



4. During the relevant period, Druffner was a person associated with an investment adviser.

5. On August 25, 2005, the United States Attorney for the District of Massachusetts filed a criminal Information against Druffner concerning his use of deceptive trading practices to market time in mutual funds. The Information charged Druffner with four counts of violating Section 10(b) of the Exchange Act and four counts of wire fraud. The case was filed in United States District Court for the District of Massachusetts and is entitled *United States v. Martin J. Druffner*, (Criminal No. 05-CR-10232JLT). The Information charged that, from at least 1999 through in or about October 2003, Druffner defrauded mutual funds by employing various deceptive and fraudulent acts and practices to execute prohibited market timing trades on behalf of seven hedge fund customers. According to the Information, Druffner's deceptive and fraudulent conduct consisted of three basic categories of conduct: (1) creating and using multiple customer account numbers; (2) creating and using multiple financial advisor, or "FA" numbers; and (3) making affirmative representations and material omissions to employees at mutual fund companies about the true nature and extent of his market timing, all for the purpose of avoiding detection by mutual funds. The Information alleges, among other things, that Druffner engaged in this conduct after he was notified, explicitly and repeatedly, both that mutual fund companies prohibited his customers' market timing activity, and, in some cases, that mutual fund companies had precluded Druffner from further trading because of repeated violations of their prospectus limitations. According to the Information, Druffner generated in excess of \$2,000,000 in net commissions as a result of his deceptive and fraudulent scheme.

6. On September 19, 2005, Druffner pled guilty to the eight counts alleged in the Information, including the violations of Section 10(b) of the Exchange Act described above.

### III.

In view of the allegations made by the Division of Enforcement, the Commission deems it appropriate and in the public interest that public administrative proceedings be instituted to determine:

- A. Whether the allegations set forth in Section II are true, and to afford the Respondent an opportunity to establish any defenses to such allegations;
- B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act; and
- C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.200.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Jonathan G. Katz  
Secretary