INITIAL DECISION RELEASE NO. 346
ADMINISTRATIVE PROCEEDING
FILE NO. 3-12626

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

In the Matter of	:	
	:	
THOMAS C. BRIDGE,	:	
JAMES D. EDGE, and	:	INITIAL DECISION
JEFFREY K. ROBLES	:	March 10, 2008
	:	

APPEARANCES: John E. Birkenheier, Anne C. McKinley, and Richard G. Stoltz for the Division of Enforcement of the Securities and Exchange Commission

Christopher P. Litterio, Barry Y. Weiner, and Michael J. Duffy for Thomas C. Bridge, James D. Edge, and Jeffrey K. Robles

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

The Securities and Exchange Commission (Commission) instituted these public administrative and cease-and-desist proceedings (OIP) on May 2, 2007, pursuant to Section 8A of the Securities Act of 1933 (Securities Act), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (Exchange Act), and Section 9(b) of the Investment Company Act of 1940 (Investment Company Act). I held a public hearing from September 10 through September 13, and on September 18, 2007. The Division of Enforcement (Division) offered testimony from eighteen witnesses, including Charles Sacco (Sacco), Respondents Thomas C. Bridge (Bridge), James D. Edge (Edge), and Jeffrey K. Robles (Robles) (collectively, Respondents), and two experts. Respondents offered testimony from two witnesses, including one expert.[1] The record contains approximately 115 exhibits offered by the Division and

[1] I will cite to the transcript of the hearing as "(Tr. __.)." I will cite to the Division's and Respondents' exhibits as "(Div. Ex. __.)" and "(Rs. Ex. __.)," respectively. I will cite to the Division's and Respondents' Post-Hearing Briefs, and the Division's Reply Brief, as "(Div. Post-Hearing Br. __.)," "(Rs Post-Hearing Br. __.)," and "(Div. Reply Br. __.)," respectively.

twenty-five exhibits offered by Respondents. The last posthearing brief was filed on December 19, 2007.

ISSUES

The issues are whether Bridge and Sacco willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and whether Edge and Robles failed reasonably to supervise Bridge or Sacco respectively, with a view to preventing their violations of the federal securities laws.

PRELIMINARY MATTER

The Division moved to strike the following portions of what was identified as the expert testimony of Norman S. Poser (Poser): pages four through eight, the first paragraph on page 9, the last sentence of the second paragraph on page 10, and page 10 n.4.[2] (Rs. Ex. 32.) The Division contends that Poser is not qualified by education or experience to opine on (1) the nature of trading in certain accounts; (2) the trading strategies employed; and (3) the harm caused to other shareholders by the market timing of Bridge and Sacco's customers. (Tr. 1144.)

I Deny the Division's motion to strike. Poser acknowledged that he did not do an economic analysis of the trades by Bridge and Sacco. (Tr. 1142.) Given Poser's background in securities law and regulation, and the non-technical areas on which he opined, I find his views admissible.

FACTS

My findings are based on the record and my observation of the witnesses' demeanors. I applied preponderance of the evidence as the applicable standard of proof. See Steadman v. SEC, 450 U.S. 91, 102 (1981). I have considered and rejected all proposed findings, conclusions, and arguments raised by the parties that are inconsistent with this Initial Decision.

A.G. Edwards & Sons, Inc.

A.G. Edwards & Sons, Inc. (A.G. Edwards), is a registered broker-dealer, headquartered in St. Louis, Missouri. (Div. Ex. 23.) A.G. Edwards had approximately 730 offices staffed by approximately 6,824 registered representatives or financial consultants (FC) that provide retail brokerage services throughout the United States, Switzerland, and the United Kingdom. (Tr. 1122; Div. Ex. 23.) A.G. Edwards is the principal operating subsidiary of A.G. Edwards, Inc., a Delaware corporation whose stock is traded on the New York Stock Exchange under the symbol AGE. (Div. Ex. 23.) The events at issue here occurred at A.G. Edwards' branch offices in Boca Raton and Lake Worth, Florida, and Boston, Massachusetts (Back Bay). The relevant time

[2] I denied the Division's motion to strike pages 9 through 14. (Tr. 1147-49.)

periods are from September 2001 through September 2003 for the allegations against Bridge and Sacco; and from June 2002 through September 2003 for the allegations against Robles.[3]

The branch manager is the front-line supervisor of A.G. Edwards' FCs and has ultimate responsibility for the daily supervision of the branch office. (Tr. 735, 760-61, 853-54, 861, 985-86, 1010, 1122.) A very large part of a branch manager's job is to grow the accounts or assets under management. (Tr. 912) The branch managers or assistant managers had to sign a new account application and approve issuance of an FC number or number shared by two FCs (split number), and they could authorize the transfer of an account from one branch office to another.[4] (Tr. 645, 659, 747, 749, 1123.) Branch managers had available various reports to assist in supervision, including a daily trade blotter or morning production report and a branch supervision report. (Tr. 736, 746.) The morning production report showed all trades entered by an FC or split FC number. (Tr. 908-09.) The branch supervision report identified areas at which a branch manager should look. (Tr. 910.) Among other information, the branch supervision report showed large transactions and all cancellations. (Tr. 758, 910.) Branch managers were required to review daily the trade blotter or morning production and the branch supervision report.[5] (Tr. 736, 744-46, 909-10.)

The Compliance Department (Compliance) had oversight responsibility and served as a support, but "it was the manager's responsibility to do all the daily supervision, reviewing the mail, correspondence, e-mails, trades, etcetera."[6] (Tr. 759-61.)

The regional managers are the direct supervisors of the branch managers; they do not supervise individual brokers or individual accounts.[7] (Tr. 852-53, 894-95.) The regional managers were not responsible for reviewing the morning production runs or the branch

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[3] Sacco is not a Respondent, but the allegations against Robles require a finding of an underlying violation by Sacco. The allegations are that Sacco committed violations in the period May 2002 through September 2003.

[4] The branch manager's decision to allow a split FC number or a new account or to transfer accounts between branch offices at the request of an FC was not reviewed by a higher authority. (Tr. 749-50.) The account numbers and the split FC numbers were issued by clerical people at A.G. Edwards' headquarters in St. Louis, but there was no second guessing the branch managers' decisions. (Tr. 1186-87.)

[5] The daily trade blotter showed all trade activity for each FC by account number and commission. (Tr. 745.)

[6] The evidence is that Compliance could not close an account, hire or fire an FC, or restrict the business practices of an FC. (Tr. 831.)

[7] Rawls Fortenberry was the regional manager for the Florida region in 2001; Alex Bigelow (Bigelow) held the position from March 1, 2002, through September 2003. (Tr. 735, 853.) Florida has fifty-five branch offices and five hundred FCs. (Tr. 852.)

supervision reports. (Tr. 854.) Regional managers were required to review the branch manager's activity. Supervision was done by looking at the profit and loss of the branch, by electronically validating that branch managers reviewed the required reports, and by annual on-site branch audits. (Tr. 844, 861-62.)

A.G. Edwards also had ten branch administrators who reported to the director of branches. (Tr. 729.) The branch administrator had no authority over the branch manager or FCs, and functioned as a liaison between the branches and the home office. (Tr. 733.) During 2001 through 2003, Michael Chitwood (Chitwood), A.G. Edwards' senior branch administrator, assisted the regional manager for the Florida region with respect to reviewing issues in the region.[8] (Tr. 757.) Chitwood reviewed the daily branch supervision report to flag issues for the regional manager and branch managers; his only concern was the business risk that transactions posed to A.G. Edwards.[9] (Tr. 796, 800.) David Ward Saunders (Saunders) was the branch administrator of the Northeast Region office from June 2002 through September 2003. (Tr.1008, 1010.). The regional managers and the branch administrators reported to the branch director. (Tr. 1009-10.)

A.G. Edwards' mutual fund order room in St. Louis, Missouri, received mutual fund orders from FCs and transferred them to mutual fund companies through the National Securities Clearing Corporation (NSCC) Fund/SERVE, its trading facilitator that provided automated trade submission service to the mutual fund industry.[10] (Tr. 197, 373) The NSCC system had data fields that disclosed basic data about the transaction to the mutual fund, including the customer's account number, name, sometimes shortened, and tax identification number, the identity and FC number of the broker servicing the account, and the branch office of the broker-dealer originating the transaction.[11] (Tr. 407, 1002, 1044, 1064, 1102; Div. Ex. 28 at 7.)

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[8] As branch administrator, Chitwood, who has been with A.G. Edwards for thirty-eight years, had no supervisory responsibility over the Boca Raton branch office or the FCs in it, but he assisted the regional manager, who did have supervisory responsibility over the branch managers by reviewing daily large trades, new accounts, and discretionary trades. (Tr. 727, 741.) In fact, Chitwood tried to provide an extra set of eyes for the branch and regional managers, and performed a daily review of all large trades in the Florida region. (Tr. 741-42.)

[9] Chitwood raised questions about market timing in mutual funds in Fund Navigator accounts, but he did not raise concerns about Bridge's market timing in mutual funds with the regional managers or Edge. (Tr. 776-77; Rs. Exs. 16, 18.) At the time, he did not view market timing as a compliance or regulatory issue. (Tr. 796.)

[10] NSCC was begun in the mid-1980s to do all over-the–counter NASDAQ trades. It later merged with Depository Trust Company. (Tr. 1101.)

[11] The amount of data furnished corresponded to the type level of account registration. All the trades at issue were level 3 for street name holdings. A level 3 customer cannot go directly to the fund. (Tr. 1101-02.)

William Winter (Winter), A.G. Edwards' Senior Vice President, Assistant Treasurer, board member, head of the mutual fund department, and head of cashiering operations, first heard about block letters and market timing in September or October 2002.[12] (Tr. 1098-99, 1104-05, 1123-24.) Winter did not consider market timing in mutual funds to be illegal. (Tr. 1109, 1113.) He considered language in a block letter that said the account may be closed if two more transactions were entered to be vague. (Tr. 1114.) He contends that, in 2001 through 2003, the mutual fund business was a sales orientated business in which a fund company would normally grant a broker, who did a lot of business with the fund, an exception. Winter testified that at A.G. Edwards "we kind of put it in the hands of the fund company to decide what the market timing was. If it was excessive to them, then shut it down. We didn't let them trade through the blocks." (Tr. 1114-15.)

In the fall of 2002, Winter brought his concerns about potential operational problems to his boss, A.G. Edwards' Vice Chairman, Director of Operations, Ron Kessler, who asked Winter and others to coattail on the work of another group that was considering whether the firm was making money on fee-based accounts, and to study in-depth market timing in mutual funds, to consider the number of mutual fund transactions on which the firm would not lose money, and to identify any regulatory issues.[13] (Tr. 1111-12, 1124-25, 1133.) The working group chaired by Winter examined block letters and related account statements, and issued the "Winter Report," a memorandum, "Excessive Mutual Fund Trade Activity," on April 7, 2003. (Tr. 1003-04, 1103, 1124; Rs. Ex. 3.) The Winter Report was put together quickly to give A.G. Edwards an idea of the problem. (Tr. 1126, 1130.)

The Winter Report acknowledges that FCs were playing a cat-and-mouse game with the mutual funds to hide information from the funds by using multiple account numbers, etc. (Tr. 1119.) The Winter Report shows that A.G. Edwards knew that some FCs were evading block letters.[14] (Tr. 846; Rs. Ex. 3.) It raises the following issue: "The firm needs to determine if the

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[12] Winter has been involved with mutual funds for about thirty-eight of the forty-one years he has been with A.G. Edwards.

[13] Winter was concerned because mutual fund transactions were settled in T1, or the day after the transaction was entered. The broker-dealer does not have a price when it enters the trade and process it as an "as-of transaction." It settles the mutual fund trade the next day by plugging in the fund's NAV from the fund's web site. If the fund rejects the trade, A.G. Edwards was concerned that it would get stuck because it had already confirmed the order and the client might insist that it give him/her that price. Winter saw the situation posing a risk to A.G. Edwards. (Tr. 1106-07.) If a client liquidated a sale the day following the purchase, the situation became more complex and posed additional potential problems for A.G. Edwards. (Tr. 1107-08.)

[14] As an example of a block letter, the Winter Report contains a letter from Thornburg Investment Management, dated January 22, 2003, asking for all possible combinations of Bridge's FC numbers and branch numbers because it sent him letters, on several occasions, restricting his trading privileges, but he continued to trade using at least seven different FC numbers. (Tr. 1129; Rs. Ex. 3 at D at SEC MRO 0002272.)

relatively small increase in business due to market timing is worth the potential damage that may be caused to its overwhelming majority of customers who purchase long term products." (Rs. Ex. 3, Tab A at 2.) Winter insists that A.G. Edwards never traded through the blocks, and that A.G. Edwards would have fired anyone found to have violated the federal securities laws. (Tr. 1114, 1118.) The Winter Report acknowledges that excessive mutual fund trading harms A.G. Edwards other customers that have holdings in the fund. (Rs. Ex. 3 at 1, Tab A, 2.) According to Winter, the Winter Report only identified two regulatory issues: anti-money laundering and know your customer. (Tr. 1115; Rs. Ex. 3.) A.G. Edwards took no action to enact any policies as a result of issues identified in the Winter Report. (Tr. 1116.) Until October 2003, the firm did not have a policy on market timing, its Branch Supervision Manual did not restrict market timing, and it considered mutual funds solely responsible for enforcing their trading limitations. (Tr. 402, 763, 813, 871, 893, 997, 1018.)

The evidence is overwhelming that A.G. Edwards' attention to the issue of market timing in mutual funds, prior to October 2003, was focused solely on protecting itself from business risk and avoiding liability.[15] (Tr. 857-59, 869-71, 1001-02, 1106-08.) There is nothing in the record that supports the statement that A.G. Edwards is a "remarkably ethical firm" that has always tried to do the right thing. (Tr. 896.)

Winter also alerted Mark Louis Roth (Roth), an A.G. Edwards employee for twenty years, who became supervisor of the mutual fund order room in St. Louis, Missouri, in August 2001.[16] (Tr. 372-74.) The mutual fund order room also received communications from mutual funds about market timing by FCs. (Tr. 375.) The communications, referred to as block notices, block letters, or market timing letters, stated either that the funds had rejected trades, that trading was approaching certain limits, or that the funds no longer accepted further trades (block notices). (Tr. 376-77, 399-400, 488; Div. Exs. 1 at 28, 2, 3.) Personnel in the mutual fund order room faxed, emailed, or wired block notices to A.G. Edwards' branch offices. (Tr. 376-77.) As a general practice, Roth had letters, addressed to him or others in the mutual fund order room, faxed to the attention of the branch manager and to the FC, while sending a wire to the branch manager saying he would be receiving correspondence. (Tr. 378, 388, 413, 535-40; Div. Ex. 2L at SEC MRO 0000888.) Roth expected that recipients of the correspondence at A.G. Edwards would follow the mutual funds' instructions and cancel the trades or stop trading and not continue market timing the fund in the accounts mentioned in the correspondence. (Tr. 381, 404-05.) In 2002, Roth learned that FCs, who were restricted or had accounts restricted by mutual funds, were getting new numbers or joint FC numbers and opening accounts for the same

[15] Gregory Ellston (Ellston), the supervisor of the mutual fund advisory programs and the mutual fund sales desk in the Managed Products Department (sales and marketing), testified that A.G. Edwards was also concerned about compliance, but he was the only witness who took that position. Several other witnesses testified that A.G. Edwards was focused only on its business interests. (Tr. 982, 1004.)

[16] Roth was not authorized to fire an FC, supervise an FC, or close any account in a branch office. (Tr. 398.) He did not authorize new FC numbers or new account numbers to get around blocks placed by mutual funds. (Tr. 413.)

customers at different branches to continue trading. (Tr. 405-06.) Roth informed his supervisor, Ms. Tinnin, A.G. Edwards' Assistant Manager for Mutual Funds, of this conduct, but received no instructions. (Tr. 406.)

In 2007, A.G. Edwards settled an administrative proceeding alleging failure reasonably to supervise its FCs with respect to preventing and detecting violations of the federal securities laws between at least January 2001 and September 2003, based on conduct similar to what is alleged here. A.G. Edwards & Sons, Inc., 90 SEC DOCKET 1618 (May 2, 2007). (Div. Ex. 4.) The firm agreed to retain an independent consultant to work on market timing issues in-house, and it was censured and ordered to pay a total of $3,860,000 in disgorgement, prejudgment interest, and a civil money penalty. A.G. Edwards, 90 SEC DOCKET at 1624. A.G. Edwards first adopted a policy and rules and regulations prohibiting excessive trading or market timing in mutual funds in October 2003. (Tr. 402, 763, 897, 996.)

Market Timing and Mutual Funds From September 2001 Through September 2003

Market timing is not illegal per se.[17] (Tr. 204, 893, 948-49, 996, 1018, 1113.) The persuasive evidence is that, during the time periods at issue, mutual fund families, with very limited exceptions, opposed market timing in their funds. (Tr. 994.)

The ING family of mutual funds made a concerted effort to stop market timing in its funds by reviewing the many hundreds of transactions that occurred the previous day in its funds, and sending letters to the FC and/or the broker-dealer's branch office, requesting that market timing activity cease in an account(s), and in some cases, by freezing trading in accounts when it found market timing.[18] (Tr. 146-51, 179; Div. Ex. 3R.) In July 2002, ING's prospectus stated, "'The Advisor may prohibit excessive exchanges.'" (Div. Ex. 3R.) ING's purpose in sending out the letters was to end market trading which was contrary to its general policies. (Tr. 146, 153.) The challenge that ING faced was that it had to wait until a pattern of trading occurred that demonstrated market timing before it could take steps to stop it.[19] (Tr. 162.) ING believed that broker-dealers and their financial advisers were obliged to honor the instructions in the block letters. (Tr. 166.)

Robles received copies of letters from ING, stating that its prospectus did not allow excessive exchange activity and requesting that Sacco's FC number and associated numbers be

[17] According to the OIP, "'Market timing' includes (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." (OIP at 1 n.1.)

[18] ING received information the next day from its transfer agent, DST Systems in Kansas City, that had largely relayed information received from broker-dealer firms. (Tr. 149.)

[19] ING's regular course of business was to freeze future transactions, however, transactions could be frozen any time before settlement. (Tr. 173-74.) The information ING received commonly did not identify the broker-dealer branch or the name and number of the financial consultant. (Tr. 178.)

restricted and not used to market time ING Funds. (Div. Ex. 3R.) ING maintained a log of market timers that listed Sacco, individually and with others. (Tr. 175-76, 180; Rs. Ex. 9-A-7.) When letters did not stop Sacco's market timing activities and ING could not get cooperation from A.G. Edwards' Operations Department, ING took the unusual action of blocking all business, except redemptions, from the A.G. Edwards' Back Bay branch, where Sacco was located. (Tr. 156-58, 180-81.) Kemper Lockwood, ING's Operations Supervisor at the time, was not aware that ING allowed certain clients to market time its funds from September 2001 through September 2003.[20] (Tr. 162.)

During the September 2001 to September 2003 time period, Franklin Templeton Investment (Franklin Templeton) tried to prevent market timing in its mutual funds.[21] The firm reviewed the previous day's transactions and certain reports, such as monthly activity reports and reports of the activity of top producers, for market timing activity. (Tr. 188-91.) Franklin Templeton identified Bridge as an FC who partnered on accounts that violated Franklin Templeton's exchange policies between September 2001 and September 2003. (Tr. 205-06.) Franklin Templeton considered these "network level 3 accounts" to be owned by A.G. Edwards, and it sent letters, facsimiles, and emails to A.G. Edwards and Bridge, informing them that it would no longer accept purchases or exchanges in these Franklin Templeton accounts.[22] (Tr. 206-10; Div. Ex. 2I.) Franklin Templeton did not have the ability to block transactions by the name of a customer, by FC, or by BIN. (Tr. 210). It could only block by Franklin Templeton account number. (Tr. 213.) Thomas Johnson (Johnson), a key accounts manager of Franklin Templeton, never told Bridge he could trade frequently in the Franklin Templeton funds. (Tr. 214-15.)

In 1999, Franklin Templeton began maintaining publicly that it did not allow market timing, however, prior to and after September 2001, Johnson knew that Franklin Templeton allowed certain broker dealers to market time and that its market timing desk maintained a list of companies and FCs who engaged in market timing. (Tr. 220-21, 223-30, 238, 240-42; Div. Ex. 2I.) Two names on the list were FCs with A.G. Edwards. (Tr. 230.) Franklin Templeton tightened its policy against market timing in late 2000. (Tr. 242.) In the September 2001 through September 2003 period, Johnson allowed Dan Calugar (Calugar) of Security Brokerage

[20] The National Association of Securities Dealers (NASD) (now the Financial Industry Regulatory Authority) sanctioned ING and fined it approximately $1.5 million, and it also sanctioned William Sessions, Vice President, on October 3, 2005. (Tr. 162-63.)

[21] Franklin Templeton dealt primarily with discount dealers and direct-to-broker firms like Charles Schwab, E*Trade, and Fidelity Investments rather than full-service brokerage firms like Merrill Lynch and Smith Barney. (Tr. 184)

[22] A broker identification number (BIN) is the client's account number at A.G. Edwards. (Tr. 200.) A BIN number might have several accounts at Franklin Templeton in different funds. (Tr. 211-12.)

to market time because he believed it was authorized by Franklin Templeton executives.[23] (Tr. 216, 233-36.) Franklin Templeton's actions were contrary to the policies stated in the prospectuses of the funds. (Tr. 231-32.) In August 2003, Franklin Templeton's in-house counsel knew of no law or rule that imposed an obligation on brokers with respect to market timing, and he considered market timing an issue between the shareholder and the fund. In-house counsel questioned whether imposing obligations on brokers via the selling agreements would hurt business as Franklin Templeton would be doing more to stop market timing than its competitors. (Tr. 248-49; Rs. Ex. 31.)

Franklin Advisers, Inc., a subsidiary of Franklin Resources, Inc., which, with its subsidiaries, operates under the name Franklin Templeton, settled an administrative and cease-and-desist proceeding in 2004 in which it agreed to certain undertakings, including creating a senior-level position with compliance responsibilities and retention of an independent distribution consultant, disgorgement of $30 million, payment of a $20 million civil money penalty, and a censure. Franklin Advisers, Inc., 83 SEC Docket 1770 (Aug. 2, 2004). The settlement also stated that:

> Despite [giving a known market timer permission to time a fund that prohibited market timers], [Franklin Templeton] as a whole has generally sought to detect, discourage, and prevent market timing in its funds. [Franklin Templeton] began to increase its efforts to control market timing in 1999, at a time when other mutual fund complexes were encouraging timers. [Franklin Templeton] has rejected many potentially lucrative proposals from market timers.

Id. at 1776.

Deutsche Asset Management, Inc. (DAMI), and Deutsche Investment Management Americas, Inc. (DIMA), entered a settlement with the Commission on December 21, 2006, in a market timing case. DIMA is a registered investment adviser subsidiary of Deutsche Bank AG, which purchased Zurich Scudder Investments and thus acquired Kemper Financial Services, the investment adviser to the Kemper funds in 1994, and Scudder, Stevens & Clark, the adviser to the Scudder funds in 1997. DAMI and DIMA agreed to certain undertakings, were censured, ordered to cease and desist from violating certain sections of the Investment Advisers Act of 1940 and the Investment Company Act, and ordered to pay $17,200,000 in disgorgement. Deutsche Asset Management, Inc., and Deutsche Investment Management Americas, Inc., 89 SEC Docket 2060 (Dec. 21, 2006).

DST Systems, Inc., performs various duties for mutual funds, including transfer agent for the DWS Scudder funds (Scudder).[24] Andrew Silens (Silens) of DST Systems, Inc., the transfer

[23] The arrangement was referred to as a "sticky-asset deal" where Calugar agreed to deposit funds in one Franklin Templeton mutual fund for the ability to market time in another Franklin Templeton mutual fund. (Tr. 223, 235.)

[24] In 2001 and 2002, Scudder included the Kemper funds and the legacy Scudder funds. The legacy Deutsche Bank funds became part of Scudder in August 2002. (Tr. 285.)

agent for Scudder, testified. Silens was not named in a settlement by Scudder's parent with respect to market timing. There appears to be some conflict between what Silens believed Scudder was doing and what is represented in the settlement.[25]

Scudder began monitoring trading activity in Scudder mutual funds, for market timing and excessive trading, on a daily basis, in November 2001. (Tr. 287, 313-14.) The general policy was to reserve the right to reject any trades that the funds considered harmful. (Tr. 313, 317.) The primary tool used in the daily review of thousands of prior-day transactions was a report on large-dollar transactions on the previous day. (Tr. 289-90, 351.) At first, the report contained every transaction above $100,000, but the amount was lowered to $50,000 per transaction. (Tr. 292.) Another report on the previous day's transactions was the "Daily Big Hit Sales" for a particular day. (Tr. 329; Rs. Ex. 24.) Other reports contained additional information, including the name of the registered representative and broker-dealer branch if the information had been submitted with the original order. (Tr. 291-93.) Sometimes, but not always, the information on transactions entered by A.G. Edwards contained the name of the FC. (Tr. 293, 302.) Scudder put a stop on transactions in an account that was market timing, and it would notify the broker-dealer that a trade was being cancelled and arrange to physically process the cancellation. (Tr. 294.) Scudder considered cancelling a trade as a very serious matter. (Tr. 327-28.) In the period September 2001 through September 2003, Scudder did not have the ability to block customer names, FC names, FC numbers, or BIN numbers. (Tr. 295.)

Scudder tried to stop market timing by A.G. Edwards' FCs in Scudder funds. (Tr. 306.) Scudder sent a large number of letters and emails to Roth, the manager of A.G. Edwards' trade desk, informing him that certain accounts or A.G. Edwards BINs had been identified as engaging in market timing and that Scudder had stopped trades in the accounts. (Tr. 296-97.) Some of the letters requested Roth to inform the FC, and others said that letters were being sent to the FC. (Tr. 296, 301-02; Div. Exs. 2U, 3BB.) Scudder had information in various reports but often it did not have time to link up the data it had from various sources to identify the FC due to the volume of correspondence it was sending out.[26] (Tr. 339-41.) Where Scudder did not have a link that identified the FC, Scudder always said, in letters to broker-dealers, to please forward this letter to the appropriate parties. (Tr. 341.) Bridge's FC number, 285-038, appears on at least four of the letters or emails, and one email faxed by Roth to Edge says that Bridge has been identified as a market timer. (Tr. 307; Div. Ex. 2U at SEC MRO 0000823) Silens authored much of the correspondence sent to A.G. Edwards.

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[25] The settlement says that DAMI allowed a hedge fund to market time three Deutsch Bank funds in a "sticky-asset" arrangement from July 2000, and that the market-timing committee reviewed the arrangement but allowed it to continue until early 2003. See Deutsche Asset Management, 89 SEC Docket at 2065 (2006). (Tr. 350)

[26] Scudder had available the following reports for its daily review of market timing: Mutual Fund Sales @NAV Sales Reporting; Large Dollar Fall File Report – Review Trades for Timers – DTG; and Lookup: Shareowner Master. (Tr. 344-47; Rs. Ex. 24.)

Scudder placed stops on accounts related to Sacco, and the evidence shows that Sacco continued to market time after Scudder sent correspondence to A.G. Edwards, asking that he stop doing so. (Tr. 308)

Silens did not grant any exceptions to Scudder's policies against market timing, and he shut down two market timing arrangements in January 2002. (Tr. 311-12.) Silens never told Bridge he could trade frequently in Scudder funds. (Tr. 307.)

Bridge and Edge and Sacco and Robles

A large number of mutual funds sent letters, emails, or facsimiles to Bridge, Sacco and/or A.G. Edwards, complaining about market timing by Bridge's and Sacco's accounts.[27] (Div. Exs. 2 and 3.) The A.G. Edwards accounts at issue were fee-based accounts, and the trades were unsolicited. (Tr. 905; Div. Ex. 30.)

Bridge and Edge

Bridge, age forty-one, has been associated with A.G. Edwards in Boca Raton, Florida, since March 1995, six years after entering the securities industry. Bridge was also assistant branch manager in Boca Raton from 2002 until May 2007.[28] (Tr. 416, 476.) Bridge now holds Series 7 and 63 securities licenses, and between 2002 and May 2007, he also held Series 9 and 10 securities licenses. (Tr. 415.)

Edge, age forty-six, has been Bridge's direct supervisor since January 2001. (Tr. 417, 735, 907.) Edge has managed A.G. Edwards' Boca Raton, Florida, office since at least 2001, and he was also responsible for A.G. Edwards' office in Lake Worth, Florida, between March 2002 and 2006.[29] (Tr. 416, 740, 906.) As branch manager, Edge reviewed the daily production report that showed all trades by FC number, single and split. (Tr. 909-10.)

In August 2001, Edge asked Bridge, one of his top sales people, to take over the RMO, Inc. (RMO), account that had about five million dollars in assets. All RMO transactions were for

[27] The parties have stipulated that the documents, describing the blocking efforts by mutual funds in Div. Exs. 2 and 3, are A.G. Edwards' official business records. (Tr. 388; Div. Ex. 29.) The mutual funds that provided correspondence included in Div. Exs. 2 and 3 have attested that this material was kept in the regular course of business. (Tr. 388, 390-94; Div. Exs. 2X, 3HH.) A.G. Edwards only acknowledges receiving those messages which were in its files and which bear the A.G. Edwards stamp. (Tr. 395-97.)

[28] The branch code for the Boca Raton branch is 285. (Tr. 419.) Bridge signed some correspondence as A.G. Edwards' Vice President-Investments. (Div. Ex. 22.)

[29] Edge has been with A.G. Edwards his entire twenty-two year career in the securities industry. He holds Series 3, 7, and 8 securities licenses. (Tr. 906.)

over $100,000 and required branch manager approval.[30] (Tr. 419-20, 911, 919; Div. Ex. 13A.) RMO's owner and president was Martin Oliner (Oliner). (Tr. 419, 911.) Edge viewed the account as having certain risks, but also the potential for further growth. (Tr. 912.)

Edge was fully aware of Bridge's activities. (Tr. 1175.) In January 2002, Bridge began receiving letters directly or from A.G. Edwards' mutual fund order room sent by mutual fund companies about trading in the accounts that had split FC numbers. (Tr. 460, 462; Div. Ex. 2.) Edge became aware of the block letters sometime in 2002. (Tr. 922.) Twenty-three different mutual fund families sent approximately 135 communications, either directly to Bridge or to A.G. Edwards, imposing a restriction or threatening to do so or cancelling a transaction.[31] (Div. Ex. 2.) The FCs, with whom Bridge shared FC numbers, told him when they were informed that a mutual fund had cancelled a trade. (Tr. 461.) Bridge and Edge are friends and talk almost every day. (Tr. 908.) Bridge told Edge about the communications he received from mutual funds, and Edge talked with Bridge about the letters he received. (Tr. 468, 926, 965, 968.) Edge did not personally review incoming block letters from mutual funds or keep copies of them because Compliance told Edge that he was required to review and retain only "direct client communications," however, the Branch Manager Supervisory Manual required that the files contain copies of all business-related letters. (Tr. 468, 923-25, 964-65, 967; Div. Ex. 6 at § 10.5.) Bridge shredded the correspondence he received on these matters. (Tr. 461.)

Following receipt of a block letter, Edge testified that he and Bridge allowed clients to continue market timing within limits. (Tr. 970.) Edge approved almost all of Bridge's order tickets; he signed off on accounts opened in the Boca Raton office; he knew about accounts that Bridge and Silvestri opened in the Lake Worth office; and he knew that Oliner accounts were being switched back and forth between the two offices. (Tr. 442, 916-18.) Bridge did not keep his activities secret from Edge, and Edge acknowledges knowing all that Bridge did. (Tr. 418, 958.) The evidence is that they acted together.

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[30] Bridge's FC number was FC 285-038. The first three digits were for the Boca Raton branch. The account number was 285246415. As a fee-based account, there were no transaction costs assessed and RMO paid a fee based on the average assets in the account. (Tr. 420.) Transactions in the account were unsolicited. (Tr. 484.) Oliner had to approve any withdrawals from the account, and account statements were sent to him. (Tr. 422-23; Div. Ex. 13A at SEC MRO 0053043.) David Taylor (Taylor), RMO's chief financial officer and secretary, was a contact on the RMO account and made most of the day-to-day investment decisions in the account. (Div. Ex. 13A at SEC MRO 0053043, 21 at 2.)

[31] Div. Ex. 2 contains block letters and emails from various funds behind tabs A through W: AIM Fund Services, Inc., American Century Investment Services, Inc., BlackRock Funds, CDC IXIS Asset Management Services, Inc., Credit Suisse Asset Management, LLC, etc. The vast majority of communications and trade cancellations occurred in accounts of companies of which Oliner was the president. (Tr. 462.) Edge testified that he did not receive each of these letters. (Tr. 956.)

Bridge claims that he followed the instructions stated in the mutual funds' letters and that if they told him to stop trading, he stopped, or if they told him to stop trading in a particular account or accounts, he stopped trading in those accounts. (Tr. 463-66, 469, 472.) Edge testified that Bridge followed the specific instruction stated in the block letter, and he believed that they obeyed the restrictions imposed by the mutual fund. (Tr. 926-27, 931, 965.)

> If the mutual fund asked -- if the mutual fund said they did not want Tom Bridge under any number to trade, he wouldn't trade. If the mutual fund asked that a certain BIN number or a certain FC number no longer trade, that would be the case. We followed the letter to the letter.

(Tr. 928, 950.) The evidence shows, however, that Bridge continued to market time in Scudder funds after Scudder sent out correspondence to A.G. Edwards asking that he stop doing so. (Tr. 307)

Edge does not consider that he and Bridge acted fraudulently by acting to circumvent the restrictions in the block letters that the mutual funds made clear they were imposing to stop market timing. (Tr. 929-32.) Edge admits that mutual funds did not favor "this business," but he is not convinced that "mutual fund companies didn't want this business." (Tr. 931, 935-36.) It was not clear to Edge that mutual fund companies objected to market timing because he believes, but has no personal knowledge, that mutual funds created space for some brokers to market time and set up deals to allow it to happen. (Tr. 969.) Also, while mutual funds' operations departments were sending out block letters, their sales people were sending positive messages. (Tr. 969.) Edge notes that mutual funds could have shut down market timing by placing a call to the home office or to the branch or by pulling the dealer agreement, but that the block letters left the door open for trading. (Tr. 952-53.)

Edge does not accept that he has a responsibility to monitor mutual fund trades, rather it is up to the funds to decide what trades they will accept. (Tr. 932.) Edge insists that A.G. Edwards provided the funds with full disclosure on each of Bridge's trades. (Tr. 950-51.)

Bridge sent the following message to Taylor on March 25, 2002:

> We have been kicked out of State Street for market timing.
>
> . . .
>
> If there are several corporations that you handle the investments for, I could facilitate trades for 3 or 4 of them, in addition to the corporate account(s) you already trade. I could set up a rotation based on each fund families [sic] policies, and have things prepared for you ahead of time. This method will keep us from hitting the same fund families too often, or purchasing too much into a small fund. This would make your job easier, and keep you from getting bounced out by fund families.

(Div. Ex. 22.)

In 2002, Bridge and Edge discussed opening accounts for Oliner's corporations in Lake Worth because transferring the accounts from Boca Raton to Lake Worth would give the clients new account numbers and allow the corporations to avoid blocks and continue trading in mutual funds.[32] (Tr. 913-14, 918-19.) Some of Bridge's accounts had no new-account opening statements, and Bridge was able to transfer accounts from one A.G. Edwards branch to another without opening a new account. (Tr. 366-67, 913.) Between August 2001 and September 2003, Bridge switched the RMO account between the Boca Raton and Lake Worth branch offices so that the account had four different account numbers at A.G. Edwards. (Tr. 439.) Edge and Bridge took these actions to accommodate the client. (Tr. 912-13.)

Bridge opened four accounts using both the Boca Raton and Lake Worth branch numbers so that two different branch office numbers would appear on the accounts, and, in part, so the mutual fund companies would not assume that one client was trading the account. (Tr. 438.) Edge had to sign off on split FC numbers, on which Bridge was an FC, for accounts opened in the Boca Raton branch. (Tr. 917.) Bridge entered twenty-eight split FC arrangements between September 1, 2001, and September 1, 2003.[33] (Div. Ex. 10.) He entered at least fifteen of these split FC arrangements to trade in accounts of companies of which Oliner was the president. (Tr. 456.) Edge was aware of all these split FC arrangements, and he knew they were to get around restrictions in block letters. (Tr. 452-57, 921, 928-29.) On May 9, 2002, following discussions with Edge, Bridge opened accounts for several businesses of which Oliner was the president, under the same conditions as in the RMO account:[34]

> Lincoln Indemnity Company (Lincoln Indemnity), account 285259290, at the Boca Raton branch, FC is Bridge;
>
> Flintridge Corporation (Flintridge), account 018464543, at the Lake Worth branch, FCs are Bridge and Dan Silvestri (Silvestri);[35] and
>
> First Lincoln/Santa Monica Corporation (First Lincoln/Santa Monica), account 018464551, at the Lake Worth branch, FCs are Bridge and Silvestri or John Orsi. (Tr. 430-37, 915-16; Div. Exs. 13B, 13C, 13D.)

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[32] Bridge had to enter a split FC number to open one of his accounts at the Lake Worth branch. (Tr. 920.)

[33] Stipulation number three lists thirty-two split FC numbers for Bridge that Edge approved from 2001 through 2003. (Div. Ex. 30.)

[34] Respondents' expert referred to them as the Oliner accounts because Oliner was the principal of each entity. (Rs. Ex. 32 at 4 n.2.)

[35] Bridge had to enter a split FC number with an FC at the Lake Worth branch when he opened an account there for a customer. (Tr. 443.) Silvestri became the on-site manager of the Lake Worth office in the spring of 2002. (Tr. 450, 917.)

Between May 2002 and September 2003, Bridge switched the Lincoln Indemnity, Flintridge, and First Lincoln/Santa Monica accounts between the Boca Raton and Lake Worth branch offices so that the accounts each had four different account numbers at A.G. Edwards. (Tr. 439-40.) Bridge's explanation for not keeping the accounts for the different corporations at the Boca Raton office is that "'it was one client, but it was four different corporations.'" (Tr. 440-41.) Bridge discussed switching the accounts with Edge. (Tr. 441.) Bridge did not switch the accounts of his other customers between the Boca Raton and Lake Worth branch offices. (Tr. 441.)

Lord Abbett & Co. (Lord Abbett) sent Bridge a letter, dated May 29, 2002, telling him to stop trading in the fund. (Div. Ex. 2O.) Lord Abbett sent him another letter, dated August 21, 2002, rejecting a transaction in a specific account. (Div. Ex. 2O.) Bridge claims that because there were hundreds of letters addressed to him and hundreds addressed to A.G. Edwards about his trading, he missed the August 21, 2002, letter and continued to trade in the fund. (Tr. 473; Div. Ex. 2O.) Lord Abbett sent Bridge another letter on September 20, 2002, rejecting a trade in a specific account. (Div. 2O.) Bridge claims that this letter, like the letter dated August 21, 2002, and most letters he received, did not tell him he was "not allowed to do anything." (Tr. 474.) After a mutual fund blocked or cancelled a trade for market timing in a corporate account where Oliner was president, Bridge continued to trade in the same mutual fund in other accounts of corporations at which Oliner was the president. (Tr. 475.) After a mutual fund blocked or cancelled a specific FC number, Bridge continued trading in the mutual fund by using different FC numbers. (Tr. 475-76.)

On January 16, 2002, Nuveen Investments informed A.G. Edwards that it was freezing a specific account in its Insured Muni Bond Fund on which Bridge was the FC because "there is now a pattern of jumping to different funds once frozen to continue market timing." (Div. Ex. 2P.) Nuveen Investments informed A.G. Edwards, in a similar message on May 30, 2002, that it had frozen three accounts in the Insured Municipal Bond Fund on which Bridge was part of a split FC identification. (Div. Ex. 2P.) On September 25, 2002, John Hancock Funds informed A.G. Edwards that it had "busted some market timers [sic] trades." (Div. Ex. 2K). The communication identified Bridge, a known market timer, as part of the split FC number. One fund refused to let Bridge sell in an account for three days. (Tr. 491.)

On April 15, 2003, PIMCO Advisors Distributors LLC froze any future transactions from Boca Raton and one other A.G. Edwards branch because of continued disregard of restrictive notices issued to protect the interest of its other shareholders. (Tr. 1161-62; Div. Exs. 2S at AGE/MT-12880, 30.) Bridge was the FC on six of the seven accounts noted.

Bridge acknowledges that he established multiple accounts for four different accounts maintained by the customer, established the accounts under different FC numbers, and established the accounts under the Lake Worth satellite branch office to allow a customer to effect transactions in mutual funds beyond the restrictions the mutual funds imposed. (Div. Ex. 28 at 9 n.10 (citing Bridge's testimony transcript, Nov. 21, 2005, at 42-44, 72).)

During the period September 1, 2001, to September 8, 2003, Bridge made 1,352 trades, representing $1.126 billion. (Div. Ex. 1 at 23.) Bridge placed the orders using his FC number

and the split numbers that had his name. (Tr. 443.) Almost all of Bridge's transactions were in municipal bond funds and were for $100,000 or significantly more. (Tr. 96, 116, 442; Div. Ex. 1 at 23-24.) Bridge's clients began selling, or sold, ninety percent of the positions they purchased within two days for equity funds and within six days for municipal bond funds. (Div. Ex. 1 at 24.)

Bridge's clients had first-day profits of $28,436 and $491,324 on purchases of equity funds and municipal bond funds, respectively. (Div. Ex. 1 at 24-25.) Bridge's clients had profits of $1,464,194 after five days on purchases of municipal bond funds. (Div. Ex. 1 at 25.)

Bridge did not think he was market timing or that his trading was illegal or violated A.G. Edwards' policies. (Tr. 479, 483, 485.) Bridge maintains that sales persons at mutual funds told him there was no problem with selling municipal bond funds short-term. (Tr. 478.) Bridge testified he got his ideas on how to continue trading for Oliner's corporations from Mike Brown (Brown), Assistant Supervisor to Roth in the mutual fund trading desk. According to Bridge, Brown told him that others avoided restrictions on trading mutual funds by using multiple accounts, multiple FC numbers, and using FCs at different branches, and that A.G. Edwards did not frown on those practices. (Tr. 477-79, 489-90.) Brown testified that between September 2001 and September 2003, Bridge would frequently ask Brown to inquire about the trading policies of the mutual funds that sent Bridge block letters. (Tr. 975.) Brown would get the information and tell Bridge. (Tr. 976.) Brown did not tell Bridge he approved the use of multiple FC numbers, multiple accounts, or transferring accounts between branches. (Tr. 976-77.) Brown had no authority over FCs or their business practices. (Tr. 973, 977-78.)

Bridge testified that he was concerned about violating the firm's policies so he asked Chitwood to alert him if A.G. Edwards changed its policies on trading municipal bond funds. (Tr. 483.) Chitwood does not recall the conversation. (Tr. 752.) According to Bridge, Chitwood informed him, in April 2003, that people at A.G. Edwards questioned municipal bond fund trading in the accounts of corporations at which Oliner was the president because the accounts were significantly underperforming the market. (Tr. 484.) Bridge does not recall telling: (1) Chitwood or Ellston that he received block or do-not-time letters that restricted trading in the accounts from multiple fund companies, or (2) Brown, Ellston, or Chitwood that he was using multiple account and split FC numbers and switched accounts between branch offices to continue trading after he received block letters from mutual funds, but he believes they knew.[36] (Tr. 489-95.)

Chitwood denies that Bridge told him that he was using multiple FC numbers or multiple accounts to continue trading in mutual funds that had restricted him from further trading. (Tr. 754.) Chitwood talked to each of the fifty or so branch managers in the Florida region at least once a month. (Tr. 753.) Edge talked with Chitwood several times a week and Edge is sure that

[36] Ellston holds a BA in Business Administration from the University of Mississippi, and an MBA from Tulane University. (Tr. 981.) He holds Series 7 and 63 securities licenses. (Tr. 982.) In 2002-2003, Ellston was Vice President in charge of the fund sales and advisory team in the Managed Products Department. (Tr. 993.)

Bridge's accounts were discussed. (Tr. 939.) Edge does not recall ever telling Chitwood that Bridge was receiving block letters, and that Bridge and he were using split accounts and multiple account numbers to get around the restrictions. (Tr. 939-40, 970.) Chitwood testified that neither Bridge nor Edge told him that: (1) Bridge received restrictive notices from mutual fund companies about his trading; or (2) Bridge was using multiple FC numbers and multiple account numbers to continue trading in mutual funds that had restricted his trading; or (3) Bridge had requested, and Edge had approved, new FC numbers and new account numbers to get around restrictive notices from mutual funds.[37] (Tr. 753-55, 817-18.) Chitwood never told Bridge or Edge that it was allowable, and he never approved using multiple FC numbers, multiple accounts, or switching accounts between branches to get around restriction notices from mutual funds. (Tr. 755-56.)

According to Bridge, Ellston told him to stop trading in Franklin Templeton funds where he had four accounts and used split FC numbers because the funds did not want him to do so. (Tr. 477-81.) Bridge recalls that Ellston only told him to stop market timing in Franklin Templeton funds, and that Ellston suggested Bridge ask the trading desks at three other mutual funds if they would negotiate an agreement giving him "space" to trade. (Tr. 480-81.) Bridge remembers Ellston using an analogy to a game to describe how mutual funds had been trying to stop market timing for twenty-five years, but when they tried to stop it one way, it reappeared in another way. (Tr. 480-81.) Bridge was enlightened by how much Ellston knew. (Tr. 480.)

Ellston does not recall Bridge disclosing that he was using multiple FC numbers or account number or switching accounts between the Boca Raton and Lake Worth branch offices to continue trading after receiving block letters. (Tr. 988-89.) Ellston's testimony is that Edge did not tell him that Bridge was receiving blocking letters, and that Bridge was using multiple account numbers, and that Edge was approving Bridge's request for new FC numbers to be used to evade block letters. (Tr. 989-90.) Ellston did not tell Bridge or Edge that he approved of using multiple account numbers or switching accounts between offices to circumvent block notices. (Tr. 990-91.) On the other hand, Ellston was aware that FCs were receiving block notices with varying restrictions, and he finds it logical to conclude that FCs were opening multiple accounts, using multiple FC numbers, and switching accounts to get around restrictions and continue trading mutual funds. (Tr. 997-1000.) Ellston believes, "Everything was in the pure light of day." (Tr. 1006.)

Edge believes that Roth (the trading room manager) knew of the restrictions in the block letters sent to Bridge. (Tr. 970.) Edge assumes that Roth and Ellston (the director of managed products) knew that Bridge was using multiple FC numbers to evade restrictions imposed on him by mutual funds because the block notices were being forwarded to Bridge from their offices at headquarters. (Tr. 941.) Edge did not tell either Roth or Ellston that Bridge sought new FC numbers to continue trading in Oliner's accounts after Bridge had been restricted under other FC numbers. (Tr. 940-41.)

[37] Chitwood did not know Bridge and Edge were doing these things until September 2003 when he was a member of the "working group" at A.G. Edwards looking at market timing. (Tr. 818.)

Alan Herzog (Herzog), A.G. Edwards' Associate Compliance Counsel, first became aware that FCs were opening new accounts and using split or multiple FC numbers to evade block notices in connection with his work on the committee led by Winter. (Tr. 833-36, 1002; Rs. Exs. 3, 5.) Herzog told Brian Underwood (Underwood), A.G. Edwards' Director of Compliance, about these evasive tactics and described them in an email, dated November 19, 2002, which he sent to Winter, Ellston, Roth, and others at A.G. Edwards. (Rs. Ex. 5.)

Edge testified that he had many conversations with Bigelow, the Regional Manager for Boca Raton, about Bridge's accounts that traded in mutual funds. (Tr. 956-57.) Bigelow had a conversation with Edge in mid-2003 in which Edge described how some clients tried to take advantage of inequities in the international bond market and they would give an indication of interest in a mutual fund early in the day and place an order close to 4:00 p.m. Bigelow told Edge he did not like the description and that some day he might shut it down. Edge said to let him know. (Tr. 866-67.) Bigelow did not instruct Edge to shut the activity down until after the announcement by the New York State Attorney General (NYSAG) in September 2003. (Tr. 867-68.)

Edge's position is that there was no reason to give this information to Bigelow, Chitwood, Compliance, Herzog, Roth, and Ellston because split FC numbers and opening new accounts were ordinary matters and he had no questions or need for clarification, and he assumed they were aware that Bridge was using split FC numbers and multiple accounts to continue trading. (Tr. 942-43, 948.) Edge discussed with Chitwood the fact that there were multiple FC numbers and multiple accounts "servicing this business;" he knew Chitwood reviewed large trades and cancellations; Roth knew about the use of multiple accounts and FC numbers; and it was clear to Edge, from a conversation with Ellston, that Ellston knew "there were multiple accounts and multiple FC numbers." (Tr. 943-45, 959-62; Rs. Exs. 14C, 14D.)

Edge saw the actions he and Bridge took as using "every means possible, every legal avenue and everything we could possibly do, to continue to allow our clients to trade mutual funds." (Tr. 913-14.) Edge does not believe that he or Bridge broke any law or A.G. Edwards policy or that they concealed their activities from people at A.G. Edwards, rather, he contends they made full disclosure to everybody. (Tr. 958-59, 962.)

Bridge and Edge remain employed by A.G. Edwards as an FC and a branch manager, respectively. (Tr. 874.)

Sacco and Robles

Sacco entered the securities industry full time before he graduated from Merrimack College, in Andover, Massachusetts, in 2000, with a Bachelor of Science in Finance.[38] (Tr. 614-16.) In December 2001, at age twenty-four, Sacco joined A.G. Edwards' Back Bay branch office. (Tr. 617.)

[38] Sacco began at Gruntal & Company and joined Prudential after he earned his Series 7 and 63 securities licenses in November 1999. (Tr. 616.)

Robles, age thirty-nine, began working in the securities industry in 1990 following graduation from Boston College with a degree in Finance. (Tr. 496.) He holds Series 7, 8, 9, 10, 63, and 65 securities licenses and has held supervisory licenses since 1997. (Tr. 496-97.) Robles received supervisory training at Merrill Lynch and at A.G. Edwards.[39] (Tr. 498-501.) Robles became manager of A.G. Edwards' Back Bay office in June 2002. (Tr. 496-503; Div. Ex. 26.) He set out to improve the office's position, which was one of the lowest in terms of revenue and profitability. (Tr. 583.) Robles was the front-line supervisor of the Back Bay office's thirty-four FCs, including Sacco. (Tr. 503-04, 558.) He was Sacco's direct supervisor until September 2003, and he had primary responsibility for reviewing the activities of the FCs in the Back Bay office. (Tr. 883-84.)

Around April 2002, an FC friend referred to Sacco a large hedge fund client, Headstart Limited (Headstart), headquartered in London, that managed over a billion dollars and placed daily trades in mutual funds using offshore accounts. (Tr. 619-22.) The manager of the Back Bay office, Albert Fagan (Fagan), checked with Compliance and approved Sacco handling the account. (Tr. 620, 684.) Fagan knew other brokers at A.G. Edwards who were market timing. (Tr. 684-85.) Later, Sacco went through a similar exercise with Robles, Patrick Winkelman, Assistant branch manager, and Compliance. (Tr. 503, 685.)

Sacco opened over one hundred accounts for Headstart under such names as Diagon (thirty-nine accounts with the same address), Mandrake (eight accounts with the same address), Sempera (eight accounts with the same address), Windsor (five accounts with the same address), and Credit Lyonnais (eighty-two accounts with the same address).[40] (Tr. 504, 551; Div. Exs. 11A, 11B, 11C, and 11D, and 11E.) Sacco's trading was abnormal because Sacco would manually write and present hundreds of trade tickets to the order desk before 4:00 p.m. daily.[41] (Tr. 508-09, 624-25.) Sacco began receiving many, many block letters from the many mutual funds in which his clients traded within a few weeks of his first trade for Headstart. (Tr. 627-28, 637; Div. Ex. 3.) Between approximately June 2002 and October 2003, approximately thirty-three mutual funds sent at least 210 communications directly to Sacco or to A.G. Edwards, restricting Sacco's trading, threatening to do so, or cancelling transactions.[42] (Div. Ex. 3.)

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[39] Robles was with Merrill Lynch from 1990 to 1999 as an FC, and a resident branch manager, and a sales supervisor for two offices. He was an FC with Morgan Stanley from 1999 to 2002. (Tr. 497-98.)

[40] Sacco understood that Headstart and Credit Lyonnais had an arrangement, and that Headstart gave Credit Lyonnais funds that it leveraged in accounts for the benefit of Headstart. (Tr. 646-47.)

[41] At the time, mutual fund orders did not have automatic order entry, at least in that office. (Tr. 509.)

[42] Div. Ex. 3, with tabs A through Z and AA through HH, contains letters and emails from various mutual funds: AIM Fund Services, Inc., American Century Investment Services, Inc., American Funds Distributors, Inc., BlackRock Funds, Calvert Funds, etc. (Tr. 631-39.)

All the letters came through the Back Bay branch office, and Robles personally delivered some of them to Sacco. (Tr. 628.) Bill Branson, Jr. (Branson), the Northeast Regional Manager, remembers asking Robles about the large number of multiple FC numbers, but he does not remember the explanation Robles gave him. (Tr. 888.) Branson expects full disclosure from branch managers who report to him, yet he does not fault Robles for not informing him about the large number of block letters because the industry was unfamiliar with market timing in mutual funds and he cannot speculate how serious Robles considered the situation to be. Also, he encouraged branch managers to go directly to Compliance who had expertise that he did not have. (Tr. 902-05.)

Between September 16, 2002, and July 16, 2003, Robles approved thirteen split FC numbers for Sacco, and in only one instance did the other FC perform any service to the client. (Tr. 682-84; Div. Ex. 9, 30.) Sacco told Robles that one reason for the split FC numbers was to get around the block letters. (Tr. 683-84, 725.) Sacco believed that using new FC numbers to continue trading when an FC had been blocked was acceptable policy at A.G. Edwards. (Tr. 714.) Sacco never told anyone at A.G. Edwards' headquarters that he used split FC numbers or multiple accounts to avoid block letters. (Tr. 721.)

Sacco could not remember all the account numbers he had; sometimes he would give Robles five or ten new account applications and explain that he needed the new accounts to keep the business going in view of the block letters. (Tr. 638, 647-48.) Sacco's testimony is that he understood that the accounts were set up for "legally formed legitimate entities." (Tr. 701.) At first, the funds blocked his client's account numbers, then they blocked Sacco's FC number, and then the same mutual fund companies blocked trading by all FCs in the Back Bay branch office. (Tr. 648.) On October 3, 2002, American Century Investment Services, Inc., informed Sacco that:

> **We have seen continued abusive trading practices from your branch, #828, in accounts on which you are listed as the representative. A warning was issued to you to cease this activity on July 1st, 2002. Due to the fact that abusive trading of our funds has continued, branch # 828 has been banned from trading all American Century funds.**

(Tr. 720; Div. Ex. 3D.)

In December 2002, Herzog informed Sacco and Robles that the firm was reviewing its policies on market timing, and, while it had "not yet chosen to shut down market timing accounts entirely, these accounts are closely monitored and require an indemnification letter . . . to minimize any legal risks" to A.G. Edwards from conducting this business. (Div. Ex. 25.)

On June 18, 2003, State Street Research Investment Services (State Street) informed Robles:

> In our letter to Mr. Sacco, dated May 19th, it was clearly stated that the [market timing] activity was a concern to our firm and the impact it was having on our

> funds as well as our shareholders. Unfortunately, the activity has continued at the same level over the past month.
>
> At this time State Street Research has placed a redemption only status on all of the accounts from your branch that are currently invested in our funds. Any attempts to make purchases or exchanges will be rejected by our system.

(Div. Ex. 3CC.) Robles had Sacco straighten the matter out with State Street, which he did by committing not to trade in any accounts under any FC number. (Tr. 648-49, 680, 720.) Generally, Sacco would have compliance at a mutual fund lift a block by committing not to trade in a particular account. (Tr. 721.)

Sacco continued to trade in the AIM family of funds (AIM) after he received a letter, dated October 3, 2002, informing him of AIM's policy against market timing and that only two more exchanges would be allowed in the account. (Tr. 636; Div. Ex. 3A at SEC MRO 001606.)

In May 2003, the same friend who recommended Headstart to Sacco, recommended another market timing hedge fund, Atlantique, located in New York or New Jersey.[43] (Tr. 509, 653; Div. Ex. 12.) Headstart and Atlantique traded in the same international and bond funds. (Tr. 654-55.) Robles was ecstatic at the idea of having another large sum under management that would generate commissions, and as more accounts were opened, Sacco received a private office and a parking space.[44] (Tr. 653-54, 657.) Sacco's activities on behalf of Atlantique were the same as for Headstart and resulted in similar block letters. (Tr. 656-58.)

During the period June 5, 2002, to November 6, 2003, Sacco made 25,533 trades on behalf of customers representing $4.036 billion. (Div. Ex. 1 at 23.) Most of these unsolicited trades were in equity funds and had an average of $155,135 per trade. (Div. Ex. 1 at 23.) Sacco's clients sold or started to sell ninety percent of their purchases within six to eighth days of purchase. (Ex. 1 at 23.) Sacco's clients had first-day profits of $2,559,961 and $89,967 on purchases of equity funds and municipal bond funds, respectively. (Div. Ex. 1 at 24-25.) Sacco's clients had profits of $279,315 after five days on purchases of municipal bond funds. (Div. Ex. 1 at 25.)

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[43] Div. Ex. 12 has eleven sets of account opening statements. Sacco says Atlantique was located in New York, but the account opening statements say New Jersey. Sacco remembers opening five or ten accounts at one time. (Tr. 657.) Three of the opening account forms are dated May 7, 2003, five are dated May 23 or 27, 2003, and three are dated June 10, 2003. (Div. Ex. 12.) Stipulations list thirty-four accounts for Atlantique at one address in New Jersey and one address in the Cayman Islands. (Div. Ex. 30.)

[44] Branson testified that Sacco could have received congratulatory emails or wires generated automatically because of a high level of production. (Tr. 886.)

Following action by the NYSAG against Canary Capital in September 2003, Sacco's marketing timing clients shut down their accounts. (Tr. 665.) Robles asked Sacco to see if they would keep them open awhile longer so that A.G. Edwards could earn quarterly fees. (Tr. 665-66.)

Sacco was the only FC in the Back Bay office engaged in market timing.[45] (Tr. 593.) Soon after he became branch manager, Robles became aware of Sacco's unusual trading activity, and he was concerned at the possibility of money laundering. (Tr. 505; Div. Ex. 26 at 2.) Robles had never heard of market timing mutual funds and insists that he had many conversations with his superiors about Sacco's trading.[46] (Tr. 505, 509, 511, 518-21, 524, 539.) According to Robles, Saunders, the branch administrator, confirmed that Sacco was engaged in short-term mutual fund trading for hedge funds and advised Robles to talk with others, including Compliance. (Tr. 510-11.)

Robles or his assistant branch manager approved: (1) opening the hundred or so accounts for Sacco's client, Headstart; and (2) requests by Sacco for several split FC numbers.[47] (Tr. 551-52.) Sacco went from one of the lowest producing FCs in the Back Bay office, in September 2001, to one of the five highest producing FCs in September 2003, and his assets under management increased significantly between June 2002 and September 2003.[48] (Tr. 584.)

By March 2003, Robles knew that A.G. Edwards was reviewing its policy on market timing, that these accounts were closely monitored, and that it was wrong for A.G. Edwards to

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[45] Boyle later partnered with Sacco. (Tr. 593.)

[46] During the period from December 2002 to January 2003, Sacco and Robles spoke with Herzog and Compliance about a required market timing indemnification letter that A.G. Edwards wanted Credit Lyonnais, for which Headstart was the money manager, to sign to indemnify it against liability. (Tr. 526-27, 571-72, 688; Div. Ex. 25.) Also, Robles was copied on an email Herzog sent to Sacco on June 25, 2002, requesting information on some of his clients and transfers in connection with the USA Patriot Act of 2001. (Div. Ex. 24.) Herzog's conversations and email had nothing to do with block letters. (Tr. 823, 825-26.) Sacco believed that people in legal and Compliance were monitoring his trading after block notices. (Tr. 688-89, 698.) Robles took these communications that addressed other subjects to mean that Compliance was "overseeing Sacco's activity" and "closely monitoring" certain of Sacco's accounts. (Tr. 597, 601-02, 608-09, 612-13.)

[47] In June 2002, Headstart received a large transfer of assets from an offshore entity and then transferred the assets between related accounts. (Tr. 505, 650-51.) Robles called the Headstart president, Najy Nasser, and requested that deposits be made directly into the individual accounts. (Tr. 506.)

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[48] Robles testified that Sacco's activities did not drive the profitability of the Back Bay office and that it was more profitable after Sacco left. (Tr. 584-85.)

assist market-timing clients hide their identities from mutual funds. (Tr. 607; Div. Ex. 25 at 3 of 4.)

Robles would not be surprised if Sacco received a thousand or so block letters during the period of May or June 2002 through September 2003. (Tr. 558-59.) He testified that no one at A.G. Edwards' home office, including Compliance, had an issue with the fact that Sacco received so many block letters.[49] (Tr. 521, 529.) Robles understood from his superiors at A.G. Edwards that block letters were something that occurred in the business, they were not a compliance issue. (Tr. 524, 532, 561.) Robles did not understand block letters to be red flags indicating illegal or inappropriate conduct. (Tr. 528-29.) The concern Robles' superiors expressed to him was that Sacco sell out of the funds as the funds directed; Robles checked and Sacco always sold as he said he would. (Tr. 521, 523-25, 531-32, 535, 543, 586.) Robles has stated that he had no independent way to ascertain that Sacco was honoring block notices, however, the expert testimony is that he did. (Div. Ex. 28 at 5, 20 n.56 (citing Robles' NASD testimony, Jan. 9, 2003, at 74-76, 208-09).) At the first branch audit after he became head of the office, Robles was told that the block letters were not considered to be correspondence, so it was not necessary to keep copies.[50] (Tr. 531, 537-40, 542.) Even so, Robles retained copies of all the letters. (Tr. 531, 537.) In 2002 and 2003, Robles considered that the letters were important in that Sacco had to follow the directions in the letters, but they did not have importance beyond that. (Tr. 534-35.)

On April 16, 2003, AIM sent two letters and two faxes to A.G. Edwards notifying the firm that because of market timing concerns it intended to cancel all future trades entered under seventeen customer account numbers and/or five Sacco-related FC numbers. Copies of these communications were sent to Robles. In spite of AIM's warning, however, over the following five months, Sacco effected 145 purchases and 184 sales in fifteen of the accounts and fewer than two of the FC numbers that AIM said were no longer permitted to effect exchange transactions in its funds. Additionally, three of the purchases and one of the sales were subsequently cancelled. When questioned about this by the SEC staff, Robles acknowledged that information regarding these transactions was available to him but that he never thought to look to ensure that this activity was not occurring. (Div. 28 at 5, 21-22 (citing Robles' testimony transcript March 2, 2005, at 161-63).)

The expert testimony is that Sacco's actions with respect to split FC numbers are the most glaring red flags that should have caused Robles to inquire into Sacco's activities. (Div. Ex. 28 at 22.) Sacco requested and received split FC numbers allegedly to obtain assistance in processing customer orders and because certain FCs, with whom he partnered, had left A.G.

[49] Examples of facsimiles sent to Robles, with letters from Credit Suisse Funds, on August 22, 2002, and First American Funds on March 11, 2003, complaining about market timing, are at Div. Exs. 3H at SEC MRO at 0001619 and 3N at SEC MRO 0001728, respectively. (Tr. 382-83.) The facsimiles refer to complaints from JP Morgan and Scudder but those letters are not in Div. Ex. 3N.

[50] Annual branch audits are conducted by the sales practice unit of Compliance. (Tr. 762.)

Edwards. (Div. Ex. 28 at 22.) In fact, only two FCs, with whom Sacco had split FC numbers, left A.G. Edwards before September 2003, and multiple transactions went through on their split FC numbers after they left the firm. (Div. Ex. 28 at 22.)

Robles or his assistant branch manager reviewed daily the branch supervision report that included trade cancellations and trades of $100,000 or more by FC number, from the previous day, and correspondence addressed to the branch office. (Tr. 533-34, 552.) Robles considered cancelled trades as a positive thing because they showed that the system was working and that trades that should not have been allowed were being cancelled. (Tr. 528, 555-56.) Robles considered the large number of cancellations as normal for the type of business. (Tr. 556.) On the few occasions when he questioned Sacco about them, Sacco told him they were mistakes. (Tr. 557.)

A.G. Edwards had no automated systems for cross referencing block letters and account numbers. (Tr. 586). Robles did not use cancelled trade information to determine if Sacco was trying to get back into funds that had sent him block letters. (Tr. 564.) He did not try to determine if Sacco was trying to trade in fund accounts that had been blocked or if Sacco was complying with block letters. (Tr. 564-65.) He thinks it would have been impossible to manually cross check the names of the funds on the block letters against Sacco's trades as shown on the daily production report. (Tr. 610-11.) The two branch audits of the Back Bay office during the period at issue did not criticize Robles' supervision of Sacco with respect to block letters, split FC numbers, or cancellations, and they did not indicate that these were red flags. (Tr. 589-90.)

According to Robles, in June or July 2002, he called Compliance and was told that market timing was legal. (Tr. 515-16.) Christopher Wolfe in A.G. Edwards' margin department or someone in Compliance told Robles that FCs in other branch offices engaged in market timing. (Tr. 517.) Herzog does not recall any conversations with Robles in the summer of 2002 about block letters from mutual funds, or the use of multiple accounts or split FC numbers to evade block letters. (Tr. 823-24.) Herzog testified that Robles did not tell him that Sacco received hundreds of block letters from mutual funds or that Sacco was using multiple FC numbers and multiple account numbers to avoid the blocks that mutual funds had imposed. (Tr. 829-30). At the time, Herzog did not know that Sacco was using multiple accounts or split FC numbers to evade block letters from mutual funds. (Tr. 827.)

Ellston does not recall that Robles told him of the hundreds of block letters that Sacco received because of his market timing. (Tr. 991.) Robles did not tell Ellston that Sacco was using multiple FC numbers, or that he was approving new FC numbers for Sacco so that he could avoid mutual fund restrictions. (Tr. 991-92.) Ellston did not tell Robles that he approved of using multiple FC numbers and multiple account numbers to get around block notices. (Tr. 992.)

Saunders testified that he had many conversations with Robles, but he does not remember any conversations in which Robles mentioned Sacco, Sacco's market timing, or the use of multiple FC numbers, multiple account numbers, or switching accounts between branches to avoid restrictions on market timing imposed by mutual funds. (Tr. 1010-13.) Between June 2002 and September 2003, Saunders was not aware that Sacco was acting to continue market

timing in mutual fund families that sought to restrict trading by his clients. (Tr. 1012-13.) Saunders does not recall any conversations with Robles in which he approved such actions by Sacco. (Tr. 1013.) About the time when A.G. Edwards terminated Sacco, Saunders learned that mutual funds sent Sacco restrictive letters and that Sacco used split FC numbers, multiple accounts, and transferred assets between accounts to continue trading. (Tr. 1020-21.)

Robles shut Sacco's market trading down following the announcement by the NYSAG, in September 2003. (Tr. 590.) Robles insists that he did not know that Sacco continued trading in mutual funds by using multiple FC numbers and multiple accounts after he received block letters, and he never doubted that Sacco was being truthful. (Tr. 527, 538, 543-44, 559, 568-69.) Robles disclosed in a December 3, 2003, letter that a branch audit, conducted after press reports of market timing, discovered that Sacco had disregarded mutual fund instructions and had engaged in market timing after he had been asked to stop. (Div. Ex. 26 at 3.) According to Branson, A.G. Edwards terminated Sacco and another FC, Josh Boyle (Boyle), when a determination was made that they had subverted a directive that Robles gave to stop their trading activity.[51] (Tr. 887). Sacco was shocked when A.G. Edwards terminated him in October 2003 because Robles had assured him that everything was going to be fine. (Tr. 503, 551, 667.)

Sacco settled administrative and cease-and-desist proceedings in which the Commission alleged that, from approximately May 2002 to September 2003, while associated with A.G. Edwards, Sacco willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by use of deceptive means to market time on behalf of his customers.[52] Charles A. Sacco, 90 SEC DOCKET 1572 (May 2, 2007). On August 27, 2007, the NASDs' Central Registration Depository showed Sacco's status as "2 Year Termed from Industry." (Div. Ex. 20M.) Sacco testified that the NASD suspended him from the industry for a year about two years ago, and that he had an arbitration proceeding pending against Robles and A.G. Edwards. (Tr. 669.)

An A.G. Edwards audit of Sacco's market timing conducted after September 2003 did not cite Robles for his supervision of Sacco. (Tr. 594.)

[51] Boyle partnered with Sacco. (Tr. 593.)

[52] Sacco agreed to cooperate with the Commission in its investigation; he was: ordered to cease and desist from violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; barred from association with any broker or dealer; prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor or principal underwriter, with the right to reapply for association after two years; and ordered to pay a total of $272,871.22 in disgorgement and prejudgment interest, however, payment of all but $15,000 was waived. Sacco, 90 SEC DOCKET at 1576-78.

Expert Testimony for the Division - Professor Lawrence Harris and Kenneth E. Newman

Professor Lawrence Harris

The Division's expert, Professor Lawrence Harris (Harris), holds the Fred V. Keenan Chair in Finance at the Marshall School of Business at the University of Southern California. Harris defines market timing as "a trading strategy designed to exploit net asset value (NAV) pricing errors that open-ended mutual funds occasionally make," and he knows of no laws or regulations prohibiting it. (Tr. 63, 82-84; Div. Ex. 1 at 3.) Harris concluded that Bridge and Sacco engaged in market timing and that this fact should have been obvious to their supervisors from "[t]he large number of trades, their large sizes, their short holding periods, the many letters of complaint about the trades from the fund families, the institutional ownership of the accounts, the apparent frequent creation of new accounts, and the use of multiple FC numbers." (Div. Ex. 1 at 7, 35-36.)[53]

According to Harris, the profit that market timers make on their purchasers, if their beliefs are correct, is a loss or dilution to the existing fund shareholders because the market timers are buying assets that are underpriced. (Tr. 85-86; Div. Ex. 1 at 3.) Also, market timers, if their beliefs are correct, avoid losses that are suffered by other shareholders. (Tr. 86; Div. Ex. 1 at 4.) Harris reviewed trades by Bridge and Sacco in certain mutual funds while they were associated with A.G. Edwards from either May 2, 2001, or September 1, 2001, through November 6, 2003, to determine the amount of dilution their activities caused.[54] (Tr. 111-12, 116, 129; Div. Ex. 1 at 2, 5, 20, 22.) Harris estimates that the market timing activities of Bridge and Sacco caused mutual fund shareholders losses of about $4.5 million: $3.6 million from trades by Sacco and $0.9 million from trades by Bridge. (Div. Ex. 1 at 5, 35.) Harris's calculations do not show how much of the dilution occurred from trades by Bridge or Sacco after the receipt of a block letter. (Tr. 124-25.)

Harris's study was done in a time when equity prices were rising and municipal bond prices were dropping, and his calculations include "noise" or price moves due to changes in the market. Harris maintains that the noise would average out over time and his calculations of profitability or avoided losses from Sacco's and Bridge's transactions are a high-quality estimate because of the large number of transactions. (Tr. 78-80, 87-88, 103, 107-08, 138-39.) Harris' calculations include transactions that occurred before and after A.G. Edwards received letters from the mutual fund families requesting that it stop market timing. (Tr. 126-27.)

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[53] In Exhibit D, Harris charts trading activity by Bridge and Sacco by account number and by FC number related to thirty letters that fund families sent to A.G. Edwards regarding violations of anti-market timing policies. (Div. Ex. 1 at D-1 through D-45.)

[54] Harris examined data from September 1, 2001, through November 6, 2003. (Div. Ex. 1 at 2, 5, 20.). His analysis concerned trades from May 2, 2001, through November 6, 2003. (Div. Ex. 1 at 22.). At the Division's instruction, Harris only reported quantitative results for trades after August 31, 2001. (Div. Ex. 1 at 22-23.)

Harris concluded that, after mutual funds sent letters to A.G. Edwards, stating that a fund family had blocked trading either by an account or by an FC due to violations of the funds' anti-marketing policies, Sacco and Bridge continued trading by using different accounts, different account numbers, or different FC numbers to avoid the funds' anti-market timing policies. (Div. Ex. 1 at 6, 28, 34.)

Kenneth Newman

The Division's second expert, Kenneth Newman (Newman), earned a degree from Ben Franklin University in Washington, D.C, in 1966. Newman joined the Ferris Company, a New York Stock Exchange member, in 1968, and served successively as internal auditor, operations manager, and chief financial officer. Newman was with the NASD in 1973, and he was with the Commission from 1974 until 1995 in capacities such as securities compliance examiner, senior compliance specialist, branch chief, and Assistant Regional Administrator for a region that encompassed five southeastern states. Following his retirement from the Commission, Newman was Associate Director of Compliance for Bear Sterns in the Atlanta region. In 1996, he established Mainstay Capital Markets Consultants, Inc., which provides consulting services to securities regulatory organizations. (Div. Ex. 28.)

Newman characterizes Bridge and Sacco as successful market timers based on their combined total of 33,000 transactions during the relevant period, of which about seven percent were cancelled. (Tr. 1087.) Newman considers that the record, as a whole, shows that Bridge and Sacco acted to mask the transactions and they committed fraud by continuing to trade in mutual funds by changing either the account numbers, the names on the accounts, or the FC numbers after receiving block notices from the mutual funds. (Tr. 1046-47, 1066, 1075.) Mutual funds have a very narrow time frame at the end of the day in which to process transactions by balancing out the buys and sells and marking the portfolio to market. (Tr. 1062.) The mutual fund screening process is geared to numbers because the funds need to act quickly to set the fund's net asset value. Bridge and Sacco knew how mutual funds are processed and acted to avoid mutual fund restrictions by changing account numbers or FC numbers. (Tr. 1062-64.)

Newman rejects Respondents' defense that they: (1) did not commit fraud if they followed the specific restrictions set out in the block letters because the purpose of the restrictions was to stop trading by the particular client, which the fund found disruptive; and (2) followed a policy of transparency in their mutual fund trading. (Tr. 1051, 1060-63, 1077, 1084, 1090-91.) Newman faults Respondents' position that they acted to satisfy their clients' requests because it disregards the impact on other investors. (Tr. 1088; Div. Ex. 28 at 18.)

Newman's expert opinions are that:

1. Bridge violated Commission rules because he "intentionally set out on a course of conduct aimed specifically at circumventing the restrictions set forth by those block notices, knowing that his actions, intended to benefit the customers whose accounts he was servicing, were potentially harming all of the other shareholders in those mutual funds;"

2. Edge failed reasonably to supervise Bridge because rather than ensure that Bridge complied with the restrictions imposed in block letters, he knowingly assisted Bridge circumvent the restrictions on market timing that the mutual funds sought to impose; and

3. Robles failed reasonably to supervise Sacco because (1) he failed to make further inquiry in response to a number of red flags that indicated Sacco was engaged in a questionable activity; and (2) he admits that he relied on his trust that Sacco would do what he told him when supervision required that he monitor Sacco's activities so as to detect improper activities and, where possible, prevent them.

(Div. Ex. 28 at 4, 23-24.)

Expert Testimony for the Respondents – Norman S. Poser

Norman S. Poser (Poser) received his undergraduate and law degrees from Harvard University and is Professor Emeritus at Brooklyn Law School where he taught from 1980 to 2007. Poser was with the Commission for five years where he worked on the Special Study of Securities Markets and served as the Assistant Director, Division of Trading and Markets, in 1964-67, and he was with the American Stock Exchange, Inc., from 1968 through 1980 where he served as Vice President for Legal and Regulatory Affairs for five years. He is the co-author of BROKER-DEALER LAW AND REGULATION, (Aspen Publishing 2007) (1995). (Tr. 1135-36; Rs. Ex. 32 at 1-2, Exhibit A.)

Poser opined that: (1) Bridge did not make material misrepresentations of fraud with scienter, and (2) Edge and Robles exercised reasonable supervision over Bridge and Sacco, respectively. (Rs. Ex. 32 at 3.) According to Poser, Bridge could not market time in municipal bonds, the subject of most of his trades, because there is usually no ready market for them. (Rs. Ex. 32 at 5.) Poser only learned at the hearing that Bigelow testified that Bridge told him most of Oliner's transactions were in the international bond market. (Tr. 1154-55.) Poser believes it would be "an unwarranted and unprecedented extension of the antifraud provisions of the securities laws" to find that Bridge committed fraud by:

> (1) trying to hide; (2) from highly sophisticated professional money managers; (3) information that was immediately available to them; and (4) about activities of his customers that were entirely legal and which neither the SEC nor any other regulatory body had ever criticized, let alone prohibited.

(Rs. Ex. 32 at 9.)

Poser discounts Harris's testimony and finds no evidence that anyone was harmed by Bridge's actions. (Rs. Ex. 32 at 10.)

Poser contends that Bridge did not make any misstatements or omissions because the information A.G. Edwards furnished through NSCC Fund/Serve disclosed the names, and tax identification numbers of the customers, and the names and FC numbers of the brokers, thus, he

did not hide his or the Oliner accounts' identities from the mutual funds. (Div. Ex. 32 at 10-11.) Poser acknowledges that Bridge's actions were, "at least in part, in order to enable Bridge's customers to continue trading in the shares of the funds," but he concludes that Bridge did not make a misstatement to the funds "given the disclosure of the name and tax identification number of the customer, as well as Bridge's name." (Div. Ex. 32 at 11.) Rather than fraud, Poser agrees with Winter that Bridge engaged in a "cat-and-mouse game" with the fund. (Div. Ex. 32 at 11.)

Poser claims that language in United States v. Finnerty, 474 F. Supp. 2d 530, 538-39 (S.D.N.Y. 2007), supports his position in that the court found that to show deception it was necessary "to prove that the statement was inconsistent with the expectations of the person or persons allegedly being deceived, and this 'will generally depend on the circumstances of [those persons] . . . , their knowledge and perceptive facilities.'" (Div. Ex. 32 at 11.) Poser claims Bridge's actions were not deceptive because the fund managers were sophisticated and had available the identities of Bridge and the Oliner accounts. (Div. Ex. 32 at 11.) Poser does not consider Bridge's attempts to mask his identity as a fraudulent omission. (Rs. Ex. 32 at 11.) Rather, he views Bridge's activities as attempts to get around fund restrictions on "a totally legal and innocuous market activity: frequent trading in the shares of municipal bond funds." (Rs. Ex. 32 at 11.)

Poser cites Chiarella v. United States, 445 U.S. 222 (1980), for the proposition that Bridge did not commit fraud by trying to mask his identity because he had no fiduciary duty to the funds. (Rs. Ex. 32 at 11-12.)

According to Poser, even if Bridge was deceptive, his deception was not material because A.G. Edwards provided the funds, or the funds had access to, the names of Bridge and the Oliner accounts, as well as the tax identification numbers of the Oliner accounts. (Rs. Ex. 32 at 12.) It is Poser's opinion that Bridge's alleged attempts to deceive the funds did not significantly alter the "total mix" of information available to the funds and therefore did not involve the misstatement or omission of any material fact. TSC Industries, Inc. v. Northway, Inc. 426 U.S. 438, 449 (1976); Basic, Inc. v. Levinson, 485 U.S. 224, 232 (1988). (Rs. Ex. 32 at 12-13.)

Poser concludes that Bridge did not act with scienter. To support his position, he maintains that Bridge: (1) acted openly and in compliance with A.G. Edwards policies; (2) had conversations about market timing with persons at A.G. Edwards; and (3) most importantly, believed that his customers were not engaging in market timing and that funds were unfairly lumping his clients in with persons market timing international funds. (Rs. Ex. 32 at 13-14.)

Poser considers the allegations against Edge and Robles to be "an extreme exercise in hindsight." (Rs. Ex. 32 at 15.) Poser considers that Edge took every step that a reasonable supervisor could be expected to take with respect to supervision of Bridge and cites Edge's conversations with Bigelow, who he claims knew fully about the activities of Bridge's customers. (Rs. Ex. 32 at 16.) Poser also references others at A.G. Edwards, including Compliance, which did not raise any objections about Bridge's activities. Poser opines that Robles' supervision of Sacco was reasonable in that he assured himself that market timing was legal. (Rs. Ex. 32 at 16.) Poser cites Arthur James Huff, 50 S.E.C. 524 (1991).

RECORD CERTIFICATION

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b) (1998), I certify that the record includes the items described in the record index issued by the Secretary of the Commission on February 21, 2008.

CONCLUSIONS OF LAW

I have set out most of the facts that are contained in this voluminous record to give an accurate picture of the Respondents' full and fierce defenses to the allegations and the Division's responses to those defenses. A great deal of this material is extraneous to deciding the allegations, however, it presents the evidence on which the parties relied for their positions.

Did Bridge and Sacco willfully violate Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder?

Section 17(a) of the Securities Act prohibits:

> any person in the offer or sale of any securities or any security-based swap agreement . . . by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly --
>
> (1) To employ any device, scheme, or artifice to defraud, or
> (2) To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
> (3) To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.[55]

Section 10(b) of the Exchange Act prohibits, under similar conditions as Section 17(a) of the Securities Act, in connection with the purchase or sale of any security, the use of any manipulative or deceptive device or contrivance. Rule 10b-5 prohibits, under similar conditions, the same conduct as in subsections (1), (2), and (3) of Section 17(a) of the Securities Act. In summary, the elements of an antifraud violation are a misrepresentation or omission of a material fact made in connection with the purchase and sale of a security, which is made with the intent to deceive.

A person must have acted with scienter, defined as "a mental state embracing intent to deceive, manipulate or defraud," to violate Section 17(a)(1) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Ernst v. Hochfelder, 425 U.S. 185, 193 n.12

[55] Information is considered material if it is so significant that a reasonable shareholder would consider it significant in deciding on how to vote. See TSC Industries, 426 U.S. at 449 (1976); Basic, 485 U.S. at 232.

(1976). Scienter may also be established by a showing of recklessness, defined as "conduct that consists of a highly unreasonable act or omission that is an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it." SEC v. Dain Rauscher, Inc., 254 F.3d 852, 856 (9th Cir. 2001). A showing of negligence is sufficient to establish a violation of Section 17(a)(2) and Section 17(a)(3) of the Securities Act.

I find that Bridge and Sacco willfully violated the anti-fraud provisions of the Securities Act, and Exchange Act and Rule 10b-5 thereunder, because they acted knowingly, or at least recklessly, to hide, disguise, disassemble, and obfuscate material information, with the intent to deceive in the buying and selling of securities.[56] Bridge and Sacco do not deny that they used split FC numbers and different account numbers to continue trading in mutual funds when the mutual funds issued restrictions prohibiting these types of trades. (Tr. 438, 818-19, 829, 833, 913-14.) In fact, Respondents' expert appears to admit that Bridge and Sacco were "trying to hide" information. (Rs. Ex. 32 at 9.)

In response to block letters from mutual funds, Bridge generated at least sixteen different account numbers and used at least fifteen different FC numbers to handle transactions for one client under various names. (Tr. 443-56; Div. Exs. 10, 19A, 19B, 19C, 19D.) Sacco, who had two market timing clients, created 142 accounts for one client and thirty-four accounts for a second. (Tr. 639-47, 653-56; Div. Ex. 11A-E, 12, 17A-E, 18.) Bridge's and Sacco's deliberate use of multiple accounts and their use of multiple FC numbers in an attempt to avoid detection of themselves and the true owners of the accounts from mutual funds constitutes a material misrepresentation. See e.g., SEC v. Druffner, 517 F. Supp. 2d 502 (D. Mass. 2007).

The violations are not Bridge's and Sacco's actions of market timing; rather, the violations are the actions Bridge and Sacco took in order to continue market timing after they had been restricted from doing so. Bridge's and Sacco's use of multiple accounts, multiple FC numbers, and moving accounts between branch offices were attempts to avoid detection. The omitted information was material because mutual funds considered it significant in determining whether to process or cancel transactions that Bridge and Sacco entered. As such, Bridge's and Sacco's actions constitute a scheme to defraud, material misrepresentations, omissions of information necessary in order to make the information provided not misleading, and a manipulative device in violation of the anti-fraud provisions. Id.

I reject Respondents' defense that they did not violate the anti-fraud provisions because: (1) persons at A.G. Edwards knew what they were doing and approved; (2) they followed the "letter of the letter" or the literal meaning of the many block letters; and (3) the Fund/SERVE made full disclosure of all relevant information to the mutual funds.

[56] The accepted definition of "willful" is "'intentionally committing the act which constitutes the violation.'" Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (citations omitted); Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965).

Persons at A.G. Edwards Knew and Approved of Bridge's and Sacco's Activities

Respondents make much of the fact that A.G. Edwards had information available from which it could have gleaned what Respondents were doing. (Tr. 1000.) This information is irrelevant because A.G. Edwards is not a respondent in this proceeding. The unanimous evidence is that during this time, A.G. Edwards was only interested in protecting its business interests with respect to the trading activities of its FCs and mutual funds. The issue here is whether the Respondents' actions violated the federal securities laws as alleged in the OIP.

Bridge and Sacco were immediately supervised by Edge and Robles. Bridge and Sacco do not claim that they made full disclosure and received approval from others at A.G. Edwards other than Edge and Robles, respectively. Rather they assume, despite not making full disclosure, that people at A.G. Edwards knew and approved of their conduct. The testimony of Bigelow, Branson, Chitwood, Ellston, Herzog, and Roth is unanimous that they did not supervise either Bridge or Sacco, and Bridge and Sacco did not tell them they were requesting split FC numbers, establishing new account numbers, and moving accounts between branches to get around restrictions imposed in block letters.

Bridge and Sacco Followed the "Letter of the Letter" or the Literal Meaning of the Restriction

The evidence does not support Respondents' position that they followed the restrictions to the letter. The large number of cancelled transactions and the blocks entered against several A.G. Edwards' branch offices are indisputable evidence that the mutual funds found that Bridge and Sacco did not comply with earlier block letters. According to Robles, A.G. Edwards terminated Sacco because he was found to have continued trading in mutual funds from which he had been blocked. The testimony from representatives of ING and Scudder is that their attempts to have Bridge and Sacco obey restrictions were unsuccessful. (Tr. 307-08.)

In addition, the block letters made clear that the mutual funds wanted the type of trading that Bridge and Sacco engaged in to stop. (Div. Exs. 2 and 3.) The fact that Bridge and Sacco acted deliberately to disguise that they were continuing the activity that the fund clearly stated it did not want continued, is a violation of the prohibition against any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

Winter, the most senior A.G. Edwards witness who testified, did not know and approve of Bridge's and Sacco's actions; however, Winter knew generally that FCs were going back into funds from which they were blocked by the funds. (Rs. Ex. 32 at 15.) It is illogical for Winter to claim, on the one hand, that the FCs at A.G. Edwards followed the block restrictions but admit, on the other hand, that, to avoid restrictions, FCs deliberately received and used split FC numbers, moved accounts between branch offices only to obtain new account numbers, and opened new accounts, primarily, if only, to continue the trading that was restricted.[57]

[57] It is shocking that someone with forty years in the securities industry can characterize the actions of Bridge and Sacco as a game played with mutual funds.

Fund/SERVE Made Full Disclosure of All Relevant Information to the Mutual Funds

The assertion by Respondents that they did not conceal information from the funds because the funds received all relevant information via Fund/SERVE is inaccurate. The evidence is that the data received from Fund/SERVE was often incomplete and that mutual funds had a very short time in which to accept or cancel transactions. For example, sometimes the customer's name was shortened or abbreviated. (Tr. 1044.) Furthermore, the uncontested evidence is that mutual funds could not block transactions at the customer level and that mutual fund data were organized by number so that a change in number, either for the FC or the accounts, caused a misidentification. It is misleading to claim that Respondents made full disclosure via Fund/SERVE given the practicalities of the situation: the time constraints that the funds operated under, the volume of transactions being reviewed, the occasional incomplete entry, and Bridge's and Sacco's efforts to disguise the true identity of the FC and the client.

Did Edge and Robles fail reasonably to supervise Bridge or Sacco respectively, with a view to preventing their willful violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder?

It is well settled that supervision of broker-dealer employees is a critical component of the federal regulatory scheme. Section 15(b)(6)(A)(i) incorporates Section 15(b)(4)(e) of the Exchange Act to permit sanctions against a person that "has failed reasonably to supervise, with a view to preventing violations of the provisions of [the securities] statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision."[58] Respondents' expert affirms, "Liability for failure to supervise is based on a negligence standard." Poser, supra at 15-7.

The Commission has made clear that to be subject to Section 15(b)(4)(e), a person must be a supervisor of the person committing the violation. See Huff, 50 S.E.C. at 524. It is uncontested that Edge supervised Bridge and that Robles supervised Sacco. Section 15(b)(4)(e) requires reasonable supervision under the attendant circumstances. See Id.

"A supervisor is charged with responsibility for ensuring that persons subject to his or her oversight are complying with the law." John Montelbano, 56 S.E.C. 76, 93-94 (2003). The Commission has held that where "[a] supervisor, whose duty it is to prevent misconduct by subordinates, actually fosters and encourages that misconduct, it constitutes an egregious breach of that responsibility, an abdication of the proper exercise of supervisory authority." Id. at 94.

[58] The Commission gained the authority to sanction supervisors as a result of the Securities Acts Amendments of 1964, Pub. L. No. 88-467, 78 Stat. 565 (1964). Prior to that time, the Commission could sanction an individual supervisor only if the firm committed a violation and the supervisor was found to have caused it. See Huff, 50 S.E.C. at 530 (Comm'rs Lochner and Schapiro concurring.)

Edge's Supervision

Edge was complicit with Bridge in the violations. I reject Edge's position that there was no need to bring what he and Bridge were doing to the attention of his direct supervisor or Compliance because (1) split FC numbers and opening new accounts were ordinary matters and he had no questions or need for clarification, and (2) he assumed they were aware that Bridge was using split FC numbers and multiple accounts to continue trading. (Tr. 942-43, 948.)

It is not an ordinary matter for some twenty-three mutual funds to send at least 135 block letters concerning the actions of a single FC over an approximate two-year period. Edge's testimony is that he saw a total of maybe fifteen block letters from mutual funds about Bridge's trading. (Tr. 965.) The evidence is, however, that mutual funds sent Edge directly at least twenty-three facsimiles, one email, and twelve wires. (Tr. 968; Div. Ex. 2.) It is not an ordinary matter to approve twenty-eight split FC numbers in order to deceive the seller in a securities transaction. It is not an ordinary matter for a branch manager to approve multiple accounts for four different accounts maintained by one customer, with different FC numbers, at two branch offices to evade trading restrictions imposed by mutual funds. (Div. Ex. 28 at 9 n.10 (citing Bridge's testimony transcript, Nov. 21, 2005, at 42-44, 72).)

Edge admits that Bigelow, his direct supervisor, did not know about the block letters. (Tr. 970.) Bigelow testified that neither Bridge nor Edge told him that Bridge was receiving restrictive notices from mutual funds about his trading or that he was using multiple FC numbers, multiple account numbers, and transferring accounts between different branch offices to evade blocks imposed by mutual funds. (Tr. 854-56.) Edge did not tell Bigelow that he was approving multiple accounts so that Bridge could evade block notices. (Tr. 856.) Bigelow never approved the use, by Bridge and Edge, of multiple FC or account numbers or switching accounts between branches to evade block notices. (Tr. 856-57.) Bigelow testified that he first became aware that Bridge was using different account numbers to avoid block letters at the end of 2003 or the beginning of 2004, and that he did not know about activities that happened that could be a problem with respect to supervision until after 2003. (Tr. 871-73.)

Edge did not tell Herzog or anyone else in Compliance that Bridge was receiving a large number of block letters from mutual funds or that Bridge was using split FC numbers to evade block letters. (Tr. 828-29, 941.)

Edge failed reasonably to supervise Bridge because he (1) was a party to the underlying violations, and (2) did not inform his direct supervisor or Compliance of the block letters and did not seek an opinion on whether the activities he and Bridge undertook to evade the restrictions were appropriate. See Montelbano, 56 S.E.C. at 93-94.

Robles' Supervision

Robles testified that he accepted what Sacco told him as true, yet even Respondents' expert agrees that reliance on an FC's representations is not a substitute for actively monitoring the employee's activity. (Tr. 1151.) The Commission has held that persons in authority must be vigilant when they become aware of indications of irregularity. See Wedbush Securities, Inc., 48

S.E.C. 963, 967 (1988). The evidence is that Robles knew, or was reckless in not knowing, of Sacco's activities of avoiding the restrictions in block letters, and that he was negligent in his supervision of Sacco. Certainly, the large number of block letters, the large number of cancellations, the large number of split FC numbers, and the large number of new accounts should have made Robles vigilant as to supervision of Sacco. (Tr. 521-22.) For example, on October 22, 2002, A.G. Edwards told Robles that the Hartford funds threatened to ban all trades from the Back Bay office because Sacco had used a split FC number to place two orders in the funds after he had been banned from trading on September 30, 2002. (Div. Ex. 27.) Robles represented that he would speak to Sacco and prevent this from happening again. (Div. Ex. 27.) Robles acknowledges, however, that Sacco continued to effect transactions in the Hartford funds. (Div. Ex. 28 at 21.) In addition, the expert opinion is that the number of cancellations on Sacco's trades, almost 2,600 cancellations, or 7.8 percent, out of roughly 33,000 mutual fund transactions, between June 2002 and September 2003, could not be due to inadvertent errors. (Div. 28 at 21.)

Despite these red flags concerning Sacco, Robles failed to note the following information which would have been on the daily production reports that he reviewed:

Keith McPhee (McPhee) left A.G. Edwards on February 21, 2003, yet a split FC number he shared with Sacco was used numerous times after he left. Some 1,380 transactions were effected on one split FC number McPhee had with Sacco from February 24, 2003, through April 3, 2003, and more than ninety transactions were effected on a second split FC number that McPhee had with Sacco from February 25, 2003, through May 21, 2003. (Div. Ex. 28 at 22.)

Maurizio Cheyne (Cheyne) left A.G. Edwards on March 26, 2003, yet a split FC number he shared with Sacco was used numerous times after he left. Some 467 transactions were effected on one split FC number he had with Sacco from March 27, 2003, through August 26, 2003, and approximately thirty-five transactions were effected on a second split FC number Cheyne had with Sacco from April 1 through April 3, 2003. (Div. Ex. 28 at 22.)

By authorizing a huge number of split FC numbers for Sacco and by not responding to the red flags provided by cancellation notices on some 7.8 percent of Sacco's transactions and over two hundred block letters, Robles enabled Sacco to commit violations. Losses from transactions that occurred after the receipt of block letters would have been less than the total of $3.6 million that mutual fund shareholders suffered from trades by Sacco. Even so, it appears that shareholders suffered losses during the period from June 2002 through September 2003 when Robles was Sacco's supervisor. (Tr. 124-25; Div. Ex. 1 at 5, 35.)

Robles' described himself as an earnest supervisor, sincerely seeking assistance from his supervisors to cope with an unusual business situation. The evidence does not support that representation. Based on my observation of Robles' demeanor and reviewing the evidence, I doubt his credibility. In his investigative testimony in 2005, Robles did not recall any conversations with A.G. Edwards' people in St. Louis about Sacco being restricted from buying certain mutual funds, however, at the hearing, Robles testified that he told Underwood, Director of Compliance, that Sacco was restricted from buying shares of certain mutual funds. (Tr. 523.) Sacco described Robles as being primarily interested in having him continue his activities for the

profits they brought to the branch office. In response to Robles' inquiry, Sacco assured Robles that the business was not in jeopardy because he could "'absolutely'" continue to trade after the block letters by using other client accounts and multiple FC numbers. (Tr. 630, 635.) While Robles described his communications with Compliance as seeking information, he told Sacco on March 12, 2003, the following about James Shay from Compliance: "The battle is on. Now he's pissed me off. I'll keep you informed." (Div. Ex. 25 at 1.)

Most important, Robles does not recall telling Branson, his direct supervisor, that Sacco was restricted from buying mutual funds under certain FC numbers. (Tr. 522.) In addition, Robles did not tell Branson that Sacco was receiving hundreds of block notices or that Sacco was using multiple account numbers or multiple FC numbers to continue market timing after receiving block letters. (Tr. 887, 889.) Branson did not, and would not, authorize activities to get around block letters. "If [he] had been aware that the purpose of this was deceptive, the music would have stopped right away."[59] (Tr. 890.) .

For all the reasons stated, I find that Robles failed reasonably to supervise Sacco so as to prevent Sacco's anti-fraud violations.

SANCTIONS

The Division recommends that:

1. Bridge should be ordered to (1) cease and desist from committing or causing any violations of the anti-fraud provisions of the federal securities statutes; (2) disgorge $39,808.53, plus prejudgment interest calculated pursuant to Rule 600 of the Commission's Rules of Practice, which it calculates to be $11,542.27 as of November 1, 2007; (3) pay a third-tier civil money penalty; and (4) be barred from association with any broker, dealer, or investment company, and from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter with the right to reapply for association after five years;

2. Edge should be ordered to pay a third-tier civil money penalty, and be barred from association with any broker or dealer in a supervisory capacity with the right to reapply for association after five years;

3. Robles should be ordered to pay a third-tier civil money penalty, and be barred from association with any broker or dealer in a supervisory capacity with the right to reapply for association after five years. (Div. Post-Hearing Br. 46-51.)

[59] Branson was not part of the group that reviewed Sacco's activities. Branson believed, at the time, that Robles was doing his job. If Branson had thought Robles had not acted properly as Sacco's supervisor, he would have taken action. (Tr. 891-92.)

Cease and Desist

Section 8A of the Securities Act and Section 21C of the Exchange Act authorize the Commission to issue a cease-and-desist order based on findings of violations. The Commission has found the following factors, similar to the public interest considerations in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981), relevant for determining whether a cease-and-desist order is appropriate:

> the seriousness of the violation, the isolated or recurrent nature of the violation, the respondent's state of mind, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his or her conduct, and the respondent's opportunity to commit future violations, . . . whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceedings.

KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1192 (2001).

The underlying violations are serious as measured by the fact that twenty-three different mutual fund families found it necessary to send Bridge some 135 letters. (Div. Ex. 2.) The estimated $0.9 million loss that mutual fund shareholders suffered as the result of market timing trades by Bridge does not distinguish losses suffered by transactions that occurred after receipt of a block letter. (Tr. 124-25; Div. Ex. 1 at 5, 35.) Even so, it does establish that existing mutual fund shareholders suffered significant losses because of Bridge's actions. Bridge's violations continued for an extended period, ceasing in October 2003, only after government action in another matter. Bridge expressed no misgivings or recognition that his actions were improper. Rather, his single-minded motivation was to build his business, a worthy goal provided lawful means were used to achieve it.

Considering all the factors described above and Bridge's belief that his actions were appropriate because an FC can use almost any means to build the business, I find it is in the public interest to order Bridge to cease and desist from committing or causing any violations or any future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

Disgorgement

Section 8A(e) of the Securities Act and Section 21C(e) of the Exchange Act authorize the Commission to order disgorgement, including reasonable interest, in any cease-and-desist proceeding. Disgorgement is defined as "'an equitable remedy designed to deprive [respondents] of all gains flowing from their wrong.'" SEC v. AMX, Int'l, Inc., 872 F. Supp. 1541, 1544 (N.D. Tex. 1994) (citations omitted). A violator is returned to where he or she would have been absent the misconduct. Disgorgement deprives a wrongdoer of his or her ill-gotten gains and deters others from violating the securities laws. See SEC v. First City Fin. Corp., 890 F.2d 1215, 1230-32 (D.C. Cir. 1989). "The effective enforcement of the federal securities laws requires that the SEC be able to make violations unprofitable. The deterrent effect of an SEC enforcement action

would be greatly undermined if securities law violators were not required to disgorge illicit profits." SEC v. Manor Nursing Ctrs., Inc., 458 F.2d 1082, 1104 (2d Cir. 1972).

The Division established that its disgorgement figure, $39,808.53, approximates the amount of unjust enrichment. The burden then shifts to the Respondent to demonstrate that the Division's disgorgement figure is not a reasonable approximation. See SEC v. Lorin, 76 F.3d 458, 462 (2d Cir. 1996). Bridge acknowledges receiving $40,000 as a result of the actions found to have been illegal. (Tr. 487.) Accordingly, disgorgement of $39,808.53, plus prejudgment interest, is appropriate because a person should not benefit from antifraud violations.

Civil Money Penalties

Section 21B(a) of the Exchange Act authorizes the Commission to impose a civil money penalty in a proceeding instituted under Section 15(b) of the Exchange Act, where it is in the public interest to do so, where a respondent has willfully violated any provision of the Securities Act or the Exchange Act or the rules and regulations thereunder. The statutes specify the following as public interest considerations: (1) whether the violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) the harm caused to others; (3) the unjust enrichment; (4) prior violations; (5) deterrence; and (6) such other matters as justice may require.

Section 21B(b) of the Exchange Act specifies a three-tiered system for determining the maximum civil penalty for each "act or omission." See Mark David Anderson, 56 S.E.C. 840, 863 (2003) (imposing a civil penalty for each of the respondent's ninety-six violations).[60] A second-tier penalty is permissible if the violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. A third-tier penalty is permissible for violations that, in addition, "directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission." 15 U.S.C. § 78u-2(b)(3)(B).

I find that civil money penalties are in the public interest as to Bridge, Edge, and Robles because the underlying violations involved fraud and deceit, they caused harm to others, and the need to deter these Respondents and other persons from similar actions. Penalties at the third tier are appropriate because the unrefuted expert testimony is that the actions of Bridge and Sacco caused mutual fund shareholders to suffer economic losses. (Div. Ex. 1 at 5, 35.) The number of individual actions is immeasurable, but certainly exceeds more than three, and the level of involvement by each of the Respondents is about the same. Bridge and Edge acted together for twenty-five months while Robles' and Sacco's actions occurred for sixteen months. I do not find the time difference to be material.

[60] Violations committed by a natural person after February 2, 2001, but before February 14, 2005, have a maximum penalty per occurrence of $6,500 in the first tier; $60,000 in the second tier; and $120,000 in the third tier. See Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, ch. 10, sec. 31001, § 3701(a)(1), 110 Stat. 1321-358; 28 U.S.C. § 2461 (effective Mar. 9, 2006); 17 C.F.R. §§ 201.1001, .1002.

Based on the statutory criteria set forth above, I find it to be in the public interest to assess a third-tier penalty of $250,000 each against Bridge, Edge, and Robles.

Bars from Association

Section 15(b)(6) of the Exchange Act authorizes the Commission to censure, place limitations on the activities or functions of a person, or suspend for a period up to twelve months, or bar from association with a broker or dealer, someone associated with a broker or dealer who violated a provision of the statute, where it is in the public interest to do so. Section 15(b)(6)(A)(i) incorporates Section 15(b)(4)(e) of the Exchange Act to permit sanctions against a person that "has failed reasonably to supervise, with a view to preventing violations of the provisions of [the securities] statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision."

Section 9(b) of the Investment Company Act authorizes the Commission, where there has been a violation of certain securities statutes, to:

> prohibit, conditionally or unconditionally, either permanently or for such period of time as it in its discretion shall deem appropriate in the public interest, any person from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter . . . .

In making a public interest determination, the Commission considers the Steadman criteria:

> [T]he egregiousness of the [respondent's] actions; the isolated or recurrent nature of the infraction; the degree of scienter involved; the sincerity of the [respondent's] assurances against future violations; the [respondent's] recognition of the wrongful nature of his conduct; and the likelihood that the [respondent's] occupation will present opportunities to commit future violations.

Steadman, 603 F.2d at 1140; Orlando Joseph Jett, 82 SEC Docket 1211, 1260-61 (Mar. 5, 2004); KPMG, 54 S.E.C. at 1183-84.

I incorporate here the discussion related to Bridge set out under Cease and Desist. All of that material relates also to Edge who acted with Bridge and who was Bridge's supervisor. Edge allowed Bridge's actions to continue and he assisted Bridge by authorizing new account numbers and split FC numbers. Edge saw nothing wrong in acting to deceive mutual funds by using various means to get around block notices so as to continue the type of transactions for certain customers that he knew mutual funds were trying to stop.

The evidence is that Robles, who insists he sought guidance from persons at A.G. Edwards in supervising Sacco, in fact, knew, or should have known, of Sacco's illegal actions and taken steps to prevent them. Sacco's violations and Robles' failure to supervise over a prolonged period were egregious actions that caused losses to existing mutual fund shareholders.

Given that Bridge has been ordered to cease and desist, disgorge his gains that resulted from the violations, and assessed a substantial civil money penalty, and considering that his regulatory record shows no other violation, I order that he be suspended from association with a broker or dealer for a period of one year.

I deny the Division's request for a sanction under Section 9(b)(2) of the Investment Company Act because in a litigated, as opposed to a settled proceeding, a person should be shown to have willfully committed a violation, even an egregious antifraud violation, indicating it is in the public interest to restrict them from "serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter." Bridge's antifraud violations of the Securities Act, and the Exchange Act and Rule 10b-5 thereunder, committed as an FC, are his only regulatory violations. In these circumstances, it has not been shown that it is in the public interest to issue a restriction pursuant to Section 9(b)(2) of the Investment Company Act.

Given the failures of Edge and Robles to carry out their supervisory responsibilities with a view to preventing the violations and the repercussions to the investing public from those failures, and considering their clear regulatory history prior to these events, I suspend them both from association with a broker or dealer for thirty days and bar them both from serving in a supervisory capacity.

ORDER

I ORDER, pursuant to Section 8A of the Securities Act of 1933, and Sections 15(b) and 21C of the Securities Exchange Act of 1934, that Thomas C. Bridge cease and desist from committing or causing any violations, or any future violations, of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder;

I FURTHER ORDER, pursuant to Section 8A(e) of the Securities Act of 1933 and Section 21C(e) of the Securities Exchange Act of 1934, that Thomas C. Bridge shall disgorge $39,808.53, and prejudgment interest from October 1, 2003, computed as set forth in Rule 600 of the Commission's Rules of Practice, 17 C.F.R. § 201.600(b);

I FURTHER ORDER, pursuant to Sections 15(b) and 21B of the Securities Exchange Act of 1934, that Thomas C. Bridge, James D. Edge, and Jeffrey K. Robles shall each pay a civil money penalty in the amount of $250,000;

I FURTHER ORDER, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, that Thomas C. Bridge is suspended from association with a broker dealer for a period of one year;

I FURTHER ORDER, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, that James D. Edge is suspended from association with a broker dealer for a period of thirty days and barred from association with a broker or dealer in a supervisory capacity;

I FURTHER ORDER, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, that Jeffrey K. Robles is suspended from association with a broker dealer for a period of thirty days and barred from association with a broker or dealer in a supervisory capacity.

Payment of the disgorgement, prejudgment interest, and civil penalties shall be made on the first day following the day this initial decision becomes final. Payment shall be made by certified check, United States Postal money order, bank cashier's check, or bank money order, payable to the U.S. Securities and Exchange Commission. The payment, and a cover letter identifying Respondents and the proceeding designation, shall be delivered to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia 22312. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Brenda P. Murray
Chief Administrative Law Judge