

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 52003 / July 8, 2005**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 2403 / July 8, 2005**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-11975**

**In the Matter of**

**TODD M. EBERHARD,**

**Respondent.**

**ORDER INSTITUTING**  
**ADMINISTRATIVE PROCEEDINGS**  
**PURSUANT TO SECTION 15(b) OF THE**  
**SECURITIES EXCHANGE ACT OF 1934**  
**AND SECTION 203(f) OF THE**  
**INVESTMENT ADVISERS ACT OF 1940,**  
**MAKING FINDINGS, AND IMPOSING**  
**REMEDIAL SANCTIONS**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Todd M. Eberhard (“Eberhard” 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 the subject matter of these proceedings, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b)

of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

### III.

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

1. Eberhard, age 41, was a general securities principal and representative of Park South Securities LLC (“Park South”) and its majority owner. Eberhard had Series 7, 24, 63 and 65 licenses. Eberhard first registered as a general securities representative in March 1987. In 1999, Eberhard advised clients through Eberhard Investment Associates, Inc. (“EIA”), for which he was the chief executive officer. From November 1998 through December 2001, Eberhard also was registered with the NASD both as a general securities principal and a general securities representative. In this time period, Eberhard solicited and received funds from clients on behalf of EIA. Eberhard transferred some or all of EIA’s accounts to Park South in late 2001. Eberhard had residences in New York City and Millbrook, NY.

2. On August 12, 2004, Eberhard was indicted by the United States Attorney’s Office for the Southern District of New York for seven counts of investment adviser fraud, three counts each of mail and wire fraud, and one count each of conspiracy, obstruction of justice and witness tampering in connection with misappropriation from, and mismanagement of, his investment advisory clients’ accounts.

3. On September 14, 2004, Eberhard pled guilty to seven counts of investment adviser fraud and one count each of mail and wire fraud, conspiracy and obstruction of justice. United States v. Eberhard, 03-Cr.-562 (S.D.N.Y.) During his plea allocution, Eberhard admitted that he traded excessively and inappropriately in his clients’ accounts for the purpose of generating commissions for himself, and that he made unauthorized withdrawals from, and transactions in, their accounts. Moreover, he admitted that to conceal his fraud, he falsified client account statements and doctored third-party statements to corroborate the falsified account statements. He further admitted that in connection with a civil asset freeze proceeding, he backdated a document in order to reflect a transfer of real property long before the civil action and submitted it to the Commission in an attempt to prevent the property from being subject to the asset freeze. On June 7, 2005, Eberhard was sentenced to 160 months incarceration, with a restitution amount to be determined by September 5, 2005. The District Court entered a judgment of conviction on June 21, 2005.

### IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act, that Respondent Eberhard be, and hereby is barred from association with any broker, dealer, or investment adviser.

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.

For the Commission, by its Secretary, pursuant to delegated authority.

Jonathan G. Katz  
Secretary