

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 8627 / October 14, 2005

SECURITIES EXCHANGE ACT OF 1934

Release No. 52610 / October 14, 2005

ADMINISTRATIVE PROCEEDING

File No. 3-10437

In the Matter of

**Hunter Adams,
Jason A. Cohen,
Steven M. Cohen,
David Hirsch,
Jonathan D. Winston,
John J. Gremmo, III,
James L. Bila,
Christian W. Blake,
Louis R. Facchini, Jr.,
Roberto A. Mangiarano,
Joseph P. Mannino,
David M. Margules,
James J. Pellizzi,
David M. Pessa,
Michael Pugliese,
Christopher J. Russo,
Howard I. Weinstein, and
Robert J. Winston,**

Respondents.

**ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER PURSUANT
TO SECTION 8A OF THE SECURITIES ACT
OF 1933, AND SECTIONS 15(b)(6) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, AS TO JONATHAN D. WINSTON**

I.

On March 8, 2001, the Securities and Exchange Commission (“Commission”) instituted public administrative proceedings, pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), and Sections 15(b)(6) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Jonathan D. Winston (“Winston” or “Respondent”).

II.

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 contained in this order, which are admitted, 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 Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, and Sections 15(b)(6) and 21C of the Securities Exchange Act of 1934, as to Jonathan D. Winston (“Order”), as set forth below.

III.

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

Respondent

1. Winston was a registered principal and representative of First United Equities Corporation (“First United”), a broker-dealer registered with the Commission, from November 1994 through December 1997, and its Vice Chairman from February 1994 through December 1997. From December 1996 through March 1998, Winston was an undisclosed and unregistered principal of AGS Financial Group, a broker-dealer registered with the Commission. From December 1998 through February 2001, Winston was an undisclosed and unregistered principal of Montrose Capital Management Ltd., a broker-dealer registered with the Commission. Winston, age 38, is a resident of Locust Valley, New York.

2. Winston participated in the public offerings of Ashton Technology Group (“Ashton”) and National Medical Financial Services (“NMFS”) stocks, which are penny stocks.

Other Relevant Entity

3. First United, a Delaware corporation with its principal place of business in New York, New York, was registered with the Commission as a broker-dealer between November 1994 and April 1998, when the Commission accepted First United’s request for withdrawal of its broker-dealer registration. The corporation records of the State of Delaware indicate that First United’s corporate charter was voided March 1, 1999 for failure to pay franchise taxes in 1997 and 1998. While registered as a broker-dealer, First United maintained offices initially in Garden City, New York, and then in New York City.

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

Background

4. Between approximately August 1995 and at least October 1997 (“the relevant period”), First United was operated and controlled by Winston and others. In May 1996, First United was the principal underwriter on a firm commitment basis for an initial public offering (“IPO”) of common stock and warrants of Ashton. First United also participated in an August 1995 IPO of the common stock of NMFS. On or after the effective dates of the IPOs of NMFS and Ashton, Winston and others in First United management caused large, undisclosed blocks of NMFS and Ashton securities to be sold or otherwise placed into First United’s inventory accounts or other accounts in the names of nominees and subject to arrangements that gave Winston and others in First United management control over the sales of the securities and all or a portion of the proceeds.

5. During the relevant period, Winston and others caused First United registered representatives to use a variety of fraudulent sales practices to (i) inflate artificially the market price of, and demand for, NMFS and Ashton securities and (ii) sell those securities to First United customers at inflated prices. Winston and others caused First United’s trader to pair, or “cross,” customer buy orders of NMFS and Ashton with sales of those securities at inflated prices from First United’s inventory accounts or other accounts controlled by Winston and others in First United management.

6. During the relevant period, Winston and others (i) instructed the registered representatives at First United to use high pressure sales tactics to induce investors to purchase NMFS and Ashton securities; (ii) distributed fraudulent scripts for use in soliciting buyers, overcoming customer objections, and dissuading investors from requesting prospectuses or other reports on NMFS or Ashton; and (iii) reiterated and emphasized that it was First United’s policy that, once a First United customer purchased NMFS or Ashton, that customer could not sell his holdings in either stock unless the customer agreed to buy the other stock or another purchaser for the stock could be found.

7. Winston and others also caused First United registered representatives to tell their customers that there would be no commission charge on purchasing NMFS or Ashton securities, even though First United registered representatives knew that they were paid undisclosed commissions, as well as prizes or other bonuses based on their volume of NMFS and Ashton sales.

8. During the relevant period, as directed by Winston and others, First United registered representatives used a variety of deceptive and fraudulent sales practices to induce First United customers and other investors to purchase NMFS or Ashton securities at inflated prices. For example, First United registered representatives made material misrepresentations and omissions concerning an investment in NMFS or Ashton. First United registered representatives also misrepresented to customers that no First United client had ever lost money at the firm and First United would compensate its clients for any of their losses on investing in NMFS or Ashton.

9. During the relevant period, on some occasions, Winston spoke with NMFS or Ashton investors who wanted to sell their shares, and misrepresented to them that they should not worry and stay invested in NMFS or Ashton because the price of these securities would increase. On many occasions, First United registered representatives did not process a customer sell order for either NMFS or Ashton securities unless the First United trader could pair, or “cross,” the sell order with a purchase of the same amount of the other security by that customer or the purchase of the same amount of the same security by another customer.

10. During the relevant period, First United registered representatives also effected unauthorized purchases of NMFS or Ashton securities in the accounts of existing First United customers. This conduct included causing First United customers to purchase NMFS or Ashton securities, when such purchases had not been authorized, or causing customers to purchase more NMFS and Ashton securities than had been authorized. Moreover, once a customer received a confirmation of an unauthorized purchase of NMFS or Ashton securities, First United registered representatives, at the direction of Winston and others, frequently attempted to compel the customer to pay for the unauthorized purchase by persuading the customer that an investment in NMFS or Ashton would be profitable.

11. During the relevant period, Winston and others at First United profited from the sale of NMFS and Ashton securities at artificially inflated prices from First United’s inventory accounts and other accounts that they controlled. For example, Winston and others at First United shared the profits from the sale of NMFS securities held in one such nominee account at Salomon Smith Barney in the name of, and controlled by, Winston and others. In addition, Winston and others at First United shared profits gained from trading NMFS and Ashton securities in First United accounts under registered representative numbers in their own names, as well as under registered representative numbers that Winston shared with others at First United. The amount of compensation given to First United registered representatives and the arrangements for the sale of NMFS or Ashton securities by Winston and others in First United management were not disclosed to First United customers at the time of their purchases of NMFS or Ashton securities or thereafter.

12. Winston was indicted in the United States District Court for the Eastern District of New York on December 7, 2000, and was the subject of a superseding indictment filed on October 31, 2001 and a second superseding indictment filed on February 4, 2002, in U.S. v. Jonathan Winston, et al., 00 CR 1248 (NGG). On October 7, 2002, Winston pleaded guilty, in relevant part, to count I of the second superseding indictment charging him with conspiracy to commit securities, mail and wire fraud in connection with the fraudulent and deceptive sales practices Winston used and directed others at First United, among others, to use with respect to the sale of NMFS and Ashton stocks, among others. Count I of the second superseding indictment alleged, among other things, that Winston knowingly and willfully conspired with others to use and employ manipulative and deceptive devices in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. On October 24, 2002 an order of forfeiture (“Forfeiture Order”) was entered against Winston in connection with the criminal case. The Forfeiture Order requires Winston, whose assets and cash were seized by the government in the criminal case, to forfeit \$5

million to the government, and gives the government the right to apply the value of such assets and cash to any restitution ordered by the Court at sentence. Winston currently is awaiting sentencing.

13. Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] prohibits the use of “any manipulative or deceptive device or contrivance,” and Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)] and Rule 10b-5 under the Exchange Act [17 C.F.R. § 240.10b-5] prohibit the use of “any device, scheme, or artifice to defraud.” One of the “basic aim[s] of the anti-fraud provisions [of the federal securities laws] is to ‘prevent rigging of the market and to permit operation of the natural law of supply and demand.’” SEC v. First Jersey Secs., Inc., 101 F.3d 1450, 1466 (2d Cir. 1996) (quoting United States v. Stein, 456 F.2d 844, 850 (2d Cir. 1972)). “This prohibition with respect to manipulative activity is not confined to any particular type of manipulation, but . . . is necessarily designed to outlaw every device ‘used to persuade the public that activity in a security is the reflection of a genuine demand instead of a mirage.’” SEC v. Resch-Cassin & Co., Inc., 362 F. Supp. 964, 975 (S.D.N.Y. 1973) (citation omitted).

14. A broker’s baseless predictions of price increases, execution of unauthorized trades, failure to execute customer sell orders and receipt of undisclosed commissions, absent disclosure, constitute material misrepresentations that violate the antifraud provisions of the federal securities laws. See, e.g., SEC v. Research Automation Corp., 585 F.2d 31, 35 n. 7 (2d Cir. 1978) (predictions of price rises, absent reasonable basis for prediction, actionable under the antifraud provisions); SEC v. Hasho, 784 F. Supp. 1059, 1106 (S.D.N.Y. 1992) (baseless price predictions and profit guarantees, receiving undisclosed commissions and general pattern of unauthorized transactions often preceded by the customers’ refusals to purchase the securities recommended by defendants constituted material misrepresentations in violation of the antifraud provisions of the securities laws); Bischoff v. G.K. Scott & Co., Inc., 687 F. Supp. 746, 749-51 (E.D.N.Y. 1986) (“specific promise to perform a particular act in the future while secretly intending not to perform may violate section 10(b) [of the Exchange Act] if the promise is part of the consideration for a sale of securities”), quoting Pross v. Katz, 784 F.2d 455, 457 (2d Cir. 1986).

15. As a result of the conduct described above, Winston willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions specified in Respondent Winston’s Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Winston cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

B. Pursuant to Section 15(b)(6) of the Exchange Act, Respondent Winston be, and hereby is barred from association with any broker or dealer;

C. Any reapplication for association by the Respondent 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;

D. Winston shall pay disgorgement of \$694,673.99 plus prejudgment interest, which includes, but is not limited to \$401,708.37 in illicit profits gained from trading NMFS and Ashton securities with others at First United, in First United accounts under registered representative number 067, but this payment shall be deemed satisfied by his October 24, 2002 forfeiture of \$5 million in U.S. v. Jonathan Winston, et al., 00 CR 1248 (NGG).

E. Respondent Winston be, and hereby is, barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

By the Commission.

Jonathan G. Katz
Secretary