UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
February 09, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12179

In the Matter of

LAWRENCE A. STOLER, CPA,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, SECTION 8A OF THE SECURITIES ACT OF 1933, SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, AND SECTION 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Lawrence A. Stoler ("Stoler" or "Respondent") pursuant to Rule 102(e) of the Commission's Rules of Practice, Section 8A of the Securities Act of 1933 ("Securities Act"), Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), and Section 203(k) of the Investment Advisers Act of 1940 ("Advisers Act").

II.

The Commission's public official files disclose that, at all relevant times, Lipper Convertibles, L.P. ("Convertibles") and Lipper Convertibles Series II, L.P. ("Series II") were each registered with the Commission as a broker-dealer.

III.

After an investigation, the Division of Enforcement and the Office of the Chief Accountant allege that:

SUMMARY

1. This proceeding concerns Stoler's improper professional conduct in the audits of the 2000 annual financial statements of three hedge funds – Convertibles, Series II, and Lipper Fixed Income Fund, L.P. ("Fixed Income") (collectively, the "Funds") – managed by Lipper Holdings, LLC ("Lipper Holdings"). Stoler was the engagement partner on the 2000 audits as well as the audits for all but two of the preceding ten years. Stoler's conduct was also a cause of violations of certain provisions of the securities laws by the Funds, Lipper Holdings, and the Funds' portfolio manager, Edward J. Strafaci ("Strafaci").

2. From at least 1998 until his resignation in January 2002, Strafaci intentionally overstated the value of the convertible bonds and convertible preferred stock in which the Funds were invested. As a result, investors and prospective investors received materially false statements about the Funds' value and performance. Strafaci's inflated valuations were reflected in Fund offering materials and in periodic reports to investors, including audited year-end financial statements. Because Convertibles and Series II were registered broker-dealers, their annual audited financial statements were also filed with the Commission pursuant to Section 17 of the Exchange Act and Rule 17a-5(d) thereunder.

3. As a result of Strafaci's fraud, the Funds were revalued and then dissolved. Just weeks after Strafaci's resignation, and following a review of his valuations, the Funds reported to their investors that Convertibles, Series II and Fixed Income were being written down by approximately 40%, 15% and 22%, respectively, from their reported values. Largely as a result of Strafaci's overvaluation, Convertibles, the largest of the Funds, lost approximately $350 million of its reported partners' capital from December 31, 2000, the date of its last audited financial statements, to December 31, 2001. The analysis performed in connection with the Funds' dissolution revealed that the partners' capital of Convertibles as reported in those audited financials was overstated by approximately 49%. Strafaci admitted his wrongdoing, pleading guilty to criminal securities fraud charges. He is currently serving a seventy-two month prison sentence, and has been ordered to pay $89 million in restitution. In addition, Strafaci has been permanently enjoined from future violations of the securities laws, and barred from associating with an investment adviser, broker, or dealer.

4. Throughout Strafaci's fraud, the Funds' year-end financial statements were audited by PricewaterhouseCoopers LLP ("PwC"). PwC's reports on the Funds' financial statements were unqualified and stated that the financial statements were prepared in conformity with generally accepted accounting principles ("GAAP"), and had been audited in accordance with generally accepted auditing standards ("GAAS"). Those auditors' reports were provided to investors and prospective investors, and thus permitted Strafaci's fraud to continue and investors' losses to mount. In fact, the Funds' financial statements were not prepared in conformity with GAAP and had not been audited in accordance with GAAS.

5. Stoler ignored the requirements of GAAS. The 2000 audits produced substantial evidence that Strafaci had grossly overstated the value of the Funds' investments, but Stoler disregarded that evidence. The 2000 audit workpapers show that the Funds were substantially overvalued in comparison to prices the audit team obtained from three independent sources: the Funds' prime brokers, Bloomberg Information Services ("Bloomberg"), and a broker-dealer that provided quotes for eight securities – seven of which were significantly lower than Strafaci's values. Stoler never questioned why Strafaci's values were significantly higher than those independent prices. Instead, he blindly relied on results of a flawed "confirmation" process. Under Stoler's supervision, the audits amounted to a mechanical execution of tests, without real regard for the results of those tests. In sum, Stoler failed to exercise due professional care and professional skepticism, failed to obtain sufficient competent evidential matter to support PwC's unqualified opinions, and failed to adequately supervise the work of assistants.

6. Stoler's conduct in the Funds' 2000 audits was reckless or, at a minimum, highly unreasonable, within the meaning of Rule 102(e)(1)(iv)(A) and (B)(1). Accordingly, Stoler engaged in improper professional conduct within the meaning of Rule 102(e)(1)(ii). In addition, by virtue of his conduct, Stoler was a cause of violations of certain provisions of the Securities, Exchange, and Advisers Acts committed by the Funds, Strafaci, and/or Lipper Holdings.

RESPONDENT

7. **Lawrence A. Stoler** was an audit partner at PwC from 1980 until he retired in 2002. Stoler was the engagement partner on the Funds' 2000 audits and on the audits from the late-1980s until the Funds' collapse in early 2002, except for two years in the mid-1990s, when he served as the concurring partner. During the relevant period, Stoler was a certified public accountant licensed to practice in New York and New Jersey. Stoler is 61 years old and resides in Allendale, New Jersey.

OTHER RELEVANT PERSONS AND ENTITIES

8. **PwC** is a Delaware limited liability partnership with its principal place of business in New York City. PwC offers a wide variety of professional services, including audit services, through more than 45,000 employees in offices in over 100 U.S. cities. PwC (and its predecessor, Price Waterhouse LLP ("Price Waterhouse")) served as the Funds' auditor from 1989 until their collapse in early 2002.

9. **The Funds** - Convertibles, Series II, and Fixed Income - were hedge funds organized as limited partnerships; none was registered or required to be registered under the Investment Company Act of 1940. Convertibles (formerly known as Lipco Partners, L.P. and, under prior management, Cohen, Feit & Co.) was established in 1985, Series II was established in 1998, and Fixed Income was established in 1993. At all relevant times, Convertibles and Series II were registered with the Commission as broker-dealers and were members of the NASD. Convertibles and Series II primarily invested in convertible securities – bonds or

preferred stock convertible by the owner into shares of common stock – and generally hedged their long positions by selling short the common stock into which the bond or preferred stock was convertible. The Funds also employed leverage – borrowed money – to purchase the convertible securities, which allowed them to hold securities in an amount in excess of the equity contributed by the Funds' partners. Fixed Income invested approximately 60% of its capital in Convertibles, and thus indirectly followed the strategy described above. Convertibles and Fixed Income are in the process of being liquidated; Series II has been liquidated.

10. **Lipper Holdings, LLC** was a Delaware limited liability company that, during the relevant period, was the general partner for each of the Funds.[1] Lipper Holdings managed the portfolio for Convertibles and Series II. Kenneth Lipper was chairman, president and chief executive officer of Lipper Holdings.

11. **Edward J. Strafaci** was, during the relevant period, the Funds' portfolio manager and executive vice president and director of fixed income money management for Lipper & Co. From at least 1998 until January 2002, Strafaci intentionally overstated the value of the convertible bonds and convertible preferred stock held by the Funds, resulting in the dissemination of materially false and misleading fund valuations and performance figures to investors and prospective investors, and the filing of inaccurate reports with the Commission. On the basis of this conduct, Strafaci has been the subject of enforcement action by the Commission and a criminal prosecution. He pleaded guilty to one felony count of securities fraud for overstating the value of Convertibles' and Series II's portfolios, in United States v. Edward Strafaci, 03 Crim. 1182 (S.D.N.Y), is currently serving a seventy-two month prison sentence, and has been ordered to pay restitution of $89,282,416. In addition, Strafaci has, by consent, been enjoined from future violations of certain provisions of the securities laws in Securities and Exchange Commission v. Edward J. Strafaci, 03 Civ. 8524 (S.D.N.Y.), and barred from association with any broker, dealer, or investment adviser in Edward J. Strafaci, Exchange Act Release No. 50422 (Sept. 22, 2004).

[1] An affiliated entity, Lipper & Co. L.P. ("Lipper & Co.") managed the portion of Fixed Income's portfolio that was not invested in Convertibles and acted as placement agent for the Funds. During the relevant period, Lipper & Co. was registered with the Commission as an investment adviser and a broker-dealer.

FACTUAL ALLEGATIONS

Strafaci's Overstatement of the Funds' Assets

12. Strafaci was the Funds' portfolio manager and the person to whom Lipper Holdings delegated responsibility for valuing the Funds' portfolios. The Funds' audited financial statements represented that securities held by the Funds were "valued at market."

13. On January 14, 2002, Strafaci abruptly left Lipper Holdings, purportedly to start his own money-management firm. Shortly after his departure, Lipper Holdings reviewed his valuations and concluded that they were not within a reasonable range of the securities' actual market values for December 31, 2001. In late-February 2002, Lipper Holdings announced that the partners' capital of Convertibles, Series II, and Fixed Income were being written down by approximately 40%, 15%, and 22%, respectively. In a November 2002 report, counsel retained by the Funds to conduct an independent investigation into the Funds' valuation practices (the "Special Counsel") concluded that since at least January 1, 1996 (or, with respect to Series II, at least January 1, 1999), Strafaci's valuations were inconsistent with the Funds' stated valuation policies and procedures and "[could] not be supported by any rational basis."

14. In October 2002, Lipper Holdings commenced court proceedings to liquidate the Funds. In connection with the liquidation proceedings, Lipper Holdings directed an accounting firm (not PwC) "to determine a reasonable method of determining the investors' ownership interest . . . without significant use of the 'market values' of the securities held by the Fund as contemporaneously reported in the Fund's records." The accounting firm revalued the Funds' convertible securities based on prices obtained from one of two commercial pricing services, or the Funds' prime brokers.[2] On that basis, the accounting firm revalued long positions of Convertibles and Series II, with the resulting impact on partners' capital as follows:

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[2] The term "prime broker" as used in this order refers to a broker-dealer that provides services to hedge funds, money managers and others, such as preparing daily account statements, clearing and settlement of securities transactions, financing or leverage, and custodial services. On December 31, 2000, the Funds dealt with seven prime brokers, sometimes also referred to as "clearing brokers" or "custodians."

Values for Convertibles as of December 31, 2000
(in millions)

	Per Audited Financials	As Revalued	Difference
Long Positions	$2,297.8	$2,017.0	$280.8 (12.2%)
Partners' Capital	$ 568.7	$ 287.9	$280.8 (49.4%)

Values for Series II as of December 31, 2000
(in millions)

	Per Audited Financials	As Revalued	Difference
Long Positions	$186.9	$175.3	$11.6 (6.2%)
Partners' Capital	$ 82.9	$ 71.3	$11.6 (14.0%)

15. As revalued by the accounting firm, the partners' capital of Convertibles as of December 31, 1999 and December 31, 1998 was, respectively, 34% and 36% less than had been reported in the Fund's audited financial statements.

The 2000 Audits

16. Price Waterhouse was first hired as Convertibles' independent accountant in 1989. Lipper Holdings selected Price Waterhouse in part because of its touted expertise with respect to hedge funds and valuation of hard-to-price securities. By the time of the 2000 audits, PwC was the auditor for all the Funds and several other affiliated entities, including several registered investment companies, and Stoler had been the engagement or concurring partner on the Funds' audits for approximately ten years.

17. As the engagement partner on the 2000 audits, Stoler was responsible for ensuring that the audits were conducted in accordance with GAAS, and was required to, among other things, supervise the work of subordinate members of the audit team to ensure that the audit work was adequately performed and supported the conclusions presented in PwC's reports on the financial statements.

18. In the 2000 audit of Strafaci's valuation of the Funds' convertible securities[3] – the most critical part of the audits – Stoler failed to act in accordance with GAAS. He failed to exercise due care and appropriate professional skepticism, obtain sufficient competent evidential matter, or adequately supervise the work of assistants. In the planning and execution phases of the audit, he failed to heed the Funds' internal controls weaknesses and failed to adequately direct the efforts of assistants in designing and executing the broker-dealer confirmation process. In assessing the evidence produced by the audit, Stoler failed to question and critically analyze that evidence and failed to follow up on evidence that Strafaci was significantly overvaluing the Funds' assets.

Stoler Was Aware of the Funds' Internal Control Weaknesses

19. At the time of the 2000 audits, Stoler knew that the Funds' internal control weaknesses called for heightened scrutiny of the valuation of their investments. The audit team had observed in prior audits that the internal controls in place with respect to valuation were inadequate and that the Funds' investments were valued by Strafaci without oversight. The workpapers for the Funds' 1996 and 1997 audits noted this internal control weakness, stating:

> [d]ue to the complexity of the process all pricing work is performed by the front office (Ed Strafaci with assistance from [a Fund trader].) There is no formal review of the marks external of the front office, because of a lack of technical knowledge (convertible arbitrage securities). In order to have proper segregation of duties, the pricing function should be monitored in a Middle/Back Office capacity by a party outside the front office (Product Control, Accounting). Point to be considered for inclusion in letter to management.

20. In addition, during the planning of the 2000 audits, the audit team noted that the Funds had certain internal control weaknesses. The team prepared a risk analysis, referred to internally as a "FRISK" analysis, for the Funds, which Stoler approved. That analysis identified the Funds' "management governance and oversight of management," as a "high risk" area, as had the FRISK analysis for the Funds' 1999 audits. PwC never sent a management letter concerning the inadequacy of the Funds' internal controls regarding valuation.

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3 Convertibles' long securities positions consisted of forty-seven convertible preferreds and seventy convertible bonds. Series II's long positions consisted of smaller positions in some of those securities. For its audits of Series II and Fixed Income, the audit team took no separate steps to test the valuation of the convertible securities in which those funds were invested, directly in the case of Series II and indirectly in the case of Fixed Income.

The Audit Work on the Valuation of the Funds' Investments

21. The procedures performed by the audit team to audit the valuation of the Funds' investments are identified in the audit workpapers. According to the workpapers, the basis for the values for the convertibles securities was "quotes received from approximately six brokers" that Strafaci traded with. The workpapers, however, do not include either the quotes that were supposedly the source of Strafaci's values or any indication that the audit team ever reviewed those quotes.

22. Although the audit team did not obtain the quotes that supposedly supported Strafaci's values, it did obtain from the Funds' prime brokers the statements of the Funds' accounts as of December 31, 2000. These statements listed market values for the convertible securities held by the Funds. According to the workpapers, the audit team's analysis of the prime broker statements revealed that Strafaci's valuation of the convertible bonds and preferreds held by Convertibles exceeded the prime brokers' valuation of those securities by approximately $274 million, or 13.5%. Stoler failed to discuss this material difference with anyone at Lipper Holdings, and the workpapers are silent as to how the audit team resolved this difference. This difference, moreover, ignored the impact of leverage on the portfolio. Had the audit team considered the effect of leverage, it would have seen that the prime brokers' prices indicated that Convertibles' partners' capital was overstated by approximately 48%. The workpapers do not reflect any consideration of the impact of the Funds' leverage on the differences produced by the prime broker test.

23. The audit team also used "Bloomberg to obtain an independent price for 65% of the total market value of positions held at 12/31/00." The Bloomberg prices then were compared to Strafaci's values and "any significant variances" were to be noted. Any Bloomberg prices that were "greater than 2% of what Lipper Convertibles has recorded" were to be "independently confirmed" by "directly contact[ing]" the brokers with whom Convertibles traded and from whom Strafaci purportedly obtained the quotes on which he based his values for the securities "so that they may confirm the price of the positions."

24. The Bloomberg comparison indicated, and the workpapers noted, that the tested portion of Convertibles portfolio was overstated by approximately 12.9%. Strafaci's values for thirty-four of the forty-four convertible bonds and nineteen of the twenty convertible preferreds tested differed by 2% or more from the corresponding Bloomberg prices, with Strafaci's values being higher for all but four securities. Strafaci's values for almost half of the preferreds exceeded the Bloomberg prices by 20% or more, and his values for almost half of the bonds exceeded the Bloomberg prices by 5% or more. Had the audit team taken leverage into account, it would have seen that the Bloomberg test indicated that Convertibles' partners' capital was overstated by approximately 34.4%. The workpapers do not reflect any consideration of the impact of the Funds' leverage on the differences produced by the Bloomberg test.

______25. The audit program called for the team to further test the valuation of securities for which Strafaci's value differed from Bloomberg's price by more than 2% by asking the broker-dealers from whom Strafaci had purportedly obtained the quotes that were the basis for his values to "confirm the prices of the positions."

26. To perform this test, a junior auditor sent faxes to institutional salespeople at five broker-dealers asking them to "please verify that the attached schedule of broker quotes as of 12/31/00 were [sic] provided by you to Lipper Convertibles," by signing the schedules "for our records," and faxing them back. The faxes contained no further instruction or explanation. The attached schedules listed the fifty-four securities as to which Strafaci's value had differed from Bloomberg's price by more than 2%, with Strafaci's value listed next to each security. Each salesperson received the same list of fifty-four securities, regardless of whether his firm traded in, or previously provided a quote to the Fund for, a particular security.

27. Of the five broker-dealer "confirmations" obtained by the audit team, four were faxed back with the salesperson's signature on the schedule and without any notation or comment (the so-called "clean confirmations"). Only one was returned with any indication that the salesperson had actually reviewed any of the values. That "confirmation," from Broker A, was unsigned and noted a bid-ask range next to Strafaci's value for eight of the fifty-four securities listed. For seven of the eight, Strafaci's value was significantly higher than even the ask-side price provided by Broker A.

28. The confirmation process was flawed in several significant respects. For example, although the audit team asked the salespeople to verify "that the attached schedule of broker quotes . . . were [sic] provided by you to Lipper Convertibles," the attached schedule was not a schedule of quotes that the broker-dealer had provided but rather was a schedule prepared by the audit team, listing Strafaci's values for the securities. The faxes did not ask the salespeople to provide quotes for the specified securities or ask them to attest to the reasonableness of the values listed on the schedules. As a result, except for Broker A, there is no evidence in the workpapers that the salespeople who returned signed confirmations had actually ascertained the broker-dealer's quote or valued the security. In addition, each broker-dealer's salesperson was asked to "confirm" values for a large number of securities (fifty-four), without regard to whether the firm made a market in the securities. These flaws made the confirmation process unreliable.

The Evaluation of the Audit Evidence

29. The workpapers show the substantial gap between Strafaci's values and the prices the audit team obtained from the independent sources. For example, the audit team obtained prices from Bloomberg for the Chiquita $3.75, MGC Comm., Loral and Intermedia 144a securities held by Convertibles. The Bloomberg prices were, respectively, 88.5%, 78.9%, 64.8% and 63.2% lower than the Strafaci's values. The differences between Strafaci's values and the independent prices for these four securities and selected other examples are shown below:

Security	Strafaci Value	Bloomberg Price	Prime Broker Price	Broker A Confirm Average*
Chiquita $3.75	$31.00	$3.56	$3.56	n/a
Human Genome 5%	157.00	138.02	138.00	122.56
Human Genome 3.75%	100.00	83.88	84.00	81.06
Intermedia 144a	33.00	12.15	9.99	n/a
Liberty Media	90.00	68.08	66.50	67.37
Loral	31.22	11.00	12.60	n/a
MGC Comm.	35.54	7.50	7.50	n/a
United Global Comm.	39.00	15.88	15.88	n/a

* Represents average of bid/ask range provide by Broker A.

30. The prime broker prices, the Bloomberg prices, and the quotes obtained from Broker A all constituted evidence that Strafaci's values were significantly higher than market prices or fair value. Other than stating "no exceptions were noted," the workpapers contain no indication as to how the audit team evaluated that evidence. Thus, the workpapers do not document, much less sufficiently support, the unqualified reports PwC issued on the Funds' financial statements.

31. The evidence obtained by the audit team was insufficient to support Strafaci's values or PwC's unqualified reports. Most of that evidence indicated that Strafaci's valuation of the Funds' assets was substantially overstated, as discussed at paragraphs 22-24 and 29 above. The "clean" confirmations were insufficient to support that valuation because they were unreliable, as discussed at paragraphs 26-28 above.

32. Stoler ignored, discounted, or failed to apprise himself of, the evidence produced by the audit tests and the flaws in the confirmation process discussed above. Thus, he failed to exercise due professional care and maintain an attitude of professional skepticism, failed to obtain sufficient competent evidential matter concerning the valuation of the Funds' assets, and failed to adequately supervise the assistants working on the audit.

33. Stoler's conduct in the 2000 audits was consistent with his failures in prior audits. The workpapers for the 1998 and 1999 audits – on which Stoler was also the engagement partner – reflect similar failures by the audit team to exercise professional skepticism and obtain competent evidential matter to support Strafaci's valuation of the Fund's assets and PwC's unqualified reports on the Funds' financial statements. In the 1998 audits, for example, the confirmation process produced broker-dealer quotes lower than Strafaci's values that suggested that his values were substantially overstated. The workpapers show that the audit team resolved the difference by simply accepting Strafaci's self-serving explanation for why his values were higher, without taking any steps to test that explanation.

Despite His Failures to Follow GAAS, Stoler Signed Unqualified Auditors' Reports

34. On February 26, 2001, Stoler, on behalf of PwC, signed Reports of Independent Accountants for each Fund stating, in part, that in PwC's opinion the Fund's "statements of financial condition, including the condensed schedule of investments, and the related statements of . . . changes in partners' capital . . . present fairly, in all material respects, the financial position of," the Fund, at December 31, 2000. The audit reports further stated that the financial statements were presented in conformity with GAAP and that PwC's audit had been conducted in accordance with GAAS.

35. On March 1, 2001, as required by Section 17 of the Exchange Act and Rule 17a-5 thereunder, Convertibles and Series II filed their audited annual financial statements with the Commission, which included PwC's reports on the financial statements. Also included were PwC's supplemental reports describing any material inadequacies found since the date of the previous audit (commonly referred to as "internal control reports"). The internal control reports, which Stoler signed on behalf of PwC, stated:

> A material weakness is a condition in which the design or operation of one or more of the specific internal control components does not reduce to a relatively low level the risk that error or fraud in amounts that would be material in relation to the employees in the normal course of performing their assigned functions. However, we noted no matters involving internal control, including procedures for safeguarding securities, that we consider to be material weaknesses as defined above.

36. The Funds' long securities were not valued in conformity with GAAP because, among other reasons, Strafaci valued the convertible bonds and convertible preferred stock in which the Funds were invested at prices higher than readily available market prices. Moreover, the Funds failed to maintain supporting documentation for Strafaci's valuation. Accordingly, the Funds' 2000 financial statements were not presented in conformity with GAAP. In addition, the audits of the financial statements were not conducted in accordance with GAAS and the internal control reports filed by Convertibles and Series II were inaccurate.

Violations by the Funds, Strafaci and Lipper Holdings

37. Strafaci, a senior official of the Funds and Lipper Holdings, caused those entities to make materially misleading statements to investors in the offer or sale, and in connection with the purchase or sale, of interests in the Funds, concerning the value and performance of the Funds, and the method by which the Funds' portfolio securities were valued. Interests in the Funds were securities within the meaning of Section 2(a)(1) of the Securities Act. Investors and potential investors in the Funds were, respectively, clients and potential clients under the Advisers Act and are referred to herein as "investors/clients" and "prospective investors/clients." The Funds' audited financial statements for the year ended December 31, 2000 were

disseminated to investors/clients and prospective investors/clients, along with PwC's unqualified reports on those statements. PwC's unqualified reports on those statements gave comfort to investors/clients, among others, that the Funds were being properly valued. Investors/clients who received those audited financial statements were solicited to, and in some cases, made investments or additional investments in the Funds.

38. Strafaci's conduct, which is attributable to the Funds and Lipper Holdings, in the offer and sale of interests in the Funds violated, among other provisions, Sections 17(a)(2) and (3) of the Securities Act, in that Strafaci, the Funds, and Lipper Holdings directly and indirectly, by the use of the means or instruments of transportation or communication in, or the means or instrumentalities of, interstate commerce, or by use of the mails, in the offer or sale of interests in the Funds: (a) obtained money or property by means of untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (b) engaged in transactions, practices and courses of business which operated or would have operated as a fraud or deceit upon purchasers of interests in the Funds. In addition, by virtue of Strafaci's fraudulent valuations, Lipper Holdings violated Section 206(2) of the Advisers Act in that it engaged in acts, practices or courses of business which operated as a fraud or deceit upon clients and prospective clients. Scienter is not required to establish violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act or Section 206(2) of the Advisers Act. Steadman v. SEC, 603 F.2d 1126, 1133 (5th Cir. 1979).

39. Section 17 of the Exchange Act and Rule 17a-5(d) thereunder generally require registered broker-dealers to file with the Commission, among other things, audited financial statements on an annual basis. Pursuant to paragraph (g)(1) of Rule 17a-5, the audit "shall be made in accordance with [GAAS]," and "shall include a review of the accounting system, the internal accounting controls and procedures for safeguarding securities." Further, pursuant to paragraph (j) of that Rule, a registered broker-dealer must file, "concurrently with its annual audit report, a supplemental report by the accountant describing any material inadequacies found to have existed since the date of the previous audit." Pursuant to paragraph (g)(3) of that Rule, the term "material inadequacy" includes "a material inadequacy in the accounting system, internal accounting controls, and procedures for safeguarding securities [. . .] which has contributed substantially to or, if appropriate action is not taken, could reasonably be expected to [. . .] result in material misstatements in the broker's or dealer's financial statements." Implicit in the requirement that a registered broker-dealer file an audited annual financial report is the requirement that the information contained in those reports be accurate. See Nikko Securities Co. International, Inc., Exchange Act Release No. 32331 (May 19, 1993). Because the audits of Convertibles' and Series II's financial statements were not conducted in accordance with GAAS and because the internal controls reports they filed were inaccurate, Convertibles and Series II violated Section 17 of the Exchange Act and Rule 17a-5 thereunder.

STOLER ENGAGED IN IMPROPER PROFESSIONAL CONDUCT

40. Under GAAS, an auditor must exercise due professional care in performing the audits of financial statements and preparing the audit reports.[4] "Due professional care" requires, among other things, that auditors: (a) exercise due professional care in the planning and performance of the audit, and professional skepticism in assessing audit evidence; and (b) obtain sufficient competent evidential matter through inspection, observation, inquiries, and confirmations to afford a reasonable basis for their opinions regarding financial statements under audit. AU 230, 230.07 & 326.01. The requirement to obtain sufficient competent evidential matter dictates that the evidence obtained through the audit "be sufficient for the auditor to form conclusions concerning the validity of the individual assertions embodied in the components of financial statements." AU 326.13. The auditor should "consider relevant evidential matter regardless of whether it appears to corroborate or contradict the assertions in the financial statements." AU 326.25.

41. GAAS further requires that audits be adequately planned and assistants be properly supervised. AU 311.01. Supervision includes keeping informed of problems encountered, assuring that the work of subordinates is properly performed, and assuring that the audit work supports the conclusions reached. AU 311.11 & 311.13. One factor to be considered in planning an audit is "[c]onditions that may require extension or modification of audit tests." AU 311.03. Moreover, "[t]he auditor's understanding of internal control may heighten or mitigate the auditor's concern about the risk of material misstatement." AU 312.16. Accordingly, GAAS requires auditors to evaluate whether the audited entity's controls that address identified risks of material misstatement due to fraud have been suitably designed and used to assess these risks. AU 316.43-.45. Among the risk factors indicative of possible misstatements due to fraud are: (1) management compensation that is based in significant part on incentives, the value of which is contingent; and (2) inadequate monitoring of significant controls. AU 316.85.

42. Stoler failed to comply with GAAS because he did not exercise due professional care and professional skepticism, obtain sufficient competent evidential matter to support the auditor's opinion on the financial statements, or adequately supervise the work of assistants. In the 2000 audits, he ignored, discounted, or failed to apprise himself of, the substantial audit evidence that Strafaci's values for the Funds' investments were not presented in accordance with GAAP and were materially overstated, and the flaws in the process that produced the "clean" confirmations. In light of his awareness of the inadequacies of the Funds' internal controls on valuation, and Strafaci's and Lipper Holdings' incentive compensation, Stoler's deviations from GAAS were reckless or, at a minium, highly unreasonable.

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[4] During the relevant period, GAAS was embodied in various Statements on Auditing Standards ("SAS"), as well as the Codification of Statements of Auditing Standards ("AU"), both issued by the Auditing Standards Board of the American Institute of Certified Public Accountants.

43. By engaging in the conduct described above, Stoler engaged in improper professional conduct within the meaning of Rule 102(e) of the Commission's Rules of Practice in that his conduct: (a) constituted intentional or knowing conduct, including reckless conduct, that resulted in violation of applicable professional standards; or (b) in the alternative, constituted negligent conduct, consisting of a single instance of highly unreasonable conduct that resulted in a violation of applicable professional standards in circumstances in which Stoler knew, or should have known, that heightened scrutiny was warranted.

STOLER WAS A CAUSE OF VIOLATIONS BY OTHERS

44. By engaging in the conduct described above in the 2000 audits, Stoler was a cause of Strafaci's and the Funds' violations of Sections 17(a)(2) and (3) of the Securities Act, Lipper Holdings' violations of Section 206(2) of the Advisers Act, and Convertibles' and Series II's violations of Section 17 of the Exchange Act and Rule 17a-5 thereunder, because he knew or should have known that his failure to conduct and supervise an audit that conformed to GAAS and his approval of, and signature on, unqualified audit reports on the Funds' 2000 financial statements, and the internal controls reports, would contribute to those violations, including the Funds' and Lipper Holdings' false representations to investors/clients and prospective investors/client about the Funds' value and performance and Convertibles' and Series II's filings of inaccurate annual audited financial reports.

IV.

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

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

B. What, if any, remedial action is necessary and appropriate pursuant to Rule 102(e) of the Commission's Rules of Practice;

C. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, and Section 203(k) of the Advisers Act, Respondent should be ordered to cease and desist from committing or causing violations and any future violations of Sections 17(a)(2) and (3) of the Securities Act and Section 206(2) of the Advisers Act, and from causing violations and any future violations of Section 17 of the Exchange Act and Rule 17a-5 thereunder.

V.

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

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

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

This Order shall be served forthwith upon Respondent personally or by certified mail.

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

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Nancy M. Morris
Secretary