

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9969 / October 28, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 76286 / October 28, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31882 / October 28, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16931

In the Matter of

HAL S. TUNICK

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 Hal S. Tunick (“Tunick” 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 Hal S. Tunick (“Tunick”), a former principal of and co-head of the equities trading desk at Rochdale Securities LLC (“Rochdale”), a now defunct registered broker-dealer in Connecticut. From at least 2010 through November 14, 2012 (“relevant period”), while he was associated with Rochdale, Tunick 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 San Diego, California-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 readily available in the market. As a result of Tunick’s misconduct, 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 Tunick’s Customer not been involved. Tunick knowingly put the interest of his Customer ahead of the interest of Rochdale's other customers. Also as a result of Tunick’s conduct, Rochdale essentially earned double trading commissions: one for executing trades by Tunick’s Customer and another for executing the original Rochdale customer order.

Respondent

1. **Hal S. Tunick**, age 56, resides in Chappaqua, New York. Tunick, currently unemployed and 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 19, 2012 until July 23, 2014. Prior to that, Tunick was a registered representative at Rochdale from 1995 until November 2012. From 2005 until November 14, 2012, he was the co-head of the equities trading desk at Rochdale as well as a minority owner of the firm.

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.

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.

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. Tunick 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 the duty of best execution and constituted a scheme to defraud the other customers.

The Violative Conduct

4. During the relevant period, Tunick improperly arranged for certain Rochdale customer securities orders to be filled by Tunick's Customer, a proprietary trader at a San Diego, California-based firm. Tunick's Customer held an account at Rochdale, and Tunick routinely 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. Tunick thereby knowingly put the interest of his Customer ahead of the interest of Rochdale's other customers.

5. When Tunick received a purchase order from certain customers, Tunick, for no purpose other than to generate commissions, instructed his Customer by instant message 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. Tunick'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 Tunick,

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

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 he or she otherwise would have paid had Tunick's Customer not been involved. Tunick, at times, even advised his Customer to submit a higher sale price than the Customer initially requested.

6. For example, on September 30, 2010, Tunick received a customer order to purchase 20,300 shares of ABC Co. ("ABC"). For no purpose other than to generate commissions, Tunick then instructed his Customer to purchase 10,000 shares of ABC through an account at a third-party broker-dealer and then to submit an order to sell these shares through his account at Rochdale. Tunick's Customer purchased these shares at approximately \$54.89 per share. Tunick's Customer thereafter submitted an order to sell the 10,000 shares through his account at Rochdale at a price of \$55.03 per share. Market data reflects that at this time (approximately 10:00 a.m.), offers (sale orders) for more than 5,000 shares of ABC were available in the open market at an average price of \$54.98 per share. Despite this, Tunick instructed his Customer to increase his order to sell at \$55.03 by two cents, to \$55.05 per share, which Tunick crossed with the pending customer order to purchase shares of ABC. Tunick's Customer thereby locked in a profit by following Tunick's instructions, while at the same time causing the other Rochdale customer to purchase the shares from Tunick's Customer at a higher price than he or she otherwise would have paid in the open market had Tunick's Customer not been involved. Moreover, Tunick was able to effectively double commissions to Rochdale, assessing commissions on both the Customer's order to sell the stock through his account at Rochdale and the original Rochdale customer order to buy the stock.

7. Similarly, when Tunick received a sale order from certain Rochdale customers, Tunick, for no purpose other than to generate commissions, instructed his Customer by instant message to purchase the relevant securities through his account at Rochdale. Tunick's Customer then: (1) purchased the securities through his account at Rochdale and (2) subsequently sold (or sold short, 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 and resulting in double commissions to Rochdale. As with the prior example, Tunick 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.

8. For example, on June 1, 2010, Tunick received a customer order to sell 30,000 shares of DEF Co. ("DEF"). For no purpose other than to generate commissions, Tunick provided his Customer with information about that customer order to enable his Customer to purchase the shares through his account at Rochdale so that Tunick could cross the trade with the original customer. Tunick's Customer purchased 10,000 shares of DEF through his account at Rochdale. Market data reflects that at the time of the Customer's purchase (approximately 10:30 a.m.), bids (purchase orders) for 2,400 shares of DEF were available in the open market at an average price of

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).

\$20.15 per share. Despite this, Tunick reduced the purchase price by \$0.05 per share and executed his Customer's 10,000 share purchase at \$20.10 per share, thereby causing the other Rochdale customer to sell the shares to Tunick's Customer at a lower price than he or she otherwise would have obtained in the open market had Tunick's Customer not been involved. Tunick's Customer sold these shares through an account at a third-party broker-dealer at approximately \$20.17 per share. Moreover, Tunick 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, Tunick knowingly unnecessarily involved his Customer in more than 250 transactions, allowing his Customer to profit in more than 95% of those instances.

10. From approximately 2010 through 2012, Tunick's firm, Rochdale, earned more than \$130,000 in combined commissions on these trades from both Tunick's Customer and Rochdale's other customers.

Violations

11. As a result of the conduct described above, Tunick 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 Tunick'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 Tunick 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 Tunick 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.

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 a civil money penalty in the amount of \$125,000 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. 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 Hal S. Tunick 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