

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**  
**January 24, 2007**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-12549**

**In the Matter of**

**Tempo Securities Corporation**  
**Robert Shiffra**  
**Dennis Zauszniewski**

**Respondents.**

**ORDER INSTITUTING**  
**ADMINISTRATIVE PROCEEDINGS**  
**PURSUANT TO SECTION 15(b) OF THE**  
**SECURITIES EXCHANGE ACT OF 1934**

**I.**

The Securities and Exchange Commission (“Commission” or “SEC”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b)(4) of the Securities Exchange Act of 1934 (“Exchange Act”) against Tempo Securities Corporation, and pursuant to Section 15(b)(6) of the Exchange Act against Robert Shiffra and Dennis Zauszniewski (collectively, “Respondents”).

**II.**

After an investigation, the Division of Enforcement alleges:

**Respondents**

1. Tempo Securities Corporation (“Tempo”), a broker-dealer registered with the Commission since 1986, is a member of the National Association of Securities Dealers (“NASD”). Tempo conducts a general securities business in over-the-counter and listed securities. Tempo is headquartered in Cleveland, Ohio. From in or about 1995 to in or about 2004, Tempo had up to twenty registered representatives who operated off-site one-person offices.
2. Robert Shiffra (“Shiffra”), age 73, is the president of Tempo and owns two thirds of the company. Shiffra has been an owner and officer of Tempo since 1991. Shiffra has been a licensed but nonpracticing attorney since 1966 and also occasionally serves as an arbitrator in the securities industry, including for the NASD. Shiffra has been working in the securities industry for at least 40 years and has held his Series 24 license since 1978. Shiffra was previously the head

of the compliance department for a broker-dealer, where he wrote the firm's compliance and procedures manual.

3. Dennis Zauszniewski ("Zauszniewski"), age 55, is a founder and the senior vice president of Tempo. Zauszniewski owns one third of the company, has been an owner and officer of Tempo since 1986, and has held his Series 24 license since 1986. Zauszniewski occasionally serves as an arbitrator in the securities industry.

#### **Related Party**

4. Gregory A. Applegate ("Applegate"), age 46, is currently serving a five-year prison term at the Federal Correctional Institute in Morgantown, West Virginia. Applegate was a registered representative associated with Tempo Securities from approximately April 1995 until approximately the end of December 2004, operating out of an office in Ashland, Ohio.

#### **Summary**

5. From in or about 2001 through approximately the end of 2004, while employed by and associated with Tempo as a registered representative, Applegate made misrepresentations of material facts to over 110 investors and defrauded them regarding the investment of at least \$3.1 million in what they were told to be securities. Throughout this time, Respondents supervised Applegate. Respondents, however, failed reasonably to supervise Applegate with a view to preventing and/or detecting his fraudulent conduct. Respondents failed to establish reasonable supervisory procedures for conducting on-site inspections and reviewing DBA accounts, and they failed to establish a reasonable system to effectively implement supervisory procedures that did exist for review of customer communications and review of customer account statements. Finally, Shiffra and Zauszniewski failed reasonably to respond to serious "red flags" indicating possible misconduct by Applegate.

#### **Applegate Came to Tempo Amid Allegations of Fraud**

6. Applegate joined Tempo in 1995. Approximately two years later, customers at Applegate's former brokerage firm filed an NASD arbitration claim against Applegate and his former firm, alleging that Applegate had committed fraud and breach of fiduciary duty, causing damages of approximately \$140,000. Applegate was accused of providing his customers fraudulent account statements that concealed his excessive trading activity on their accounts. This alleged fraudulent conduct took place just before Applegate left for Tempo.

7. Respondents were aware of the substance of these allegations soon after the claim was filed. During investigative testimony before the staff of the Division of Enforcement, Shiffra claimed that he did not remember Applegate's explanation regarding the allegations, but Shiffra testified that he "didn't buy it when [he] heard it." At no time did Respondents attempt to contact Applegate's former supervisor or the complaining customers regarding the allegations.

8. During investigative testimony before the staff of the Division of Enforcement, Shiffra admitted that the timing of this alleged fraud and Applegate's move to Tempo "would raise

concern. All of these things would be flags . . . it looks like that would be a reason he'd be leaving: under the scrutiny of Ohio Company checking with his customer.”

### **Applegate's Ponzi Scheme**

9. From in or about 2001 through the end of August 2005, Applegate solicited at least 160 investors to invest at least \$9.5 million in a supposed “hedge fund” and other investment vehicles, purportedly through an entity called “Applegate Investments” and other similar names. Applegate orally guaranteed an annual rate of return to these investors. In reality, “Applegate Investments” was a Ponzi scheme: Applegate misappropriated investor funds, using them to finance an unrelated personal business, pay personal expenses, and pay “investment returns” to earlier investors. To carry out this scheme, Applegate mailed to investors false monthly “customer statements” maintained on his office computer, reflecting securities holdings and returns that did not exist, as well as monthly “dividend checks.”

10. Throughout the period from in or about 2001 through approximately the end of 2004, Applegate was associated with Tempo as a registered representative.

11. While Applegate was associated with Tempo, at least 50% of “Applegate Investments” Ponzi scheme investors were also Tempo customers, and at least 40% of Applegate’s Tempo customers with equity accounts also invested in the “Applegate Investments” Ponzi scheme.

12. Applegate continued operating the “Applegate Investments” Ponzi scheme after leaving Tempo at the end of 2004 for another brokerage firm. In August 2005, Applegate’s supervisor at his new firm learned that one of Applegate’s customers had received possibly false account statements directly from Applegate. Applegate’s supervisor immediately conducted an unannounced review of Applegate’s office in Ashland and discovered evidence of the “Applegate Investments” Ponzi scheme in Applegate’s customer files. These customers had also been Tempo customers when Applegate was with Tempo.

13. Applegate’s misconduct described above violated Section 17(a) of the Securities Act of 1933 (“Securities Act”) and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

14. On October 7, 2005, the Commission filed a complaint in SEC v. Gregory Applegate, No. 1:05CV2363, in the Northern District of Ohio, and obtained a temporary restraining order against Applegate, including an asset freeze. The complaint alleged the facts referred to in paragraph 6 above, and sought injunctive as well as monetary relief against Applegate.

15. On January 9, 2006, in the case of U.S. v. Gregory A. Applegate, No. 1:05-cr-00577-PAG in the Northern District of Ohio, Applegate plead guilty to a one count information charging mail fraud, in violation of Title 18, U.S. Code, Section 1341, for conduct related to the “Applegate Investments” Ponzi scheme.

16. During the plea colloquy in the criminal case referred to in the previous paragraph, Applegate admitted that as early as 2001 and continuing until September 2005, he “executed a scheme and artifice to defraud certain clients of his and to obtain money by means of fraudulent

pretenses, representations and promises.” Applegate also admitted that “in order to conceal this fraudulent scheme . . . [he] caused statements to be mailed to his clients, usually on a monthly or quarterly basis, from his office in Ashland, which falsely reflected the nature of his clients' investments and the balances in his clients' accounts.”

17. On April 26, 2006, Applegate was sentenced to 5 years in prison and was ordered to pay approximately \$2.9 million in restitution to aggrieved investors of the “Applegate Investments” Ponzi scheme.

18. On October 17, 2006, in SEC v. Gregory Applegate, the District Court entered a final judgment against Applegate including the entry of an order of permanent injunction enjoining him from violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

19. On October 30, 2006, the SEC instituted settled Administrative Proceedings against Applegate, barring him from association with any broker or dealer.

#### **Respondents held all supervisory authority at Tempo**

20. Tempo, Shiffra, and Zauszniewski supervised Applegate while he was associated with Tempo as a registered representative, from approximately April 1996 to approximately the end of 2004.

21. Shiffra and Zauszniewski jointly made all decisions regarding establishing Tempo’s supervisory and compliance procedures and were jointly responsible for implementing and enforcing existing procedures. Shiffra and Zauszniewski jointly held all supervisory authority at Tempo, including the ability to discipline, hire and fire registered representatives.

22. Shiffra was Applegate’s designated supervisor at Tempo, and Shiffra performed all on-site visits of Applegate’s office and reviews of Applegate’s operations.

#### **Respondents failed to establish reasonable supervisory procedures or a system to implement existing procedures**

23. During investigative testimony before the staff of the Division of Enforcement, Zauszniewski stated that Tempo is “not a real brokerage firm” and that Tempo does not follow compliance procedures that “real firms” use because they would be “cost [prohibitive].”

24. At all relevant times, Tempo registered representatives have been characterized by Tempo as “independent contractors,” operating out of their own offices or homes without on-site supervision.

25. Applegate operated a one-person branch office in Ashland, Ohio, over an hour’s drive from Tempo’s main office. Tempo thus did not provide on-site supervision for Applegate.

## Annual Reviews

26. Respondents did not establish reasonable procedures for inspections of registered representatives' offices, or implement the procedures for inspections of registered representatives' offices that did exist.
27. Respondents conducted only pre-announced scheduled "annual reviews" of its registered representatives' offices and operations. Respondents never conducted any unannounced visits or inspections.
28. During investigative testimony before the staff of the Division of Enforcement, Zauszniewski admitted that, because Respondents' reviews were always announced, Applegate "could have hid a lot of stuff, which he obviously did and intentionally hid."
29. Respondents' on-site visits to Applegate's office did not include reasonable inspection or review of his operations or offices.
30. During all reviews of Applegate's office and operations, Shiffra did not request to review Applegate's account records or customer account files.
31. Besides looking at the top of Applegate's desk and what was visible on his computer screen, Shiffra never conducted any physical inspection of Applegate's office.
32. From approximately 2001 until the end of 2004, Applegate maintained his "Applegate Investments" Ponzi scheme records on his office computer and in a binder labeled "Applegate Investments Accounts" in his office in Ashland, Ohio. At any given time, at least one month's worth of fraudulent customer statements, one for every "Applegate Investments" investor, was maintained in that binder.
33. The binder referenced in the previous paragraph and its label, "Applegate Investments Accounts," were clearly visible during all compliance reviews conducted by Shiffra. Shiffra never inquired about the binder's contents or attempted to inspect the binder.
34. During investigative testimony before the staff of the Division of Enforcement, Shiffra testified that he doubted that he had "the authority to check [Applegate's] computer or file cabinets or desk drawers" as part of a compliance review of Applegate's office. In fact, as Applegate's supervisor, Shiffra had the authority to do so as part of a compliance review.
35. As part of Respondents' annual review of Applegate's office, a survey was mailed to him asking for responses to various compliance questions. No attempt was made to verify Applegate's answers to the annual survey.
36. During investigative testimony before the staff of the Division of Enforcement, Shiffra stated, "I never understood what [Applegate's assistants] did . . . . I don't know what kept her busy full-time, especially with his production."

37. Respondents did not ask Applegate, or his administrative assistants, what work the assistants were performing in Applegate's office. Respondents did not attempt to interview Applegate's administrative assistants about any compliance matters. Respondents did not monitor how many administrative assistants Applegate retained.

38. Applegate's administrative assistants helped Applegate create and update the "Applegate Investments" Ponzi scheme customer statements every month, as well as to help mail them to customers. They also helped organize the customer files, including keeping "Applegate Investments" files separate from the legitimate Tempo customer account files.

39. Despite Tempo's own requirements to conduct on-site reviews at least annually, Respondents failed to implement this procedure by failing to conduct an on-site review of Applegate's office during at least one year: 2004; Applegate's last year associated with Tempo.

40. Zauszniewski admitted to examiners from the Commission's Office of Compliance, Inspections, and Examinations that Respondents did not conduct an on-site review of Applegate's office in 2004, citing "personal issues."

#### **Lack of Procedures for Review of Applegate's DBA Bank Accounts**

41. As an "independent contractor," Applegate was responsible for his own business expenses, such as office rent, phone, and electricity.

42. Respondents did not establish procedures to review or inspect, nor did they ever review or inspect, Applegate's business "DBA" bank accounts from which he paid his business expenses.

43. Had Respondents ever asked to review or audit Applegate's "DBA" bank accounts during approximately 2001 through the end of 2004, they would have discovered personal checks from Applegate's Tempo customers being deposited into his "DBA" bank accounts, and funds being diverted from those accounts to his personal bank accounts, as part of the "Applegate Investments" Ponzi scheme.

44. One of Applegate's "DBA" bank accounts was in the name of "Applegate Investments."

#### **Inadequate Implementation of Procedures for Review of Customer Communications**

45. The Tempo Compliance and Procedure Manual required that branch supervisors "devise and institute a program whereby all communication from the public to any registered representative under his authority or control is reviewed daily prior to such material being given to the registered representative." The Tempo Manual also required that branch supervisors "institute and supervise a system whereby the registered representative's communications to the public concerning securities transactions for the business of this organization are reviewed and a copy retained in the branch office filed and a copy sent to the Compliance Director."

46. During investigative testimony before the staff of the Division of Enforcement, Shiffra stated that the requirements in the previous paragraph are “referring to a real branch where all of the incoming mail is opened by one person or supervisor and read and looked at before it’s passed out. Where you’ve got one guy in an office, it doesn’t work.” Instead, for one-person offices with no on-site supervision such as Applegate’s, registered representatives were simply asked to forward copies of all customer correspondence to Respondents. However, no systems were established to effectively implement this requirement.

#### **Lack of Systems to Implement Procedures for Customer Account Statement Review**

47. Tempo’s Compliance and Procedure Manual requires that supervisors “review all monthly statements at least four times per year and initial as evidence of such review.” Tempo’s clearing firm produced monthly account statements for Tempo’s customers, and copies of these statements were mailed to Tempo every month. The Tempo Manual also requires that supervisors of branch offices “review monthly the customer statements” to check for unusual activity, excessive commissions, and unusual patterns of buying or selling.

48. Starting some time in 2000, Tempo’s clearing firm stopped providing paper copies of the monthly statements, instead providing only electronic copies of customers’ monthly account statements on its web site, to which Tempo had access. Tempo had dial-up internet access at its main office.

49. After the clearing firm stopped providing paper copies of the monthly statements some time in 2000 until at least January 2006, Respondents failed to develop a reasonable system to implement procedures regarding review of customer account statements. No one at Tempo reviewed customers’ monthly account statements, despite having access to them through the clearing firm’s web site.

#### **Shiffra and Zauszniewski failed reasonably to respond to red flags concerning Applegate**

##### **Applegate’s Commission Decline**

50. Between 1995 and 2004, Applegate generally was one of Tempo’s highest “producers” in terms of commission, at times generating approximately one third of Tempo’s total revenue and well over \$100,000 in annual gross commissions.

51. Applegate’s annual gross commissions then dropped nearly in half between July 1, 2002 and June 30, 2003, Tempo’s fiscal year. Shiffra and Zauszniewski did not investigate this dramatic drop in commissions or ask Applegate why his production had declined.

52. During the same period that Applegate’s gross commissions dropped nearly in half, customer investments in the “Applegate Investments” Ponzi scheme more than doubled.

### **Applegate's Repeated Violation of Tempo Advertisement Policy**

53. Applegate repeatedly violated Tempo's advertisement policy when he listed his office in the local Yellow pages as "Applegate Investments" and other variations of that name, instead of "Tempo Securities." Shiffra and Zauszniewski repeatedly told Applegate that this listing was unacceptable, but the listing remained the same for the next nine years without any follow-up, further investigation, or disciplinary action taken against Applegate.

54. Shiffra and Zauszniewski failed reasonably to enforce Tempo's advertisement policy when they failed to follow up or take any action against Applegate for the recurring violation described in the previous paragraph.

55. In addition, Applegate's repeated violation of this Tempo policy was a red flag of suspicious conduct, which Shiffra and Zauszniewski should have investigated.

### **Significant Customer Liquidations**

56. Shiffra and Zauszniewski were aware of numerous liquidations by Applegate's customers from their Tempo securities accounts.

57. Shiffra and Zauszniewski never attempted to contact any of these customers regarding liquidations.

58. With respect to certain significant liquidations, Shiffra testified that he asked Applegate, not the customer, why the customer decided to liquidate their holdings.

59. At least \$900,000 worth of customer liquidations in 2003 and 2004 were deposited in the "Applegate Investments" Ponzi scheme soon thereafter.

60. One of Applegate's Tempo customers liquidated at least \$400,000 worth of securities held with Tempo within an eight-month period. This customer countersigned all of her liquidation checks directly over to Applegate.

### **Applegate Claimed No Correspondence with Customers**

61. During annual reviews, Shiffra asked Applegate for copies of all correspondence with customers.

62. During investigative testimony before the staff of the Division of Enforcement, Shiffra testified that Applegate always told him that he had engaged in no written correspondence with his customers, except for brief notes referring the customers to newspaper articles.

63. Shiffra and Zauszniewski never attempted to verify Applegate's repeated claims that he never engaged in any substantive customer correspondence. For example, Shiffra and

Zauszniewski never communicated with customers to verify that Applegate never corresponded with them.

64. Applegate engaged in regular written correspondence with a large proportion of his Tempo customers: he mailed them monthly account statements regarding their “Applegate Investments” Ponzi scheme investments.

65. Shiffra and Zauszniewski took no independent steps to communicate with Applegate’s customers, such as periodic “happiness letters,” “activity letters” or any other regular attempts to ascertain customer satisfaction or familiarity with their accounts.

### **Applegate’s Fraud Violations**

66. By virtue of the conduct alleged above, Applegate violated Sections 17(a) of the Securities Act and 10(b) of the Exchange Act and Rule 10b-5 thereunder when he made intentional misrepresentations regarding the investment activity of “Applegate Investments.”

67. Applegate represented to some customers that their investments would be pooled into a “hedge fund” invested in various securities. Other investors were told that they were investing directly into mutual funds or municipal funds.

68. In reality, Applegate misappropriated investor deposits, using customers’ funds to pay off previous investors and for various personal expenses.

69. Applegate also created false “Applegate Investments” monthly statements to support his misrepresentations as to the status of customers’ investments.

### **Respondents’ Failure Reasonably to Supervise Applegate**

70. Section 15(b)(4)(E) of the Exchange Act provides that the Commission can impose various sanctions against a broker-dealer, if it “has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision.” Section 15(b)(6)(A)(i) of the Exchange Act similarly provides that the Commission can impose various sanctions against individuals who fail to supervise others who are subject to their supervision, within the meaning of Section 15(b)(4)(E).

71. By virtue of the conduct alleged above, Tempo, Shiffra, and Zauszniewski failed reasonably to supervise Applegate within the meaning of Section 15(b) of the Exchange Act when they failed to supervise Applegate with a view to preventing and detecting violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

72. Respondents failed to establish reasonable supervisory procedures or a system to implement the procedures that did exist. In addition, while Applegate was associated with Tempo, several incidents occurred that should have raised red flags concerning Applegate’s

conduct. Shiffra and Zauszniewski, however, did not reasonably respond to these red flags. If Respondents had developed reasonable supervisory procedures for conducting on-site inspections and reviewing DBA accounts, or reasonable systems to implement supervisory procedures for reviewing customer communications and customer account statements, or if Shiffra and Zauszniewski had responded reasonably to red flags, it is likely that they could have prevented and detected Applegate's fraud.

### III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

### IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents, and each of them, shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If any Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, that Respondent may be deemed in default and the proceedings may be determined against him or it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon each Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice, 17 C.F.R. § 201.360(a)(2).

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as

witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Nancy M. Morris  
Secretary