SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES ACT OF 1933
Rel. No. 9068 / September 29, 2009

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 60736 / September 29, 2009

Admin. Proc. File No. 3-12626

In the Matter of

THOMAS C. BRIDGE
JAMES D. EDGE
and
JEFFREY K. ROBLES

c/o Ruberto, Israel & Weiner, P.C.
100 North Washington St.
Boston, Massachusetts 02114

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

CEASE-AND-DESIST PROCEEDING

Grounds for Remedial Action

Fraud

Failure to Supervise

Salesperson associated with registered broker-dealer employed a scheme to defraud, engaged in a practice that operated as a fraud, and misrepresented and omitted to state material facts in order to evade trading restrictions imposed by registered investment companies. Salesperson willfully violated antifraud provisions of federal securities laws. Held, it is in the public interest to bar salesperson from association with any broker or dealer with a right to reapply after five years, impose a cease-and-desist order, order disgorgement, plus prejudgment interest, and assess a civil money penalty.

Branch managers failed to exercise reasonable supervision over salespersons with a view towards preventing salespersons' violations of antifraud provisions of the securities laws. Held, it is in the public interest to bar branch managers from association with any broker or dealer in a supervisory capacity, with rights to reapply after five and three years, respectively, and to assess civil money penalties.

APPEARANCES:

Christopher P. Litterio, Barry Y. Weiner, and Michael J. Duffy, of Ruberto, Israel & Weiner, P.C., for Thomas C. Bridge, James D. Edge, and Jeffrey K. Robles.

John E. Birkenheier, Anne C. McKinley, and Richard G. Stoltz, for the Division of Enforcement.

Appeal filed: March 31, 2008
Last brief received: July 25, 2008
Oral argument: May 13, 2009

I.

Thomas C. Bridge, James D. Edge, and Jeffrey K. Robles, each a former associated person of A.G. Edwards & Sons, Inc. ("A.G. Edwards" or the "Firm"), 1/ a registered broker-dealer, appeal an administrative law judge's decision. 2/ The law judge found that Bridge, a financial consultant, or "FC," 3/ with A.G. Edwards, and Charles Sacco, 4/ also an A.G. Edwards

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1/ A.G. Edwards was acquired in January 2008 by Wachovia Corporation, which was itself acquired by Wells Fargo and Company in October 2008. In connection with the conduct at issue in this proceeding, A.G. Edwards consented, without admitting or denying any findings, to the entry of our order finding that it failed reasonably to supervise certain of the Firm's salespersons with a view to preventing their willful violation of the antifraud provisions. See A.G. Edwards & Sons, Inc., Securities Exchange Act Rel. No. 55692 (May 2, 2007), 90 SEC Docket 1618.

2/ A.G. Edwards terminated the employment of each of the respondents following the issuance of the initial decision in this case.

3/ A.G. Edwards used the term "financial consultant" or "FC" to refer to its salespersons.

4/ Sacco consented, without admitting or denying any findings, to the entry of our order finding that he violated the antifraud provisions and barring him from association with any broker or dealer, prohibiting him from serving or acting in any capacity for a registered investment company, with the right to reapply for association after two years,

(continued...)

financial consultant, willfully violated Section 17(a) of the Securities Act of 1933, 5/ Section 10(b) of the Securities Exchange Act of 1934, 6/ and Exchange Act Rule 10b-5 7/ by employing deceptive tactics to evade market-timing restrictions imposed by registered investment companies. 8/

The law judge further found that Edge, a branch manager of A.G. Edwards and Bridge's direct supervisor, failed reasonably to supervise Bridge with a view to preventing his antifraud violations because he was "complicit with Bridge in the violations." In addition, the law judge found that Robles, a branch manager of A.G. Edwards and Sacco's direct supervisor, failed reasonably to supervise Sacco because he "knew, or was reckless in not knowing, of Sacco's activities of avoiding the [market timing] restrictions in block letters." We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal.

4/ (...continued) ordering him to cease and desist from violations of the antifraud provisions, and ordering him to disgorge $272,871.22, plus prejudgment interest, with all but $15,000 of that amount waived based on his inability to pay. See Charles A. Sacco, Exchange Act Rel. No. 55693 (May 2, 2007), 90 SEC Docket 1572, 1576-78. As a result of the conduct at issue in this proceeding, A.G. Edwards terminated Sacco's employment in October 2003.

5/ 15 U.S.C. § 77q.

6/ 15 U.S.C. § 78j(b).

7/ 17 C.F.R. § 240.10b-5.

8/ We have stated that "market timing" involves the "frequent buying and selling of mutual fund shares in order to take advantage of the fact that there may be a lag between a change in the value of a mutual fund's portfolio securities and the reflection of that change in the fund's share price." Disclosure Regarding Market Timing and Selective Disclosure of Portfolio Holdings (Final Rule), Investment Company Act Rel. No. 26418 (Apr. 16, 2004), 82 SEC Docket 2685, 2686 n.11. We have noted that market timing itself is not illegal but may nevertheless harm shareholders because it "may dilute the value of long-term shareholders' interests," "may cause mutual funds to manage their portfolios in a disadvantageous manner," and "may incur increased brokerage and administrative costs related to the frequent purchases and redemptions associated with market timing." Disclosure Regarding Market Timing and Selective Disclosure of Portfolio Holdings (Proposed Rule), Investment Co. Act Rel. No. 26287 (Dec. 11, 2003), 81 SEC Docket 2971, 2979-80.

II.

A. Introduction

The record demonstrates that Bridge and Sacco took various actions – such as establishing multiple accounts with different customer names and numbers, transferring assets between accounts, transferring accounts between branch offices, and linking activity in the accounts to other FCs through the use of "split" FC numbers 9/ – in an effort to mislead mutual fund companies as to the identity of their market-timing clients. 10/ The evidence also shows that Edge was aware of, and helped facilitate, Bridge's use of these deceptive tactics. Although the evidence does not show that Robles knowingly facilitated Sacco's actions or was aware of the tactics that Sacco was repeatedly using to evade funds' trading restrictions, it indicates that Robles knew that Sacco's trading was aberrant and that Sacco was receiving correspondence from mutual fund companies placing restrictions on his trading. However, Robles did not attempt to confirm Sacco's compliance with those restrictions.

B. Bridge

Bridge worked in the Firm's Boca Raton, Florida branch office. The Division's allegations relate to Bridge's execution of 1,352 trades representing $1.126 billion between September 2001 and September 2003, on behalf of certain companies owned and controlled by Martin Oliner.

Initially, Oliner had one account held in the name of RMO, Inc. In January 2002, Bridge began receiving notices from certain mutual fund companies stating that they were concerned about the effects of market timing in their funds, that they were authorized to address this concern consistent with the applicable prospectus language, and that the RMO account had either neared, reached, or exceeded trade frequency limitations set forth in the applicable

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9/ The Firm typically assigned one FC number to a financial consultant. In situations where two financial consultants both serviced a client, the Firm assigned "split" FC numbers, i.e., an additional number shared by the two financial consultants.

10/ The record indicates that mutual funds varied as to how they identified a client account. Some fund companies used the Firm's three-digit "broker identification number," or "BIN," which was unique to each branch office, as a prefix to several other numbers that followed (e.g., BIN # 285281245 refers to a Bridge account originating from the Boca Raton, Florida branch office, whose BIN was 285). Some fund companies used numbers that do not appear to be linked with BINs. Other fund companies used both kinds of numbers. All of these identifiers, regardless of which approach a mutual fund company took, could be altered as a result of the tactics employed by Bridge and Sacco.

prospectus ("Restriction Notices"). 11/ Some of these Restriction Notices informed Bridge that the RMO account was prohibited from further purchases or exchanges. For example, on January 3, 2002, Nuveen Investments sent a fax to A.G. Edwards' mutual fund operations room in St. Louis stating, among other things, that the RMO account was "frozen due to market timing violations" by Bridge, and that if he continued to place trades, they would be rejected and Bridge would be charged for any losses incurred. On January 16, 2002, Nuveen Investments sent another fax to the mutual fund operations room noting that it was freezing that account and that "any initial purchases coming from this client will be rejected as there is now a pattern of jumping to different funds once frozen to continue market timing." The fax also noted that "any losses incurred by any fund due to continued trading/trade cancellation will be charged back." 12/ Between January 2002 and September 2003, at least twenty-three different mutual fund companies sent Bridge approximately 135 Restriction Notices.

Bridge knew that he risked losing Oliner as a client if he could not continue to accommodate Oliner's market timing trades. Bridge and Edge both testified that they discussed ways to accommodate Oliner's trading objectives because, according to Edge, there was a "very high likelihood" that Oliner would "leave" if they could not continue to place his market-timing trades. Bridge testified that he was aware that other financial consultants at the Firm were able to continue market timing on behalf of a client by using multiple account numbers and split FC numbers, and that switching accounts between branch offices was a means of generating new account and split FC numbers.

On March 25, 2002 Bridge sent an e-mail message to David Taylor, the secretary of RMO, explaining that Oliner's problem resulted from "hit[ting] the same fund families . . . over

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11/ For example, Fidelity Advisor Funds sent a letter to Bridge dated May 6, 2002, stating that the relevant Oliner-controlled account "has reached a level that is deemed disruptive" to the funds, that the funds may reject any trades pursuant to their "policy regarding short-term, excessive or otherwise disruptive trading," as noted in the prospectus, that accounts "under common ownership or control will be counted together" for purposes of the exchange limit, that the trading at issue "may harm performance by disrupting portfolio management strategies and by increasing expenses," and that the funds "prohibit disruptive trading and limit exchanges to protect the interests of all fund shareholders."

12/ Bridge testified that he received communications directly from the mutual fund companies or indirectly through the Firm's headquarters in St. Louis. Mark Roth, then the supervisor of the Firm's mutual fund order room, testified that his department's procedure was to fax and wire any communications received from mutual funds to the relevant financial consultant and to the branch manager who supervised that financial consultant.

and over again until they shut the account down," and that Bridge could help Oliner to continue market timing. Bridge's e-mail further stated:

> We have been kicked out of State Street for market timing. . . . If there are several corporations that you handle the investments for, I could facilitate trades for 3 or 4 of them, in addition to the corporate account(s) you already trade. I could set up a rotation based on each fund families [sic] policies, and have things prepared for you ahead of time. This method will keep us from hitting the same fund families too often, or purchasing too much into a small fund. This would make your job easier, and keep you from getting bounced out by fund families.

On May 9, 2002, Bridge, with Oliner's authorization, opened three new accounts in the names of three different companies that Oliner controlled – two accounts were in the Lake Worth branch office, and one account was in the Boca Raton branch. 13/ Bridge acknowledged that it was his idea to have "two different branch office numbers on four different accounts" because, in part, he did not want mutual fund companies to assume that one client was trading the account. Bridge did not identify any other reason for spreading the accounts over two branch offices. Thereafter and through September 2003, as Bridge received Restriction Notices in connection with a particular account number, he moved the account's assets back and forth between the Boca Raton and Lake Worth branch offices, generating a total of at least sixteen different account numbers for accounts controlled by Oliner. 14/ Bridge obtained and used at least fifteen different split FC numbers for these Oliner-controlled accounts, which further modified identifying information associated with these accounts and enabled him to continue to place trades as he received Restriction Notices. 15/

13/ Bridge knew that, in order to open an account in the Lake Worth, Florida branch office, he was required to work with a financial consultant assigned to that branch office, and thus acquire a split FC number with that financial consultant. He therefore knew that opening an account in the Lake Worth office would generate a new account number and a new split FC number.

14/ The record contains evidence of numerous instances of Bridge switching the Oliner accounts back and forth between branch offices shortly after receiving Restriction Notices. Bridge testified that he did not switch accounts back and forth between branch offices for other clients.

15/ Bridge testified that the other financial consultants assigned to a split FC number with him "probably" serviced the account but that he could not recall with certainty whether they did.

At oral argument, Respondents' counsel characterized Bridge's actions as "masking activity" which included entering into a "partnership with another broker so that they

(continued...)

The record contains limited information about the data that A.G. Edwards transmitted to the funds regarding the trades at issue. There is no evidence of any written policy or procedures specifying particular identifying information that the Firm required an FC to transmit with each trade. Firm officials, including Edge, testified that the Firm typically provided to the National Securities Clearing Corporation Fund/SERV ("NSCC") the account name, account number, social security number or tax identification number, and the name and FC number of the FC or FCs involved. 16/ Respondents did not, however, introduce any documentary evidence to demonstrate that they did, in fact, provide such information with respect to any transactions effected by Bridge and Sacco. The Division's expert witness, Kenneth E. Newman, testified and stated in his report that, generally speaking, Fund/SERV forwards to mutual funds the information that firms provide. However, Newman's testimony did not describe the actual information that the Firm submitted to the funds regarding the transactions at issue here.

While Respondents claim to have provided accurate and complete information about each trade, the record demonstrates that the funds had difficulty screening for market timing. Evidence shows that because, in part, of the way NSCC and the funds processed and disseminated trade data, the mutual fund personnel charged with monitoring market-timing trades often did not have access to information that would have enabled them to detect such trading, or they did not get the information until after the trade had been processed. Apparently, after NSCC received trade information, it was broken down by varying criteria and provided to different departments of the mutual fund companies' service providers, including market-timing trade monitors. 17/ These trade monitors reviewed transactions based on identifiers, such as account, branch, or FC numbers, names, or dollar volumes, or any combination of these categories to varying degrees depending on the information available at the time.

Trade monitors from three different mutual fund companies testified that they typically decided whether to reject a trade the morning after it was received (instead of in one to three days, as permitted by applicable settlement rules), due to accounting concerns regarding the valuation of their funds. Thus, the monitors were under pressure to make quick determinations about whether to cancel or reject a trade, because of market-timing concerns – a circumstance

15/ (...continued)
would receive a separate broker ID number, or to open up a different account for any of these four clients, either within the Boca Raton office, or within the Lake Worth branch . . . ."

16/ NSCC is a "trading facilitator" that provides automated trade submission services to the mutual fund industry. A.G. Edwards transmitted all order ticket information to mutual fund companies through this system.

17/ It is unclear from the record whether NSCC or the various funds determined how to disseminate the data provided to NSCC.

that was exploited by market-timing clients. 18/ As one trade monitor testified, trying to freeze accounts associated with FC numbers was unsuccessful because

> [t]he same reps would end up back conducting market timing activity in our funds under a different number. It turned into quite the cat-and-mouse game . . . [because] we would freeze the account, and they would come back with a different rep ID, sometimes leave off the rep name, so we wouldn't know who, what rep was attached to it. 19/

The remaining trade monitor witnesses further testified that the information available during the monitoring process varied and evolved as they attempted to improve the efficacy of their detection systems. They agreed that their monitoring methods were essentially reactive and had limited capabilities, and that, combined with the volume of trades to review in a short window of time, it was not surprising that many trades violated restrictions.

Thus, as the Firm's associate compliance counsel, Alan Herzog, acknowledged in a December 2002 e-mail to Sacco, Robles, and other Firm officials ("Herzog E-mail"), the true account owner could be and was readily hidden from the funds:

> In order to bring transparency to the relationship and the parties associated, I think its [sic] important that the account registration be altered to reflect both Credit Lyonnais [the name listed on the A.G. Edwards account form for a Sacco market-timing client] as the client and Headstart [the entity actually controlling the account] as the money manager. This would ensure that the mutual funds and [variable annuities] are apprised with whom they are conducting business and would prevent the mutual funds or their underlying investors from arguing that [the Firm] has assisted one of the parties from hiding its true identity to continue its market timing strategy. 20/

18/ The record is unclear regarding what criteria other mutual fund companies used and what information they had when monitoring trades.

19/ Another trade monitor testified that when he enforced market-timing restrictions in 1999, he thought that he "could just call the reps up and say, 'Stop it.'" By late 2000, when it was apparent that the approach "didn't work," he testified that they "went right back to a war situation" that involved "sending out letters and blocking."

20/ Herzog testified that, in this e-mail, he was solely providing guidance in connection with his concerns about complying with anti-money laundering requirements. See text accompanying note 36, infra.

There is no evidence that Herzog's recommendation to increase transparency by identifying the account owner was implemented.

Bridge testified that he asked Michael Brown, the assistant supervisor of the Firm's mutual funds operations trading desk, why he was receiving so many market timing "trade cancellations" from mutual fund companies, to which Brown responded, "'[t]hey don't like that kind of activity [i.e., market timing].'" Bridge also testified that Greg Ellston, who oversaw the mutual funds sales and marketing division located in the Firm's headquarters, told him that Franklin Templeton Funds called Ellston and said, "Hey, this guy Bridge in Boca Raton is buying and selling our funds. We don't like it. We want you to tell him to stop."

The three trade monitor witnesses testified that they discouraged market timing in their respective prospectuses, internal policies, and Restriction Notices. At least four mutual fund companies eventually blocked all trading from Bridge's or Sacco's branch offices in response to their market-timing activities.

The Division's expert, Lawrence Harris, explained that market-timing strategies cause harm to funds' shareholders by diluting the value of their holdings. 21/ He explained that when market timers

> buy shares for less than they are worth, [the market timers] profit because the shares that they would receive would be more valuable than the cash that they would pay for them. The retaining shareholders would lose because the proportionate increase in the number of shares in the mutual fund would be greater than the proportionate increase in the total value of the fund's assets. The retaining shareholders suffer dilution because the [market timers] contribute less to the fund than their proportionate share of ownership.

Harris estimated that Bridge's market-timing trades caused losses of approximately $0.9 million to other shareholders of the affected funds.

C. Edge

Edge was the branch manager of A.G. Edwards' Boca Raton office, oversaw the Lake Worth office, and was Bridge's direct supervisor. Edge was responsible for reviewing two daily reports, which included a morning production run that listed all trades by FCs from the previous day and a branch supervision report that permitted a supervisor to review large trades and cancelled trades. Edge recalled seeing a handful of Restriction Notices from mutual funds

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21/ Although Respondents' expert characterizes market timing as "an ill-defined practice," he conceded that "the potential for harm" caused by market timing has been "publicly known" for a number of years.

regarding Bridge's activities, and he testified that he was aware of the restrictions mutual funds were placing on the Oliner-controlled accounts.

Edge also testified that he knew of Bridge's efforts to continue the Oliner accounts' market timing after their being restricted by mutual funds. Edge testified that he knew that transferring accounts to the Lake Worth branch would generate a new account number and that securing new account numbers would permit Oliner to continue market timing after certain mutual funds blocked the original account numbers. Edge also testified that he was aware that Bridge used split FC numbers to facilitate the transfer of Oliner's accounts to Lake Worth, and that Bridge, "[i]n most cases," informed Edge before requesting the numbers. Edge understood that by securing different identifying numbers to associate with the market-timing trades, Bridge could "continue to trade and get around [the] particular restriction" imposed by a mutual fund.

Edge "underst[ood] that the mutual funds did not favor this [market-timing] business" but did not consider Bridge's evasion of mutual fund restrictions to be fraudulent. Edge testified that he ensured that Bridge complied with the precise restrictions imposed upon his trading: "[I]f the mutual fund said they did not want Bridge under any number to trade, he wouldn't trade. If the mutual fund asked that a certain BIN number or a certain FC number no longer trade, that would be the case. We followed the letter to the letter." Evidence in the record, however, indicates that Bridge sometimes did continue to trade in funds using the same account after being restricted from doing so, and on other occasions transferred assets from the restricted account to a newly-created account in order to continue market timing. 22/

Edge testified that, although he had several conversations with his branch administrator, Michael Chitwood, about the Oliner accounts, he did not recall telling Chitwood that Bridge was using multiple account and FC numbers to evade mutual fund trading restrictions. 23/ Edge further admitted that he did not inform Greg Ellston (the Firm's director of managed products) or Mark Roth (the supervisor of the mutual fund order room) that Bridge sought to obtain new FC numbers in order to continue trading for Oliner after being restricted from trading with other numbers. Edge stated that he assumed Ellston and Roth were aware of Bridge's activity, however, because Restriction Notices were often forwarded to the branch by A.G. Edwards' home office in St. Louis, where Roth and Ellston worked.

22/ See infra note 64 and accompanying text.

23/ The record also contains evidence that Edge received two wire communications from Chitwood on July 24 and 25, 2002 inquiring about two large mutual fund trades by Bridge in one of Oliner's accounts that had been cancelled by the mutual fund. Edge responded to Chitwood in a brief message, noting that "the mutual fund identified him as a market timer & kicked it out," and mentioning that there "was no loss [to the Firm]." The message made no mention of Bridge's use of multiple account and FC numbers.

Edge's direct supervisor, Alex Bigelow, testified that neither Bridge nor Edge informed him they were using multiple account and FC numbers to evade funds' trading restrictions, and that he did not become aware of it until after September 2003; Bigelow never approved the use of these methods to evade the restrictions. Edge testified further that he did not contact anyone in the compliance department to discuss Bridge's use of multiple account and FC numbers to continue trading, testifying that he felt he "had no reason to." 24/

D. Sacco

Sacco worked in the Firm's Boston, Massachusetts ("Back Bay") branch office. Between May 2002 and September 2003, Sacco entered 25,533 market-timing trades representing $4.036 billion on behalf of two hedge-fund clients, Headstart Fund Limited ("Headstart") and Atlantique Capital Offshore Fund Limited ("Atlantique"). 25/

Like Bridge, Sacco received Restriction Notices warning that certain of his accounts had either neared, reached, or exceeded trade frequency limitations set forth in the applicable prospectus, and that, in some cases, an account was prohibited from making further purchases or exchanges. 26/ Between June 2002 and October 2003, approximately thirty-three mutual fund companies sent at least 211 Restriction Notices to Sacco. The Division's expert, Harris, estimated that the market-timing trades that Sacco placed on behalf of his clients during the

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24/ Edge testified that "all of this was normal, routine business. I don't go to my regional [manager] every day with everyday, routine, mundane type of business. There was no reason for me to contact these people unless I felt I needed some clarification or a question or something to that effect."

25/ See supra note 4.

26/ For example, with respect to a Headstart account, Credit Suisse Asset Management stated in a letter dated August 22, 2002 that the account had "repeatedly engaged in excessive trading of shares of one or more of the [Credit Suisse] Funds," that if "this type of disruptive activity continue[d] the representative on the account [would] be permanently banned from trading the Funds," that such activity had a negative impact on the Funds and shareholders, and that, "[i]n accordance with the Funds' prospectuses, the Funds [would] refuse any request on behalf of the . . . account to purchase additional shares of the Funds (by exchange or otherwise) effective immediately."

Sacco testified that he received the Restriction Notices directly through the mail at the Back Bay branch office or through a telephone conversation with a representative from a mutual fund company, or indirectly through mail that was initially delivered to the Firm's headquarters in St. Louis and then faxed or e-mailed to Sacco and/or his supervisor, Robles.

period at issue caused approximately $3.6 million in dilution losses to other shareholders of the affected funds. 27/

Between May 2002 and June 2003, Sacco opened 142 nondiscretionary accounts in the Back Bay branch office on behalf of Headstart using various names that effectively obfuscated Headstart's identity, and in variations of names that represented, at most, four Headstart subsidiaries and an entity identified as "Credit Lyonnais." 28/ Between May 2003 and July 2003, Sacco opened thirty-four nondiscretionary accounts in the Back Bay office on behalf of Atlantique. Between June 2002 and October 2003, Sacco transferred assets between Headstart or Atlantique accounts, respectively, on a regular basis. 29/ Many transfers of assets between similarly-named accounts controlled by a single client occurred within days of the issuance of a Restriction Notice. 30/

Sacco testified that, at the time, he "did not understand why the client was [transferring assets]," but that he believed the transfers "were just to get around the [Restriction Notices]." Sacco testified that he believed that his clients had multiple accounts because they "just knew

27/ See text accompanying note 21, supra.

28/ For example, the record contains thirty-nine different accounts using variations of a Headstart subsidiary named Diagon Limited, five as to Windsor Limited, eight as to Mandrake Limited, eight as to Sempera Limited, and eighty-two as to Credit Lyonnais. The record contains limited information about these subsidiaries or Headstart's relationship to them or to Credit Lyonnais. Sacco did not indicate at the hearing whether he or Headstart determined the listed identity of the account owner.

29/ For example, Sacco transferred assets monthly among various Headstart accounts that were held in variations on the name "Diagon" a total of approximately 166 times between August 2002 and October 2003. Sacco also transferred assets monthly among various Atlantique accounts that were held in variations on the name Atlantique a total of approximately fifty-eight times between May 2003 and October 2003.

30/ For example, with respect to Diagon-related accounts, AIM Funds informed Sacco in a letter dated July 25, 2002 that account number 828033840 had two exchanges left before reaching the ten-exchange limit, at which time a "stop code" would be placed on the account. On August 8 and August 15, 2002, Sacco transferred some assets from that Diagon account to another Diagon account numbered 828035207. AIM Funds informed Sacco in a letter dated August 16, 2002 that the new account number, 828035207, reached its limit of ten exchanges that resulted in the placement of a "stop code" on that account number. On August 19 and August 26, 2002, Sacco transferred some assets from account number 828035207 to another Diagon account numbered 828034383.

that they were going to get kicked out of the funds." 31/ On cross-examination by Respondents' counsel, Sacco testified that he was "not attempting to hide anyone's identity" with the tactics that he employed and that he was instead "just putting [sic] what the client wanted." Also on cross-examination, he testified that unidentified "employees of mutual fund companies" told him that he could continue to place trades by obtaining a new FC number if the FC number he was using was blocked. However, Respondents did not introduce any evidence that corroborates Sacco's assertion that employees of mutual fund companies approved his use of split FC numbers. 32/

E. Robles

Robles was the branch manager of the Back Bay office and was Sacco's direct supervisor. Robles was responsible for reviewing incoming correspondence to the branch and testified that he received copies of many (though he believes not all) of the Restriction Notices that mutual funds sent to the Firm related to Sacco's trading. Robles or his designee reviewed and signed all order tickets for trades of $100,000 or more. Robles was responsible for reviewing daily a morning production report and a branch supervision report, which included a report of trades of $100,000 or more placed by FCs in his branch as well as trades that were cancelled by mutual funds. According to uncontested information in the Division's expert's report, "well over half" of Sacco's trades were valued in excess of $100,000 and, as discussed below, over 2,000 of his trades were cancelled by mutual funds.

Robles was new to the Firm in 2002 and admitted that he was unfamiliar with the type of trading in which Sacco was engaged, and he "didn't understand [it] initially." Robles testified that he noticed that Sacco's trading on behalf of Headstart was "crazy," because Sacco had to place a very large number of written orders late in the trading day – an "administrative nightmare" for Sacco as well as the people in "the cage" who had to enter the orders. Robles was concerned because the transfer of assets between Headstart accounts "after a large transfer of [funds from] an offshore entity" was "a red flag for money laundering."

31/ Sacco also testified that the clients had multiple accounts because "they had different type[s] of trading strategies." However, to the extent that he meant to suggest that such a purpose demonstrated a separate, legitimate intent, he did not elaborate on this point. Sacco added that, "[a]s time went on, we received more and more of these block letters. It was getting harder to place any trades of any mutual funds with any accounts because of the number of block letters."

32/ Sacco also testified, without explaining why, that only one other individual authorized to use a split FC number with him actually serviced the client on the account. Sacco further testified that, in one case, he and another financial consultant received two successive split FC numbers because the first split FC number (identified by initials only) was "shut down or we were not able to place trades," which required obtaining a second split FC number (identified with the other FC's full last name) "in order to continue trading."

Robles testified that his unfamiliarity with Sacco's trading prompted him to speak to some people at A.G. Edwards about the legality of market timing and the possibility that the accounts were being used for money laundering. Robles discussed Sacco's trading with Bill Branson, Robles' regional manager and direct supervisor, but could not recall any specific conversations or whether Robles mentioned that Sacco had been restricted from trading in certain mutual funds under certain FC numbers. Branson testified that he spoke to Robles occasionally from June 2002 through September 2003 but was not told that Sacco was receiving Restriction Notices from mutual funds or that he was using multiple account numbers and FC numbers to continue trading in those funds.

Robles also called his branch administrator, David Saunders, who directed Robles to talk to compliance. 33/ Robles called compliance and asked whether market timing was legal, but could not remember to whom he spoke. Robles testified that, during a management training session sometime in 2002, he discussed the Restriction Notices Sacco was receiving with Brian Underwood, A.G. Edwards' head of compliance, but recalled only that Underwood believed market timing to be "a business issue . . . not a compliance issue." 34/ There is no suggestion in the record that Robles mentioned to Underwood the multiple account and FC numbers Sacco used to market time for the Atlantique and Headstart accounts. The law judge found that "the evidence does not support [Robles'] representation" that he was "an honest supervisor, sincerely seeking assistance from his supervisors to cope with an unusual business situation." She concluded that she "doubt[ed] his credibility" in this regard.

A.G. Edwards' compliance department was aware, to some degree, of the activity in the Headstart accounts. On June 25, 2002, associate compliance counsel Herzog faxed a memorandum to Sacco, copying Robles, requesting information about certain of the additional accounts Sacco had established on behalf of Headstart to "know and verify the identity of [the Firm's] client" for purposes of satisfying anti-money laundering requirements established by the USA PATRIOT Act of 2001. In December 2002, Sacco and Robles received the Herzog E-mail requesting that Sacco have Headstart sign a letter indemnifying A.G. Edwards from liability associated with conducting market-timing trades. 35/ In the e-mail, Herzog noted that the Firm

> is presently reviewing its policies relating to market timing. While [A.G. Edwards] has not yet chosen to shut down market timing accounts entirely, these

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33/ Saunders testified that he spoke with Robles "a lot" but that he could not recall any specific conversation with him. Saunders testified that he did not learn that Sacco was acting to evade restrictions on trading in mutual funds until after Sacco was terminated by the Firm.

34/ Underwood did not testify.

35/ See text accompanying note 20, supra, discussing the Herzog E-mail in the context of the identifying information about client trades that was transmitted to funds through NSCC.

> accounts are closely monitored and require a signed indemnification letter by parties to the account to minimize any legal risks [A.G. Edwards] may face by conducting this business. . . . Another issue that should be addressed is how these accounts should be properly registered. . . . [Altering the registration to identify the client and the money manager] would ensure that the mutual funds and [variable annuities] are apprised with whom they are conducting business and would prevent the mutual funds or their underlying investors from arguing that [A.G. Edwards] has assisted one of the parties [in] hiding its true identity to continue its market timing strategy.

Robles testified that these communications indicated to him that the compliance department was "overseeing" Sacco's trading activity in his market timing accounts. Herzog testified, however, that the communications were limited to soliciting information related to anti-money laundering requirements and securing the documentation necessary to ensure that A.G. Edwards was indemnified from risks associated with market timing accounts. 36/ Herzog also testified that he did not perform any daily monitoring of accounts and did not oversee the branch managers' supervision of FCs. Although Herzog sought greater transparency regarding account ownership for purposes of anti-money laundering requirements, 37/ he testified that he was not aware when he sent these e-mails to Sacco that Sacco was receiving Restriction Notices from mutual funds or that Sacco was using multiple account and FC numbers to evade those restrictions. Robles similarly testified that, although he had one or more telephone conversations with Herzog regarding the need to have market-timing clients sign indemnification letters, Robles did not discuss with Herzog Sacco's use of multiple account and FC numbers to continue trading in restricted funds.

Robles knew that Sacco had opened over a hundred accounts for Headstart and had himself approved eleven requests from Sacco to use split FC numbers. Four of these FC numbers were split with two FCs who eventually left the Firm; yet Sacco continued to place market-timing trades using these split FC numbers for several months. Robles testified that, when he received Restriction Notices related to Sacco's trading and called A.G. Edwards' home office for guidance, he was instructed to tell Sacco to "sell out of the fund." Robles believed at the time that Sacco was "selling out of the funds" whenever Sacco received a Restriction Notice. He testified consistently that he was unaware that Sacco was using the multiple account and FC numbers that Robles approved to circumvent mutual funds' trading restrictions, and that he

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36/ Copies of client agreements and indemnification letters in the record, executed by Oliner, are consistent with Herzog's testimony. The letters memorialize Oliner's acknowledgment that the Firm typically did not "allow clients to engage in [a market timing] strategy," but focus on the client's agreement to hold the Firm harmless for trades not executed by mutual fund companies despite the Firm's use of "best efforts" to execute orders.

37/ See text accompanying note 20, supra.

therefore did not ask anyone at A.G. Edwards whether the Firm considered these practices appropriate. 38/ Robles testified that, when you "manage a group of people, . . . you trust your people" and that "you can't manage someone by going in with the assumption that they're lying to you."

Robles was informed, however, on at least one occasion, that The Hartford Funds complained to A.G. Edwards that Sacco had continued to trade in its funds using a split FC number after he had been banned from trading in any of the company's funds. A memorandum to the file written by the A.G. Edwards employee who took the call from the fund on October 22, 2002 indicates that she informed Robles of the complaint and that Robles "stated that he would speak to [Sacco] immediately and prevent this from happening again." Robles did not recall the conversation but conceded that the memo probably accurately recounted the discussion. The record indicates that Sacco nevertheless continued to market time in The Hartford Funds, as evidenced by a Restriction Notice dated February 21, 2003 that cancels numerous trades placed by Sacco.

As noted, from June 2002 to September 2003, mutual funds cancelled over 2,000 trades in Sacco's accounts. Robles testified that he did not know how many of Sacco's trades were cancelled but that he "wouldn't have been surprised" if the number topped 1,000 or more and that it would not have looked to him like "an issue" because "there was a lot of transactions going on, there was money there going into various different funds." Robles testified that he considered it a "source[] of comfort" when a mutual fund would cancel a trade placed by Sacco because it demonstrated that the mutual funds had "a system in place . . . to catch [market timing]," and that "[i]f [Sacco did] something wrong, the mutual funds cancel[led] the trade." Robles testified that Sacco told him that the cancelled trades were "a mistake" that were entered "by error."

F. A.G. Edwards' Review of Market Timing Practices: The Winter Report

As noted above, the Firm understood that some of its clients were engaged in a market timing strategy and that market timing was not, by itself, necessarily illegal. A.G. Edwards had no formal, written policy regarding market timing until October 2003 – after the period at issue in this proceeding. Before then, the Firm's supervisory manual contained no instructions relating to overseeing brokers whose clients engaged in market timing.

38/ Robles testified that conversations with Sacco about his tactics simply "never came up," but Sacco testified that he did discuss these tactics with Robles. Although the law judge determined Robles was not credible with regard to his claimed efforts to discuss Sacco's trading with Firm officials, see text following note 34, supra, she did not make a credibility finding with respect to Robles' and Sacco's divergent testimony on this matter and left unresolved the conflict between the two.

Nevertheless, concerns about business risk prompted the Firm in late autumn 2002 to organize a working group to "review accounts with excessive mutual fund trade activity." The group, led by Bill Winter (head of mutual fund operations) and including Herzog, Ellston, and Roth, "very quickly" produced a written report (the "Winter Report") distributed on April 7, 2003 that recommended the Firm "no longer accept [market-timing] accounts and require existing ones to transfer to another firm." 39/ The Winter Report consists of a two-page summary memo accompanied by five appendices that are not discussed in any detail in the summary memo. One of the appendices, titled "Background of Market Timers at Edwards," discusses the tactics often employed by market timers and observes that, "in order to stay ahead of this 'cat and mouse game' [in which funds shut down timers when they are identified] and continue their market timing strategies, the market timers simply set up new accounts in different corporate names to mask their true identity and continue their market timing strategy." The Winter Report does not give a complete description of Bridge's or Sacco's evasive tactics, but does include in an appendix copies of Restriction Notices from mutual funds mentioning Bridge and Sacco by name that suggest that Bridge and Sacco were using multiple branch and FC numbers to continue market timing for their clients.

Testimony from members of the Winter working group suggests that, despite the Report's inclusion of some Restriction Notices complaining of Bridge's and Sacco's evasion of fund restrictions, it appears that several members of the working group had limited awareness that A.G. Edwards FCs were using multiple identifying numbers to continue market timing. Roth became aware in early 2002 that FCs were using multiple account numbers and split FC numbers to continue trading. Roth spoke to his supervisor about the activity but did not receive instructions to stop it. Herzog testified that he discovered through his participation in the Winter group in late 2002 that certain FCs at the Firm were opening new accounts to continue market timing. Herzog raised the issue with Underwood, the head of compliance, who told Herzog to ensure there was transparency for the mutual funds regarding identifying information about client trades. It is not clear from the record whether Ellston knew that Bridge and Sacco were using multiple account and split FC numbers. However, there is no evidence that any of the members of the working group, regardless of their level of knowledge about Respondents' activities, ever told Respondents that it was permissible to seek to evade market-timing restrictions.

39/ The Report explained that there were four main risks associated with market timing accounts: running afoul of anti-money laundering regulations with respect to accounts "that are trying to hide their actual ownership"; market loss exposure due to logistics in processing trades; reputational damage with the mutual fund companies; and "[h]arm to [the Firm's] other customers that have holdings in the funds involved in their activity."

III.

A. Antifraud Violations

Securities Act Section 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b-5 proscribe fraudulent conduct. 40/ These provisions "prohibit the employing of fraudulent schemes or the making of material misrepresentations and omissions in offers, purchases, or sales of securities." 41/ The United States Supreme Court has held that the antifraud provisions are "designed as a catch-all clause to prevent fraudulent practices," no matter how novel. 42/ The Supreme Court also has emphasized repeatedly that Congress crafted the antifraud provisions, not only to protect investors, but also "to achieve a high standard of business ethics . . . in every facet of the securities industry." 43/ Although market timing is not, by itself, illegal, courts have found the use of tactics similar to those employed by Bridge and Sacco to facilitate clients' market-timing activities to violate the antifraud provisions. 44/

1. Bridge's and Sacco's Conduct

Bridge and Sacco knew that mutual fund companies had policies restricting market timing but that enforcement of those policies could be circumvented through the use of various

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40/ 15 U.S.C. § 77q; 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.

41/ SEC v. Brooks, 1999 WL 493052, at *2 (N.D. Tex. July 2, 1999) (not reported in F. Supp. 2d); see also SEC v. Dain Rauscher, Inc., 254 F.3d 852, 855-56 (9th Cir. 2001) (noting that the antifraud provisions "prohibit fraudulent conduct or practices" and "forbid making a material misstatement or omission" in connection with the offer or sale of securities). The United States Supreme Court has embraced an expansive interpretation of Exchange Act Section 10(b)'s "in connection with" language. See, e.g., Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit, 547 U.S. 71, 85 (2006); SEC v. Zandford, 535 U.S. 813, 819 (2002); United States v. Naftalin, 441 U.S. 768, 773 & n.4 (1979). Respondents do not dispute that those requirements have been met.

42/ Chiarella v. United States, 445 U.S. 222, 226 (1980); see also Ernst & Ernst v. Hochfelder, 425 U.S. 185, 202-03 (1976).

43/ Naftalin, 441 U.S. at 775 (citing SEC v. Capital Gains Bureau, 375 U.S. 180, 186-187 (1963)); see also SEC v. Tambone, 550 F.3d 106, 120 (1st Cir. 2008) (noting that the text of the antifraud statutes "confirms their common purpose to prohibit a wide swath of fraudulent behavior that Congress believed impeded the smooth and honest functioning of the securities markets"), reh'g denied (Feb. 23, 2009).

44/ SEC v. Druffner, 517 F. Supp. 2d 502, 508-09 (D. Mass. 2007), aff'd sub nom. SEC v. Ficken, 546 F.3d 45 (1st Cir. 2008); SEC v. Gann, 2008 WL 857633, at *10 (N.D. Tex. Mar. 31, 2008) (not reported in F. Supp. 2d), aff'd, 565 F.3d 932 (5th Cir. 2009).

tactics (i.e., opening multiple accounts with various account names and numbers, using multiple split FC numbers, transferring accounts back and forth between branch offices, and transferring assets and mutual fund positions between accounts). Using these tactics, Bridge and Sacco repeatedly altered the identifying information associated with market-timing trades by generating new identifying information or omitting old identifying information, even though the actual client and financial consultant remained essentially the same. Their tactics concealed the fact that the actual client and FC had been subject to Restriction Notices from the mutual fund companies and therefore deceived the funds into permitting trades that conflicted with fund restrictions. Because of their altered appearance, these trades avoided altogether, or at the very least delayed, the issuance of further Restriction Notices in connection with the limitations set forth in the relevant prospectuses. As a result, Bridge's and Sacco's clients were able to pursue their market-timing strategies notwithstanding the restrictions that had been established by the funds. Accordingly, we conclude that Bridge and Sacco employed a scheme to defraud and engaged in a practice that operated as a fraud upon the mutual fund companies. 45/

The deceptive tactics used by Bridge and Sacco also constitute material misrepresentations and omissions because of the significance the mutual funds attached to

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45/ Cf. Naftalin, 441 U.S. at 770-778 (upholding district court's finding that respondent employed a scheme and artifice to defraud by deceiving certain broker-dealers into believing that he owned securities that were sold short); SEC v. Simpson Capital Mgmt., Inc., 586 F. Supp. 2d 196, 204-05 (S.D.N.Y. 2008) (denying defendants' motion to dismiss complaint alleging that defendants engaged in a scheme to defraud, and engaged in any act, practice, or course of business which operated as a fraud upon, certain mutual funds and their shareholders by deceiving them into believing that trades were submitted before a required cutoff time when they actually were submitted after the required cutoff time); Irfan Mohammed Amanat, Exchange Act Rel. No. 54708 (Nov. 3, 2006), 89 SEC Docket 714, 726-33 (finding that respondent engaged in fraudulent scheme to obtain market data rebates from Nasdaq by deceptively executing thousands of wash trades and matched orders through automated trading program that he designed); Terrance Yoshikawa, Exchange Act Rel. No. 53731 (Apr. 26, 2006), 87 SEC Docket 2924, 2930-36 (finding that respondent engaged in a manipulative trading scheme by fraudulently entering orders designed to improve the price of certain securities and then rapidly placing larger orders on the opposite side of the market from that of his initial order to take advantage of the price change he had caused); Robert W. Armstrong, III, Exchange Act Rel. No. 51920 (June 24, 2005), 85 SEC Docket 3011, 3022-28 (finding that respondent engaged in deceptive acts as part of a scheme to defraud by computing and supplying figures necessary to achieve predetermined growth rates and convey false appearance of a smooth growth trend); Orlando Joseph Jett, 57 S.E.C. 350, 352 (2004) (finding that respondent engaged in a scheme to defraud by deceiving his firm about enormous illusory profits recorded through anomaly in firm's trading and accounting systems).

knowing their customers' identities as a means of restricting market-timing practices. 46/ In SEC v. Gann, a case involving deceptive market timing similar to this appeal, the district court held:

> Given the policies of the mutual funds prohibiting market timing, their active policing of market timers, and the block notices that were sent when their rules were violated, the court determines that the mutual funds would have attached importance to Gann's use of multiple accounts and representative numbers, as well as the change in the branch office identifier, in light of the fact that Gann continued to trade in their funds after receiving block notices. Gann tried to make it appear as if different brokers and clients were making trades when he . . . continued to try to make market timing trades on behalf of [his client] after block notices were received. Accordingly, Gann's actions were material misrepresentations made in the course of buying securities. 47/

Similarly, in SEC v. Druffner, the court held a registered representative liable for securities fraud based on his use of deceptive trading techniques to facilitate market timing by clients. The court found that the defendant made material misrepresentations because he, among others, "used a total of thirteen different [FC] numbers and over 170 brokerage accounts to carry out . . . market timing transactions even though [he and the other members of his group] had only five clients." 48/ The court also found that the defendant "clearly misrepresented the nature of his and the [group's] transactions to the mutual funds," and that, given the mutual fund companies' requests that the group discontinue its market timing activities, the "multitude of [registered representative] numbers and accounts was a method of concealing the true identities

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46/ A fact is material if there is a substantial likelihood that a reasonable investor would have considered the omitted fact important to his or her investment decision, and disclosure of the omitted fact would have significantly altered the total mix of information available to the investor. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988); TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976).

47/ Gann, 2008 WL 857633, at *10. Consistent with the district court decision, the Fifth Circuit Court of Appeals found that Gann used "different and varying client account numbers to disguise the frequency and magnitude of [his client's] trading in the various funds," and that the district court's finding that such use constituted a material misrepresentation was a "reasonable interpretation of the facts." Gann, 565 F.3d at 936, 938. The court further found the Commission staff's "characterization of the use of multiple registration and account numbers as ample evidence of an intent to mislead." Id. at 938.

48/ Druffner, 517 F. Supp. 2d at 508.

of the defendant and the . . . group." 49/ The court concluded that, "had it not been for such misrepresentations, the mutual funds would not have allowed the transactions undertaken by the defendant." 50/

As in Gann and Druffner, Bridge and Sacco created the false appearance that different financial consultants and clients were making trades. The obfuscation of the account information was material because the mutual funds wanted to identify the actual clients and FCs so that they could make informed, timely decisions about rejecting or canceling a trade in connection with their efforts to limit market timing.

Respondents do not deny that Bridge and Sacco engaged in the tactics described above. Respondents contend, however, that, notwithstanding their deceptive tactics, they provided sufficient information for the funds to determine the customer identities in each case. 51/ According to Respondents, it is undisputed that "Bridge's and Sacco's trades, like all mutual fund trades [the Firm] transmits through the NSCC Fund/Serv system, identified the customer by name and tax identification number, and identified the broker or brokers by name and FC number," and that, "accordingly, all of the information necessary to identify Bridge or Sacco and their clients was fully disclosed to the mutual fund companies." 52/ Respondents assert that, based on this disclosure, the funds could, and frequently did, reject trades that conflicted with market-timing restrictions.

49/ Id. at 508.

50/ Id. at 508-09; see also Michael Joseph Boylan, 47 S.E.C. 680, 683 (1981) (finding identity of customer, who had been barred, to be material and the withholding of this information in order to process trades, where customer's business entity was instead named on the account, to be fraudulent), aff'd, SEC v. Boylan, 703 F.2d 573 (9th Cir. 1983) (Table).

51/ Respondents claimed in their reply brief and at oral argument that the basis for the Commission's agreement to voluntarily dismiss a civil fraud action against certain financial advisors in SEC v. Darryl Goldstein, No. 07 CV 11275 (S.D.N.Y. filed May 30, 2008), is "strikingly similar" to the full disclosure argument made here and that, therefore, "this case should be dismissed because it is devoid of legal or factual merit." However, the case to which Respondents cite did not involve a hearing at which findings of fact and law were made and instead resulted in a "stipulation of voluntary dismissal" without prejudice, stating that the Commission intended "to conduct additional investigation into the allegations" made in the original complaint. Id. at 1. The stipulation has no discussion of facts or law.

52/ Emphasis in original.

Respondents argue that their conduct is readily distinguishable from the conduct in Gann and Druffner because, according to Respondents, "the use of different accounts, FC or branch numbers could not have 'significantly altered the total mix' of information available to the mutual fund companies in regard to Bridge's, Sacco's, or their clients' identities, because their actual identities were disclosed." Respondents suggest that "account numbers and FC numbers were not important to the mutual fund companies' screening for market timing" because, Respondents claim, the mutual fund companies "reviewed trades primarily based on dollar volume," i.e., the funds monitored trades that exceeded a threshold dollar value, such as $50,000 or $100,000, not based on a particular account number or FC number.

We are unpersuaded by Respondents' contentions. Whether the trade monitors reviewed transactions based on numbers, names, or dollar volumes, or any combination of these categories, it is clear that the tactics used by Bridge and Sacco exploited the vulnerabilities in the monitoring systems – which were responsible for reviewing multitudinous trades under extremely tight time constraints – by obfuscating the links between related accounts. Even if the funds' trade monitors received what Respondents claim to have provided, Respondents do not dispute that, like the clients in Gann and Druffner, Oliner and Headstart, for example, were not named on the accounts, although they were the actual clients. 53/ Thus, the mutual funds could not effectively determine the real party behind the trades at issue. 54/ We have held that a salesperson can violate the antifraud provisions by masking the identity of a customer. 55/

53/ As noted, the record does not contain evidence of what Bridge and Sacco submitted to NSCC or what information trade monitors reviewed regarding any of the mutual fund transactions at issue. However, with respect to the witnesses who testified on behalf of three different mutual fund companies involved in this case, in general, trade monitors did not necessarily receive the information that Respondents claim to have submitted to NSCC. For example, the witnesses testified that a "screen shot" of a trade presented to them at the hearing, although appearing to include all categories of identifying information, did not represent the information that they typically received. These witnesses testified that representatives who submitted trades often omitted identifiers, such as representative names, representative numbers, account names, and account numbers to varying degrees. The witnesses further testified, without explaining why, that the market timing screening reports that were provided to them often lacked identifying information to varying degrees.

54/ Cf. Gann, 2008 WL 857633, at *5, *8, *10 (finding that the true client was one hedge fund and that twenty-one accounts were opened in the names of the hedge fund's affiliates, entities that were without dispute legitimate companies); Druffner, 517 F. Supp. 2d at 506 (finding that over 170 customer accounts were opened under fictitious names).

55/ See Boylan, 47 S.E.C. at 683.

Moreover, as in Gann and Druffner, Bridge and Sacco moved assets among various accounts that were controlled by one client. 56/ Bridge and Sacco did not disclose this movement of client funds, and the mutual fund trade monitors were unable to track these assets independently to determine that assets from restricted accounts were used to market time in unrestricted accounts controlled by the same client. In light of the extensive period of time that Bridge and Sacco, like the salespersons in Gann and Druffner, continued to employ their market timing strategy on behalf of their clients – and even if Bridge and Sacco did not understand the detailed mechanics of how each mutual fund company monitored its trades – it is clear that they must have been aware that their tactics were effective at circumventing the funds' restrictions. 57/ We therefore reject Respondents' contentions that Bridge's and Sacco's actions did not violate the antifraud provisions. 58/

56/ Gann, 2008 WL 857633, at *5 (finding that money was routinely transferred between accounts); Druffner, 517 F. Supp. 2d at 509 (finding that assets were split into separate accounts in order to remain under trade monitoring threshold).

57/ At oral argument, Respondents' counsel attempted to distinguish Gann by arguing that "the broker-dealer with whom [Gann] worked . . . was engaged in a much broader scheme to defraud [that involved] late trading, . . . piggybacking, [and] a lot of the types of classic masking activities, not what you see here." Respondents' counsel conceded, however, that "Gann is a little bit close to the conduct in this case." Moreover, although Respondents' counsel claimed that piggybacking and late-trading distinguished Gann from the facts here, neither the Gann district court nor the Court of Appeals referred to such conduct.

58/ The Division filed a motion for leave to file a sur-reply to Respondents' reply brief, arguing that certain information in Respondents' reply brief regarding NSCC information that Respondents claim was available to mutual fund companies "should be stricken and disregarded" because it "was not offered into evidence, admitted into evidence, or officially noticed during the administrative hearing in this matter." Specifically, the brief refers to an NSCC website hyperlink, "User Manuals," and a "Technical Manual." Respondents admit that this information was "not made part of the record in the hearing." Rule 452 of our Rules of Practice permits a party to adduce new evidence on appeal only if the moving party shows "with particularity" both (a) that the evidence is "material" and (b) that there were "reasonable grounds for failure to adduce such evidence previously." 17 C.F.R. § 201.452. Although Respondents acknowledge the application of this rule, they failed to file a corresponding motion or explain how they satisfy the standard set forth in the rule. Based on the record evidence as a whole, the information, as presented, does not alter our conclusion that Bridge's and Sacco's conduct violated the antifraud provisions.

The Division also argues in its proffered sur-reply that we should reject late-filed evidence of Bridge's inability to pay the sanctions imposed by the law judge. Because we (continued...)

2. Bridge and Sacco Acted with Scienter

Violations of Securities Act Section 17(a)(1), Exchange Act Section 10(b), and Exchange Act Rule 10b-5 require scienter, "a mental state embracing intent to deceive, manipulate or defraud." 59/ We find that Bridge and Sacco acted with scienter in that they intended to deceive the funds as to their and their customers' identities.

Communications from mutual fund companies put Bridge and Sacco on notice that their activity was at risk of being limited or stopped. Bridge's client communications indicate that he knew why Oliner's trades were being rejected or canceled and how the tactics would permit his client to evade the funds' screening efforts. Although Bridge and Sacco claim without elaboration that they had legitimate reasons for using their tactics, these unsubstantiated claims do not outweigh their testimony and conduct, both of which indicate that they understood that their tactics would mislead the funds as to the identity of their clients and, thereby, circumvent Restriction Notices. 60/ We conclude that Bridge's and Sacco's actions, which occurred over an extended period, were "intentionally geared toward evading detection" by the mutual fund companies. 61/

58/ (...continued)
reject Bridge's claim, see infra Section IV., the Division's request to file a sur-reply is moot on both points, and we accordingly deny the motion. See infra note 119.

59/ Ernst & Ernst, 425 U.S. at 193 n.12. There is no scienter requirement for violations of Securities Act Sections 17(a)(2) or (3); negligence is sufficient. Aaron v. SEC, 446 U.S. 680, 685, 701-02 (1980). Proof of scienter may be demonstrated by circumstantial evidence. Herman & MacLean v. Huddleston, 459 U.S. 375, 390-91 n.30 (1983); Valicenti Advisory Servs., Inc. v. SEC, 198 F.3d 62, 65 (2d Cir. 1999).

60/ Moreover, the Commission has held that isolated instances of seemingly innocent conduct can, when viewed as a whole, constitute circumstantial evidence of fraudulent activity. Cf. Yoshikawa, 87 SEC Docket at 2933-34.

61/ Druffner, 517 F. Supp. 2d at 509 (finding that scienter was established through evidence in the form of e-mails from mutual fund companies attempting to stop Ficken and e-mails from Ficken to his clients "indicating that the defendant's actions were intentionally geared toward evading detection by the mutual fund managers"); see also Ficken, 546 F.3d at 51-52 (finding that Ficken manipulated identifying account numbers and registered representative numbers "to misrepresent his identity and that of his clients in order to deceive mutual fund companies into allowing trades that they otherwise would have blocked . . . meet[ing] the scienter requirement of Section 17(a)(1), Section 10(b) and Rule 10b-5, and more than meet[ing] the negligence requirement of Section 17(a)(2) and Section 17(a)(3)"); Gann, 565 F.3d at 938 (viewing the Commission's "characterization of the use of multiple registration and account numbers as ample
(continued...)

Respondents contend that Bridge and Sacco did not possess the requisite scienter because, "[a]t most, Bridge's and Sacco's intentions were to facilitate trading strategies for their clients, which everyone agreed was perfectly legal." Respondents claim that Bridge and Sacco "believed that they were not engaged in unlawful or prohibited conduct." However, Bridge's and Sacco's admittedly repeated use of their tactics on behalf of their market timing clients in the same funds with different accounts after having received Restriction Notices belies their claim. 62/

Respondents assert that they "complied with [A.G. Edwards'] policy, which did not prohibit the use of multiple account numbers or FC numbers for facilitating active trading." The policies, however, were silent about market timing in general and certainly did not address the propriety of Bridge's and Sacco's tactics. Respondents claim that Bridge and Sacco did not attempt to "conceal anything from their superiors, whom they believed were fully aware of their activities, a fact borne out by the Winter Group." Yet all of the Firm's management personnel witnesses, except for Edge, testified that, although they were aware that Bridge and Sacco were engaged in market timing on behalf of clients, they did not understand the full extent of Bridge's and Sacco's use of the tactics at issue. 63/

61/ (...continued)
evidence of an intent to mislead"); Gann, 2008 WL 857633, at *11 (finding that Gann acted with scienter because he "responded to block notices by changing the representative number or account number and by continuing to execute trades to circumvent the mutual funds' attempt to prohibit trades." As in Druffner, the court determined that Gann's actions were "'intentionally geared toward evading detection by the mutual fund managers.'").

62/ See Gann, 565 F.3d at 937, 939 (noting that the "district court found Gann not credible and sided with the [version of the facts presented by the] SEC," and that the facts, including Gann's "use of numerous account and registration numbers" on behalf of his client, demonstrated that Gann "did not want the fund companies catching on to his trading practices"); Gann, 2008 WL 857633, at *10, 11 (rejecting a similar argument and finding that the "overwhelming testimony and evidence . . . undercut Gann's credibility. His repeated conduct does not square with his testimony that he had no intent to deceive or defraud . . . . Gann's continuing behavior in trying to make trades [with different accounts] in funds after receiving block notices indicates his intent to deceive the mutual funds. . . . Gann knew that [his client] was a market timer and that the mutual funds were acting to prevent market timing in their funds.").

63/ In any event, management's knowledge of and acquiescence to the tactics would not necessarily refute a finding of scienter. See Jett, 57 S.E.C. at 390 (finding that, even if management knew of respondent's fraudulent conduct, "indeed even if they ordered him
(continued...)

Respondents claim that Bridge and Sacco "respected the specific terms of the Restriction Notices they received." For example, they assert that the Restriction Notices did not always prohibit future trading, but sometimes merely cancelled a trade or alerted the Firm that an account was reaching a stated limit. According to Respondents, the Division's own expert, Harris, indicated in his report that Bridge and Sacco generally did not trade in accounts after they received Restriction Notices. Respondents contend that continuing to market time after receiving Restriction Notices is not a matter of fraud, but rather a matter of contract law because the notices are "merely correspondence between parties in an arms-length contractual relationship." It follows, Respondents argue, that the Restriction Notices did not "create a duty on brokers" to cease or police market-timing activities and that the law judge and the Division improperly extended the reach of the antifraud provisions to that conduct.

Respondents' literal interpretations fail to appreciate the significance of the deception that Bridge and Sacco practiced in order to continue market timing on behalf of their clients. Technical compliance through, for example, the transfer of assets from a restricted account to a newly-created unrestricted account, does not alter our conclusion that Bridge's and Sacco's intent and effect was to deceive the funds as to the identities of the client and FC. Moreover, evidence demonstrates that Bridge and Sacco did, in fact, ignore Restriction Notices and continue trading in accounts subject to such notices. 64/

Pointing to certain internal documents and settlement orders, Respondents claim that "the mutual funds conveyed mixed messages regarding their tolerance of active trading." Respondents claim that undisputed testimony shows that Bridge disclosed his market-timing plans to personnel at certain funds, who expressed no opposition to such plans and also told him that market timing of bond funds – the kind that his clients preferred to market time – was not a problem. Respondents further claim that funds were reluctant to take effective steps against market timers, such as by blocking all trades from a branch where the account was based or by terminating a dealer agreement with the broker-dealer involved, because doing so would place them at a competitive disadvantage.

63/ (...continued)
to commit it – that would not relieve Jett of responsibility for what he knew or was reckless in not knowing and for what he did").

64/ For example, in a letter to the Firm, American Century Funds stated that it froze one of Bridge's accounts after determining that the restricted account ignored earlier requests to stop engaging in "abusive trading practices." The Hartford Funds sent Sacco a letter stating that it was freezing his accounts because he ignored their earlier warning against further market-timing activity in those accounts. Evidence also contradicts Respondents' assertion that Bridge and Sacco were frequently unaware of Restriction Notices sent to the Firm's headquarters. To the contrary, testimony established that it was the Firm's practice to forward all Restriction Notices to the affected FC.

At the hearing, Bridge suggested that, in his view, the funds with which he dealt were not serious about enforcing the restrictions. 65/ Respondents introduced four documents generated by the distributor of one of the mutual fund companies at issue to support their claim that market timing was, in fact, permitted by the fund. These four exhibits, which were created between 1999 and 2001, included lists or e-mail discussions of individuals who were permitted to market time. Respondents also introduced two Commission settlement orders, which contain allegations that the advisers for two of the fund companies at issue permitted certain customers to engage in market-timing trading despite the restrictions on such activity imposed by the funds, in violation of antifraud provisions. 66/ Bridge testified that he believed that mutual funds viewed market timing as "not anything serious . . . until after [then New York Attorney General Eliot] Spitzer" began investigating the practice, i.e., late 2003. He further testified, without any corroboration, that the "sales side" of fund companies told him that they had "no problem" with his market timing. Bridge did not elaborate on what or who he meant by "sales side."

While Respondents claim that mutual funds sent mixed messages regarding their tolerance of market timing, they provide no supporting evidence other than Bridge's and Sacco's own testimony. In fact, the funds repeatedly issued Restriction Notices, which evidence shows Respondents received, and took other measures available to them in an effort to curtail these practices. Although Respondents suggest that the funds could have done more if they had been serious about stopping market timing, in fact, some of the funds did respond to Bridge's and Sacco's actions by variously freezing accounts and/or FC numbers associated with them. Moreover, while funds were reluctant to do so because of adverse effects on uninvolved customers, evidence indicates that four mutual funds blocked Bridge's or Sacco's branch offices from conducting any further business.

In this connection, we do not consider it significant that, in the two settled Commission orders introduced by Respondents, two fund advisers allowed certain customers to violate fund restrictions on market timing. As those settlement orders made clear, the advisers deceived not only the fund investors but also the funds themselves, who were not found to have any role in the scheme. We also are unpersuaded by Respondents' reference to the four distributor-generated

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65/ Likening the situation to the 1980's arcade game "Frogger," Bridge testified that "[t]hey knew these accounts were going to pop up somewhere else. If I didn't have it, it was going to be in the Fort Lauderdale office or it was going to be in a different office. It was going to be somewhere else. So the game of Frogger was just, whoop, rep number, block that BIN, block that. Never addressing the real problem, which is there's people inside of A.G. Edwards, me being one of the smallest, that were market timing. I mean, I only made $40,000, which sounds like a lot of money, but in the grand scheme of things, it was very small at A.G. Edwards. So they would just play this game of Frogger with me."

66/ See Deutsche Inv. Mgmt. Americas, Inc., Investment Advisers Act Rel. No. 2575 (Dec. 21, 2006), 89 SEC Docket 2060; Franklin Advisers, Inc., Advisers Act Rel. No. 2271 (Aug. 2, 2004), 83 SEC Docket 1770.

documents involving individuals who were permitted to market time. These documents, which predate the period at issue, do not suggest that Bridge and Sacco themselves received permission to market time. Respondents' claim that they received mixed messages was further challenged by contrary testimony from mutual fund personnel, as well as by Bridge's own admission that two members of the Firm's senior management told him that certain mutual funds had objected to Bridge's market timing activity. Bridge's and Sacco's own actions, through the use of their deceptive tactics over an extended period of time in response to Restriction Notices, further demonstrate that the messages they received from mutual fund companies were not mixed and put Respondents on notice that their market timing was not welcomed.

Accordingly, we find that Bridge and Sacco willfully violated Securities Act Section 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b-5.

B. Failure to Supervise Reasonably

Exchange Act Sections 15(b)(4)(E) and (b)(6) authorize the Commission to sanction an individual associated with a broker-dealer if the individual "has failed reasonably to supervise, with a view to preventing violations of the provisions of [the securities] statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision." 67/ In assessing the actions of Edge and Robles under these provisions, we must consider whether they exercised "reasonable [supervision] under the attendant circumstances." 68/ We have explained that "the test is whether [the] supervision was reasonably designed to prevent the violations at issue." 69/

It is undisputed that Edge and Robles had direct supervisory responsibility for Bridge and Sacco, respectively. It is also undisputed that Edge and Robles were responsible for reviewing daily trading reports that listed, among other things, trades that had been cancelled by mutual funds for violating market timing restrictions, and both admit they were aware that their supervisees were receiving Restriction Notices from mutual funds regarding their market-timing trades. Both also approved the opening of many of the new account and split FC numbers used to perpetuate the trading at issue. Yet neither supervisor took steps to curb his supervisee's use of various tactics to evade funds' trade restrictions.

Edge, in fact, was fully aware of, and complicit in, the tactics Bridge used to continue trading in mutual funds that had placed restrictions on Bridge's trading. Edge testified that he knew these mutual funds did not "favor" market timing but believed it was the funds' own

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67/ 15 U.S.C. §§ 78o(b)(4)(E), (b)(6).

68/ Clarence Z. Wurts, 54 S.E.C. 1121, 1130 (2001) (quoting Arthur James Huff, 50 S.E.C. 524, 528-29 (1991)).

69/ Albert Vincent O'Neal, 51 S.E.C. 1128, 1135 (1994).

responsibility to detect and prevent or cancel unwelcome trades. Edge's knowing assistance of Bridge's efforts to evade funds' trading restrictions and failure to prevent them was at least unreasonable.

Although the evidence does not establish that Robles was complicit in Sacco's fraud, it establishes that he should have been aware of it. Sacco placed over 25,000 market-timing trades during the period at issue, most of which were in amounts over $100,000 and which therefore would have appeared on the daily trade reports Robles reviewed. In addition, mutual funds cancelled over 2,000 of Sacco's trades – cancellations that also would have appeared on daily reports to which Robles had access and of which Robles admitted having some awareness. Sacco received over 200 Restriction Notices from mutual funds, and Robles admitted he was aware of at least some of them. Sacco traded using some FC numbers – originally approved by Robles – that were split with FCs who subsequently left the Firm and therefore had no legitimate relationship to the accounts Sacco serviced. These facts should have prompted Robles to investigate Sacco's trading. Indeed, Robles testified that Sacco's frenetic trading activity struck him as "crazy." Yet, apparently, he never learned, or attempted to learn, that Sacco was evading mutual funds' restrictions by using the account and FC numbers that Robles himself approved, even though he had access to daily trading reports that should have informed him of Sacco's activity, and even though he was told that at least one mutual fund company had complained that Sacco was reentering funds from which he had been banned.

Instead, Robles assertedly assumed that Sacco was observing the restrictions mutual funds placed on his trading. We have held that, when a supervisor is aware of "any indication of irregularity," the issue "must be treated with the utmost vigilance." 70/ Robles' failure to respond adequately to indications that Sacco was engaging in questionable activity was at least unreasonable under the circumstances. 71/

Exchange Act Section 15(b)(4)(E) contains a "safe harbor" provision that protects supervisors from liability if the broker-dealer has "established procedures, and a system for

70/ Consol. Invs. Servs., 52 S.E.C. 582, 588 (1996).

71/ See James J. Pasztor, 54 S.E.C. 398, 412-13 (1999) (finding failure to supervise where, in light of "many red flags" that employee was effecting wash trades and matched orders, supervisor "[a]t a minimum" "should have conducted an independent investigation"); Michael E. Tennenbaum, 47 S.E.C. 703, 711 (1982) (finding failure to supervise where, despite specific warnings that employee might be engaging in excessive trading, supervisor "failed to take or recommend any action to investigate [his] activities"); Blinder, Robinson & Co., 47 S.E.C. 812, 814 (1982) (finding respondents' "cursory examination" "clearly inadequate" because a failure of supervision "connotes 'a failure to learn of improprieties when diligent application of supervisory procedures would have uncovered them.'") (quoting Jerome F. Tegeler, 45 S.E.C. 512, 515 n.8 (1974) and Anthony J. Amato, 45 S.E.C. 282, 286 (1973)).

applying such procedures, which would reasonably be expected to prevent and detect . . . violations . . . and such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system . . . ." 72/

Edge and Robles argue that they should not be liable for failing to supervise Bridge and Sacco because they followed applicable Firm procedures which, they claim, were reasonably designed to prevent the misconduct at issue. Respondents assert that the Firm "had compliance and supervisory procedures in place that were reasonably expected to detect and prevent fraud, and Edge and Robles reasonably complied with those procedures." Contrary to Respondents' assertions, however, there is no evidence of a Firm policy requiring compliance review of market-timing accounts. Instead, the record demonstrates that A.G. Edwards had no policy or procedures that addressed market timing in general, and certainly had no policy designed to detect and prevent the specific tactics Bridge and Sacco employed. 73/ Rather, compliance was dependent on the active involvement of the direct supervisors who, as discussed, abdicated their responsibilities.

Further, although Respondents claim the existence of a general Firm policy of providing "transparency" to mutual funds regarding the identities of brokers and clients, this policy is evidenced only by the Herzog E-mail, which Respondents characterized at oral argument as "the most significant piece of evidence, which should exonerate Mr. Robles." However, there is no evidence in the record that Herzog's recommendation to disclose the ultimate account owner was followed. 74/

If A.G. Edwards could be said to have an informal practice of providing identifying information to mutual funds about each trade, the information supplied to NSCC, as noted, did not provide transparency to mutual funds. As evidenced by the success of Bridge's and Sacco's

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72/ See IFG Network Sec., Inc., Exchange Act Rel. No. 54127 (July 11, 2006), 88 SEC Docket 1374, 1392 (finding no failure to supervise where company "implemented procedures that were addressed specifically to disclosure" of material fact at issue that included "written compliance materials" such as a manual, pamphlet, and compliance alerts, as well as "a system for reviewing and approving purchases of [securities] that would have reasonably been expected to ensure that its associated persons disclosed all material facts to their customers").

73/ As noted, A.G. Edwards settled allegations that, from 2001 through late 2003, it failed reasonably to supervise certain salespersons in connection with market-timing activities. See supra note 1.

74/ For this reason, the Herzog E-mail supports our finding that Sacco acted with scienter in evading trading restrictions because Sacco continued to place trades on behalf of Headstart without following Herzog's advice to ensure the accounts' registration accurately reflected Headstart's identity as the account owner.

evasive tactics and testimony of personnel who policed trading in mutual funds, A.G. Edwards' disclosure did not necessarily identify the person who controlled the accounts and was insufficient to permit funds timely to detect and prevent most of Bridge's and Sacco's market-timing trades. Further, although Respondents claim that the compliance department monitored market-timing accounts, the record indicates that, to the extent compliance monitored market-timing accounts, its focus was on anti-money laundering requirements and business risk, not evasion of market-timing policies. The "safe harbor" provision of Exchange Act Section 15(b)(4)(E) therefore is unavailable to Respondents.

Edge and Robles further argue that their supervision was reasonable because they made appropriate inquiry of their superiors to determine if market timing was permissible and complied with instructions, and because the Firm was aware of, and did nothing to stop, the deceptive tactics that Bridge and Sacco used. However, Edge and Robles did not fully disclose to, or receive guidance from, more senior Firm officials about the specific tactics that Bridge and Sacco were using to circumvent mutual funds' trading restrictions. Robles admitted that he did not become aware of Sacco's use of these tactics until late 2003, after Sacco was terminated by the Firm. Accordingly, as Robles admits, he did not seek (and could not have sought) approval from his superiors regarding Sacco's specific conduct. To the extent that Robles testified that he was "an honest supervisor, sincerely seeking assistance from his supervisors to cope with an unusual business situation," the law judge did not credit this testimony, and the record does not offer reason to reject that determination. 75/ Edge's testimony similarly demonstrates that he did not inform his superiors of the specific tactics Bridge was using to evade mutual funds' trading restrictions. Further, senior employees of the Firm, including Chitwood, Herzog, Winter, Ellston, Saunders, Bigelow, and Branson, consistently testified that they were unaware of the full details regarding Bridge's and Sacco's evasion of funds' restrictions. Even if senior Firm employees were aware of the specifics of Bridge's and Sacco's conduct – a finding we need not and do not make – they may be liable for their own role in permitting Bridge's and Sacco's fraud, but their liability would not exonerate Edge and Robles. 76/

75/ The credibility determination of an initial fact finder is entitled to considerable weight and deference because it is based on hearing the witnesses' testimony and observing their demeanor. See Rita J. McConville, Exchange Act Rel. No. 51950 (June 30, 2005), 85 SEC Docket 3127, 3136 n.21, petition denied, 465 F.3d 780 (7th Cir. 2006), reh'g denied, 2007 U.S. App. LEXIS 926 (7th Cir. 2007).

76/ See, e.g., Stephen E. Muth, Exchange Act Rel. No. 52551 (Oct. 3, 2005), 86 SEC Docket 1217, 1242 ("As we have held, even where supervisory responsibility is shared, each individual can be held liable for supervisory failure.") (citing Steven P. Sanders, 53 S.E.C. 889, 904 (1998)); Robert J. Check, 49 S.E.C. 1004, 1008 (1988) ("The fact that other officials . . . shared responsibility for supervising the firm's salesmen did not relieve [respondent] of his supervisory obligations.") (citing Michael E. Tennenbaum, 47 S.E.C. 703)). See also Rita H. Malm, 52 S.E.C. 64, 76 (1994) (finding supervisory deficiency
(continued...)

The record also indicates that, notwithstanding a general inquiry into the business risks attendant to market-timing accounts by the Winter group, the Winter Report does not demonstrate that Respondents sought or were given permission to engage in the evasive tactics they used to continue market timing for their clients. Respondents characterized the Winter Group as having "thoroughly investigated the market timing practices occurring at [A.G. Edwards], documented the various practices they observed as early as the fall of 2002, and made recommendations to implement policies prohibiting market timing . . . ." However, Winter testified that the report was put together "very quickly," that in researching the matter "nobody really went to much depth," and that the intent of the document was to give a "general feel of what was going on." Although the report contains attached examples of Restriction Notices related to Bridge's and Sacco's market-timing trades, testimony suggests that the extent and details of Bridge's and Sacco's conduct were not generally known to the Winter Group. Significantly, no one in the Winter Group communicated approval of the evasive tactics to any of the Respondents and, indeed, the ultimate recommendation of the Report was to cease doing business with market timers. Further, the Winter Report was finalized and distributed to a limited group of A.G. Edwards officials (not including Respondents) in April 2003, well after most of the conduct at issue in this case took place. The Winter Report is not, therefore, persuasive evidence of the Firm's knowledge or approval of Bridge's and Sacco's efforts to evade trading restrictions and provides no defense to the allegations that Edge and Robles failed to provide reasonable supervision. 77/

76/ (...continued)
and noting that violations of law by others "does not absolve [respondent] of responsibility" for reasonable supervision).

77/ Respondents claim that the law judge's findings of violation against Edge and Robles were based on "extreme bias," which they allege was demonstrated by an analogy – made by the law judge during opening statements – between market timing and "beating your wife." Respondents argue that the analogy "evidences . . . her total misunderstanding of the charges she was presiding over – circumvention of restriction letters, not market timing." [Emphasis in original.] However, Respondents point to no prejudice suffered other than their general disagreement with the law judge's factual and legal conclusions. Moreover, in her decision, the law judge made clear her understanding that "[m]arket timing is not illegal per se," and concluded that Bridge's and Sacco's actions were deceptive. We believe the record demonstrates that the law judge permitted Respondents to defend themselves fully and that she accorded them a fair hearing. See Robert D. Potts, 53 S.E.C. 187, 209 (1997) (rejecting argument that law judge was prejudiced against respondent and observing that respondent was able to defend himself fully and received fair hearing), aff'd, 151 F.3d 810 (8th Cir. 1998), cert. denied, 526 U.S. 1097 (1999). Moreover, our review of this matter "dissipat[es] the possibility of bias" and, having reviewed Respondents' claims against the "fairness and reasonableness of the law judge's evidentiary rulings and factual and legal conclusions," we conclude that "this
(continued...)

C. Procedural Claim

Respondents challenge the law judge's decision to deny their pre-hearing request for the production of the "Division's complete file regarding Charles Sacco," along with "[n]otes and memoranda of witness statements," and "[a]ll materials obtained by any Division of the Commission regarding all of the mutual fund companies at issue in this case." Respondents contend that the law judge's denial of their request resulted in prejudice to them by

> depriving the Respondents of: (1) documents directly relevant to Mr. Sacco's credibility and impeachment as a witness for the Division, including sworn statements Mr. Sacco provided to the Commission in connection with settling administrative proceedings based on the very same activity the Division alleged against the Respondents in this action; and (2) potentially exculpatory material in the Commission's investigative files regarding the mutual fund companies the Division alleged sent letters to A.G. Edwards purportedly communicating their clear request that active trading in their funds immediately stop.

Respondents claim that the order was "in contravention of the Commission's Rules of Practice, the Jencks Act, Brady v. Maryland, and other relevant law." Respondents' contention is without merit because Respondents do not demonstrate that they were entitled to the information sought under any of these criteria.

1. Rule 231

Commission Rule of Practice 231(a) provides:

> Any respondent in an enforcement or disciplinary proceeding may move that the Division of Enforcement produce for inspection and copying any statement of any person called or to be called as a witness by the Division of Enforcement that pertains, or is expected to pertain, to his or her direct testimony and that would be required to be produced pursuant to the Jencks Act. 78/

The Division represents that it produced copies of prior statements of its proposed witnesses to Respondents eighteen days before the start of the hearing and that Respondents did not indicate

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77/ (...continued)
remedial action may be properly based on the record as developed before the law judge." Id. at 209-10.

78/ 17 C.F.R. § 201.231(a). The Jencks Act requires production, on demand, of a statement that relates to the subject matter of the testimony of witness. 15 U.S.C. § 3500.

that they were dissatisfied with the production of materials at that time. The Division further represents that it voluntarily produced draft versions of Sacco's offer of settlement and settled order in a related administrative proceeding, copies of Sacco's tax returns and W-2 forms (with only tax identification information and personal addresses redacted), and copies of related correspondence with other regulators. The Division states that it declined to produce "highly-sensitive financial disclosures [i.e., sworn financial statements] that Sacco made to the Division in June 2006 related to his financial condition at that time because they were outside the scope of . . . Rule 231 since Sacco's financial condition in June 2006 was not relevant to the proceeding [which involved 2002-2003 conduct], and the documents were not 'expected to pertain' to Sacco's direct testimony or otherwise required by the Jencks Act." We agree that these withheld financial statements fall outside the scope of Rule 231(a) and were not otherwise required to be disclosed because (1) they were not expected to, and did not, pertain to Sacco's direct testimony, and (2) in relation to the Jencks Act requirements, they are not statements that relate to the subject matter of his direct testimony.

2. Rule 230

Commission Rule of Practice 230(a)(1) provides that "the Division of Enforcement shall make available for inspection and copying by any party documents obtained by the Division prior to the institution of proceedings, in connection with the investigation leading to the Division's recommendation to institute proceedings." 79/ The Division represents that it made available its entire non-privileged investigative file to Respondents well in advance of the hearing. 80/ The Division also represents that, pursuant to a request by the law judge during a pre-hearing conference on May 29, 2007, the Division ascertained "whether any other Division offices had investigative materials related to Respondents." Based on its efforts, the Division identified two compact discs possessed by staff in the New York Regional office regarding Sacco's market timing customer, Headstart, determined that no other Division offices possessed materials related to Respondents, promptly informed Respondents of its search, and included the compact discs for copying along with the rest of the entire non-privileged investigative file.

79/ 17 C.F.R. § 201.230(a)(1).

80/ Respondents state that, rather than traveling to review the Division's investigative file, they requested an index from the Division so that they could determine what they wanted to copy. The Division provided an index – although not required to do so under the Rule – and Respondents requested that all materials listed in the index be produced. The Division complied with Respondents' request and produced the entire investigative file, except for documents it excluded under Rule 230(b), as discussed below.

To the extent the Division withheld certain documents, it did so pursuant to Rule 230(b)(1). 81/ Rule 230(c) vests the law judge with discretion to determine whether the Division's withholding of documents was appropriate. 82/ The law judge reviewed the Division's list of withheld material and determined that the Division has acted properly. Respondents do not specify what they believe was improperly withheld. We have reviewed that list and see no reason to disagree with the law judge's determination.

Rule 230(b)(2) provides that "[n]othing in this paragraph (b) authorizes the Division of Enforcement in connection with an enforcement or disciplinary proceeding to withhold, contrary to the doctrine of Brady v. Maryland, 83/ documents that contain material exculpatory evidence." 84/ The Commission has held that, "[t]o trigger the obligation to disclose under Brady, the evidence must be 'material either to [the defendant's] guilt or punishment' . . . ." 85/ As the Commission has held, Brady does not "authorize a wholesale 'fishing expedition' into investigative material." 86/ Moreover, "the purpose of the Brady rule is not to provide a defendant with a complete disclosure of all evidence . . . which might conceivably assist him in preparation of his defense." 87/ "'Brady is not a discovery rule, instead, it is intended to insure

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81/ 17 C.F.R. § 201.230(b)(1). Pursuant to this rule, the Division may withhold documents if the document is privileged; the document is an internal memorandum, note, or writing prepared by a Commission employee, other than an examination or inspection report, or is otherwise attorney work product; the document would disclose the identity of a confidential source; or the hearing officer grants leave to withhold a document or category of document as not relevant to the subject matter of the proceeding or otherwise, for good cause shown.

82/ 17 C.F.R. § 201.230(c).

83/ 373 U.S. 83, 87 (1963).

84/ 17 C.F.R. § 201.230(b)(2).

85/ Elizabeth Bamberg, 50 S.E.C. 201, 205 (1990) (citation omitted).

86/ See Jett, 52 S.E.C. at 830 ("[I]t is well established that the Supreme Court's Brady decision does not authorize respondents to engage in "fishing expeditions" through confidential Government materials in hopes of discovering something helpful to their defense.") (citation omitted); Haight & Co., 44 S.E.C. 481, 510-511 (1971) (rejecting respondents' argument that the Division of Enforcement improperly suppressed evidence favorable to their defense) (citation omitted).

87/ Rooney, Pace Inc., 48 S.E.C. 602, 606 n.7 (1986) (citing United States v. Ruggiero, 472 F.2d 599, 604 (2d Cir. 1973)).

that exculpatory material known to the Division is not kept from the respondent.'" 88/ The Division represents that it is not aware of any Brady material in any of the investigative files at issue. Respondents point to no evidence to contradict this representation. 89/ We conclude that the Division complied with the requirements of Rule 230.

3. Rules 231(b) and 230(h)

Commission Rules of Practice 231(b) and 230(h) provide that, even if Respondents were entitled to the information sought, which we do not find that they were, no rehearing or redecision of a proceeding already heard or decided is required, unless Respondents establish that the Division's failure to make a document available or to turn over a statement was not harmless error. 90/ Respondents do not satisfy this standard.

With respect to the information Respondents seek regarding Sacco, Respondents' claim that they were prevented from undermining Sacco's credibility in connection with his testimony as a witness for the Division is inconsistent with their reliance on Sacco's testimony in support of their defense. It is also unclear how Sacco's 2006 financial status would affect his credibility. Moreover, Respondents had the opportunity to examine, and did cross-examine, Sacco.

With respect to the information Respondents seek from certain mutual fund companies about market-timing practices, Respondents assert that it was "potentially exculpatory." Respondents testified and introduced documents related to certain practices and had the

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88/ Warren Lammert, Exchange Act Rel. No. 56233 (Aug. 9, 2007), 91 SEC Docket 856, 866 & n.29 (citing David M. Haber, Exchange Act Rel. No. APR-418 (Feb. 2, 1994), 55 SEC Docket 3333, 3334).

89/ Respondents rely on a decision by a Commodity Futures Trading Commission ("CFTC") law judge in Global Minerals & Metals Corp., C.F.T.C. No. 99-11, 2003 WL 23112470, at *1 (Jan. 6, 2004), to support their broader reading of the Division's Brady obligations. We have stated that "rulings by a CFTC law judge are not binding precedent on us." Lammert, 91 SEC Docket at 866. Further, Global Minerals does not stand for the proposition for which Respondents cite it. Respondents in Global Minerals identified specific exculpatory (not potentially exculpatory) evidence that the CFTC's Division of Enforcement was alleged to have knowledge of and withheld. The law judge concluded that the record provided sufficient reason to believe that the specific evidence may have been located in other CFTC offices because a certain individual associated with the evidence had changed positions within the CFTC. Thus, the law judge ordered the Division to search for the specific evidence in the locations that were "reasonably calculated to discover" such material. Here, Respondents have offered no evidence to indicate that a situation similar to the Global Minerals matter exists in this proceeding.

90/ 17 C.F.R. §§ 201.231(b), 201.230(h).

opportunity to subpoena documents and witnesses in this regard but appear not to have done so. Respondents also had the opportunity to examine, and did cross-examine, the Division's witnesses regarding mutual fund companies' market-timing practices.

Accordingly, we reject Respondents' procedural claim that they were improperly denied access to certain documents.

IV.

A. Cease-and-Desist Order

Securities Act Section 8A and Exchange Act Section 21C authorize the Commission to enter a cease-and-desist order against any person who "is violating, has violated, or is about to violate" any provision of the Securities Act or Exchange Act, respectively, or rule or regulation thereunder. 91/ In considering whether a cease-and-desist order against Bridge is appropriate, we look to whether there is some risk of future violations. 92/ We also consider whether other factors demonstrate a need for a cease-and-desist order, including the seriousness of the violation, its isolated or recurrent nature, whether the violations is recent, the respondent's state of mind, the sincerity of assurances against future violations, the opportunity to commit future violations, and the remedial function to be served by a cease-and-desist order in the context of any other sanctions sought in the proceeding. 93/

Bridge employed a variety of deceptive tactics for more than eighteen months to facilitate market timing by his clients and, thereby, generate significant income for himself. These fraudulent activities were serious and occurred repeatedly over an extended period of time. Bridge refuses to recognize that his actions were deceptive. The issuance of a cease-and-desist order would serve the remedial purpose of obliging Bridge to take his responsibilities more seriously in the event he works in the industry in the future. Moreover, the antifraud provisions

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91/ 15 U.S.C. §§ 77h-1, 78u-3. These sections do not authorize imposition of a cease-and-desist order upon persons, like Edge and Robles, who have failed reasonably to supervise, and we therefore consider only whether this remedy is appropriate as to Bridge.

92/ KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1185 (2001), reh'g denied, 55 S.E.C. 1 (2001), petition denied, 289 F.2d 109 (D.C. Cir. 2002). The risk of future violations required to support a cease-and-desist order is significantly less than that required for an injunction. Id. at 1191. "A single violation can be sufficient to indicate some risk of future violation." Amanat, 89 SEC Docket at 735 n.64 (citing Geiger v. SEC, 363 F.3d 481, 489 (D.C. Cir. 2004)).

93/ KPMG, 54 S.E.C. at 1192.

"apply to securities transactions by 'any person.'" 94/ A cease-and-desist order is therefore necessary to protect the public against future violations that Bridge could commit without being an associated person of a broker-dealer. Accordingly, we find it is in the public interest to order that Bridge cease and desist from committing or causing any violations or future violations of Securities Act Section 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b-5.

B. Associational and Supervisory Bars

Exchange Act Section 15(b)(6) authorizes us to censure, place limitations on, suspend, or bar a person associated with a broker or dealer if we determine that the person has, among other things, willfully violated the federal securities laws and it is in the public interest to do so. 95/ We have indicated that, in determining what sanction is in the public interest, we consider the factors in Steadman v. SEC. 96/ Those factors include the egregiousness of a respondent's actions, the degree of scienter involved, the isolated or recurrent nature of the infraction, the recognition of the wrongful nature of the conduct, the sincerity of any assurances against future violations, and the likelihood that the respondent's occupation will present opportunities for future violations. 97/

1. Bridge

Bridge participated in a deceptive market-timing scheme over eighteen months that defrauded many mutual funds and investors in those funds. 98/ The Division's expert calculated that, over the period, market-timing trades that Bridge placed diluted the value of affected mutual fund shares by $0.9 million. 99/ Bridge acted with a high degree of scienter, given his admitted

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94/ Cady, Roberts & Co., 40 S.E.C. 907, 911 (1961).

95/ 15 U.S.C. § 78o(b)(6).

96/ 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981).

97/ Id.

98/ We have observed previously that conduct that violates the antifraud provisions "is especially serious and subject to the severest sanctions." Justin F. Ficken, Advisers Act Rel. No. 2803 (Oct. 17, 2008), 94 SEC Docket 10887, 10891 & n.20 (citing cases).

99/ See text accompanying note 21, supra. Bridge does not dispute Harris' method of calculating the harm to shareholders, but he argues that Harris' figure is too high because it "failed to distinguish dilution resulting from market timing – which everyone agrees is not illegal – and dilution resulting from fraud." We accept Harris' calculation as a fair representation of the harm done shareholders. As explained infra with respect to Bridge's (continued...)

desire to enable his client to continue market timing using tactics that he believed would effectively circumvent the Restriction Notices he received. As described above, Bridge fails to recognize the wrongfulness of his conduct and offers no assurances against future violations. Although Bridge does not appear to be currently employed in the securities industry, his relative youth would permit him to reenter the industry at any time, and for some time to come. These factors lead us to conclude that a bar from association with any broker or dealer, with a right to reapply after five years, is necessary to protect the public interest and will serve a remedial purpose.

2. Edge

Edge acted with the same high degree of scienter exhibited by Bridge, facilitating Bridge's evasion of trading restrictions to help effect Oliner's market-timing strategy despite the objections of mutual funds. Edge was aware of, and assisted, Bridge's scheme throughout the period. Edge fails to appreciate the impropriety of Bridge's fraudulent scheme and especially his own role in furthering it. He continues to shift the responsibility for recognizing and preventing fraud to others in his firm while accepting none for himself. Although Edge appears not to be currently employed in the securities industry, nothing prevents his reentry. 100/ We have determined that a supervisory bar, with a right to reapply after five years, will encourage Edge and others similarly situated to take more seriously their supervisory responsibilities and will thereby help protect the public from dealing with securities professionals who are not adequately supervised.

3. Robles

Although we recognize that Robles' level of scienter appears to have been less than Edge's, his abdication of his supervisory duties, under the circumstances, is nevertheless troubling. Robles supervised Sacco during the seventeen months that Sacco committed fraud. During that time, the hundreds of Restriction Notices and thousands of trade cancellations triggered by Sacco's activity should have inspired Robles to take some action to investigate, understand, and perhaps stop Sacco's scheme. Moreover, like Edge, Robles has continuously insisted that any supervisory failing that may have occurred was the fault of A.G. Edwards and not his own. Also like Edge, Robles may reenter the securities industry at any time, even though

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99/ (...continued)
arguments about disgorgement, we consider all of the market-timing trades Bridge placed for the Oliner-controlled accounts to be part of the scheme to evade trading restrictions regardless of whether they triggered a Restriction Notice from the affected fund.

100/ Enforcement did not originally seek, and we decline to impose, a suspension or bar against Edge or Robles in all capacities.

he is not currently employed in it. 101/ We find that Robles' inaction and asserted blind trust of Sacco in the face of numerous red flags evidences a "fundamental misunderstanding of his supervisory duties that presents a significant likelihood that he will commit similar violations in the future." 102/ We therefore conclude that a supervisory bar, with a right to reapply in three years, is necessary to protect the public interest and will serve a remedial purpose.

C. Disgorgement

Securities Act Section 8A and Exchange Act Section 21C authorize the Commission to require disgorgement, including reasonable interest, in a cease-and-desist proceeding. 103/ "Disgorgement is an equitable remedy designed to deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws." 104/ "[T]he amount of disgorgement should include 'all gains flowing from the illegal activities.'" 105/ "The disgorged amount must be 'causally connected to the violation,' but it need not be figured with exactitude." 106/

The law judge ordered Bridge to disgorge $39,808.53, plus prejudgement interest, based on her finding that this amount, which Bridge admittedly earned in fees based on Oliner's assets held in the accounts, reasonably approximated the amount of unjust enrichment. This disgorgement order was consistent with the Gann court's finding that it was "'remedial and not punitive'" to order Gann to disgorge the $56,640.67, plus prejudgment interest, that he admittedly earned in fees, based on the customer's assets held in the account, "for the work that he performed on behalf of [his market timing client]." 107/

Bridge claims that the "alleged 'unjust enrichment' [he] obtained only pertains to those commissions earned by placing market timing trades through the alleged circumventing activity –

101/ See supra note 100.

102/ Stephen J. Horning, Exchange Act Rel. No. 56886 (Dec. 3, 2007), 92 SEC Docket 207, 226 , aff'd, No. 08-1038 (D.C. Cir. June 26, 2009).

103/ 15 U.S.C. §§ 77h-1; 78u-3.

104/ SEC v. First City Fin. Corp., 890 F.2d 1215, 1230 (D.C. Cir. 1989).

105/ SEC v. JT Wallenbrock & Assocs., 440 F.3d 1109, 1114 (9th Cir. 2006).

106/ Druffner, 517 F. Supp. 2d at 512 (citing SEC v. Happ, 392 F.3d 12, 31 (2004)).

107/ Gann, at *5, *11. Similarly, the Druffner court found that it was appropriate to order Ficken to disgorge $732,281, plus prejudgement interest, that he admittedly earned in "commissions from his market timing activities." Druffner, 517 F. Supp. 2d at 511. It is unclear whether Ficken earned income based on commissions per trade or assets in the account.

not all market timing activity." Bridge does not explain how "the alleged circumventing activity" is different from, i.e., a subset of, "all market timing activity." The evidence demonstrates that they are one and the same. Bridge's entire relationship with Oliner seems to have been based on his willingness to use deceptive tactics to facilitate the client's market timing, and he does not dispute that all trades considered in the calculation are related to Oliner's accounts. To the extent that Bridge is arguing that "the alleged circumventing activity" includes only trades that were associated with Restriction Notices, rejections, or cancellations, we disagree. The evidence demonstrates that the purpose of Bridge's scheme was to evade the trading restrictions and that he did so successfully. Thus, to exclude the seemingly innocuous trades that were not associated with Restriction Notices, rejections, or cancellations, but which nevertheless contained misleading identifying information, would ignore much of the deception that he practiced on the mutual funds. Bridge does not present any evidence of trades that were disconnected from the violative conduct. We therefore reject his distinction. 108/

Moreover, Bridge earned income from the fees that Oliner paid on a quarterly basis, determined, as in Gann, with respect to the assets held in the accounts, not from individual trades. Once the Division demonstrated that its disgorgement amount was a reasonable approximation of Bridge's unjust enrichment through his willingness to engage in fraud on his client's behalf, the burden shifted to Bridge to show that such amount was not reasonable. 109/ Bridge did not suggest an alternative calculation. We therefore conclude that it is in the public interest for Bridge to disgorge $39,808.53, plus prejudgment interest.

D. Civil Money Penalties

Exchange Act Section 21B(a) authorizes the Commission to assess a civil money penalty where a respondent has willfully violated the Exchange Act or rules and regulations thereunder, and where such a penalty is in the public interest. 110/ It specifies a three-tier system identifying the types of conduct that warrant increasingly higher penalty amounts. For each act or omission

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108/ See also SEC v. Lorin, 76 F.3d 458, 462 (2d Cir. 1996) (rejecting appellants' request to distinguish transactions where it was within the discretion of the district court to reason that all trades made involving securities at issue were in connection with violative conduct).

109/ Id. at 462. ("Where disgorgement calculations cannot be exact, 'any risk of uncertainty . . . should fall on the wrongdoer whose illegal conduct created that uncertainty.'"); see also SEC v. First City Fin. Corp., 890 F.2d at 1232 (finding that the burden shifts to the wrongdoer to show what transactions were unaffected by his offenses).

110/ 15 U.S.C. § 78u-2(a). In deciding whether a penalty is in the public interest, the Commission may consider the following six statutory factors: (1) fraud; (2) harm to others; (3) unjust enrichment; (4) prior violations; (5) need for deterrence; and (6) such other matters as justice requires. 15 U.S.C. § 78u-2(b).

by a person that violates the Exchange Act or related rules, the maximum amount of a penalty is \$6,500 in the first tier. 111/ For each act or omission by a person that involved "fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement," the maximum amount is \$60,000 in the second tier. 112/ For each act or omission that involved fraud and also "directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission," the maximum penalty amount is \$120,000 in the third tier. 113/ The Exchange Act also requires that, in determining whether civil penalties are in the public interest, we examine the above factors and also the respondent's prior disciplinary history, the need to deter others, and other matters as justice may require. 114/

1. Bridge

We find third-tier penalties appropriate to address Bridge's misconduct. Bridge engaged in deceptive acts designed to circumvent trading restrictions. His fraudulent activities directly or indirectly caused almost \$1 million in dilution losses to mutual fund shareholders and resulted in commissions of almost \$40,000 for himself. Imposition of a civil penalty is necessary to deter Bridge and others from similar misconduct. Although the Exchange Act permits us to impose a maximum of \$120,000 per violative act or omission, we have determined, in light of the circumstances here and the other sanctions imposed, to levy a penalty of \$60,000 for each of the four Oliner-controlled subsidiaries' accounts that Bridge fraudulently traded on Oliner's behalf, for a total penalty amount of \$240,000.

2. Edge

Edge was complicit in Bridge's fraud. His failure to supervise Bridge evidenced at least a reckless disregard for regulatory requirements, including the antifraud statutes and regulations as well as his supervisory duties. We find, therefore, that his conduct warrants a second-tier civil penalty, which is necessary to deter Edge and others from similar misconduct. Although in these circumstances the Exchange Act authorizes a maximum penalty of \$60,000 per violative act or omission, we have determined, in light of the other sanctions we impose against Edge, to impose a penalty of \$30,000 for each of the four Oliner-controlled subsidiaries' accounts in which Edge permitted Bridge to fraudulently trade. We therefore conclude that a total civil penalty of

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111/ See 15 U.S.C. § 78u-2(b)(1). Pursuant to the Debt Collection Improvement Act of 1996, the Commission has increased the maximum penalty amounts from those that appear in the text of the Exchange Act. See 17 C.F.R. § 201.1002, Subpt. E, Table II.

112/ 15 U.S.C. § 78u-2(b)(2).

113/ 15 U.S.C. § 78u-2(b)(3).

114/ 15 U.S.C. § 78u-2(c).

$120,000 is appropriate in light of our need to protect the investing public against future supervisory failures of this kind.

3. Robles

The record does not permit us to conclude that Robles was reckless, but his supervisory failures, in light of the red flags that should have marked Sacco's trading as deserving of higher scrutiny, were highly negligent. Robles' failure to appreciate his own important role in the detection and prevention of wrongdoing by brokers leads us to conclude that a civil penalty is necessary to encourage him and others to discharge their supervisory duties with more diligence than exhibited here. We therefore impose a first-tier civil penalty of $6,500 for each of the six entities' accounts (including the four Headstart subsidiaries, Credit Lyonnais, and Atlantique) in which he permitted Sacco to trade fraudulently, for a total penalty amount of $39,000.

4. Inability to Pay

All three Respondents argue that they are unable to pay the monetary sanctions levied against them by the law judge. 115/ Under Rule of Practice 630(a), we may, in our discretion, consider evidence of ability to pay in determining whether a respondent should be required to pay disgorgement, interest, or civil penalties. 116/ Ability to pay, however, is only one factor that informs our determination and is not dispositive. 117/

115/ The Division urges that the Commission should deem their argument waived because Respondents failed to raise it before the law judge. See David Henry Disraeli, Exchange Act Rel. No. 57027 (Dec. 21, 2007), 92 SEC Docket 852, 882 (finding that respondent "waived his right to assert the defense of an inability to pay because he did not raise the issue before the law judge below" and stating that evidence regarding a newly-claimed inability to pay will be admitted only if it comports with the requirements of Rule 452, i.e., "that such evidence is material and that there were reasonable grounds for failure to adduce such evidence previously."). However, it is uncontested that Bridge, Edge, and Sacco were terminated by A.G. Edwards upon the issuance of the law judge's decision. We find that these changed circumstances are sufficient to explain their failure to raise the issue below.

116/ 17 C.F.R. § 201.630(a).

117/ See, e.g., Brian A. Schmidt, 55 S.E.C. 576, 597-98 (2002) (noting that, under Exchange Act Section 21B, ability to pay a penalty is but one factor to consider in determining whether a penalty is in the public interest); SEC v. Warren, 534 F.3d 1368, 1370 (11th Cir. 2008) (per curiam) (stating that "at most" a defendant's ability to pay is one factor to be considered in imposing a civil money penalty or disgorgement for violations of the federal securities laws).

Bridge claims a negative net worth of over $485,000; however, the documentation he submitted demonstrates his income before he was terminated by A.G. Edwards but does not substantiate his claimed expenses 118/ and fails to explain why certain sizeable loans are not at least partially offset by the value of the assets collateralizing those loans. 119/ Robles' submission is also problematic because, although he claims a net worth of $107,944 (a figure that arguably demonstrates that he has the means to pay a civil penalty), he has submitted no supporting documentation to substantiate his asserted net worth. 120/ Edge claims a net worth of only $17,900 and notes that he has no current income and is the caretaker of two dependent children.

Although we consider claims of inability to pay in assessing sanctions, we weigh those claims against the public interest that would be served by a strict sanction. We have held that when conduct is "sufficiently egregious," the Commission may impose a sanction despite a demonstrated inability to pay. 121/ We find that the egregiousness of Bridge's and Edge's conduct outweighs any reason presented here for us to grant a discretionary waiver of disgorgement, prejudgment interest, and/or penalties. Bridge engaged in a scheme to defraud

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118/ We note that some of these claimed expenses include non-essential items like country club dues.

119/ On July 18, 2008, the Division requested leave to file a sur-reply, in which the Division, among other arguments, urges us to ignore the tax returns that Bridge submitted late as evidence of his inability to pay. Given our determination to deny Bridge's claimed inability to pay, we reject the Division's motion as moot. See supra note 58.

120/ See, e.g., Philip A. Lehman, Exchange Act Rel. No. 54660 (Oct. 27, 2006), 89 SEC Docket 536, 549 (finding respondent's evidence of inability to pay "neither adequate nor credible because his assertions variously are vague, unsubstantiated, inconsistent, or contradicted by reliable evidence").

121/ Lehman, 89 SEC Docket at 543 ("Even when a respondent demonstrates an inability to pay, we have discretion not to waive the penalty, particularly when the misconduct is sufficiently egregious."); see also Schmidt, 55 S.E.C. at 600 (finding that, although respondent's "financial statements, on their face, indicate that he is impecunious, the egregiousness of his conduct outweighs any consideration of his ability to pay"); Charles Trento, Securities Act Rel. No. 8391 (Feb. 23, 2004), 82 SEC Docket 785, 793 ("Even accepting [respondent's] financial report at face value, we find that the egregiousness of his conduct far outweighs any consideration of his present ability to pay a penalty.").

mutual funds and their shareholders, and Edge knowingly facilitated that scheme. We conclude that, in light of all the circumstances present in this case, the disgorgement and penalties imposed against Respondents are necessary to deter others from defrauding, or failing to detect and prevent others from defrauding, mutual funds and their shareholders through illegal and deceptive trading practices.

An appropriate order will issue. 122/

By the Commission (Chairman SCHAPIRO and Commissioners CASEY, WALTER, AGUILAR, and PAREDES).

Elizabeth M. Murphy
Secretary

122/ We have considered all of the arguments advanced by the parties. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Rel. No. 9068 / September 29, 2009

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 60736 / September 29, 2009

Admin. Proc. File No. 3-12626

In the Matter of

THOMAS C. BRIDGE
JAMES D. EDGE
and
JEFFREY K. ROBLES

c/o Ruberto, Israel & Weiner, P.C.
100 North Washington St.
Boston, Massachusetts 02114

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's opinion issued this day, it is

ORDERED that Thomas C. Bridge be, and he hereby is, barred from association with any broker or dealer with a right to reapply after five years; and it is further

ORDERED that Thomas C. Bridge cease and desist from committing or causing any violations or future violations of Section 17(a) of the Securities Act of 1933, Sections 10(b) of the Exchange Act of 1934, and Exchange Act Rule 10b-5; and it is further

ORDERED that Thomas C. Bridge disgorge $39,808.53, plus prejudgment interest of $16,665.57, such prejudgment interest calculated beginning from November 1, 2003, in accordance with Commission Rule of Practice 600; and it is further

ORDERED that Thomas C. Bridge pay a civil money penalty in the amount of $240,000; and it is further

ORDERED that James D. Edge be, and he hereby is, barred from association with any broker or dealer in a supervisory capacity with a right to reapply after five years; and it is further

ORDERED that James D. Edge pay a civil money penalty in the amount of $120,000; and it is further

ORDERED that Jeffrey K. Robles be, and he hereby is, barred from association with any broker or dealer in a supervisory capacity, with a right to reapply after three years; and it is further

ORDERED that Jeffrey K. Robles pay a civil money penalty in the amount of $39,000.

Payment of the amount to be disgorged and the civil money penalties shall be: (i) made by United States postal money order, certified check, bank cashier's check, or bank money order; (ii) made payable to the Securities and Exchange Commission; (iii) mailed or delivered by hand to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, VA 22312; and (iv) submitted under cover letter that identifies the respondent and the file number of this proceeding. A copy of the cover letter and check shall be sent to Paul G. Gizzi, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 3 World Financial Center, 4th Floor, New York, NY 10281.

By the Commission.

Elizabeth M. Murphy
Secretary