

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 54219A / July 26, 2006**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 27428A / July 26, 2006**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-12382**

**In the Matter of**

**ROBERT P. HETZER,**

**Respondent.**

**CORRECTED**  
**ORDER INSTITUTING ADMINISTRATIVE**  
**AND CEASE-AND-DESIST PROCEEDINGS,**  
**MAKING FINDINGS, AND IMPOSING**  
**REMEDIAL SANCTIONS AND A CEASE-**  
**AND-DESIST ORDER PURSUANT TO**  
**SECTIONS 15(b) AND 21C OF THE**  
**SECURITIES EXCHANGE ACT OF 1934 AND**  
**SECTIONS 9(b) AND 9(f) OF THE**  
**INVESTMENT COMPANY ACT OF 1940**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate, in the public interest and for the protection of investors 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”), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Robert P. Hetzer (“Hetzer” or “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 over the subject matter of these proceedings, which are admitted, Respondent consents 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 Sections 15(b) and 21C of the

Securities Exchange Act of 1934 and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Order”), as set forth below.

### **III.**

On the basis of this Order and Respondent’s Offer, the Commission finds<sup>1</sup> that:

#### **Summary**

1. This is a proceeding against Hetzer, a former senior vice president in charge of mutual fund trading at Fiserv Securities, Inc. (“FSI”), a registered broker-dealer. Between January 2001 and October 2002, Hetzer engaged in late trading of mutual funds for his own benefit in personal accounts he opened while employed by FSI. He entered more than 800 mutual fund trades in his personal accounts after 4:00 p.m. ET, and as late as 5:30 p.m., and improperly received the current day’s net asset value (“NAV”). In order to conduct this late trading, Hetzer misused FSI’s system which was intended to permit trade entry after 4:00 p.m. ET only in limited circumstances involving errors, other technical problems and legitimate delays in processing orders. By virtue of his conduct, Hetzer violated and/or aided and abetted and caused violations of the antifraud and mutual fund pricing provisions of the federal securities laws.

#### **Respondent and Relevant Entity**

2. **Hetzer**, age 47, resides in Hollywood Beach, Florida. From April 2000 until November 2002, when his position was eliminated, he was the senior vice president of FSI’s Mutual Fund Department. Prior to FSI, Respondent had worked in the mutual fund sector of the securities industry in a variety of capacities since 1979. Respondent holds no securities industry licenses.

3. **FSI**, located in Philadelphia, Pennsylvania, registered with the Commission as a broker-dealer in October 1983. During the relevant time period, FSI provided securities clearing services for hundreds of introducing brokers.

#### **Background – Late Trading**

4. Rule 22c-1(a) under the Investment Company Act requires any registered investment company issuing redeemable securities, its principal underwriter, any dealers in its shares, and any person designated in the fund’s prospectus as authorized to consummate transactions in securities issued by the fund to sell and redeem fund shares at a price based on the current NAV next computed after receipt of an order to buy or redeem. Mutual funds generally determine the NAV of mutual fund shares as of 4:00 p.m. ET. In these circumstances, orders received by the entities identified in Rule 22c-1 before 4:00 p.m. ET must be executed at the

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<sup>1</sup> 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.

price determined as of 4:00 p.m. ET that day. Orders received by these entities after 4:00 p.m. ET must be executed at the price determined as of 4:00 p.m. ET the next trading day. Mutual fund prospectuses typically identify the time as of which the NAV is determined for purposes of pricing fund shares for purchases and redemptions.

5. “Late trading” refers to the practice of placing orders to buy or redeem mutual fund shares after the time as of which a mutual fund has calculated its NAV (usually as of the close of trading at 4:00 p.m. ET), but receiving the price based on the prior NAV already determined as of 4:00 p.m. ET. Late trading enables the trader to attempt to profit from market events that occur after 4:00 p.m. ET but that are not reflected in that day’s price. In particular, the late trader may obtain an advantage – at the expense of the other shareholders of the mutual fund – when he learns of market moving information and is able to purchase (or redeem) mutual fund shares at prices set before the market moving information was released. Late trading violates Rule 22c-1(a) under the Investment Company Act and harms shareholders by diluting the value of their shares.

### **Respondent’s Late Trading**

6. In November 2000 and January 2001, respectively, Respondent opened a retail trading account and an IRA account at FSI, and began trading in mutual funds in these accounts. Between January 2001 and October 2002, Hetzer engaged in 1,106 mutual fund transactions through which he earned profits of \$917,000.

7. Of the total trades, 855 trades were entered in Respondent’s personal accounts after 4:00 p.m. ET, and as late as 5:30 p.m., and received that day’s NAV. Respondent’s late trading resulted in dilution to the mutual funds he traded and thus harm to mutual fund shareholders. In order to receive the current day’s NAV for trades entered after 4:00 p.m. ET, Hetzer and others acting at his direction manually substituted, in FSI’s electronic order system, the current day’s NAV for the next day’s NAV.

8. As part of his responsibilities at FSI, Hetzer had direct access to FSI’s computerized trade-processing system. This system automatically processed mutual fund orders at the current day’s price at 4:00 p.m. ET. Under limited circumstances, such as in the event of technical problems, including input errors, and legitimate delays in processing orders, certain members of FSI’s staff could manually enter trades after 4:00 p.m. ET and substitute the current day’s NAV for the next day’s NAV. This process was intended to be used as an exception process.

9. Respondent, however, intentionally input or directed the input of a majority of his mutual fund trades after the close of the market, and thus misused FSI’s system. Specifically, on 855 occasions, Respondent and others acting at his direction entered his trades between 4:00 and 5:30 p.m. ET and manually substituted the current day’s NAV for the next day’s NAV. In essence, Hetzer took the exception process and made it his standard operating procedure.

10. The mutual funds which accepted Hetzer’s late trades had no way of knowing that these trades were, in fact, entered after 4:00 p.m. ET. To the contrary, Hetzer simply entered his

trades into FSI's system as though his orders had appropriately been entered prior to 4:00 p.m. ET.

11. In addition, Respondent caused FSI to violate its dealer agreements with mutual funds by entering his trades after 4:00 p.m. ET. FSI's dealer agreements contained provisions obligating FSI to comply with all of the terms of the funds' prospectuses, including provisions regarding the time for submitting trades. Most dealer agreements contained some version of the following provision:

You are to offer and sell such shares only at the public offering price which shall be currently in effect, in accordance with the terms of the then current prospectus of the Funds.

12. Respondent knew or was reckless in not knowing that what he was doing was improper. Specifically, Respondent knew or was reckless in not knowing that the FSI system was not intended to allow for the substitution of the current day's NAV for the next day's NAV for trades entered after 4:00 p.m. ET except in the limited circumstances referenced above.

### **Violations**

13. As a result of the conduct described above, Respondent willfully violated 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.

14. As a result of the conduct described above, Respondent willfully aided and abetted and caused violations of Rule 22c-1(a) under the Investment Company Act, which prohibits registered investment companies issuing any redeemable security, persons designated in such issuer's prospectus as authorized to consummate transactions in such security, and any principal underwriter of, or dealer in any such security from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value which is next computed after receipt of an order to purchase or redeem.

### **Undertakings**

In determining whether to accept the Offer, the Commission has considered the following undertakings by Hetzer:

15. Ongoing Cooperation. Respondent shall 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, Hetzer 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 be interviewed by the Commission's staff at such times as the staff reasonably may request and 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

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

i. Agrees that any such notice or subpoena for his appearance and testimony may be served by regular mail on his counsel, Guy Petrillo, Esq., Dechert LLP, 30 Rockefeller Plaza, New York, NY 10112-2200; and

ii. Agrees that any such notice or subpoena for his 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.

#### IV.

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

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Hetzer shall cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent Hetzer shall cease and desist from causing any violations and any future violations of Rule 22c-1(a) under the Investment Company Act.

C. Respondent Hetzer be, and hereby is barred from association with any broker or dealer, and is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter, with the right to reapply for association after three (3) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

D. Any reapplication for association by Respondent Hetzer will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

E. IT IS FURTHER ORDERED that Respondent Hetzer shall, within 30 days of the entry of this Order, pay disgorgement of \$454,130 and prejudgment interest of \$73,890, for a total of \$528,020, to the United States Treasury. Such 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 Robert P. Hetzer 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 Daniel M. Hawke, Securities and Exchange Commission, Philadelphia District Office, Mellon Independence Center, 701 Market Street, Suite 2000, Philadelphia, PA 19106.

F. IT IS FURTHER ORDERED that Respondent Hetzer shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$100,000 to the United States Treasury. Such 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 Robert P. Hetzer 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 Daniel M. Hawke, Securities and Exchange Commission, Philadelphia District Office, Mellon Independence Center, 701 Market Street, Suite 2000, Philadelphia, PA 19106.

By the Commission.

Nancy M. Morris  
Secretary