UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9048 / July 6, 2009

SECURITIES EXCHANGE ACT OF 1934
Release No. 60245 / July 6, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13542

In the Matter of **DANNY E. LANDAU** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER AS TO DANNY E. LANDAU**

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 Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Danny E. Landau ("Respondent").

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 him 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 Section 8A of the Securities Act of 1933 and Section 15(b) 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 finds[1] that:

Summary

From October 2002 through August 2005 (the "relevant period"), Landau, a registered representative at broker-dealer Finance 500, Inc. ("Finance 500"), violated Sections 5(a) and 5(c) of the Securities Act by selling a massive number of shares in unregistered offerings under so-called employee stock option programs implemented by approximately thirty-five issuer customers (the "Issuers"). The programs functioned as public distributions of securities using the Issuers' employees as conduits so that the Issuers could raise capital without complying with the registration requirements of the federal securities laws. The Issuers improperly registered the shares sold on Form S-8 registration statements and then received at least 85% of the shares' sales proceeds. Landau administered the brokerage aspects of the programs despite red flags indicating that the shares he sold were issued through unregistered offerings.

Respondent

1. **Danny E. Landau**, age 38, is a resident of Coto de Caza, California. He holds Series 7, 24, 63 and 65 securities licenses. During the relevant period, he was a registered representative at Finance 500. He currently holds an ownership interest in, and is a registered representative of, Private Equity Securities, Inc., a broker-dealer in Irvine, California.

Other Relevant Entities

2. **Finance 500,** a California corporation with its principal offices in Irvine, California, has been registered with the Commission as a broker-dealer since 1982. Finance 500's primary business is selling and underwriting brokered Certificates of Deposit. It also conducts a market making business and a general retail securities business. During the relevant period, the retail business had roughly 80 registered representatives, of which Landau was one, and 15 branch offices.

Background

3. Sections 5(a) and 5(c) of the Securities Act prohibit any person from using interstate commerce, directly or indirectly, to sell or offer to sell a security unless a registration statement is filed with the Commission. Registrants that are subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act and are current in their filings may use Form S-8

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

registration statements to register the offer and sale of securities to their employees, including consultants, to compensate them for *bona fide* services or to provide incentives. Because of the compensatory purpose and the employees' and consultants' familiarity with the registrant's business, Form S-8's disclosure requirements are abbreviated as compared to statements registering shares to raise capital. A registrant cannot use Form S-8 to issue shares to employees who act as conduits for the sale of S-8 stock to the public because the transaction that takes place – the distribution of securities to the public – is not registered.

4. From October 2002 through August 2005, Landau provided brokerage services for the employee stock option programs implemented by the Issuers. Landau, who had regular contact with the Issuers, administered all brokerage aspects of the Issuers' programs with the aid of his staff acting under his direction. He brought the business with him from his prior brokerage firm and, while the business initially comprised approximately 10% to 15% of Landau's total business, it grew to approximately 60% at its height. Landau became one of the broker-dealer's top producers and eventually earned one of the highest commission rates at the firm.

5. The Issuers were microcap companies that had limited operational histories, generated little revenue and had low priced securities listed on the OTC Bulletin Board that were thinly traded before the Issuers began to issue Form S-8 shares. They used employee stock plans generally titled Employee Stock Incentive Plans ("ESIPs") that issued shares registered on Form S-8. Attached to the Forms S-8 were the ESIPs and attorney opinion letters stating that the S-8 shares, when issued and sold, would be validly issued, fully paid and non-assessable.

6. As administered, the Issuers' ESIP programs[2] shared three key characteristics that, when combined, virtually ensured that the options would be exercised and the underlying shares simultaneously sold to the public at or near the time the options were granted. First, the option exercise price floated with the market value of an Issuer's stock at the time of exercise. The exercise price was typically set by the Issuers at 85% of the proceeds from the sale of the shares underlying the options. This meant that the options were always "in the money" – or that the exercise price was less than the market price at the time of exercise – and that the Issuer, not the employee, would receive most of the benefit from an increase in stock price after the time of grant. Second, the options vested immediately, meaning that the options could be exercised at any time after the date of grant. Third, the programs used a cashless exercise method where the exercise price was remitted to the Issuer from the sales proceeds of the shares underlying the options. Accordingly, the employees did not have to pay any money out-of-pocket to exercise the options.

7. The Issuers and their employees had brokerage accounts with Finance 500. When an Issuer implemented its ESIP program, Landau generally visited its offices and presented the program to its employees. During the presentation, he explained the mechanics of the ESIP program, including how to open an account, how to fill out certain paperwork and how to exercise options and sell the underlying shares under the cashless exercise method.

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[2] "ESIP programs" means the Issuers' employee stock options programs where each Issuer issued Form S-8 shares under a series of ESIPs.

8. When Landau and his staff opened the accounts for the employees, they typically obtained standing orders or other instructions from the employees that the options should be exercised immediately after grant. Also, due to their clearing firm's requirements, they required the employees to fill out and have notarized multiple blank authorizations in advance of the Issuers' granting any options. The Issuers collected and forwarded these authorizations to Landau and his staff as part of setting up the Issuers' ESIP programs. The authorizations gave Finance 500 authority to both sell the shares underlying any options granted and exercise the options using the underlying shares' sales proceeds to pay the exercise price.

9. When the Issuers granted the options, they sent Landau and his staff share certificates representing the number of Form S-8 shares underlying the options. Generally, upon receipt of the share certificates, Landau and his staff sold the shares underlying the options in unsolicited sales to the public. Then they calculated the options' exercise price at 85% of the sales price and credited the exercise price proceeds to the Issuers' accounts and the remainder, minus brokerage and clearing fees, to the employees' accounts.

10. The manner in which the Issuers implemented their ESIP programs (*i.e.*, the high-percentage exercise price that was based on the underlying shares' sale price, the immediate vesting and use of a cashless exercise), combined with the employees' standing orders to exercise immediately, all but ensured that the options were exercised and the underlying shares simultaneously sold within days of grant. Other than the ministerial acts of opening brokerage accounts, creating standing orders and signing blank authorizations, the employees usually did not make any decisions concerning the options' exercise or the sale of the underlying shares during the course of the ESIP programs. In some cases, certain employees were not notified of an option grant until after they received their portion of the sale proceeds of the underlying shares. By virtue of the programs' structure and administration, the Issuers effectively controlled the timing of sales to the public through the timing of their option grants and received the vast majority of the sale proceeds. The employees simply served as conduits.

11. These near-immediate sales of shares underlying the options resulted in millions and, in many cases, billions of shares in each Issuer's stock being sold to the public, which severely diluted the ownership interests of existing shareholders. The Issuers generally received payment for the exercised options that greatly exceeded their revenues and allowed them to fund their otherwise failing operations. By comparison, the employees received approximately 7%-8% of the sales proceeds.

12. The ESIP programs functioned as public offerings to raise capital. The Issuers essentially used their employees as conduits to offer shares to the public without providing the disclosures required by the registration provisions. As such, the employees acted as underwriters.

13. Because the Form S-8 statements cannot be used to raise capital, no registration statements were in effect or filed as to the shares issued under the ESIP programs. As a result, the shares were sold in unregistered offerings.

14. While administering the brokerage aspects of the ESIP programs, Landau encountered red flags indicating that Issuers' employees were underwriters to unregistered offerings. These red flags included: (1) the employees' nearly immediate exercise of options after grant, (2) the simultaneous exercise and sale of the shares underlying the options, (3) the high-percentage, floating exercise price, (4) the huge number of shares sold in previously thinly-traded stock of microcap companies, (5) the large amounts of money received in each of the Issuers' Finance 500 accounts, (6) the relatively small amounts received in the employee accounts, and (7) the fact that the employees were related to the Issuers.

15. No one else involved in the programs, including securities lawyers, the Issuers' officers and Finance 500's compliance officers, alerted Landau to the programs' capital-raising function. Nonetheless, the red flags noted above should have prompted Landau to inquire further as to whether the employees were underwriters in unregistered offerings. But Landau failed to conduct an inquiry reasonable under the circumstances set forth above.

16. As a result of the conduct described above, Landau willfully violated Sections 5(a) and 5(c) of the Securities Act, which prohibit using interstate commerce, directly or indirectly, in the absence of any applicable exemption, to sell or offer to sell a security unless a registration statement is filed with the Commission.[3]

Disgorgement and Civil Penalties

17. Respondent has submitted a sworn Statement of Financial Condition dated March 31, 2008 and other evidence and has asserted his inability to pay the full amount of disgorgement plus prejudgment interest and a civil penalty.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act and Section 15(b) of the Exchange Act, it is hereby ORDERED that**:**

A. Respondent Landau cease and desist from committing or causing any violations and any future violations of Sections 5(a) and 5(c) of the Securities Act;

[3] 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)).

B. Respondent Landau be, and hereby is, suspended from association with any broker or dealer for a period of six months, effective on the second Monday following the entry of this Order.

C. IT IS FURTHER ORDERED that Respondent Landau shall pay disgorgement of $2,972,367 and prejudgment interest of $966,541, but that payment of such amount except for $275,000 is waived and a civil penalty is not imposed based upon Respondent's sworn representations in his Statement of Financial Condition dated March 31, 2008 and other documents submitted to the Commission. The payment required by this Order shall be made to the United States Treasury in the following installments:

1. an initial payment of $100,000 made within ten (10) days of the entry of the Order;
2. a payment of $17,500 on April 6, 2010;
3. a payment of $17,500 on July 6, 2010;
4. a payment of $17,500 on October 6, 2010;
5. a payment of $17,500 on January 6, 2011;
6. a payment of $17,500 on April 6, 2011;
7. a payment of $17,500 on July 6, 2011;
8. a payment of $17,500 on October 6, 2011;
9. a payment of $17,500 on January 6, 2012;
10. a payment of $17,500 on April 6, 2012; and
11. a payment of $17,500 on July 6, 2012.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement and prejudgment interest, plus any additional interest accrued pursuant to SEC Rule of Practice 600, shall be due and payable immediately, without further application. 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, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Danny E. Landau 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 Robert J. Burson, Senior Associate Regional Director, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Boulevard, Suite 900, Chicago, Illinois 60604.

D. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement and pre-judgment interest and of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement, interest and a penalty should not be ordered; (3) contest the amount of disgorgement and interest to be ordered or the imposition of the maximum penalty allowable under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Elizabeth M. Murphy
Secretary