

STATE OF ILLINOIS  
SECRETARY OF STATE  
SECURITIES DEPARTMENT

IN THE MATTER OF: RICHARD J. MASSAUX )  
 )  
 )

FILE NO. 0800291

**CONSENT ORDER OF DISMISSAL**

**TO THE RESPONDENT:** Richard J. Massaux (CRD#: 2746156 )  
4 Simsbury Drive  
Voorhees, New Jersey 08043

c/o Wachovia  
Securities, LLC  
One North Jefferson Avenue  
Saint Louis, Missouri 63101

c/o Daniel T. Brown  
Attorney At Law Mayer Brown LLP  
1909 K Street, NW  
Washington, DC 20006

WHEREAS, Respondent on the 28th day of January, 2009 executed a certain Stipulation to Enter Consent Order of Dismissal (the "Stipulation"), which hereby is incorporated by reference herein.

WHEREAS, by means of the Stipulation, Respondent has admitted to the jurisdiction of the Secretary of State and service of the Notice of Hearing of the Secretary of State, Securities Department, dated August 5, 2008 in this proceeding (the "Notice") and Respondent has consented to the entry of this Consent Order of Dismissal "Consent Order").

WHEREAS, by means of the Stipulation, the Respondent acknowledged, without admitting or denying the truth thereof, that the following allegations contained in the Notice of Hearing shall be adopted as the Secretary of State's Findings of Fact:

1. That at all relevant times, the Respondent was registered with the Secretary of State as a salesperson in the State of Illinois pursuant to Section 8 of the Act.
2. That on May 16, 2006 FINRA entered a Letter Of Acceptance, Waiver And Consent (AWC) submitted by the Respondent regarding File No. 2006004542202 Which sanctioned the Respondent as follows:

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- a. suspension from association with any FINRA member firm for a period of three months; and
  - b. Fined \$86,014 (including disgorgement of \$43,007).
3. That the AWC found:

### **OVERVIEW**

During the period March 2002 through the end of January 2003, the respondent and another individual facilitated a hedge fund customer's use of deceptive practices to engage in market timing of mutual fund shares. The Respondent executed trades for the customer through multiple accounts which used multiple partnership names and traded through three registered representative numbers. These activities allowed the hedge fund customer to avoid detection of its market timing activities by mutual fund companies in many instances and to circumvent numerous restrictions on additional trading imposed by those companies. By engaging in this conduct, the Respondent violated NASD Conduct Rule 2110.

### **FACTS AND VIOLATIVE CONDUCT**

#### **Market Timing**

Generally unlike securities listed on an exchange, the NAV of most mutual funds currently is calculated only once per day, based upon closing prices at 4:00p.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.

In an effort to minimize the negative effects of market timing, as disclosed in mutual fund prospectuses, many mutual fund companies maintain policies and procedures to detect and prevent market timing. 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. 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").

**The Philadelphia Office Market Timing Accounts**

In March and April 2002, the Respondent acquired as a customer a local asset management company, which operated a hedge fund ("the Hedge Fund Customer"). The Respondent acted as the registered representative for the Hedge Fund Customer. The Hedge Fund customer told the Respondent that it intended to engage in market timing of international mutual funds. Early in the relationship with the Hedge Fund Customer, branch manager told the Respondent that mutual fund companies might undertake efforts to block or restrict the type of trading that the Hedge Fund Customer intended to pursue.

To enhance its ability to market time without detection, the Hedge Fund Customer created eleven limited partnerships. Between March and July 2002, the Respondent opened a total of forty-four separate accounts for the Hedge Fund Customer, four for each limited partnership. The eleven limited partnership names were used on four accounts each, with the different accounts for each limited partnership bearing a separate number identifier (such as XYZ #1, XYZ #2, XYZ #3, and XYZ #4). Although the limited partnerships outwardly appeared to be separate entities, the Respondent knew or had reason to know that the funds used by partnerships to engage in the trading were all part of the same pool of money. The Hedge Fund Customer in its accounts with the Respondent treated the various partnerships interchangeably. The Hedge Fund Customer regularly commingled money and occasionally moved securities among the limited partnership accounts in transactions effectuated by the Respondent. The Respondent periodically advised the Hedge Fund Customer as to which accounts had or had not been blocked by specific mutual fund companies and which other accounts had available funds to use to continue trading in those mutual funds. The Hedge Fund Customer used this information to avoid detection of its trading activities by mutual funds.

The Hedge Fund Customer's accounts were split evenly between the Respondent and another individual. Accounts with #1 and #3 identifiers were assigned to the Respondent and accounts with #2 and #4 identifiers were assigned to another individual. In addition, for approximately three months, eight of the Hedge Fund Customer's accounts traded under the name and registered representative number of a different broker in the office, who received the commissions for the trades in those accounts. The use of this additional registered representative number interfered with the ability of the mutual fund companies to identify the trades as coming from the same customer, or coming through the same registered representatives.

Shortly after the accounts were opened, the Hedge Fund Customer began to engage in market timing activity. On April 14, 2002, less than a month after the first accounts were opened, the Respondent began receiving restriction notices from mutual fund companies, including blocks on trading of certain funds by specific accounts of the Hedge Fund Customer. A number of fund companies continued to impose blocks or restrictions on the Hedge Fund Customer's accounts from this time through early 2003. The blocks and restrictions were communicated to, or received by the Respondent, in various ways, including calls placed directly to him from mutual fund companies, trade rejections communicated to him by Prudential Securities' mutual fund operations department, e-mails to him from then branch manager and from Prudential Securities' compliance department, and letters sent directly to the Philadelphia branch office or to the Respondent.

By executing trades in multiple accounts, which used multiple limited partnership names and three registered representative numbers, the Respondent assisted the Hedge Fund Customer in avoiding and circumventing mutual fund restrictions and limitations on market timing activity. For instance, the division of accounts under separate registered representative numbers allowed the Hedge Fund Customer to circumvent blocks imposed by certain fund families that had blocked one representative number but not the other. The use of the third registered representative allowed the Hedge Fund Customer to trade in at least one mutual fund that had blocked both of them from trading. In other instances, the use of multiple registered representative numbers helped the Hedge Fund Customer avoid detection of its market timing in the first instance by splitting simultaneous trading between the two representatives. Similarly, the use of multiple accounts and account names allowed the Hedge Fund Customer to avoid detection as a market-timer in the first instance through its practice of "spreading" trades across numerous accounts with different names. The Hedge Fund Customer frequently placed orders for the same funds on the same day in multiple accounts serviced by the Respondent, allowing for trade sizes to be kept smaller than those monitored by fund families and allowing the Hedge Fund Customer to avoid exposure to account-by-account surveillance by the mutual fund companies.

The Respondent also effectuated the movement of funds and securities among accounts of the Hedge Fund Customer, as requested by the customer. These actions helped the Hedge Fund Customer execute trades through one account after another account had been identified and restricted as a market timer by a mutual fund company. Between May 30, 2002 and January 2003, the Respondent effectuated the transfer of more than \$160 million among the various accounts of the Hedge Fund Customer through at least 314 separate journal entries.

Despite the repeated efforts by the mutual fund companies to stop the Hedge Fund Customer's market timing, the Respondent continued to execute short-term mutual fund trades in thirty-eight of the forty-four accounts until late January, 2003. In some instances, he executed trades for the Hedge Fund Customers in different accounts or submitted trades under a different registered representative number after the Hedge Fund

Customer or the Respondent was identified by the mutual fund companies as participating in market timing. These tactics also allowed the Hedge Fund Customer to engage in trading in violation of blocks imposed by mutual fund companies for a number of months. The Respondent facilitated more than 650 trades on behalf of the Hedge Fund Customer in violation of restrictions of blocks placed by the mutual fund companies. These improper trades generated \$53,196 in net commissions to another individual and \$43,007 in net commissions to the Respondent.

By virtue of this misconduct, the Respondent failed to observe high standards of commercial honor and just and equitable principles of trade, and thereby violated NASD Conduct Rule 2110.

4. That Section 8.E(1)(j) of the Act provides, inter alia, that the registration Of a salesperson may be revoked 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.
5. That FINRA is a self-regulatory organization as specified in Section 8.E(1)(j) of the Act.

WHEREAS, by means of the Stipulation Respondent has acknowledged, without admitting or denying the averments, that the following shall be adopted as the Secretary of State's Conclusion of Law:

That by virtue of the foregoing, the Respondent's registration as a salesperson in the State of Illinois is subject to revocation pursuant to Section 8.E(1)(j) of the Act.

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that he shall be levied costs incurred during the investigation of this matter in the amount of One Thousand dollars (\$1,000.00 ). Said amount is to be paid by certified or cashier's check, made payable to the Office of the Secretary of State, Securities Audit and Enforcement Fund.

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that he has submitted with the Stipulation a certified or cashier's check in the amount of One Thousand dollars (\$1,000.00) to cover costs incurred during the investigation of this matter. Said check has been made payable to the Office of the Secretary of State, Securities Audit and Enforcement Fund.

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that he has executed a certain Affidavit which contains undertakings that he will adhere to upon entry of this Consent Order. Said Affidavit is incorporated herein and made a part hereof.

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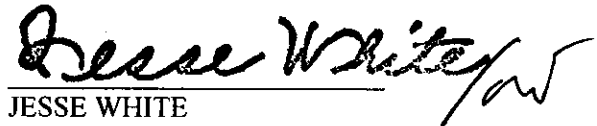
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WHEREAS, the Secretary of State, by and through his duly authorized representative, has determined that the matter related to the aforesaid formal hearing may be dismissed without further proceedings.

NOW THEREFORE IT SHALL BE AND IS HEREBY ORDERED THAT:

1. The Notice of Hearing dated August 5, 2008 is dismissed.
2. The Respondent is levied costs of investigation in this matter in the amount of One Thousand dollars (\$1,000.00), payable to the Office of the Secretary of State, Securities Audit and Enforcement Fund, and on January 29, 2009 has submitted One Thousand dollars (\$1,000.00) in payment thereof.
3. The Respondent shall comply with all of the terms and conditions contained in his accompanying Affidavit which has been made a part of this Order.
4. The formal hearing scheduled on this matter is hereby dismissed without further proceedings.

ENTERED- This 29<sup>th</sup> day of January 2009.



JESSE WHITE  
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State of Illinois

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