

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 57710A / April 24, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13020

In the Matter of

**FIRST MONTAUK
SECURITIES CORP. AND
HERBERT KURINSKY,**

Respondents.

**CORRECTED
ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER PURSUANT TO SECTIONS 15(b)
AND 21C OF THE SECURITIES EXCHANGE
ACT OF 1934**

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 Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against First Montauk Securities Corp. (“First Montauk”) and Herbert Kurinsky (“Kurinsky”) (collectively referred to as “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have 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 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 Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offer, the Commission finds that:¹

Respondents

1. First Montauk, a New York corporation based in Red Bank, New Jersey, has been registered with the Commission as a broker-dealer since 1983 and is the wholly-owned subsidiary of First Montauk Financial Corp., a publicly traded company. As a broker-dealer, First Montauk primarily conducts retail brokerage business. During the relevant period, however, First Montauk, through its newly formed capital markets group ("Capital Markets Group") headed by its first institutional research analyst, entered into the institutional brokerage business, providing institutional customers with trading assistance as well as research reports on select companies in the computer networking and enterprise software sector.

2. Kurinsky purchased First Montauk in 1986 and was at all relevant times its CEO and president, one of its principals, and a member of its senior management until he retired from First Montauk in February 2006. As First Montauk's primary principal, CEO and President, Kurinsky was responsible to ensure that the firm had in place a supervisory system designed to achieve compliance with all applicable securities laws, rules and regulations. Kurinsky, 76 years old, is a resident of Ocean, New Jersey.

Overview

3. These proceedings arise out of Respondents' failure reasonably to supervise a former First Montauk registered representative, Berton M. Hochfeld ("Hochfeld"), with a view to preventing and detecting his violations of the federal securities laws during a ten-month period from March 2003 through December 2003. In March 2003, First Montauk formed the Capital Markets Group in New York City to accommodate Hochfeld and his team, after joining First Montauk from another brokerage firm where they had been operating in a similar capacity. During that period, Hochfeld, First Montauk's first and only institutional research analyst, wrote numerous research reports on select companies in the computer networking and enterprise software sector, which were distributed to First Montauk's institutional customers and potential customers. At the same time that he wrote such reports for First Montauk, Hochfeld also managed a hedge fund through his management company, Hochfeld Capital Management ("HCM"). On numerous occasions, Hochfeld engaged in illegal "scalping" of securities he covered in his research reports distributed to First Montauk's institutional customers. Specifically, Hochfeld traded in the same stocks covered in his research reports in a manner inconsistent with those reports, without disclosing such inconsistent trades. By

¹ The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

scalping stocks covered in his research reports through his hedge fund Hochfeld violated the antifraud provisions of the federal securities laws.²

4. First Montauk failed reasonably to supervise Hochfeld with a view to preventing and detecting his violations of the federal securities laws. Specifically, First Montauk failed to adopt reasonable policies and procedures to monitor Hochfeld's trading so as to prevent and detect the fraudulent conduct described herein.

5. Kurinsky, the firm's CEO and president, failed reasonably to supervise Hochfeld with a view to preventing and detecting his violations of the federal securities laws. Kurinsky improperly delegated supervisory responsibilities to an individual who did not hold a Series 24 license, as required by the National Association of Securities Dealers, Inc. (now FINRA, hereinafter "NASD") for supervisory principals. Moreover, Kurinsky failed to follow-up on his supervisory delegation and failed to address whether reasonable policies and procedures to monitor Hochfeld's activities had been implemented.

6. First Montauk also violated Section 15(b)(7) of the Exchange Act and Rule 15b7-1 thereunder, and Kurinsky aided and abetted and caused First Montauk's violations, by delegating supervisory duties to an individual who did not hold a Series 24 license.

7. First Montauk also failed to comply with the analyst certification requirements of Regulation AC of the Exchange Act in connection with Hochfeld's research reports. For several months after Regulation AC went into effect, First Montauk distributed Hochfeld's reports to up to forty customers and potential customers without certifications by Hochfeld that the views expressed in his research reports accurately reflected his personal views. The research reports also failed to include a certification identifying the type and amount of compensation, if any, Hochfeld received related to specific recommendations or views expressed in the report.

Hochfeld's Scalping Activities

8. In March 2002, First Montauk formed the Capital Markets Group to house Hochfeld as the first in-house institutional research analyst ever employed by First Montauk. In his capacity as research analyst, Hochfeld wrote research reports on numerous companies he covered in the computer networking and enterprise software sector for First Montauk's customers and prospective customers. At the same time, Hochfeld also managed several institutional

² The Commission filed a settled civil action against Hochfeld and HCM on November 23, 2005, based on their scalping activities. Pursuant to that settlement, and without admitting or denying the allegations of the Complaint, Hochfeld and HCM consented to the entry of a judgment permanently enjoining them from future violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, ordering them, jointly and severally, to disgorge a total of \$83,460, and to pay a civil penalty of \$75,000. SEC v. Hochfeld, 05 CV 9921 (SDNY Jan 5, 2005). In January 2006, the Commission instituted administrative proceedings against Hochfeld based on the injunction, pursuant to which Hochfeld consented to an order barring him from association with any broker-dealer or investment adviser, with a right to reapply after four years. Berton M. Hochfeld, Exch. Act Rel. No. 53160 (Jan. 20, 2006).

customer accounts, accepting and executing trades on their behalf. First Montauk and Kurinsky placed Hochfeld in the firm's New York Branch.

9. While employed as a research analyst at First Montauk, Hochfeld, through HCM, caused the execution of trades on behalf of the Hepplewhite Fund L.P. ("Hepplewhite"), a private hedge fund Hochfeld managed through HCM, his wholly-owned management company. The majority of Hepplewhite's trades were executed through First Montauk, and Hochfeld received commissions on all of those trades. Between March 27, 2003, and December 15, 2003, Hochfeld engaged in a fraudulent practice known as "scalping," specifically, trading securities covered in his research reports in a manner that was contrary to the recommendations he made in those reports, without disclosing those trading activities.

10. On at least 21 occasions, Hochfeld and HCM bought stock in Hepplewhite's accounts prior to issuing positive reports on those stocks, and then sold these shares shortly thereafter. In some instances, Hochfeld caused Hepplewhite's sale of stock multiple times after issuance of a research report, for a total of thirty-one improper sales. Nearly all the sales occurred when the price of stock increased after a positive report. Hepplewhite realized a profit through this improper trading activity. Hochfeld also personally shared in 2% of Hepplewhite's profits as an investor, received a management fee from Hepplewhite and received commissions from First Montauk on all of the improper trades he caused to be made in Hepplewhite's accounts during 2003.

First Montauk and Kurinsky Failed Reasonably to Supervise Hochfeld

11. First Montauk failed reasonably to supervise Hochfeld with a view to preventing his violations of the federal securities laws. In particular, First Montauk failed to prevent and detect Hochfeld's scalping activities because it failed to develop reasonable policies and procedures to monitor Hochfeld's trading in securities he covered in his research reports. In fact, it failed to implement *any* written supervisory rules regarding the content and dissemination of Hochfeld's research reports, and any trading by Hochfeld of securities he covered in his reports. Indeed, First Montauk's written supervisory procedures focused strictly on the firm's retail activities, and failed to address its institutional activities or the new compliance and supervisory issues raised by the creation of the Capital Markets Group.

12. Kurinsky failed reasonably to supervise Hochfeld by failing to develop reasonable policies and procedures at First Montauk regarding Hochfeld's trading in securities he covered in his research reports. Instead, Kurinsky unreasonably delegated supervisory responsibilities regarding Hochfeld and the Capital Markets Group to an individual without a supervisory license. Moreover, Kurinsky also failed to follow up in any way on his delegation of supervisory responsibility. Had he done so, he would have discovered that Hochfeld was not being adequately supervised in respect to his trading activities that related to securities he covered in his research reports.

13. Kurinsky's delegation of his supervisory responsibilities to the unlicensed individual was unreasonable because Kurinsky knew, or was reckless in not knowing, that this person was not registered as a supervisory principal with the NASD.

14. First Montauk profited from Hochfeld's scalping. The profit was in the form of commissions paid to First Montauk for executing Hochfeld's scalping trades, totaling \$597.24.

Hochfeld's Violations

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

First Montauk's and Kurinsky's Violations

First Montauk and Kurinsky Failed Reasonably to Supervise Hochfeld

16. Section 15(b)(4)(E) of the Exchange Act requires broker-dealers reasonably to supervise persons subject to their supervision, with a view toward preventing violations of the federal securities laws. *See, e.g., Dean Witter Reynolds, Inc.*, Exchange Act Rel. No. 46578 (October 1, 2002). The Commission has emphasized that the "responsibility of broker-dealers to supervise their employees by means of effective, established procedures is a critical component in the federal investor protection scheme regulating the securities markets." *Id.* Section 15(b)(4)(E) of the Exchange Act provides for the imposition of a sanction against a broker or dealer who "has failed reasonably to supervise, with a view to preventing violations of the securities laws, another person who commits such a violation, if such other person is subject to his supervision." Section 15(b)(6)(A)(i) parallels Section 15(b)(4)(E) and provides for the imposition of sanctions against persons associated with a broker or dealer.

17. As a result of the conduct described above, First Montauk and Kurinsky failed reasonably to supervise Hochfeld with a view to detecting and preventing his violations of the federal securities laws.

First Montauk Violated Section 15(b)(7) of the Exchange Act and Rule 15b7-1 Thereunder, and Kurinsky Aided and Abetted and Caused the Violations

18. Rule 15b7-1, promulgated under Section 15(b)(7) of the Exchange Act, provides in pertinent part that "[n]o registered broker or dealer shall effect any transaction in, or induce the purchase or sale of, any security unless any natural person associated with such broker or dealer who effects or is involved in effecting such transaction is registered or approved in accordance with the standards of training, experience, competence and other qualification standards . . . established by the rules of any national securities exchange or national securities association of which such broker or dealer is a member." For almost two years, First Montauk and Kurinsky delegated the supervision of Hochfeld's research reports and trading activities to an individual who did not pass the required supervisory examination and was not registered as a supervisor under

NASD Rules 1021 and 1022. Kurinsky knew, or was reckless in not knowing, that the individual to whom he delegated supervisory authority was not registered as a supervisory principal.

19. As a result of the conduct described above, First Montauk willfully³ violated Section 15(b)(7) of the Exchange Act and Rule 15b7-1 thereunder, and Kurinsky willfully aided and abetted and caused First Montauk's violations.

First Montauk Failed to Comply with Regulation AC

20. Regulation AC requires that a broker or dealer or "covered person" that publishes, circulates or provides a research report prepared by a research analyst include in that research report: (A) a certification by the research analyst that the views expressed in the research report accurately reflect the research analyst's personal views about the subject securities and issuers; and (B) a certification that no part of his or her compensation was, is, or will be directly or indirectly related to the specific recommendations or views contained in the research report; or that part or all of his or her compensation was, is, or will be directly or indirectly related to the specific recommendations or views contained in the research report. From April 14, 2003, the date Regulation AC became effective, until January 2004, when Hochfeld resigned, First Montauk issued research reports authored by Hochfeld. Until August 2003, none of those reports contained any certifications by Hochfeld that the views expressed in the report accurately reflected his personal views nor did they state the type and amount of compensation, if any, Hochfeld received related to specific recommendations or views expressed in the report.

21. As a result of the conduct described above, First Montauk willfully violated Regulation AC.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents First Montauk's and Kurinsky's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. First Montauk shall cease and desist from committing or causing any violations and any future violations of Section 15(b)(7) of the Exchange Act, Rule 15b7-1 and Regulation AC promulgated thereunder;

B. Kurinsky shall cease and desist from causing any violations and any future violations of Section 15(b)(7) of the Exchange Act and Rule 15b7-1 promulgated thereunder;

³ A willful violation of the securities laws means merely "that the person charged with the violation knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

C. First Montauk is hereby censured;

D. Kurinsky shall be, and hereby is, suspended from association in a supervisory capacity with any broker or dealer for a period of six months, effective on the second Monday following the entry of this Order;

E. IT IS FURTHER ORDERED that Respondent First Montauk shall pay, within 10 days of the entry of this Order, disgorgement of \$597.24, prejudgment interest of \$145.64, and a civil money penalty in the amount of \$100,000, for a total amount of \$100,742.88, 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, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies First Montauk 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 Glenn S. Gordon, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Miami Regional Office, 801 Brickell Avenue, 18th Floor, Miami, Florida 33131; and

F. IT IS FURTHER ORDERED that Respondent Kurinsky shall, within 10 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, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Kurinsky 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 Glenn S. Gordon, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Miami Regional Office, 801 Brickell Avenue, 18th Floor, Miami, Florida 33131.

By the Commission.

Nancy M. Morris
Secretary