

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

**SECURITIES ACT OF 1933**  
**Release No. 8795 / May 2, 2007**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 55693 / May 2, 2007**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 27816 / May 2, 2007**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-12625**

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In the Matter of	:	ORDER INSTITUTING ADMINISTRATIVE
	:	AND CEASE-AND-DESIST PROCEEDINGS,
	:	MAKING FINDINGS, AND IMPOSING
CHARLES A. SACCO,	:	REMEDIAL SANCTIONS AND A CEASE-
	:	AND-DESIST ORDER PURSUANT TO
Respondent.	:	SECTION 8A OF THE SECURITIES ACT OF
	:	1933, SECTIONS 15(b) AND 21C OF THE
	:	SECURITIES EXCHANGE ACT OF 1934 AND
	:	SECTION 9(b) OF THE INVESTMENT
	:	COMPANY ACT OF 1940

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Charles A. Sacco (“Sacco” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting 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, Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 9(b) of the Investment Company Act of 1940 (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent’s Offer, the Commission finds<sup>1</sup> that:

#### **Summary**

1. This is a proceeding against Sacco, a former registered representative at A.G. Edwards & Sons, Inc. (“AG Edwards”), a registered broker-dealer. Between May 2002 and September 2003, Sacco used deceptive means to market time mutual fund shares on behalf of two large hedge fund customers.<sup>2</sup> By virtue of his conduct, Sacco violated the antifraud provisions of the Securities Act and the Exchange Act.

#### **Respondent**

2. Sacco, age 29, is a resident of Medford, Massachusetts. Between December 2001 and October 2003, Sacco was employed as a registered representative, referred to at AG Edwards as a “financial consultant” (“FC”), in the Boston Back Bay, Massachusetts branch office of AG Edwards. At all relevant times, Sacco held the following licenses with the National Association of Securities Dealers, Inc. (“NASD”): General Securities Representative (Series 7); Uniform Securities Agent State Law (Series 63); and Registered Investment Adviser (Series 65).

#### **Other Relevant Entity**

3. AG Edwards is a Delaware corporation with headquarters located in St. Louis, Missouri that has been registered with the Commission as a broker-dealer pursuant to Section 15 of the Exchange Act since 1967. AG Edwards has approximately 730 offices staffed by approximately 6,824 registered FCs that provide retail brokerage services throughout the United States, Switzerland and the United Kingdom. AG Edwards is the principal operating subsidiary of A.G. Edwards, Inc., a Delaware corporation whose stock is traded on the NYSE under the symbol AGE.

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<sup>1</sup> The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> “Market timing” refers to (a) frequent buying and selling of shares of the same mutual fund or (b) buying or selling mutual fund shares in order to exploit inefficiencies in mutual fund pricing. Market timing, while not illegal *per se*, can harm other mutual fund shareholders because it can dilute the value of their shares if the market timer is exploiting pricing inefficiencies, disrupt the management of the mutual fund’s investment portfolio or cause the targeted mutual fund to incur costs borne by other shareholders to accommodate frequent buying and selling of shares by the market timer.

## **Background**

4. From approximately May 2002 to September 2003, Sacco engaged in an illegal market timing scheme on behalf of two large hedge fund customers (“Hedge Fund A” and “Hedge Fund B,” collectively, “hedge fund customers”). Sacco defrauded more than 100 mutual funds from at least 25 different mutual fund companies and their shareholders by engaging in a series of deceptive practices designed to conceal his identity and the identities of his hedge fund customers from the mutual fund companies in order to circumvent restrictions that the mutual fund companies imposed on market timing.

## **Sacco’s Trading Practices**

5. Starting in approximately May 2002, based on a referral from a former colleague at another broker-dealer, Sacco began opening brokerage accounts for his hedge fund customers. Between May 2002 and September 2003, Sacco opened 129 accounts for Hedge Fund A and 13 accounts for Hedge Fund B. At all relevant times, Sacco knew that Hedge Fund A and Hedge Fund B planned to use their accounts at AG Edwards to place market timing trades.

6. Most of the hedge fund customers’ accounts were fee-based accounts in AG Edwards’ Fund Navigator program, later called the Preferred Fund Advisor program. Through these accounts, the hedge fund customers did not pay commissions for each transaction placed on their behalf. Instead, the customers paid Sacco and AG Edwards quarterly fees ranging from 1% to 1.5% of the total assets in the account. During the relevant time period, Sacco received \$215,892.52 in compensation for trading on behalf of his hedge fund customers.

7. Between May 2002 and September 2003, Sacco placed more than 35,000 trades on behalf of his hedge fund customers. Most of these trades were in mutual funds that prohibited or strictly limited the number and frequency of trades in an effort to prevent market timing.

8. Sacco regularly communicated with his hedge fund customers by telephone and e-mail concerning specific trades, the flow of assets into and out of their accounts and the opening of new accounts.

9. Many of the mutual fund companies screened for market timing or excessive short-term trading by reviewing the FC identification numbers and account numbers associated with trades over a certain dollar amount. Typically, if a mutual fund company concluded that a particular trade placed by one of AG Edwards’ FCs violated its exchange limitations or restrictions against market timing, it would attempt to prevent additional trades in that mutual fund or mutual fund family by contacting AG Edwards and/or the registered FC who placed the trade.

10. Over time, Sacco and AG Edwards received at least 180 telephone calls, letters, e-mails and canceled trade notices (collectively “restriction notices”) from mutual fund

companies objecting to Sacco's placement of market timing trades on behalf of his hedge fund customers. These restriction notices informed Sacco and AG Edwards that the fund companies had rejected particular trades or restricted Sacco and his hedge fund customers from placing further market timing trades.

11. The majority of the written restriction notices were sent to the mutual fund order room at AG Edwards' headquarters in St. Louis, Missouri. As the restriction notices came in, employees in the order room updated AG Edwards' trading data and then sent copies of the restriction notices to Sacco and the Boston Back Bay branch of AG Edwards.

12. After receiving copies of the restriction notices, Sacco repeatedly ignored the mutual fund companies' requests to cease trading and continued market timing on behalf of his hedge fund customers. In order to avoid further detection by the mutual fund companies, Sacco engaged in a series of deceptive acts and practices to conceal his continuing market timing activity from mutual fund companies.

13. For example, Sacco opened 142 separate accounts for his two hedge fund customers in the names of multiple entities affiliated with Hedge Fund A and Hedge Fund B in order to avoid further detection of the customers' market timing activity. Sacco also transferred assets between the related accounts after he received restriction notices.

14. In addition, Sacco placed market timing trades on behalf of his hedge fund customers using several different FC identification numbers.

15. AG Edwards issued each of its registered FCs one unique identification number through which to place trades on behalf of customers. However, FCs could obtain additional FC identification numbers with which they could place trades by entering into a "split" with one or more other FCs. A legitimate reason to request a new split FC number was to share commissions and fees with one or more additional FCs who serviced the same customer. In contrast, an illegitimate reason to obtain additional split FC numbers was to continue market timing mutual funds that previously restricted an FC from trading under other FC numbers or split FC numbers. Because many mutual fund companies restricted further trading by FC numbers rather than by FC names, an FC could evade restrictions by obtaining and trading under a new FC number.

16. Between May 2002 and September 2003, Sacco requested and obtained at least nine different split FC numbers with which to trade on behalf of his hedge fund customers. Most of the splits were with FCs and other individuals who did not do anything to service Sacco's hedge fund customers and who received only 1% of the commissions or fees for trades executed under the split FC numbers.

17. By using these deceptive acts and practices, Sacco was able to disguise his identity and the identities of his hedge fund customers and thus, gain access to mutual funds that previously restricted him and his hedge fund customers from trading.

### **Violations**

18. As a result of the conduct described above, Sacco willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase, offer, or sale of securities.

### **Disgorgement and Civil Penalties**

19. Respondent Sacco has submitted a sworn Statement of Financial Condition dated June 5, 2006 and other evidence and has asserted his inability to pay the entire amount of disgorgement plus prejudgment interest and a civil penalty.

### **Undertakings**

In determining whether to accept Respondent Sacco's Offer, the Commission has considered the following undertakings by Sacco:

20. Respondent Sacco shall cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in this Order. In connection with such cooperation, Respondent Sacco has undertaken:

- a. To produce, without service of a notice or subpoena, any and all documents and other information reasonably requested by the Commission's staff;
- b. To be interviewed by the Commission's staff at such times as the staff reasonably may request and to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, litigations, hearings or trials as may be requested by the Commission's staff; and
- c. That in connection with any testimony of Respondent Sacco to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, Respondent Sacco:
  - i. Agrees that any such notice or subpoena for his appearance and testimony may be served by regular mail on his counsel, Daniel Rabinovitz, Esq., Michaels & Ward, LLP, 12 Post Office Square, Boston, MA 02109; and
  - ii. Agrees that any such notice or subpoena for his appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

#### IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

- A. Respondent Sacco cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.
- B. Respondent Sacco be, and hereby is barred from association with any broker or dealer, and is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor or principal underwriter, with the right to reapply for association after two (2) years to the appropriate self-regulatory organization, or if there is none, to the Commission.
- C. Any reapplication for association by Respondent Sacco will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.
- D. Respondent Sacco shall be ordered to pay disgorgement of \$215,892.52 plus prejudgment interest of \$56,978.70 for a total payment of \$272,871.22, but based upon Respondent Sacco's sworn representations in his Statement of Financial Condition dated June 5, 2006 and other documents submitted to the Commission, the payment of all but \$15,000 of the disgorgement and prejudgment interest is waived and the Commission is not imposing a penalty against Respondent Sacco. Respondent Sacco shall pay disgorgement in the amount of \$15,000 pursuant to the payment plan outlined below.
- E. Respondent Sacco shall pay \$15,000 in 12 installments of \$1,250.00 over a 36 month period to the United States Treasury. Sacco's first payment of \$1,250.00 shall be due thirty days after the date of entry of this Order and his remaining 11 payments shall be post-marked no later than the 30<sup>th</sup> of June, September, December and March of each year until December 30, 2009. Such payments 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, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Charles Sacco as a Respondent in these proceedings and the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Merri Jo Gillette, Regional Director, Midwest Regional Office, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 900, Chicago, IL 60604.

F. Respondent Sacco agrees that if the full amount of any payment described above is not made within ten (10) days following the date the payment is required by this Order, the entire amount of disgorgement, prejudgment interest and civil penalties, plus post judgment interest minus payments made, if any, is due and payable immediately without further application.

G. The Division of Enforcement may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent Sacco provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement and prejudgment interest and the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent Sacco was fraudulent, misleading, inaccurate or incomplete in any material respect. Respondent Sacco may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement, interest and a penalty should not be ordered; (3) contest the amount of disgorgement and interest to be ordered or the imposition of the maximum penalty allowable under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Nancy M. Morris  
Secretary