

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 8621 / September 30, 2005

SECURITIES EXCHANGE ACT OF 1934

Release No. 52545 / September 30, 2005

INVESTMENT ADVISERS ACT OF 1940

Release No. 2437 / September 30, 2005

INVESTMENT COMPANY ACT OF 1940

Release No. 27108 / September 30, 2005

ADMINISTRATIVE PROCEEDING

File No. 3-12068

In the Matter of

**INTERNATIONAL
EQUITY ADVISORS, LLC
AND RICHARD ROGER
LUND,**

Respondents.

**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, SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, SECTION 203(f)
OF THE INVESTMENT ADVISERS ACT OF
1940, AND SECTION 9(b) OF THE
INVESTMENT COMPANY ACT OF 1940**

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”), Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against International Equity Advisors, LLC (“IEA”); and that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Section 203(f) of the Advisers Act, and Section 9(b) of the Investment Company Act against Richard Roger Lund (“Lund”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, IEA and Lund each has submitted an Offer of Settlement (collectively, 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, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Section 203(f) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds¹ that

Respondents

1. Lund, 47 years old, is a resident of Wilmington, North Carolina. From April 1998 to December 1999, Lund, doing business as International Equity Advisors, a North Carolina sole proprietorship, was an investment adviser registered with the Commission. In that capacity, Lund provided investment advisory services to more than 100 individual clients. In December 1999, Lund began doing business through International Equity Advisors, LLC (“IEA”), through which Lund continued operating as an investment adviser until at least December 2003.

2. IEA is a limited liability company organized pursuant to the laws of the State of North Carolina. IEA’s principal place of business was Wilmington, North Carolina. From December 1999 through at least December 2003, IEA provided investment advisory services to varying numbers of clients, and had assets under management that averaged approximately \$110 million. Lund was the only person associated with IEA.

Background

3. From at least September 1999 through at least December 2003, Lund – operating as International Equity Advisors and, subsequently, through IEA – was an investment adviser specializing in the business of market timing mutual funds on behalf of his clients. “Market timing” includes: (a) the frequent buying and selling of shares of the same mutual fund, or (b) buying or selling mutual fund shares in order to exploit inefficiencies in mutual fund pricing. Many of the mutual funds Lund traded on behalf of his clients discouraged, restricted or prohibited

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

market timing. While not illegal per se, the frequent in and out trading associated with market timing can dilute the value of mutual fund shares, if the market timer is exploiting pricing inefficiencies, or disrupt the management of the mutual fund's investment portfolio, or cause the targeted mutual fund to incur costs borne by other shareholders to accommodate frequent buying and selling of shares by the market timer.

4. To evade detection of his market timing activities, Lund engaged in a scheme to conceal the nature and volume of his trading from the mutual funds through the use of multiple accounts opened at four different broker-dealers. One of the broker-dealers at which Lund opened multiple accounts on behalf of his clients for the purpose of market timing was Ehrenkrantz King Nussbaum, Inc. ("EKN"), a registered broker-dealer headquartered in Garden City, New York. Lund was recruited to open accounts at EKN by an unregistered associate of the firm, Brendan E. Murray ("Murray"), in early 2003. Murray had been brought on to work at EKN by the firm's chief executive officer, Anthony Ottimo ("Ottimo"), for the purpose of bringing market timing business to the firm. Ottimo was a registered representative of EKN, holding Series 4, 7, 24 and 63 licenses, and an indirect part-owner of the firm. Murray was associated with EKN but he was not registered or licensed in any capacity.

5. At EKN and other broker-dealers, Lund used multiple brokerage accounts, all funded with client assets, to continue trading in mutual funds that had previously prohibited him from trading because of his market timing activity. During their association with Lund, EKN and other broker-dealers that serviced accounts controlled by Lund received dozens of so-called "kick-out notices" from different mutual funds that stated that the funds were not meant to be short-term market timing vehicles, and that no further trades would be accepted from the Lund-controlled account that had been identified as engaging in market timing. The broker-dealers forwarded certain of these kick-out notices, or information regarding certain of the kick-out notices, to Lund. In response, the broker-dealers opened new accounts. Lund was made aware that new accounts had been opened for his use and he then continued trading through the new accounts in certain of the same funds.

6. For example, between March 13 and March 17, 2003, Lund bought and then sold approximately \$200,000 in shares of one mutual fund ("Fund A") in each of three accounts that he had originally opened at EKN, making a profit of approximately \$17,000 for his clients. One of the accounts Lund used was flagged by Fund A for market timing activity because, as Fund A stated in its prospectus: "[E]xcessive account transactions can disrupt the management of the funds and increase transaction costs for all shareholders." On March 18, 2003, Fund A blocked the flagged account from making any further trades in the fund.

7. In response to the block from Fund A, and similar blocks from other mutual funds, Murray sent Lund an e-mail informing him that EKN had "taken the liberty of opening three 'mirror' accounts on our books," which would allow Lund to continue to trade in mutual funds that had previously prohibited him from trading, including Fund A. By "mirror accounts," Murray meant that the new accounts differed from the old accounts only in terms of the account numbers assigned to the new accounts. There was no difference in terms of the trading strategy to be employed in the new accounts, or the source of the funds to be deposited in the new accounts. In

fact, the only purpose behind opening the new accounts was to allow Lund to continue to trade in funds that had previously prohibited him from trading because of market timing.

8. After the new accounts were opened, Lund continued to trade, on behalf of his clients, in Fund A despite the fact that Fund A had previously prohibited him from trading. He did so by directing EKN to place orders for Fund A through the new, cloned accounts. By trading through the cloned accounts, which had new account numbers, Lund effectively prevented Fund A from associating the cloned accounts with either the old account that had previously been flagged by Fund A, or with other of the Lund-controlled accounts at EKN that had traded in Fund A. In so doing, Lund misrepresented the nature and volume of his trading.

9. Lund communicated his orders to EKN using individual trade sheets that he sent via facsimile to the firm, each of which was marked with a specific account number for each cloned account, and some of which were labeled “#2,” “#3,” or with another number that corresponded with the time at which the cloned account had been opened, relative to other Lund-controlled accounts at EKN. In all, from March 13 to June 13, 2003, Lund completed 24 purchases and 24 sales of shares of Fund A using eight different accounts, and realizing a profit of approximately \$70,000 for the benefit of Lund’s clients.

10. As part of Lund’s scheme to mask the nature and volume of his trading, and in order to keep off what Lund and others referred to as the mutual funds’ “radar screens,” Lund also spread out the total amount of money he moved into and out of a single mutual fund by executing simultaneous trades in the same fund using several different accounts. Lund had learned that by keeping the amount invested in a fund artificially low in any single account, there was a greater probability that he could avoid the mutual fund’s so-called “market timing police,” who would be more apt to notice trades involving larger dollar amounts. Throughout 2003, Lund regularly received from Murray an updated spreadsheet listing the approximate dollar maximum that Lund could trade in each account “to Avoid Funds’ ‘Radar screen’,” which listed information on dozens of different mutual funds.

11. For example, in accounts at EKN, between March 13 and March 17, 2003, Lund bought approximately \$710,000 in shares of one mutual fund (“Fund B”) on behalf of his clients, and then quickly sold the shares for approximately \$724,000, making a profit of approximately \$14,000 for his clients. However, to keep off Fund B’s “radar screen,” Lund caused the transactions to be executed in three separate accounts, never purchasing more than \$300,000 in shares of the fund in any one account.

12. With Lund’s full knowledge and approval, EKN and other broker-dealers that serviced accounts controlled by Lund used multiple registered representative codes (“rep codes”) and multiple branch office identifiers (“branch identifiers”) for the purpose of hiding the nature and volume of Lund’s trading in mutual funds. When mutual funds identified a particular rep code or branch identifier as being associated with a Lund-controlled account that was market timing the fund, and sent notices indicating that no further trades would be accepted from the identified registered representative or the identified branch office, the broker-dealers opened new accounts with new rep codes and new branch identifiers, all with Lund’s full knowledge and

approval. In many instances, the rep codes corresponded with registered representatives who had no actual contact with the Lund-controlled accounts, and the branch identifiers corresponded with branch offices at which Lund never conducted any business. The sole reason for the use of different rep codes and branch identifiers was to disguise Lund's identity, as the individual controlling the accounts, and to lead the mutual funds into believing that the new accounts were established by different individuals. The truth, however, was that the new accounts were created for the sole purpose of hiding Lund's identity and cloaking his market timing activities.

13. For example, EKN opened at least 15 separate accounts that Lund used to market time mutual funds. Lund was made aware that the accounts had been opened for his use, and he knowingly placed orders in all of the accounts for the purpose of concealing the nature and volume of his trading. The various Lund-controlled accounts were assigned at least three different rep codes, only one of which corresponded with Ottimo, the only EKN registered representative who had any contact with the Lund-controlled accounts. The accounts also were assigned at least four different branch identifiers, only one of which corresponded with the EKN branch office at which Lund did business.

14. In all, the four broker-dealers through which Lund traded on behalf of his clients opened at least 105 different accounts for the purpose of allowing Lund to market time mutual funds. Lund was made aware that the accounts had been opened for his use, and he knowingly placed orders in all of the accounts for the purpose of concealing the nature and volume of his trading. From September 1999 through December 2003, Lund made approximately \$34,000,000 for the benefit of his clients through his market timing activities. Lund, himself, realized approximately \$2,500,000 in management fees that he was paid as a result of the increase in client assets he achieved through his market timing.

Violations

15. As a result of the conduct described above, Lund and IEA willfully committed violations of Section 17(a) of the Securities Act, which prohibits fraudulent conduct in the offer or sale of securities.

16. As a result of the conduct described above, Lund and IEA willfully committed violations of 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.

Cooperation

17. In determining to accept the Offers, the Commission considered the cooperation Respondents afforded the Commission staff.

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 Section 8A of the Securities Act, Section 21C of the Exchange Act, Section 203(f) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Lund shall 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 IEA shall 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;

C. Respondent Lund be, and hereby is suspended from association with any investment adviser and is 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 for a period of 12 months, effective on the date of the entry of this Order;

D. Respondent IEA be, and hereby is suspended from association with any investment adviser and is 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 for a period of 12 months, effective on the date of the entry of this Order;

E. IT IS FURTHERED ORDERED that Respondents shall together, on a joint and several basis, pay disgorgement in the amount of \$2,500,000 plus prejudgment interest in the amount of \$190,000, and pay a civil money penalty in the amount of \$500,000. Respondents shall satisfy this obligation by making payment to the United States Treasury within 30 days of the entry of this Order. 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 Lund and IEA as Respondents in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Katherine S. Addleman, Division of Enforcement, Securities and Exchange Commission, 3475 Lenox Road, N.E., Suite 1000, Atlanta, GA 30326-1232. Such disgorgement, prejudgment interest and civil money penalty may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 ("Fair Fund distribution"). Regardless of whether any such Fair Fund distribution is made, 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, Respondents agree that they shall not, after offset or reduction in any Related Investor Action based on Respondents' payment of disgorgement in this action, argue that they are entitled to, nor shall they further benefit by offset or reduction of any part of Respondents' payment of a civil

penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 United States Treasury or to a Fair Fund, as the Commission directs. 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.

By the Commission.

Jonathan G. Katz
Secretary