

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9968 / October 28, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 76285 / October 28, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31881 / October 28, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16930

In the Matter of

PATRICK R. BURKE

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
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,
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 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 Patrick R. Burke (“Burke” 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, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, 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, 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 Respondent’s Offer, the Commission finds¹ that

Summary

These proceedings arise out of a fraudulent scheme perpetrated by Patrick R. Burke (“Burke”), a former registered representative at Rochdale Securities LLC (“Rochdale”), a now defunct registered broker-dealer in Connecticut. From at least 2010 through November 15, 2012 (“relevant period”), while he was associated with Rochdale, Burke violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by needlessly inserting his longstanding customer, a proprietary trader at a New York City-based firm (the “Customer”), into the filling of other customers’ orders, often at a profit to the Customer, thereby failing to seek to obtain best execution on those orders by causing orders to be filled at prices that were worse than those available in the market. As a result of Burke’s misconduct, certain other Rochdale customers generally paid higher average prices on purchase orders or received lower average prices on sale orders than they otherwise would have paid (or received) had Burke’s Customer not been involved. Burke knowingly put the interest of his Customer ahead of the interest of certain other Rochdale customers. Also as a result of Burke’s conduct, Rochdale essentially earned double trading commissions: one for executing trades by Burke’s Customer and another for executing the original Rochdale customer order.

Respondent

1. **Patrick R. Burke**, age 49, resides in Wilton, Connecticut. Burke, currently not associated with a registered broker-dealer, was a registered representative at Rafferty Capital Markets, LLC, a broker-dealer registered with the Commission, from November 15, 2012 until September 4, 2014. Prior to that, Burke was a registered representative at Rochdale since August 4, 1998.

Other Relevant Entity

2. **Rochdale Securities LLC** is a defunct broker-dealer, formerly registered with the Commission from 1986 until April 26, 2013, with its principal place of business in Stamford, Connecticut. Rochdale’s membership with FINRA was cancelled effective April 23, 2013, and its registration with the State of Connecticut was revoked by consent effective August 12, 2013.

¹ 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.

Duty of Best Execution

3. The duty of “best execution” requires a broker-dealer to seek to obtain the most favorable terms reasonably available under the circumstances for a customer’s transaction. As part of this duty, a broker-dealer must conduct a regular and rigorous review of its practices in light of market and technology changes, and may need to assess which competing markets, market makers, or electronic communications networks offer the most favorable terms for customers’ orders. In addition to considering the price of a security, a broker-dealer should take into account other factors such as account order size, trading characteristics of the security, speed of execution, clearing costs, and the cost and difficulty of executing an order in a particular market. Burke was aware of his obligation to execute Rochdale customer trades consistent with Rochdale’s duty of best execution. Arranging for his Customer to participate in filling other Rochdale customer orders failed to comply with Rochdale’s duty of best execution and constituted a scheme to defraud other Rochdale customers.

The Violative Conduct

4. During the relevant period, on certain occasions, Burke improperly arranged for certain Rochdale customer securities orders to be filled by Burke’s Customer, a proprietary trader at a New York City-based firm. Burke’s Customer held an account at Rochdale, and Burke on certain occasions passed other customer order information to his Customer so that the Customer could arrange to submit orders through his Rochdale account to fill, at least in part, the original Rochdale customer order, often at a profit to the Customer. At other times, Burke exercised discretionary trading authority in the Customer’s Rochdale account and routed orders through the Customer’s account, often at a profit to the Customer. Burke thereby knowingly put the interest of his Customer ahead of the interest of Rochdale’s other customers.

5. In certain instances, when Burke received a purchase order from certain customers, Burke, for no purpose other than to generate commissions, arranged for his Customer to purchase the relevant securities elsewhere and sell them through his account at Rochdale to satisfy the original customer’s order, at least in part. Burke’s Customer then (1) purchased the securities through an account held away from Rochdale at a third party broker-dealer and (2) subsequently sold the position through his account at Rochdale, often at a profit.² Rochdale, through Burke, would fill at least a part of the original customer’s purchase order by crossing³ the sale order from his Customer’s Rochdale account with the original customer’s purchase order, generally causing the other Rochdale customer to pay a purchase price higher than otherwise would have been paid had Burke’s Customer not been involved. Similarly, on certain occasions, when Burke received a sale

² Burke’s Customer typically day traded and generally did not previously own the securities he sold through his account at Rochdale.

³ In this context, “crossing” refers to a trade execution in which a broker buys securities on behalf of one customer’s account (here, the longstanding customer/seller) and sells the same securities on behalf of another customer’s account (here, the original customer/buyer).

order from certain Rochdale customers, Burke, for no purpose other than to generate commissions, arranged for his Customer to purchase at least some of the relevant securities through his account at Rochdale. Burke's Customer then (1) purchased (or sold short, depending on the sequence) the securities through his account at Rochdale and (2) subsequently sold (or bought to cover a short position, depending on the sequence) his position through an account held away from Rochdale at a third party broker-dealer, again often at a profit to the Customer. Burke similarly filled at least some of the original customer's sale order by crossing the shares from the original customer's Rochdale account with the Customer's Rochdale account. Burke thereby failed to seek to obtain best execution by needlessly inserting his Customer into the filling of customers' orders, and, in doing so, Burke generally enabled his Customer to earn a profit on these trades. Burke also was able to effectively double commissions to Rochdale, assessing commissions on both the Customer's trade and the original Rochdale customer's order.

6. For example, on January 23, 2012 prior to the market open, Burke received a customer order to sell 14,284 shares of ABC Co. ("ABC"). For no purpose other than to generate commissions, Burke provided his Customer with information about that customer order to enable his Customer to short sell shares of ABC through a third-party account and subsequently cover the short sale by purchasing the ABC shares through his account at Rochdale so that Burke could cross the trade with the original customer. Burke's Customer then sold short 12,600 shares of ABC through a third-party account at approximately \$5.65 per share. The other Rochdale customer likely would have received a similar price had Burke sold that customer's shares directly into the open market. Then Burke caused his Customer to subsequently purchase 12,600 shares through his Rochdale account from the other Rochdale customer at approximately \$5.60 per share. Burke thereby caused the other Rochdale customer to sell the shares to Burke's Customer at a lower price than he or she otherwise would have obtained in the open market had Burke's Customer not been involved. Moreover, Burke was able to effectively double commissions to Rochdale, assessing commissions on both the Customer's order to purchase the stock and the original Rochdale customer's order to sell the stock.

7. On other occasions, Burke used his discretionary authority to trade in the Customer's Rochdale account. If the other Rochdale customer entered a purchase order, Burke (1) used the Customer's Rochdale account to purchase the securities through a third-party brokerage account and (2) subsequently sold the position to the other Rochdale customer using the Customer's Rochdale account to cross the trade. Similarly, if the other Rochdale customer entered a sale order, Burke (1) purchased the securities from the other customer using the Customer's Rochdale account and (2) subsequently sold the position out of the Customer's account through a third party broker-dealer. As with the above example, Burke filled at least some of the original customer's order by crossing the shares from the original customer's Rochdale account with the Customer's Rochdale account. Burke thereby failed to seek to obtain best execution by needlessly inserting his Customer into the filling of other customers' orders, and, in doing so, Burke generally enabled his Customer to earn a profit on these trades. Burke also was able to effectively double commissions to Rochdale, assessing commissions on both the trade through the Customer's account and the original Rochdale customer's order.

8. For example, on April 15, 2010, Burke received a Rochdale customer order to sell 86,469 shares of DEF Co. (“DEF”) and 195,056 shares of GHI Co. (“GHI”). Burke used the Customer’s Rochdale account to purchase 7,000 shares of DEF from the other Rochdale customer at approximately \$61.42 per share and 5,000 shares of GHI at approximately \$46.71 per share. Market data reflects that at the time Burke used the Customer’s account to purchase the 7,000 shares of DEF from the other Rochdale customer (approximately 2:33 p.m.), bids (purchase orders) for 22,500 shares of DEF were available in the open market at an average price of \$61.46 per share. Similarly, at the time Burke used the Customer’s account to purchase 5,000 shares of GHI from the other Rochdale customer (approximately 2:44 p.m.), market data reflects that bids for 5,800 shares of GHI were available in the open market at an average price of \$46.72. Burke thereby caused the other Rochdale customer to sell the shares to Burke’s Customer at a lower price than he or she otherwise would have obtained in the open market had Burke’s Customer not been involved. Moreover, Burke was able to effectively double commissions to Rochdale, assessing commissions on both the Customer’s order to purchase the stock and the original Rochdale customer’s order to sell the stock.

9. During the relevant period, Burke knowingly unnecessarily involved his Customer in approximately 100 transactions, enabling his Customer to profit in more than 90% of those instances.

10. From approximately 2010 through 2012, Burke earned approximately \$6,300 in combined commissions on these trades from both Burke’s Customer and Rochdale’s other customers, and Rochdale earned approximately \$21,000 in combined commissions on these trades.

Violations

11. As a result of the conduct described above, Burke 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 or sale of securities and in connection with the purchase or sale of securities.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, and for the protection of investors to impose the sanctions agreed to in Respondent Burke’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 Burke 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. Respondent Burke be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

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; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock,

with the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by the 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. Respondent shall, within 10 days of the entry of this Order, pay disgorgement, which represents profits gained as a result of the conduct described herein of \$6,300.00, prejudgment interest of \$659.07, and civil penalties of \$50,000, for a total payment of \$56,959.07 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717 and SEC Rule of Practice 600. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent 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) Respondent 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 Patrick R. Burke 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 Michele T. Perillo, Division of Enforcement, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110.

E. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree

or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary