

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 54536/September 28, 2006

ADMINISTRATIVE PROCEEDING  
File No. 3-12312

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In the Matter of	:	
	:	ORDER MAKING FINDINGS
JOHN F. HELBOCK and	:	AND IMPOSING REMEDIAL
JOHN P. FIGLIOLINI, JR.	:	SANCTIONS BY DEFAULT
	:	AS TO JOHN P. FIGLIOLINI, JR.

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The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on May 31, 2006, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The Division of Enforcement (Division) has provided evidence that Respondent John P. Figliolini, Jr. (Figliolini), was served with the OIP on August 5, 2006.<sup>1</sup> To date, Figliolini has not filed an Answer to the OIP due twenty days after service. See OIP at 6; 17 C.F.R. § 201.220.

On September 19, 2006, Division filed a motion for default against Figliolini, based on his failure to answer the OIP. The Division requests that Figliolini be barred from acting in a supervisory capacity for a period of three years and assessed a second-tier civil penalty of \$50,000 pursuant to 21B of the Exchange Act. To date, Figliolini has not filed a response to the Division's motion.

Figliolini is in default for failing to file an Answer to the OIP, to respond to the Division's motion for default within the time provided, and to otherwise defend the proceeding against him. See 17 C.F.R. §§ 201.155(a), .220(f). Accordingly, as authorized by Rule 155(a) of the Commission's Rules of Practice, I find the following allegations in the OIP to be true as to Figliolini.

**FACTS**

Figliolini has been a registered representative associated with various broker-dealers from 1982 through 2004. From December 1996 through October 2003, Figliolini was the chairman,

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<sup>1</sup> Respondent John F. Helbock has settled the proceeding against him, agreeing to (1) a twelve-month suspension from acting in a supervisory capacity with any broker or dealer; and (2) a civil monetary penalty in the amount of \$20,000. John F. Helbock, Exchange Act Release No. 54512 (Sept. 26, 2006).

president, beneficial owner, and a registered representative of Phillip Louis Trading, Inc. (Phillip Louis), a broker-dealer formerly registered with the Commission. From September 2002 through July 2003, Figliolini was Phillip Louis's head trader and supervisor of registered representatives. Figliolini was responsible for all supervisory matters at Phillip Louis during this period. At all relevant times, approximately 90%-95% of Phillip Louis's business involved proprietary trading. Figliolini, 43 years old, is a resident of Wainscott, New York.

Joseph R. Huard, Jr. (Huard), was a registered representative associated with various broker-dealers from 1988 through December 2002. Huard was associated as a registered representative with a Pennsylvania registered broker-dealer, from October 1988 until it closed in January 2002. Huard was also associated as a registered representative with Phillip Louis from October 1996 through December 2002. After the Pennsylvania broker-dealer closed in January 2002, Huard moved his customers to Phillip Louis. One of the customers Huard brought to Phillip Louis was a group of hedge funds (hedge funds). The hedge funds primarily invested in penny stocks, some of which were thinly traded. Prior to joining Phillip Louis, Huard had a regulatory disciplinary history including sanctions by the National Association of Securities Dealers and from state regulators in Alabama and New Hampshire. Huard, 48 years old, is a resident of Lake Worth, Florida.

Huard was charged with conspiracy to commit and committing mail, wire, and securities fraud in two separate indictments unsealed in August 2002, arising from an undercover sting operation conducted by the United States Attorney's Office. United States v. Huard, Case No. 02-20473-CR-Graham (S.D. Fla.); United States v. Huard, Case No. 02-020626-CR-Ungaro-Benages (S.D. Fla.). On December 18, 2002, Huard pleaded guilty to one count in each indictment of conspiracy to commit wire fraud, mail fraud, and securities fraud, and conspiracy to commit wire fraud and securities fraud, respectively, and was sentenced to five years' probation including eight months' home-detention, 300 hours of community service, and assessed a \$10,000 fine.

From approximately January through November 2002, Huard, while associated with Phillip Louis, engaged in a manipulative trading scheme including, among other things, marking the close at month-end in numerous small cap securities comprising a substantial portion of the hedge funds' portfolios. During this period, Huard received and executed over 165 buy trades on the last day of the month in various penny stocks in the hedge funds' portfolios. Many of these trades occurred within the last thirty minutes of the close of trading and marked the month-end closing price for those securities in the hedge funds' portfolios. Huard executed these trades with the intent of affecting the price of the securities and thereby inflating the value of the hedge fund's portfolio.

Huard was directly supervised by Figliolini from September 2002 through December 2002. While charged with the responsibility for supervising Huard, Figliolini failed reasonably to supervise Huard, with a view to preventing his violations of the federal securities laws. When Huard moved to Phillip Louis, Figliolini, as Phillip Louis's president, reviewed Huard's Form U-4 and his corresponding disciplinary history.

Shortly after Huard began his manipulation scheme in various hedge funds' securities at Phillip Louis, Figliolini was alerted to Huard's end of the day trading activity by John F. Helbock. Despite these concerns and being aware of Huard's prior disciplinary history, Figliolini failed to investigate the ongoing manipulation of the securities in the hedge funds. Had Figliolini made further inquiry into Huard's end of the month trading activity he likely would have uncovered the stock manipulation scheme.

When Figliolini became Huard's direct supervisor in September 2002, Phillip Louis had gone through a down-sizing that left it with just a few registered representatives in its New Jersey office.

On July 22 and October 28, 2002, Figliolini received correspondence from separate state securities regulators questioning Huard's disciplinary history and qualifications for registration in those states. In fact, one state securities regulator warned that based on Huard's disclosure records "we believe a heightened level of supervision is warranted."

While under Figliolini's supervision, Huard continued to engage in the stock manipulation scheme. For example, on September 30, 2002, Huard executed 14 trades (all purchases after 3:00 p.m.) on behalf of the hedge funds for the purchase of penny stocks. These trades substantially increased the month-end close price in three stocks held by the hedge funds which increased the value of the hedge funds' portfolios. Huard also marked the close in the hedge funds' securities at month-end in October and November 2002.

As Huard's direct supervisor, Figliolini only reviewed a sample of the daily order tickets to verify, among other things, that each order was properly time-stamped which was contrary to Phillip Louis's written supervisory procedures which required that all order tickets be reviewed. Phillip Louis's written supervisory procedures also contained anti-manipulation guidelines and policies that proscribed the manipulative practice of marking the close by engaging in a trade on an "uptick" or a "downtick" at or near the close of trading. Figliolini did not evaluate whether Huard's trading activity involved marking the close despite the red flags presented by Huard's order tickets that showed trades occurring late in the day at month-end.

Figliolini further failed to follow Phillip Louis's written supervisory procedures by failing to conduct weekly and monthly customer account reviews as required. Figliolini's failure to do weekly and monthly customer account reviews prevented him from conducting any meaningful review of Huard's trading activities in the hedge funds' related account. If he had undertaken such a review, it is likely Figliolini would have noticed the large number of month-end buy trades at or near market close in the hedge funds' account and uncovered Huard's stock manipulation scheme.

## **CONCLUSIONS AND SANCTIONS**

Figliolini failed reasonably to supervise Huard with a view to detecting and preventing his manipulative trading practices during the period that he was Huard's direct supervisor by ignoring the numerous red flags and failing to follow Phillip Louis's written supervisory procedures. As a result, Figliolini violated Sections 15(b)(4)(E) and 15(b)(6) of the Exchange

Act and should have detected and prevented Huard's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

In light of the foregoing, pursuant to Sections 15(b)(4)(E), 15(b)(6), and 21B of the Exchange Act and 17 C.F.R. § 201.193, I conclude it necessary and appropriate for Figliolini to be: (1) barred from associating with a broker dealer in a supervisory capacity with a right to reapply after three years; and (2) ordered to pay a \$50,000 civil penalty.

### **ORDER**

Based on the foregoing:

IT IS ORDERED THAT, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and 17 C.F.R. § 201.193, John P. Figliolini, Jr., shall be barred from associating with a broker or dealer in a supervisory capacity, with the right to reapply after three years to the appropriate self-regulatory organization, or if none, to the Securities and Exchange Commission; and

IT IS FURTHER ORDERED THAT, pursuant to Section 21B of the Securities Exchange Act of 1934, John P. Figliolini, Jr., shall pay a civil monetary penalty of \$50,000.

Payment of the civil penalty shall be made by wire transfer, certified check, United States postal money order, bank cashier's check, or bank money order, payable to the Securities and Exchange Commission. The payment, and a cover letter identifying the Respondent and the proceeding designation, shall be delivered to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop O-3, Alexandria, Virginia 22312. A copy of the cover letter and the instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

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Robert G. Mahony  
Administrative Law Judge