

**STATE OF ILLINOIS  
SECRETARY OF STATE  
SECURITIES DEPARTMENT**

\_\_\_\_\_  
IN THE MATTER OF: TIMOTHY R. TOULOUKIAN )  
\_\_\_\_\_) )

FILE NO. 0600467

**SUMMARY ORDER OF DENIAL**

TO THE RESPONDENT: Timothy R. Touloukian  
(CRD#: 2803832)  
305 East 63rd Street Apartment 6N  
New York, New York 10021

C/o Spencer Clarke LLC  
505 Park Avenue  
4th Floor  
New York, New York 10022

WHEREAS, on July 31, 2006, Spencer Clarke LLC, a registered dealer, filed a Form U-4 application for registration of Timothy R. Touloukian (the "Respondent") as a salesperson in the State of Illinois;

WHEREAS, pursuant to the authority granted under Section 11.F of the Illinois Securities Law of 1953 [815 ILCS 5] (the "Act"), the Secretary of State has determined that the Respondent's application for registration as a salesperson in the State of Illinois is subject to a Summary Order of Denial;

WHEREAS, the Secretary of State finds that the grounds for such Summary Order of Denial are as follows:

1. That on July 11, 2006, NASD entered a Letter Of Acceptance, Waiver And Consent (AWC) submitted by the Respondent regarding File No. EAF0400370003 which sanctioned the Respondent as follows:
  - a. fined \$15,000; and
  - b. suspension from association with any member firm in any capacity for 45 days.
2. That the AWC found:

**Summary**

Between January 2003 and September 2003, the Respondent opened approximately eleven accounts for four hedge fund clients at Paulson (his then employing dealer) for the purpose of market-timing mutual funds. During this time, the Respondent received increasing numbers of account blocks and trade rejects from mutual funds that were monitoring his clients' market-timing activities for excessive market timing. In an effort to hide from mutual funds that monitored for brokers that engaged in excessive market timing, the Respondent requested two new broker codes for his market-timing account. Paulson granted the Respondent's requests for new broker codes on July 31, 2003. Thereafter the Respondent executed approximately twenty-four single trades with the new broker codes in mutual funds that had already blocked a trade he had attempted to execute with his preexisting broker codes. As a result, the Respondent was able to trade for clients in funds that may have been monitoring for, and may have rejected trades associated with, his pre-existing broker codes. These trades generated approximately \$30,000 in profits for the Respondent's clients. By requesting and then using additional broker codes for the purpose of hiding his identity from mutual funds, the Respondent violated NASD Rule 2110, which requires registered persons to adhere to high standards of commercial honor and just and equitable principles of trade.

**Back Ground**

Unlike securities listed on an exchange, the NAV of most mutual funds currently is calculated only once per day, based upon closing prices at 4:00 p.m. Eastern Time. This regimen for determining NAV provides market timers the opportunity to engage in arbitrage based on market information not reflected in that day's net asset value. To do this, market timers typically buy and sell shares in mutual funds on a short-term basis, realizing quick gains and then retreating to the previous market position. Market timing is not illegal per se. It can harm mutual fund shareholders, however, because it can dilute the value of their shares, by, among other things, removing profits that would otherwise be shared by all the shareholders, requiring the fund to keep a larger percentage of highly liquid assets to cover redemptions, or by increasing the transaction costs for the fund. Long-term fund investors may ultimately bear the burden of paying these costs. In addition, trading profits obtained by market timers can result in losses to long-term mutual fund shareholders. Many mutual fund companies monitor trading activity for market timing and attempt to enforce restrictions and limitations on market timing through written and oral communications, or notices, blocking or rejecting trades. The notices vary from reminders as to the fund company's market timing policies and procedures, to warnings that an account is permitted one more transaction,

to absolute restrictions from effecting additional transactions in the securities of that fund company ("block notices").

At times, market timers employ a number of strategies to attempt to avoid detection and continue market timing after a mutual fund has attempted to prevent future trading activity. These strategies include using different names and broker code numbers. Market timers undertake these efforts in an attempt to gain more market timing capacity, or increased access to market timing opportunities in any given fund company.

**The Respondent Engaged In Deceptive Market Timing:**

In January 2003, the Respondent opened the first market-timing account for a hedge fund client at Paulson. The Respondent's market-timing business grew until he had a total of eleven market-timing accounts, managed by four hedge funds. These accounts were opened for the express purpose of market timing and they managed a total of approximately \$21 million in assets in the Respondent's customers' accounts. In total, between January 2003 and September 2003, the Respondent processed over 1,300 trades in over forty fund families for these clients.

Between January and May 2003, mutual fund companies rejected an increasing number of trades from the Respondent's accounts for excessive market timing. In many of these trade rejects, the mutual fund companies warned the Respondent that market timing was detrimental both to the management of the fund and long-term shareholders and was not a proper investment purpose. In addition, some of the trade rejects sent by the mutual funds identified the Respondent's broker code and the broker name that was assigned to the account. By May 1, 2003, the Respondent received approximately thirteen communications from mutual funds rejecting trades, restricting accounts, or otherwise curtailing the market-timing activity of his clients.

In May 2003, the Respondent approached his hedge-fund clients about ways to increase his market-timing business with them. He took notes based upon his conversations with the clients. During these conversations, the Respondent's clients told him that they were "not pleased with the amount of cancelled trades" and that "capacity" to market time was "shrinking with the rep numbers we have." The Respondent wrote that "changing and or getting multiple rep numbers is key to our survival" and that "if we are less identifiable, we will be able to trade more successfully!"

Shortly after his conversations with his clients about ways to increase their business with him, the Respondent requested new broker codes from the President of Paulson. The Respondent requested the new broker codes

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to hide from mutual funds that monitored for brokers that engaged in excessive market timing. In the meantime, the Respondent's market-timing business increased, as did the communications from mutual funds restricting the market timing of his clients.

On July 31, 2003, Paulson's President granted the Respondent's request for new broker codes. The Respondent was then provided a new broker code that he shared with a junior broker, who performed administrative duties and received a small portion of commissions generated with trades executed under the new broker code. In addition, the Respondent was also assigned a new broker name for these codes - MITEOJ - that consisted of the Respondent's first name, combined with the first name of a junior broker, and then spelled backwards.

The Respondent made approximately twenty-four trades with these new joint broker codes and broker names in mutual funds that had already blocked a trade processed by the Respondent with his pre-existing broker codes and broker names. As a result, the Respondent was able to trade in funds that may have been monitoring for, and may have rejected trades associated with, his old broker code. By requesting and using additional broker codes for the purpose of hiding his identity from mutual funds, the Respondent violated NASD Rule 2110, which requires registered persons to adhere to high standards of commercial honor and just and equitable principles of trade.

3. That Section 8.E(1)(j) of the Act provides, *inter alia*, that the registration of a salesperson may be denied if the Secretary of State finds that such salesperson has been suspended by any self-regulatory organization registered under the Federal 1934 Act or the Federal 1974 Act arising from any fraudulent or deceptive act or a practice in violation of any rule, regulation or standard duly promulgated by the self-regulatory organization.
4. That the NASD is a self-regulatory organization as specified in Section 8.E(1)(j) of the Act.
5. That by virtue of the foregoing, the Respondent Timothy R. Touloukian's registration as a salesperson in the State of Illinois is subject to denial pursuant to Section 8.E(1)(j) of the Act.

NOW IT IS HEREBY ORDERED THAT:

The Respondent Timothy R. Touloukian's application for registration as a salesperson in the State of Illinois is **DENIED**, subject to the further Order of the Secretary of State.

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A public hearing will be set within thirty (30) days of the Respondent's filing a written request for hearing with the Secretary of State at 69 west Washington Street, Suite 1220, Chicago, Illinois 60602. Said hearing will be held at the aforesaid address before a Hearing Officer duly designated by the Secretary of State. A copy of the Rules under the Act pertaining to contested cases is attached to this Order.

YOUR FAILURE TO REQUEST A HEARING WITHIN THIRTY (30) DAYS AFTER RECEIPT OF THIS ORDER SHALL CONSTITUTE AN ADMISSION OF ANY FACTS ALLEGED HEREIN AND SHALL CONSTITUTE A SUFFICIENT BASIS TO MAKE THIS ORDER FINAL.

You are further notified that if you request a hearing that you may be represented by legal counsel, may present evidence; may cross-examine witnesses and otherwise participate. Failure to so appear shall constitute default, unless any Respondent has upon due notice moved for and obtained a continuance.

Delivery of this Order or any subsequent notice to the designated representative of any Respondent constitutes service upon such Respondent,

ENTERED: This 31<sup>st</sup> day of August 2006

  
JESSE WHITE  
Secretary of State  
State of Illinois

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