

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3473 / September 21, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15038

In the Matter of

STOCK MARKETS
INSTITUTE, INC. and
SERGEY PERMINOV

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 203(e), 203(f) AND 203(k) OF
THE INVESTMENT ADVISERS ACT OF
1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS
AND A CEASE-AND-DESIST ORDER**

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 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Stock Markets Institute, Inc. (“SMI”) and Sergey Perminov (“Perminov”) (collectively, “Respondents”).

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 Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

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

Summary

1. This matter involves misrepresentations and omissions of material fact regarding the returns achieved in 2008 and 2009 by SMI, a registered investment adviser and online financial newsletter publisher that provides a service commonly referred to as "auto-trading."

Respondents

2. SMI is a Delaware corporation with its principal place of business in the Russian Federation. SMI has been registered with the Commission as an investment adviser since 2006. SMI was founded in 2002 by Perminov.

3. Perminov, age 62, resides in the Russian Federation. Perminov is the founder, president, and 80% owner of SMI and manages the operations of SMI.

Background

4. SMI publishes investment newsletters and offers auto-trading services under the name "OptionSmart" and through the website "www.optionsmart.com." SMI publishes several paid subscription newsletters, including, during 2008, QQQQ Picks, and during 2009, QQQQ Picks and QQQQ Enhanced Picks. During the relevant period, these two newsletters recommended strategies employing bull call spreads and bear put spreads. The newsletters also included auto-trade alerts that recommended a specific spread trading strategy that required, on average, three or four trades per month.

5. To utilize the auto-trading feature of the QQQQ Picks and QQQQ Enhanced Picks newsletters, a subscriber had to open a brokerage account at one of the broker-dealers registered with the Commission through which SMI provided auto-trading services. The subscriber also had to execute an auto-trading agreement with that broker-dealer and configure his or her auto-trade settings, by, among other things, specifying the amount per trade based on dollar values, number of options contracts, or percentage of account equity. Once that happened, SMI would approve the subscriber for auto-trading and begin emailing trade alerts to the broker-dealer, who then executed the alerts for each auto-trading customer on a best-efforts basis.

6. Perminov is, and at all times relevant, was, the ultimate decision maker as to the strategies recommended by these newsletters, the types and timing of the trade alerts sent by SMI, and the information published on its website.

7. In 2009, the QQQQ Picks newsletter had approximately 167 subscribers and net revenues of \$111,413. The QQQQ Enhanced Picks newsletter had approximately 133 subscribers and net revenues of \$160,618. SMI had a net loss of \$62 for 2009.

8. SMI marketed its services to subscribers by promoting on its website the success of its auto-trading strategies. From at least July 2009 to November 2009, SMI made several misrepresentations and omissions of material fact on its website regarding the performance of the trading alerts for the QQQQ Picks and QQQQ Enhanced Picks newsletters.

9. On at least July 20, 2009 and November 19, 2009, SMI represented that its 2008 QQQQ Picks newsletter's "Spreads Performance" consisted of 100% winning trades (16 of 16), with an average gain per trade of 16.5%. These representations were supported by historical performance tables that purported to provide the following trade information: (i) options traded; (ii) entry date; (iii) entry debit/credit (price); (iv) exit date; (v) exit debit/credit (price); (vi) profitability; and (vii) number of days held.

10. SMI inflated its 2008 performance results for the QQQQ Picks newsletter by failing to disclose a number of trade alerts that resulted in significant losses. SMI failed to disclose 12 trade alerts that had been issued in 2008 and had resulted in losses ranging from 43.5% to 100%. When the 12 losing trade alerts are factored into that newsletter's results for the 2008 calendar year, the effect is an average loss per trade of 28%, not the average gain of 16.5% touted by SMI.

11. On July 20, 2009, SMI represented that its 2009 QQQQ Picks newsletter's performance from January 1, 2009 to July 20, 2009 consisted of 100% winning trades (43 of 43). On November 19, 2009, SMI represented that the performance of its QQQQ Enhanced Picks newsletter, from its inception in April 2009 through November 19, 2009, consisted of 100% winning trades (52 of 52). These representations were supported by historical performance tables that purported to provide the following trade information: (i) options traded; (ii) entry date; (iii) entry debit/credit (price); (iv) exit date; (v) exit debit/credit (price); (vi) profitability; and (vii) number of days held.

12. SMI inflated its number of winning trades in 2009 by reporting trades made by different broker-dealers in connection with a single winning trade alert as separate trades where the broker-dealers obtained different prices when executing that trade alert. SMI also failed to disclose trade alerts that resulted in losses. As of July 20, 2009, only 35 winning trade alerts were actually issued by the QQQQ Picks newsletter, and SMI failed to disclose that there were also four losing trade alerts. Similarly, as of November 20, 2009, only 37 winning trade alerts were actually issued by the QQQQ Enhanced Picks newsletter, and SMI failed to disclose that there were also two losing trade alerts.

13. During the relevant period, SMI when reporting its performance results did not include losses from positions that it considered to be "rolled." If an options position was set to result in a loss, SMI typically issued a "rollover" alert, which recommended that the existing

position be “rolled” into a new position by closing out both legs of the existing spread and opening two legs of a new spread using an option of the same type (call or put) at a different, more distant, expiration date and/or different strike price. All of the losing trades that SMI failed to disclose resulted from positions that had been “rolled over” by SMI, some of them on more than one occasion. For “rolled” positions, instead of reporting gains or losses from each alert separately, SMI calculated whether the original alert produced a gain or loss by adding up the gains and/or losses resulting from the original alert and any rollover alerts associated with that original alert when the last position was closed.

14. The losing trades discussed above should have been included in SMI’s performance results because the positions that were “rolled” were in fact closed out at a loss, and additional premiums were paid to execute the new positions. SMI did not inform investors that its reporting methodology excluded a number of positions that had been closed and resulted in losses, and it did not disclose the amount of the losses or how the losses impacted its returns for the newsletters’ performance.

15. Beginning in May 2009, SMI opened a brokerage account through which it made trades for its own account based on the same trade alerts that it issued to the broker-dealers for the QQQQ Enhanced Picks newsletter. It opened a subsequent brokerage account through which it made trades for its own account based on the trade alerts that it issued for the QQQQ Picks newsletter in July 2010. After opening these accounts, SMI on its website provided links to its account statements, where investors could view all of the trades made pursuant to the alerts issued by these two newsletters, the prices at which such trades were executed, and the resulting gains or losses.

16. Prior to the institution of this action, SMI voluntarily changed its performance results reporting to only report information based on actual trades conducted through its control accounts and to report “rollover” trades as distinct and separate transactions. In addition, SMI no longer reports different execution prices obtained by auto-trading broker-dealers based on the same alert and no longer makes any representations as to the number of winning or losing recommendations in any calendar period

17. As a result of the conduct described above, SMI willfully violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser to engage in any act, practice or course of business which operates as a fraud or deceit upon any client or prospective client, and Section 206(4) of the Advisers Act, which makes it unlawful for an investment adviser to engage in any act, practice or course of business which is fraudulent, deceptive or manipulative. SMI also willfully violated Rule 206(4)-1(a)(2), which, *inter alia*, makes it unlawful for an advertisement published by an investment adviser to refer to any past specific recommendations which were profitable to any person without providing a complete list of all recommendations made within the immediately preceding period of at least one year. SMI also willfully violated Rule 206(4)-1(a)(5), which makes it unlawful for an investment adviser to distribute an advertisement which contains any untrue statement of a material fact, or which is otherwise false and misleading.

18. As a result of the conduct described above, Perminov willfully aided and abetted and caused SMI's violations of Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-1(a)(2) and (5) thereunder.

SMI's Remedial Acts

19. In determining to accept the Offers, the Commission considered remedial acts undertaken by SMI.

Undertakings

20. SMI has undertaken to¹:
- a. Make available to current and potential subscribers the complete performance histories for all of its newsletters from the date that control accounts were instituted for the newsletter; provided that SMI shall not be required to disclose open recommendations made within the prior 30 days to persons who are not current subscribers of the applicable newsletter;
 - b. Establish internal procedures and controls reasonably designed to ensure the accuracy of SMI's representations regarding the performance of its trading recommendations to any investor or potential investor, including those on its website;
 - c. Retain, within sixty (60) days of the entry of this Order, the services of an independent compliance consultant (the "Independent Consultant") that is not unacceptable to the Commission staff. The Independent Consultant's compensation and expenses shall be borne exclusively by SMI;

¹ SMI has begun certain of these Undertakings.

- d. SMI shall require that the Independent Consultant perform annual reviews (“Reviews”) of SMI’s internal controls, policies and procedures, performance representations, and advertising materials for compliance with the Advisers Act for a period of two years, with the first review as of December 31, 2012 and the second review as of December 31, 2013;
- e. SMI shall provide to the Commission staff, within thirty (30) days of retaining the Independent Consultant, a copy of an engagement letter detailing the Independent Consultant's responsibilities, which shall include the Reviews to be made by the Independent Consultant as described in this Order.
- f. SMI shall require that, within forty-five (45) days from the end of each annual review, the Independent Consultant shall submit a written and dated report of its findings to SMI and to the Commission staff (the “Report”). SMI shall require that each Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Independent Consultant's recommendations for changes in or improvements to SMI’s policies and procedures and/or disclosures to investors, and a procedure for implementing the recommended changes in or improvements to SMI’s policies and procedures and/or disclosures.
- g. SMI shall adopt all recommendations contained in the Report within sixty (60) days of the date of the receipt of the Report; provided, however, that within forty-five (45) days after the date of the applicable Report, SMI shall in writing advise the Independent Consultant and the Commission staff of any recommendations that SMI considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that SMI considers unduly burdensome, impractical or inappropriate, SMI need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose. As to any recommendation with respect to SMI’s policies and procedures on which SMI and the Independent Consultant do not agree, SMI and the Independent Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the applicable Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by SMI and the Independent Consultant, SMI shall require that the Independent Consultant inform SMI and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that SMI considers to be unduly burdensome, impractical, or inappropriate. SMI shall abide by the determinations of the Independent Consultant and, within sixty (60) days after final agreement between SMI and the Independent Consultant or final determination by the Independent Consultant, whichever occurs first, SMI shall adopt and implement all of the recommendations that the Independent Consultant deems appropriate.

- h. Within ninety (90) days of SMI's adoption of all of the recommendations in a Report that the Independent Consultant deems appropriate, as determined pursuant to the procedures set forth herein, SMI shall certify in writing to the Independent Consultant and the Commission staff that SMI has adopted and implemented all of the Independent Consultant's recommendations in the applicable Report. Unless otherwise directed by the Commission staff, all Reports, certifications, and other documents required to be provided to the Commission staff shall be sent to Kathryn Pyszka, Assistant Regional Director, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, Illinois, 60604, or such other address as the Commission staff may provide.
- i. SMI shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to such of its files, books, records, and personnel as are reasonably requested by the Independent Consultant for review; provided that SMI may satisfy its obligation to provide access to the Independent Consultant by physical delivery of documents to the Independent Consultant by email, ftp site and phone calls with personnel, and the Independent Consultant shall not be required to conduct on-site inspections of SMI's offices unless the Independent Consultant determines that an on-site inspection is necessary to perform its duties, in which case SMI shall cooperate with the Independent Consultant to arrange a reasonable on-site inspection. To ensure the independence of the Independent Consultant, SMI: (1) shall not have the authority to terminate the Independent Consultant or substitute another independent compliance consultant for the initial Independent Consultant, without the prior written approval of the Commission staff; and (2) shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

- j. SMI shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two (2) years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with SMI, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Consultant will require that any firm with which the Independent Consultant is affiliated or of which the Independent Consultant is a member, and any person engaged to assist the Independent Consultant in the performance of the Independent Consultant's duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with SMI, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two (2) years after the engagement.
- k. Within ten (10) days of the entry of this Order, SMI shall post prominently on its website a description of this Order in a form and location acceptable to the Commission staff, with a hyperlink to the entire Order. SMI shall maintain the posting and hyperlink on its website for a period of twelve (12) months from the entry of this Order.
- l. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.
- m. SMI shall certify, in writing, compliance with its undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and SMI agrees to provide such evidence. The certification and supporting material shall be submitted to Kathryn Pyszka, Assistant Regional Director, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, Illinois, 60604, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

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

Accordingly, pursuant to Sections 203(e), 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. SMI cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-1(a)(2) and (5) thereunder.

B. Perminov cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-1(a)(2) and (5) thereunder.

C. SMI and Perminov are censured.

D. Perminov shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$40,000 to the United States Treasury. If timely payment is not made by the date the payment is required by this Order, interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Perminov may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Perminov may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Perminov may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Perminov as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Kathryn Pyszka, Assistant Regional Director, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, Illinois, 60604.

E. SMI shall pay a civil money penalty in the amount of \$75,000 to the United States Treasury, plus post judgment interest. Perminov shall be jointly and severally liable for this penalty. Payment shall be made in the following installments: \$40,000 shall be paid within 14 days of the issuance of this Order, and SMI shall make 11 monthly payments of \$3,000, which are due on the 27th day of each month beginning in September 2012, and a final payment in the amount of \$2,000, plus any remaining balance, which is due on September 15, 2013. Payments shall be deemed made on the date they are received by the Commission and shall be applied first to post judgment interest, which accrues pursuant to 31 U.S.C. 3717 on any unpaid amounts due after 14 days of issuance of this Order. Prior to making the final payment set forth herein, SMI shall contact the staff of the Commission for the additional amount due for the final payment. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance plus any additional interest accrued pursuant to pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) SMI may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) SMI may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) SMI may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying SMI as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Kathryn Pyszka, Assistant Regional Director, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, Illinois, 60604.

F. SMI shall comply with its undertakings enumerated in Paragraphs 20(a) through 20(m) above.

By the Commission.

Elizabeth M. Murphy
Secretary