

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9988 / December 11, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 76628 / December 11, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31934 / December 11, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16999

In the Matter of

AARON NOWAK

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTION 15(b)
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”), Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Aaron Nowak (“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, Section 15(b) 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”), 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 Aaron Nowak’s negligent participation in a fraudulent scheme perpetrated by certain employees at Linkbrokers Derivatives LLC (“Linkbrokers”), a New York based interdealer broker, to unlawfully take secret profits of more than \$18 million at the expense of Linkbrokers’ customers. Aaron Nowak and four other individuals (collectively “the Linkbrokers Team”) worked on Linkbrokers’ “Cash Desk,” executing orders to purchase and sell securities on behalf of their customers, primarily large foreign institutions and foreign banks, and purportedly charging small commissions—typically between a fraction of a penny and two pennies per share.²

Typically, the Cash Desk executed trades for Linkbrokers’ customers on a “riskless principal” basis. That is, the customer gave the Cash Desk the order, the order was filled in the market under Linkbrokers’ name, then allocated to the customer. Thus, typically, Linkbrokers facilitated the transactions in exchange for the agreed-upon commission, and, essentially, served as an intermediary for others who assumed the market risk.

From at least 2005 through at least February 2009 (the “relevant period”), on over 36,000 customer transactions, the Linkbrokers Team perpetrated the scheme by charging customers false prices with embedded hidden markups or markdowns. In total, the sales brokers selectively engaged in the scheme when the volatility in the market was sufficient to conceal the fraud from the customer.

After receiving and executing orders on behalf of customers, the sales brokers routinely evaluated each transaction to determine whether they could make an additional or “secret” profit above the commission to be charged to the customer. The sales brokers considered other transactions in the relevant security occurring in the seconds to minutes before and after the actual trade was executed. Where the price fluctuated sufficiently to conceal the fraud from customers, a sales broker instructed Nowak or another sales trader to record, on Linkbrokers’ internal records, a false execution price that included a secret profit. Then, Linkbrokers charged the customer the

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.

² Gregory Reyftmann, Benjamin Chouchane and Marek Leszczynski were “sales brokers” and Aaron Nowak and Henry Condron were “sales traders” on the Linkbrokers Team.

inflated price while also charging the agreed-upon commission. In that way, Linkbrokers received not only the actual commission charged, but also the fraudulent secret profit that the sales broker, with assistance from Nowak on certain occasions, embedded in the price reported to the customer. In total, the Linkbrokers Team fraudulently over-charged customers by \$18 million, representing approximately 40% of the Cash Desk's earnings during the relevant time period.

Respondent

1. Aaron Nowak, is a registered representative and has been associated with broker-dealers registered with the Commission from November 2004 until the present. Nowak was associated with Linkbrokers from November 2004 until April 2011 as a sales trader and middle-office assistant. In April 2011, he transferred to a new position at ICAP. He holds Series 7, 55 and 63 securities licenses. Nowak, 36 years old, is a resident of Greenwood Lake, New York.

Other Relevant Entities and Individuals

2. Linkbrokers was a Delaware limited liability company. During the relevant period, Linkbrokers' principal place of business was in New York, New York. It was registered with the Commission as a broker-dealer from 2003 until 2014. Linkbrokers ceased acting as a broker-dealer in April 2013 and withdrew its broker-dealer registration in November 2014. In the related administrative proceeding *In the Matter of Linkbrokers Derivatives LLC*, File No. 3-16017 (Aug. 14, 2014), Linkbrokers was ordered to pay disgorgement of \$14 million.

3. Gregory Reyftmann ("Reyftmann"), age 41, was a sales broker and supervisor at Linkbrokers from February 2005 until June 2010. During that period, Reyftmann was the head of the Cash Desk and responsible for supervising Chouchane, Leszczynski, Condron, and others. He was a defendant in the related case *SEC v. Leszczynski, et al.*, No. 12-cv-07488 (S.D.N.Y.), and on February 9, 2015, he was ordered to pay disgorgement, prejudgment interest and penalty totaling \$8,720,140.

4. Benjamin Chouchane ("Chouchane"), age 41, was a sales broker at Linkbrokers from February 2005 until December 2010. He pled guilty in a criminal case arising from the same conduct discussed herein, *United States v. Leszczynski*, No. 12-cr-00923 (S.D.N.Y.). He was sentenced to twenty-four months imprisonment, two years supervised release, and ordered to pay \$5 million in restitution. In addition, he was a defendant in the related case *SEC v. Leszczynski, et al.*, Civil Action No. 12-cv-07488 (S.D.N.Y.). He consented to a judgment entered on January 13, 2014, ordering him to pay disgorgement and prejudgment interest totaling \$2,449,577. In the related administrative proceeding, *In the Matter of Benjamin Chouchane*, File No. 3-15739 (Feb. 4, 2014), Chouchane was barred, by consent, from association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent and from participating in any penny stock offering.

5. Marek Leszczynski ("Leszczynski"), age 45, was a sales broker at Linkbrokers from March 2005 until December 2010. He pled guilty in a criminal case arising from the same

conduct discussed herein, *United States v. Leszczynski*, No. 12-cr-00923 (S.D.N.Y.). He was sentenced to eighteen months imprisonment, two years supervised release, and ordered to pay \$1.5 million in restitution. In addition, he was a defendant in the related case *SEC v. Leszczynski, et al.*, Civil Action No. 12-cv-07488 (S.D.N.Y.). He consented to a judgment entered on January 13, 2014, ordering him to pay disgorgement of \$1,500,000. In the related administrative proceeding, *In the Matter of Marek Leszczynski*, File No. 3-15738 (Feb. 4, 2014), Leszczynski was barred, by consent, from association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent and from participating in any penny stock offering.

6. Henry A. Condrón (“Condrón”), age 36, was a sales trader and middle-office assistant at Linkbrokers from February 2005 until October 2010. He pled guilty in a criminal case arising from the same conduct discussed herein, *United States v. Condrón*, No. 12-cr-768 (S.D.N.Y.). He was sentenced to eighteen months probation and ordered to pay \$207,675 in restitution. In addition, he was a defendant in the related case *SEC v. Leszczynski, et al.*, Civil Action No. 12-cv-07488 (S.D.N.Y.). He consented to a judgment entered on January 13, 2014, ordering him to pay disgorgement and prejudgment interest totaling \$207,675. In the related administrative proceeding, *In the Matter of Henry A. Condrón*, File No. 3-15740 (Feb. 4, 2014), Condrón was barred, by consent, from association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent and from participating in any penny stock offering.

Facts

7. During the relevant time period, Linkbrokers acted as an interdealer broker for institutional customers dealing in equities products, both cash and derivatives.

8. Linkbrokers established its Cash Desk in February 2005. The Cash Desk executed trades in U.S. and Canadian stocks. Its customers were primarily large foreign institutions and foreign banks. Typically, Linkbrokers operated as an agent and executed large volumes of securities trades on behalf of customers for low commissions. The Cash Desk typically did not hold any securities itself. The Cash Desk was one of several desks at Linkbrokers.

9. Linkbrokers marketed and advertised itself as an agency-only business. For example, in marketing materials distributed on March 8, 2007, Linkbrokers represented that “Link acts as a fiduciary in all transactions. Link trades on an agency basis in transactions with the sole purpose of providing best execution.” In separate marketing materials distributed on January 4, 2007, Linkbrokers further stated that it provided “unparalleled execution without the conflicts of investment banking and proprietary trading.”

10. Linkbrokers’ internal records show that, for the majority of its customers, the Cash Desk was to charge its customers flat commission rates between \$0.005 per share and \$0.02 per share.

11. Reyftmann, Chouchane and Leszczynski were “sales brokers” on the Cash Desk and were responsible for finding customers, developing relationships, negotiating commission rates, taking orders from customers, and communicating with customers regarding their orders and Linkbrokers’ execution of those orders. Reyftmann also supervised the Cash Desk during the relevant period.

12. Nowak and Condrón were “sales traders” on the Cash Desk who entered orders they received from the sales brokers into systems for execution, and worked at the direction of Reyftmann.

13. Nowak and Condrón also served as “middle-office assistants,” who maintained and updated Linkbrokers’ internal “trade blotter” (hereafter “Trade Blotter”), a spreadsheet generated from Linkbrokers’ proprietary software program that contained detailed information about trades executed by the Linkbrokers Team, including the names of the customers and execution prices. The Trade Blotter contained three price fields: (1) the actual “execution price” received by Linkbrokers; (2) the “gross price” – the price that included the undisclosed markup/markdown; and (3) the “net price” – the gross price plus the agreed-upon commission rate. The Linkbrokers Team used the Trade Blotter to record profits from the unlawful scheme.

14. In addition, as middle-office assistants, Nowak and Condrón reported customer trades to Linkbrokers’ clearing firm (either through a transfer via Linkbrokers’ proprietary software program or directly), reviewed trade settlements by the clearing firm, calculated daily profit and loss, and sent trade recaps and/or trade confirmations via email to customers.

15. Depending on the customer’s preference, Linkbrokers, through Reyftmann, Chouchane and Leszczynski, accepted customer orders by telephone, instant message, or email. Nowak or other members of the Linkbrokers Team also confirmed trades to customers by telephone, instant message, email or mail, depending on the customer’s preference.

The Undisclosed Markups/Markdowns

16. Members of the Linkbrokers Team concealed the markups/markdowns from Linkbrokers’ customers by, among other things, misrepresenting execution prices to the customers, and omitting information relating to markups/markdowns.

17. The sales brokers opportunistically engaged in adding undisclosed markups/markdowns to trades when they thought the particular customer would not detect it, frequently taking advantage of market volatility to conceal the conduct.

18. The undisclosed markups/markdowns ranged anywhere from a few dollars to \$228,822 per transaction.

19. The markup/markdown scheme worked in the following way:

- a. A sales broker received a customer order either by telephone, instant message, or email.
- b. The sales broker gave the order to a sales trader to execute.
- c. The sales trader executed the trade.
- d. After the order was executed, a middle-office assistant recorded the actual execution price on the Trade Blotter and informed the sales broker of the execution.
- e. Shortly after the trade was executed, the sales broker examined other market executions in or around the time of the actual execution, to determine whether the stock price fluctuated. If the stock price's fluctuation was favorable to Linkbrokers and sufficient to conceal the fraud from Linkbrokers' customer, the sales broker instructed the middle-office assistant to record a false execution price in the gross price field on their internal Trade Blotter.
- f. A member of the Linkbrokers Team reported the false execution price and the commission to the customer, and recorded the total charged to the customer in the net price field on their internal Trade Blotter.

20. Frequently, Nowak or other members of the Linkbrokers Team provided the false and/or misleading information through trade recaps communicated to customers by telephone, instant message, or email. The Linkbrokers Team also sent, or caused to be sent, trade confirmations containing the false and/or misleading information to some customers.

Example Of A Markup/Markdown

21. On September 29, 2008 at 3:54 p.m., a customer placed an order by telephone with Leszczynski to sell 90,000 shares of Citigroup, Inc. ("C"). Linkbrokers executed the trade at 3:56 p.m., selling 90,000 shares of C on the customer's behalf at an average price of \$19.1311 per share. The Trade Blotter reflects an execution price of \$19.1311, a gross price of \$17.7500, and a net price of \$17.7435. At 5:01 p.m., Nowak generated, and emailed to the customer, a trade confirmation containing the false execution price of \$17.7500 per share. The commission for this transaction was \$0.0065 per share, resulting in a total commission of \$585 for the trade, which Linkbrokers charged and disclosed to the customer. However, Linkbrokers, and the Linkbrokers Team, failed to disclose that the actual execute price was \$124,299 higher than the execution price reported to the customer, thereby taking this undisclosed profit for Linkbrokers at the expense of its customer.

Nowak Was Negligent

22. Nowak, through emailed trade recaps and trade confirmations sent to customers, caused the disclosure of false execution prices and inaccurate fees charged to customers.

23. Nowak was negligent in that he should have known that the confirmations sent to customers contained false and/or misleading information and omitted the markups/markdowns. Nowak received the false prices from the sales brokers and input them into Linkbrokers' internal database and then generated the confirmations or emailed the trade recaps that contained the false prices and omitted the markups/markdowns.

Violation

24. As a result of the negligent conduct described above, Nowak willfully³ violated Sections 17(a)(2) and (3) of the Securities Act, 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, to impose the sanctions agreed to in Respondent Nowak's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Section 15(b) of the Exchange Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Nowak cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) and (3) of the Securities Act.

B. Respondent Nowak be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent;

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

³ The use of the word "willful" does not reflect a finding that the actor intended to violate the law or knew that he was doing so. A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

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 three (3) 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 14 days of the entry of this Order, pay a civil money penalty in the amount of \$5,000 to the Securities and Exchange Commission. 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 Aaron Nowak 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 G. Jeffrey Boujoukos, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, One Penn Center, 1617 JFK Boulevard, Suite 520, Philadelphia, PA 19103.

E. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalty referenced in paragraph D above. This Fair Fund shall be transferred to the related matter *In the Matter of Linkbrokers Derivatives LLC*, File No. 3-16017 (Aug. 14, 2014), and combined with the funds previously collected in that matter and distributed in accordance with the proposed distribution plan in that matter pursuant to Commission Rule 1101(a). 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