

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8928 / June 6, 2008

SECURITIES EXCHANGE ACT OF 1934
Release No. 57934 / June 6, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13060

<p>In the Matter of</p> <p>EKN Financial Services, Inc. f/k/a Ehrenkrantz King Nussbaum, Inc., and Anthony Ottimo,</p> <p style="text-align:center">Respondents.</p>	<p>ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, AND SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, AS TO EKN FINANCIAL SERVICES, INC. F/K/A EHRENKRANTZ KING NUSSBAUM, INC., AND ANTHONY OTTIMO</p>
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I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against EKN Financial Services, Inc., f/k/a Ehrenkrantz King Nussbaum, Inc. (“Ehrenkrantz” or the “firm”) and Anthony Ottimo (“Ottimo”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934, as to EKN Financial Services, Inc., f/k/a Ehrenkrantz King Nussbaum, Inc., and Anthony Ottimo (“Order”), as set forth below.

III.

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

Respondents

1. Ehrenkrantz, a registered broker-dealer headquartered in Garden City, New York, is approximately 45 percent owned by Ottimo, the firm’s chief executive officer.
2. Ottimo, 68 and a resident of Plainview, New York, is the chief executive officer of Ehrenkrantz, and also a registered representative of the firm. He holds Series 4, 7, 24 and 63 licenses.

Overview

3. These proceedings arise out of deceptive practices engaged in by Ehrenkrantz and a person associated with Ehrenkrantz (“the associated person”) between January 2003 and November 2003. During that period, Ehrenkrantz, through the associated person, defrauded mutual funds and their shareholders by engaging in deceptive practices designed to mislead the funds and conceal from the funds that four of Ehrenkrantz customers each controlled numerous accounts, which they used to exceed limits on exchanges imposed by the funds. Ottimo failed reasonably to supervise the associated person with a view to preventing the violations.

4. The associated person, although nominally an independent contractor, performed the functions of a registered representative with respect to the accounts at

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

issue, and was therefore an associated person of Ehrenkrantz and a person subject to the supervision of Ottimo. The associated person was not registered or approved in accordance with the rules of any national securities exchange or association of which Ehrenkrantz was a member.

Account Cloning

5. Ehrenkrantz and the associated person employed a variety of deceptive acts and practices, including using multiple account numbers, multiple codes used to identify registered representatives purportedly servicing the accounts (“representative codes”), and codes used to identify the branch offices where the accounts were located (“office codes”), to conceal from the funds that multiple accounts were under common control and to thereby avoid the funds’ restrictions on market timing and exchanges between funds in a given fund family. Among other things, Ehrenkrantz and the associated person opened accounts for the four customers using codes of representatives who were not involved in servicing the accounts and office codes of Ehrenkrantz branches which were not involved in servicing the accounts.

6. Multiple account numbers allowed the customers to use new accounts to continue their market timing activities after existing accounts had been restricted based upon market timing or exchanges in excess of fund policies, because the mutual funds were misled into believing that the transactions did not originate from the same customers. Multiple registered representative codes concealed the identities of the Ehrenkrantz registered representatives from mutual funds so that the funds could not identify a specific Ehrenkrantz representative as facilitating market timing and restrict further transactions effected by the registered representative associated with that representative code. Finally, multiple branch codes concealed the identity of the Ehrenkrantz Garden City, New York branch as the originating branch of the transactions.

7. The associated person was aware that mutual funds were reviewing trades by accounts with common representative codes or branch codes to detect patterns of market timing activity.

8. Ehrenkrantz earned approximately \$62,000 in ill-gotten gains from the accounts controlled by the four customers as the result of this scheme.

Violations

9. As a result of the conduct described above, the associated person and Ehrenkrantz willfully violated Section 17(a) of the Securities Act, which prohibits fraud in the offer and sale of securities, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities, and Ehrenkrantz willfully violated and the associated person willfully aided and abetted violations of Section 15(c)(1) of the Exchange Act, which prohibits a broker-dealer from using interstate facilities or the mails to effect or induce transactions in

securities “by means of any manipulative, deceptive, or other fraudulent device or contrivance.” In addition, Ehrenkrantz willfully violated and the associated person willfully aided and abetted, and Ottimo caused, the violations of, Section 15(b)(7) of the Exchange Act and Rule 15b7-1 thereunder, which prohibits broker-dealers from effecting transactions in securities unless all persons associated with the firm who are involved in effecting the securities transactions, are registered or approved in accordance with the rules of any national securities exchange or association of which the broker-dealer is a member.

Failure to Supervise

10. Section 15(b)(4)(E) of the Exchange Act requires broker-dealers reasonably to supervise persons subject to their supervision, with a view toward preventing violations of the federal securities laws. See e.g., Dean Witter Reynolds, Inc., Exchange Act Rel. No. 46578 (October 1, 2002). The Commission has emphasized that the “responsibility of broker-dealers to supervise their employees by means of effective, established procedures is a critical component in the federal investor protection scheme regulating the securities markets.” Id. Section 15(b)(4)(E) of the Exchange Act provides for the imposition of a sanction against a broker or dealer who “has failed reasonably to supervise, with a view to preventing violations of the securities laws, another person who commits such a violation, if such other person is subject to his supervision.” Section 15(b)(6)(A)(i) parallels Section 15(b)(4)(E) and provides for the imposition of sanctions against persons associated with a broker or dealer.

11. From January 2003 through November 2003, Ottimo failed reasonably to supervise the associated person, with a view to preventing the associated person’s violations of the federal securities laws. Specifically, Ottimo was aware that the associated person was using multiple accounts for certain customers; that those customers were engaged in market timing; that, in connection with the accounts, Ehrenkrantz was listing codes identifying registered representatives of Ehrenkrantz who were not servicing those accounts; and that at least some funds had stopped exchanges in accounts of the relevant customers by preventing exchanges in accounts by representatives listed as servicing those accounts; and failed to follow up and investigate these red flags.

Undertakings

Respondent has undertaken as follows:

12. Ongoing Cooperation by Ehrenkrantz. Ehrenkrantz undertakes to cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in this Order. In connection with such cooperation, Ehrenkrantz has undertaken:

A. To produce, without service of a notice or subpoena, any and all documents and other information reasonably requested by the Commission’s staff;

B. To use its best efforts to cause its employees to be interviewed by the Commission's staff at such times as the staff reasonably may direct;

C. To use its best efforts to cause its employees to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and

D. That in connection with any testimony of Ehrenkrantz to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, Ehrenkrantz:

i. Agrees that any such notice or subpoena for Ehrenkrantz's appearance and testimony may be served by regular mail on its counsel, Robert Bursky, Esq., or any successor identified by Ehrenkrantz; and

ii. Agrees that any such notice or subpoena for Ehrenkrantz's appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

13. Independent Compliance Consultant. Ehrenkrantz undertakes to, within 30 days of the entry of this Order plus, hire an independent compliance consultant ("Consultant"), not unacceptable to the Commission staff, to review and evaluate the effectiveness of Ehrenkrantz's supervisory and compliance systems, policies and procedures designed to detect and prevent violations of the federal securities laws concerning: (1) review of incoming and outgoing correspondence, including electronic correspondence such as e-mail; (2) mutual fund market timing activity; (3) supervision of branch offices; and (4) registration of associated persons as required by the rules of any national securities exchange or association of which Ehrenkrantz is a member. In connection with the hiring of the Consultant, Ehrenkrantz undertakes the following:

A. The Consultant's expenses shall be borne exclusively by Ehrenkrantz. Ehrenkrantz shall cooperate fully with the Consultant and shall provide the Consultant with access to its files, books, records, and personnel as reasonably requested for the review. Ehrenkrantz shall cause the review to begin no later than 60 days after the issuance of this Order.

B. At the conclusion of the review, which in no event shall be more than 120 days of the entry of this Order, Ehrenkrantz shall cause the Consultant to submit to Ehrenkrantz and to the Commission's staff a written Initial Report. The Initial Report shall describe the review performed and the conclusions reached, and will include any recommendations deemed necessary to make the policies, procedures, and system of supervision and compliance adequate.

C. Within 30 days of receipt of the Initial Report, Ehrenkrantz shall in writing respond to the Initial Report. In such response, Ehrenkrantz shall advise the Consultant and the Commission's staff of the recommendations from the Initial Report that it has determined to accept and the recommendations that it considers to be unduly

burdensome. With respect to any recommendation that Ehrenkrantz deems unduly burdensome, Ehrenkrantz may propose an alternative policy, procedure or system designed to achieve the same objective or purpose.

D. Ehrenkrantz and the Consultant shall attempt in good faith to reach agreement within 180 days of the date of the entry of this Order with respect to any recommendation that Ehrenkrantz deems unduly burdensome. If the Consultant and Ehrenkrantz are unable to agree on an alternative proposal, Ehrenkrantz shall abide by the recommendation of the Consultant.

E. Within 200 days of the date of the entry of this Order, Ehrenkrantz shall, in writing, advise the Consultant and the Commission's staff of the recommendations and proposals that it is adopting.

F. Ehrenkrantz shall cause the Consultant to complete the aforementioned review and submit a written Final Report to Ehrenkrantz and to the Commission's staff within 230 days of the date of the entry of this Order. The Final Report shall recite the efforts the Consultant undertook to review Ehrenkrantz's supervisory and compliance policies, procedures, and systems as set forth in paragraph 13; set forth its conclusions and recommendations; and describe how Ehrenkrantz is implementing those recommendations.

G. Ehrenkrantz shall take all necessary and appropriate steps to adopt and implement all recommendations contained in the Consultant's Final Report.

H. No later than one year after the date of the Consultant's Final Report, Ehrenkrantz shall cause the Consultant to conduct a follow-up review of Ehrenkrantz's efforts to implement the recommendations contained in the Final Report, and Ehrenkrantz shall cause the Consultant to submit a follow-up report to the Commission's staff. The follow-up report shall set forth the details of Ehrenkrantz's efforts to implement the recommendations contained in the Final Report, and shall state whether Ehrenkrantz has fully complied with the recommendations in the Final Report.

I. For good cause shown, and upon receipt of a timely application from the Consultant or Ehrenkrantz, the Commission's staff may extend any of the procedural dates set forth above.

J. To ensure the independence of the Consultant, Ehrenkrantz: (a) shall not have the authority to terminate the Consultant without the prior written approval of the Commission's staff; (b) shall compensate the Consultant, and persons engaged to assist the Consultant, for services rendered pursuant to this Order at their reasonable and customary rates; (c) shall not be in and shall not have an attorney-client relationship with the Consultant and shall not seek to invoke the attorney-client or any other privilege or doctrine to prevent the Consultant from transmitting any information, reports, or documents to the Commission staff; and (d) during the period of engagement and for a period of two years after the engagement, shall not enter into any employment, customer,

consultant, attorney-client, auditing, or other professional relationship with the Consultant.

K. Ehrenkrantz shall cause the Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Ehrenkrantz, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Atlanta Regional Office Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Ehrenkrantz, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

IV.

On the basis of the foregoing, Respondents hereby consent to the entry of an Order by the Commission imposing the following remedial sanctions pursuant to Section 8A of the Securities Act and Sections 15(b) and 21C of the Exchange Act:

A. Ehrenkrantz shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Sections 10(b), 15(c)(1) and 15(b)(7) of the Exchange Act and Rules 10b-5 and 15b7-1 thereunder;

B. Ottimo shall cease and desist from causing any violations and any future violations of Section 15(b)(7) of the Exchange Act and Rule 15b7-1 thereunder.

C. Ehrenkrantz is hereby censured;

D. Ottimo shall be, and hereby is, barred from association in a supervisory capacity with any broker or dealer.

E. Ehrenkrantz shall pay disgorgement of \$31,000 and prejudgment interest of \$10,024 to the Securities and Exchange Commission. Respondent Ehrenkrantz shall also pay a civil money penalty in the amount of \$25,000 to the Securities and Exchange Commission. Respondent Ehrenkrantz shall satisfy the disgorgement and prejudgment interest obligation by paying \$10,000 within ten (10) business days of the entry of this Order and the remainder in installments according to the following schedule: (1) \$10,000 within 90 days of the entry of this Order plus interest pursuant to SEC Rule of Practice 600; and (2) \$21,024 within 180 days of the entry of this Order plus interest pursuant to SEC Rule of Practice 600. Respondent Ehrenkrantz shall satisfy the civil penalty obligation by paying (1) \$15,000 within 270 days of the entry of this Order; and (2)

\$10,000 within 360 days of the entry of this Order. If Respondent Ehrenkrantz fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, the entire amount of disgorgement and prejudgment interest, and civil penalties plus any interest accrued on the disgorgement pursuant to SEC Rule of Practice 600, and interest accrued on the penalties pursuant to 31 U.S.C. § 3717, minus amounts paid, shall become due and payable immediately without further application.

All payments shall be made by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Virginia 22312, Mail Stop 0-3, and shall be accompanied by a letter identifying Respondent Ehrenkrantz as a respondent in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Order, a copy of which cover letter and money order or check shall be sent to Ronald L. Crawford, Senior Associate Regional Administrator, Securities and Exchange Commission, 3475 Lenox Rd., N.E., Suite 1000, Atlanta, GA 30326-1232. Respondent Ehrenkrantz shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

The civil money penalty may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 ("Fair Fund distribution"). Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent Ehrenkrantz agrees that it shall not, after offset or reduction in any Related Investor Action based on Respondent Ehrenkrantz's payment of disgorgement in this action, argue that it is entitled to, nor shall it further benefit by offset or reduction of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

F. Ottimo shall, within ten days of the entry of this Order, pay disgorgement of \$31,000 and prejudgment interest of \$10,024 to the Securities and Exchange Commission. Respondent Ottimo shall also pay a civil money penalty in the amount of \$25,000 to the Securities and Exchange Commission. Ottimo shall satisfy the civil penalty obligation by paying (1) \$10,000 within 90 days of the entry of this Order; and (2) \$15,000 within 270 days of the entry of this Order. If Respondent Ottimo fails to make any payment by the date agreed and/or in the amount agreed according to the

schedule set forth above, the entire amount of disgorgement and prejudgment interest, and civil penalties plus any interest accrued on the disgorgement pursuant to SEC Rule of Practice 600, and interest accrued on the penalties pursuant to 31 U.S.C. § 3717, minus amounts paid, shall become due and payable immediately without further application. Such payments shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, VA 22312, Mail Stop 0-3; and (D) submitted under cover letter that identifies Ottimo as a respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Ronald L. Crawford, Senior Associate Regional Administrator, Securities and Exchange Commission, 3475 Lenox Rd., N.E., Suite 1000, Atlanta, GA 30326-1232.

Such civil money penalty may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 ("Fair Fund distribution"). Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent Ottimo agrees that he shall not, after offset or reduction in any Related Investor Action based on Respondent Ottimo's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by offset or reduction of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent Ottimo agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

G. Ehrenkrantz shall comply with the undertaking specified in Paragraph 13 above.

By the Commission.

Florence E. Harmon
Acting Secretary