

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61625 / March 2, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13800

In the Matter of

Warrior Fund LLC,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

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 Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Warrior Fund LLC (“Respondent” or “Warrior”).

II.

In anticipation of the institution of these proceedings, Respondent has 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

In this matter, Warrior operated as an unregistered broker-dealer as a result of its master/sub-account arrangement with a number of day traders.² Warrior established a master account at a registered broker-dealer using pooled funds primarily contributed by its manager and primary owner, but also provided by day trader members Warrior recruited. Warrior opened sub-accounts under the master account for each trader to track his or her individual day trading. From 2003 through 2007, Warrior earned most of its income from transactional charges on its day traders' trading and the payments Warrior received from the branch office of Warrior's broker-dealer based on Warrior's volume of trading. This master/sub-account structure allowed Warrior to offer day trading services to persons whose accounts were not margined on an individual basis and to profit from the individuals' day trading.

Respondent

1. Warrior Fund LLC is a Texas limited liability company formed in 2002 that is managed by its primary investor. A self-described private equity firm, in 2007 Warrior had approximately 75 members, each of whom day traded through sub-accounts established under Warrior's master account at a registered broker-dealer, which cleared Warrior's trades. Warrior is not registered with the Commission as a broker or dealer. In August 2008, Warrior ceased operations.

Facts

2. Warrior solicited day traders to open accounts with Warrior by word-of-mouth and through its web site, which promoted the advantages the company affords day traders. Warrior's web site specifically highlighted the enhanced leverage, execution platform, support team and potential 100% payout of trading profits that Warrior offered. The day trading services Warrior provided included the trading programs necessary to place securities orders and route those orders into the market electronically, as well as research and analytical software, training, technical support, and administrative services.

3. Orders for Warrior's day trader members were placed through Warrior's master account, and Warrior's broker-dealer linked those trades to each sub-account for accounting purposes. Warrior's broker-dealer provided a single monthly statement to Warrior. Warrior provided

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person in this or any other proceeding.

² NASD Rules define "day trading" generally as the purchasing and selling or the selling and purchasing of the same security on the same day in a margin account. NASD Rule 2520(f)(8)(B)(i).

monthly profit-and-loss statements for each sub-account. In addition, sub-account holders received on-line access to sub-account trading activity and trading charges from Warrior's broker-dealer.

4. The day traders contributed various amounts to Warrior, ranging from \$100 to \$200,000. These deposits were pooled in Warrior's master account. The vast majority of Warrior's trading funds, however, were contributed by its managing member. Historically, only about 5% of Warrior's day traders have made initial deposits into their sub-accounts of as much as \$25,000, which is the minimum account equity required for pattern day traders who are customers of registered broker-dealers.³

5. At Warrior's instruction, its broker-dealer placed individualized trading limitations on the sub-accounts created under Warrior's master account. Warrior determined particularized trading parameters and margin restrictions for each sub-account based on its evaluation of the sub-account holders' experience and success in day trading. The trading parameters and margin restrictions that Warrior established were unrelated to the sub-account holder's equity in Warrior. Warrior frequently authorized its day trading members to trade using leverage far in excess of the amounts they otherwise would have been permitted to trade through registered broker-dealers. It did so by allowing traders to trade against the equity of the entire pooled account, rather than the equity in the individual traders' sub-account.⁴

6. The experienced and active day traders, which constituted about half of Warrior's members, kept 99% or 100% of their trading profits above the amount of fees they paid on trades. Other less experienced or active traders paid Warrior 30% of profits above fees.

7. From May 2003 through December 2007, Warrior received transaction-based compensation for the trading and other services it provided member sub-account holders. Warrior charged sub-accounts fees ranging from \$.0025 to \$.0055 per share. Warrior's broker-dealer charged Warrior transaction fees at rates which varied based on total monthly trading volume, but the monthly fees charged to Warrior were less than the total fees charged to sub-accounts by Warrior.

8. The broker-dealer's branch office also returned a portion of its commission revenues to Warrior as compensation for the business volume Warrior generated. This payment reflected the branch office and Warrior's agreement to establish, on a post-hoc basis, a pre-negotiated trading rate

³ NASD Rules define "pattern day trader" as a customer who executes four or more day trades within five business days, except if the number of day trades is 6% or less of total trades for the five business day period. NASD Rule 2520(f)(8)(B)(ii). NASD rules require broker-dealers to ensure that every pattern day trader maintains minimum equity of \$25,000 in the trader's account at all times. NASD Rule 2520(f)(8)(B)(iv)(a).

⁴ FINRA has established a day trading buying power limitation by requiring broker-dealers to restrict the margin available to day traders: "Whenever day trading occurs in a customer's margin account the special maintenance margin required for the day trades in equity securities shall be 25% of the cost of all the day trades made during the day." (the 4:1 leverage limitation) NASD Rule 2520(f)(8)(B)(iii). *See also* NYSE Rule 431(f)(8)(B)(iii). By allowing Warrior's day traders to trade based on the margin available to the pooled equity in the master account, Warrior's master/sub-account arrangement increased the leverage available to the day traders above the 4:1 leverage limitation. The registered broker-dealer through which Warrior cleared applied the day trading rules only to Warrior's master account, not to the sub-accounts.

lower than the one the broker-dealer charged Warrior. From May 2003 through December 2007, Warrior earned the majority of its income from (a) the excess of transaction-based fees charged to sub-accounts over the net transaction-based fees the broker-dealer charged to Warrior, and (b) the payments Warrior received from the branch office based on Warrior's volume of trading.

Legal Conclusions

9. Subject to limited exemptions, none of which apply in this matter, Section 15(a)(1) of the Exchange Act makes it unlawful for any broker or dealer "to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered" in accordance with Section 15(b) of the Exchange Act. Scierer is not required in order to prove a violation of Section 15(a)(1).⁵

10. Section 3(a)(4) of the Exchange Act defines a "broker" as a person, including a company,⁶ engaged in the business of effecting transactions in securities for the account of others. A person acts as a broker if it regularly "participates in securities transactions at key points in the chain of distribution."⁷ Actions indicating that a person is "effecting" securities transactions include soliciting investors; handling customer funds and securities; participating in the order-taking or order-routing process; and extending or arranging for the extension of credit in connection with a securities transaction. A key factor indicating that a person is "engaged in the business" is the receipt of transaction-based compensation.⁸

11. As a result of the conduct described above, Warrior willfully violated Section 15(a)(1) of the Exchange Act by operating as an unregistered broker through the master/sub-account arrangement described above.⁹ In particular, Warrior recruited day trader members to open accounts with Warrior and received transaction-based compensation for providing day trading services,

⁵ *SEC v. Interlink Data Network*, U.S. Distr. LEXIS 20163 (C.D. Cal. 1993).

⁶ *See* Section 3(a)(9) of the Exchange Act, 15 U.S.C. 78c(a)(9).

⁷ *Massachusetts Financial Services, Inc. v. Securities Investor Protection Corp.*, 411 F.Supp. 411, 415 (D. Mass.), *affirmed*, 545 F.2d 754 (1st Cir. 1976); *John A. Carley*, Release No. 34-57246 (Jan. 31, 2008).

⁸ *See, e.g.*, Release No. 34-22172 (June 27, 1985), 50 FR 27946 (July 9, 1985), at Section II.B (discussing the role of transaction-based compensation in determining whether associated persons of an issuer are deemed to be brokers). *See also SEC v. Corporate Relations Group, Inc.*, 2003 U.S. Dist. LEXIS 24925, at *56 (M.D. Fla. Mar. 28, 2003); *SEC v. Hansen*, 1984 U.S. Dist. LEXIS 17835, at *26 (S.D.N.Y. April 6, 1984). While receipt of transaction-based compensation in connection with participation in securities transactions is sufficient to show a person is engaged in the business of effecting transactions in securities, transaction-based compensation is not a necessary element to determine whether someone is a broker. Receipt of other forms of compensation in conjunction with regular participation in securities transactions may also indicate that a person is engaged in the business.

⁹ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

including access to programs to place and route securities orders, to its sub-account holders. In addition, Warrior handled its members' funds, which were used for securities transactions, and granted leverage to its members by allowing sub-account holders to trade against the equity of the entire pooled account.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Warrior's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Warrior cease and desist from committing or causing any violations and any future violations of Section 15(a)(1) of the Exchange Act;

B. Respondent Warrior is censured; and

C. Respondent Warrior shall, within 21 days of the entry of this Order, pay disgorgement of \$124,901, prejudgment interest of \$21,483.00 and a civil money penalty in the amount of \$75,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C 3717. Payment 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, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Warrior Fund LLC 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 Stephen J. Korotash, Esq., Associate Regional Director, Fort Worth Regional Office, 801 Cherry Street, 19th Floor, Fort Worth, Texas, 76102.

By the Commission.

Elizabeth M. Murphy
Secretary