

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9060 / August 12, 2009

SECURITIES EXCHANGE ACT OF 1934
Release No. 60490 / August 12, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13581

In the Matter of

ROBERT J. ZANNOTTI,

Respondent.

**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, AND 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 Section 8A of the Securities Act of 1933 (“Securities Act”) and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Robert J. Zannotti (“Zannotti” 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 and 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 Respondent's Offer, the Commission finds¹ that:

Summary

1. From approximately June 2001 through March 2005 (the "Relevant Period"), Zannotti and two individuals who advised, and were the sole principals of, an unregistered fund (the "Fund") perpetrated a fraud on customers of the Fund, which lost millions of dollars due to misappropriation and undisclosed trading losses. As a part of the scheme, Zannotti, who was employed as a registered representative of broker-dealer Kimball & Cross Investment Management Corp. ("K&C"), agreed to kickback to the Fund's principals ninety percent of the brokerage commissions Zannotti earned on trades executed by K&C for the Fund, and, at the request of the Fund's principals, moved certain profitable trades from the Fund's account to other K&C customer accounts belonging to friends and family members of the Fund's principals and of Zannotti. In addition, Zannotti also solicited potential investors to invest in the Fund and knowingly distributed materially false and misleading information concerning the Fund's assets under management to these investors.

Respondent

2. **Robert J. Zannotti**, age 40, of Mashpee, Massachusetts, was a registered representative of K&C in its Boston branch office from June 2001 until K&C terminated his employment in October 2005. Zannotti was the registered representative for the Fund's account at K&C. During that period, Zannotti also worked full-time as a client service manager at a large financial services company unrelated to K&C. Zannotti conducted business for K&C from his office at the financial services company, an off-site location away from any established K&C office.

Other Relevant Entity

3. **Kimball & Cross Investment Management Corp.**, is a Massachusetts corporation that was registered as a broker-dealer with the Commission from April 12, 1982, to February 22, 2009. K&C has its principal place of business in Boston, Massachusetts. In November 2007, K&C registered as an investment adviser with the Commonwealth of Massachusetts. On December 23, 2008, K&C received notice from FINRA that K&C failed to meet minimum net capital requirements. On December 24, 2008, K&C filed with the Commission a Form BDW to withdraw its registration as a broker dealer, which became effective February 22, 2009.

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

Background

4. From October 2000 through at least March 2005, the Fund's principals raised almost \$16 million from approximately twenty investors and dissipated nearly all of their clients' assets through undisclosed trading losses in the Fund's brokerage accounts, unauthorized use of investor funds, and misappropriation of client funds for personal use. During the Relevant Period, the Fund was a brokerage customer of K&C and had a brokerage account at K&C in which assets of the Fund were held.

5. Zannotti was the K&C registered representative for the Fund's account. He conducted his K&C business entirely at an off-site location -- his office at his full-time employer, a large financial services firm unrelated to K&C.

Zannotti Participated in a Scheme to Defraud the Fund and Its Clients

6. During the Relevant Period, and despite the fact that Zannotti became aware that his actions were improper, Zannotti provided the Fund's principals with Zannotti's K&C employee secure log-in information to enable the Fund's principals to effect trades directly on K&C's trading platform on behalf of the Fund and other K&C customers the Fund's principals had referred to K&C. Zannotti attempted to conceal the fact that the Fund's principals and not Zannotti himself were making the trades. Specifically, one of the Fund's principals regularly prepared a daily trade blotter and emailed it to Zannotti's e-mail address at the unrelated financial services firm where he worked. Rather than simply forwarding to his supervisor at K&C the emails sent to Zannotti by the Fund's principals, Zannotti typically composed a separate email to his supervisor to which he attached the daily trade blotters obtained from the Fund's principals to make it appear Zannotti had effected the trades.

7. During the Relevant Period, at the request of the Fund's principals and after the trades had proven profitable, Zannotti diverted approximately \$56,000 in profitable trades from the Fund's account to other K&C customer accounts held in the names of Zannotti's sister and brother in-law and family members of one of the Fund's principals. Zannotti was aware that the profits from these trades would benefit relatives of Zannotti and one of the Fund's principals. Zannotti came to realize that this activity was wrong and advised one of the Fund's principals by email that he should space out the occasions in which he requested such diversions of profitable trades in order to avoid detection.

8. During the Relevant Period, Zannotti agreed to kick back to the Fund's principals ninety percent of commissions Zannotti earned from the Fund's trading activity. By at least 2003, Zannotti became aware that his conduct was improper and came to believe it violated NASD rules, yet continued to kick back commissions to the Fund's principals because the arrangement benefited him personally at a time that he was under financial strain. Zannotti earned approximately \$1.5 million in commissions from the Fund's account activity. As a part of the kickback scheme, Zannotti made payments totaling approximately \$1.2 million to the Fund's principals, including making payments to satisfy one Fund principal's personal expenditures.

9. During the Relevant Period, Zannotti solicited potential investors in the Fund using false and misleading sales materials concerning the Fund's assets under management. For example, in July 2004, Zannotti sent an email containing sales material that claimed the Fund's principals managed over \$105 million in customer assets. At the time he sent the email, Zannotti knew that the Fund's total assets were no more than \$33-34 million. This information overstating assets under management by nearly 200% was material to potential investors. Zannotti would have benefited if the persons he had solicited had invested additional assets in the Fund because he would have earned additional commissions from a resulting increase in trading by the Fund's principals.

10. While engaging in the conduct described above, Zannotti acted with scienter, as reflected by his attempt to conceal the fact that the Fund's principals and not Zannotti himself were effecting trades using Zannotti's password on the K&C order entry system, his diversion of profitable trades from the Fund's account to benefit his family members, his involvement in and failure to disclose the kickback scheme, his knowledge that the kickback scheme was improper, and his solicitation of potential investors using email containing information he knew to be false.

Zannotti's Violations

11. Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder generally prohibit any person from employing any device, scheme or artifice to defraud; obtaining money or property by means of any untrue statement of a material fact, or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaging in any transaction, act, practice or course of business which operates or would operate as a fraud or deceit upon any person in the offer or sale, or, for Section 10(b), in connection with the purchase or sale, of any security. Violations of Section 17(a)(1) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder require the respondent to have acted with scienter. Aaron v. SEC, 446 U.S. 680, 691 (1980).

12. Based on the conduct described above, Zannotti willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Disgorgement and Civil Penalties

13. Zannotti has submitted a sworn Statement of Financial Condition dated May 10, 2008, and updated April 14, 2009, and other evidence submitted to the staff, and has asserted his inability to pay a civil penalty and an inability to pay complete disgorgement.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act and Sections 15(b)(6) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Zannotti cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

B. Zannotti be, and hereby is, barred from association with any broker or dealer;

C. Any reapplication for association by Respondent 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. Zannotti shall pay disgorgement of \$182,721.20 and prejudgment interest of \$54,451.16, but payment of such amount except \$171,800, is waived based on Zannotti's sworn representations in his Statement of Financial Condition dated May 10, 2008, and updated April 14, 2009, and other documents submitted to the Commission. The payment required by this Order shall be made in the following installments:

- a. within 10 days of the entry of this Order, a payment of \$89,000;
- b. on or before August 31, 2009, a payment of \$6,900;
- c. on or before November 30, 2009, a payment of \$6,900;
- d. on or before February 28, 2010, a payment of \$6,900;
- e. on or before May 31, 2010, a payment of \$6,900;
- f. on or before August 31, 2010, a payment of \$6,900;
- g. on or before November 30, 2010, a payment of \$6,900;
- h. on or before February 28, 2011, a payment of \$6,900;
- i. on or before May 31, 2011, a payment of \$6,900;
- j. on or before August 31, 2011, a payment of \$6,900;
- k. on or before November 30, 2011, a payment of \$6,900;
- l. on or before February 20, 2012, a payment of \$6,900; and
- m. on or before May 31, 2012, a payment of \$6,900.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600, shall be due and payable immediately, without further application. 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 Court Clerk, United States District Court for the District of Massachusetts; (C) hand-delivered or mailed to the

Clerk of Court, United States District Court for the District of Massachusetts, One Courthouse Way, Boston MA 02210; and (D) submitted under cover letter that identifies Robert Zannotti as a Respondent in these proceedings and the file number of these proceedings and states that the payment is to be applied to the obligation to pay restitution of the defendant in the criminal action United States v. Amit Mathur, 4:06-cr-40034-FDS, a copy of which cover letter and money order or check shall be sent to John T. Dugan, Division of Enforcement, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110.

E. Based upon Zannotti's sworn representations in his Statement of Financial Condition dated May 10, 2008, and updated April 14, 2009, and other documents submitted to the Commission, the Commission is not imposing a penalty against Zannotti.

F. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether the Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of 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 was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of a penalty should not be ordered; (3) contest 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.

Elizabeth M. Murphy
Secretary