

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

**SECURITIES ACT OF 1933**  
**Release No. 8747 / September 29, 2006**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 54545 / September 29, 2006**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-12447**

<b>In the Matter of</b>	)	<b>ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND- DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTIONS 15(b), 15B(c)(4) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934</b>
	)	
	)	
<b>ROBERT K. MALKIN and</b>	)	
<b>CANTELLA &amp; COMPANY, INC.</b>	)	
	)	
<b>Respondents.</b>	)	
	)	
	)	
	)	

**I.**

The Securities and Exchange Commission (the “Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Robert K. Malkin (“Malkin”) and Cantella & Company, Inc. (“Cantella”) (collectively, “Respondents”) pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Sections 15(b), 15B(c)(4) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Public Administrative and Cease-and-Desist

Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b), 15B(c)(4) and 21C of the Securities Exchange Act of 1934, as set forth below.

### **III.**

On the basis of this Order and Respondents' Offers, the Commission finds that:

#### **SUMMARY**

1. This matter involves the purchase and sale of thinly-traded nonrated municipal bonds by Malkin, a registered representative of Cantella, a registered broker-dealer and a registered municipal securities dealer. From at least September 2000 through June 2002, Malkin purchased and sold bonds for his customers' accounts at prices that were not related to the last prevailing market prices for the bonds. The conduct involved approximately thirty transactions that were effected in the accounts of at least nine customers.

#### **RESPONDENTS**

2. Malkin resides in Ojai, California. He has been associated with Cantella as a registered representative from April 1995 to the present. Malkin is employed at Cantella's Ojai, California branch office, and he holds series 7 and 24 securities licenses.

3. Cantella has been registered with the Commission as a broker dealer since 1979. Cantella is headquartered in Boston, Massachusetts.

#### **BACKGROUND**

4. Since approximately 1984, Malkin has specialized in trading thinly-traded nonrated tax-free municipal bonds. Malkin traded these bonds through his own personal accounts and those of his family members. Malkin also directed the bond trading in a Cantella proprietary trading account. Malkin received the profits from that account and was responsible for any losses. Most of his customers had been with him for many years and trusted his advice in purchasing and selling bonds, including providing information regarding the bonds' values and recommending the prices at which to buy and sell the bonds.

5. Many of the bonds traded by Malkin had previously defaulted on their payments of interest and principal, and they generally traded only sporadically. It was not unusual for a particular bond not to trade for a period of days, weeks, or even months. For example, one of the bonds had traded only 117 times over the 33-month period from August 2000 through May 2003. In addition, the prices of the bonds traded by Malkin, especially bonds in default, were generally more volatile than prices for rated corporate or U.S. government bonds or rated municipal bonds.

6. The trustees for many of the bonds in default did not publish to bondholders or others periodic or annual reports. Public information concerning the bonds, including information on their progress (if any) from default status, was often not publicly available.

7. Relatively few broker-dealers traded in the bonds in which Malkin specialized, and price quotations were not always readily available. While some pricing information was reported to and listed on the MSRB, pricing information at the time was only sporadically available. For transactions involving his own accounts, the Cantella trading account, and his customers' accounts, Malkin was responsible for determining the price at which a transaction would be executed. To determine the price at which a bond should be traded, Malkin purported to rely upon the price history of the bonds, offerings from other dealers, his general knowledge of the bonds, and events concerning the value of the underlying collateral.

### **MALKIN TRADED BONDS AT PRICES NOT REASONABLY RELATED TO THE PREVAILING MARKET PRICES**

8. On at least thirty occasions from September 2000 through June 2002, Malkin traded six different municipal bonds at prices that were unrelated to the bonds' prevailing market prices. In most of those instances, Malkin purchased the bonds at the market price for his personal accounts and other accounts that he controlled, sold the bonds to customer accounts at significantly higher prices, and frequently caused these customers to resell the bonds to other customers at even higher prices.

9. The higher prices that Malkin set for the bonds represented improper markups or markdowns of up to 220% from the prevailing market prices of the bonds. For example, Malkin sold certain bonds to three customers at \$22.61 per bond even though he had recently purchased the bonds at \$7 in a transaction prior to the trades at issue. Malkin's profit from all of the trades at prices not reasonably related to the prevailing market prices was approximately \$585,000.

10. Malkin reversed many of the improper trades in January 2003, after having received a letter from the Commission's examination staff in which the staff questioned many of the transactions. In reversing the trades, Malkin caused the Cantella trading account that he controlled to buy the bonds back at the same prices at which they had been sold to the customers. Malkin also credited funds into certain customer accounts to reduce or make up losses resulting from the trades at issue. After the reversed transactions and credits to certain customers are taken into consideration, Malkin's remaining net profit was \$79,332.

### **VIOLATIONS**

11. Based upon the foregoing, Malkin willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and willfully aided and abetted and caused Cantella's violations of Section 15B(c)(1) of the Exchange Act and Municipal Securities Rulemaking Board ("MSRB") Rule G-30. Section

17(a) of the Securities Act prohibits fraudulent conduct in the offer or sale of securities while Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit fraudulent conduct in connection with the purchase or sale of securities.

12. Based upon the foregoing, Cantella willfully violated Section 15B(c)(1) of the Exchange Act and MSRB Rule G-30

#### IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, to impose the sanctions agreed to in Respondents' Offers. Accordingly, pursuant to Section 8A of the Securities Act and Sections 15(b), 15B(c)(4) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Malkin shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Sections 10(b) and 15B(c)(1) of the Exchange Act and Rule 10b-5 thereunder, and Municipal Securities Rulemaking Board Rule G-30.

B. Cantella shall cease and desist from committing or causing any violations and any future violations of Section 15B(c)(1) of the Exchange Act and Municipal Securities Rulemaking Board Rule G-30.

C. Malkin be, and hereby is, barred from association with any broker or dealer or municipal securities dealer, with the right to reapply for association after one year to the appropriate self-regulatory organization, or if there is none, to the Commission.

D. Any reapplication for association by Malkin will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against Malkin, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

E. Cantella shall be, and hereby is, censured.

F. Malkin shall, within thirty days of the entry of this Order, pay disgorgement of \$79,332 and prejudgment interest of \$15,883, and a civil money penalty in the amount of \$80,000, for a total payment of \$175,215, to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial

Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies Malkin as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Briane Nelson Mitchell, Associate Regional Director, Office of Enforcement, Securities and Exchange Commission, 5670 Wilshire Blvd., Ste. 1100, Los Angeles, CA 90036.

G. Cantella shall, within thirty days of the entry of this Order, pay a civil money penalty in the amount of \$50,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies Cantella as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Briane Nelson Mitchell, Associate Regional Director, Office of Enforcement, Securities and Exchange Commission, 5670 Wilshire Blvd., Ste. 1100, Los Angeles, CA 90036.

By the Commission.

Nancy M. Morris  
Secretary