

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF MARKET REGULATION,

Complainant,

v.

PHILIP B. MELNICK
(CRD No. 2930299),

Respondent.

Disciplinary Proceeding
No. 2004200003801

DEFAULT DECISION

Hearing Officer – SW

Date: March 3, 2006

Respondent is barred from associating with any NASD member firm in any capacity for engaging in market manipulation, in violation of Section 10(b) of the Securities Exchange Act of 1934, SEC Rule 10b-5 thereunder, and NASD Conduct Rules 2110 and 2120.

Appearances

Gerard M. Babendreier, Esq., Senior Attorney, Peter D. Santori, Esq., Assistant Chief Counsel, and Jeffrey K. Stith, Esq., Of Counsel, Rockville, MD, for the Department of Market Regulation.

No appearance by or for Respondent Philip B. Melnick.

DECISION

I. Background

On September 21, 2005, the Department of Market Regulation ("Market Regulation") filed the attached one-count Complaint in this proceeding. The Complaint alleges that Respondent Philip B. Melnick ("Respondent") engaged in market manipulation, in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), SEC Rule 10b-5 thereunder, and NASD Conduct Rules 2110, 2120, 3310, and IM-3310.

Pursuant to NASD Rules 9215(a) and 9138(c), Respondent was required to file an answer to the Complaint, which he failed to do. Accordingly, on January 5, 2006, Market Regulation filed a Motion for Entry of Default Decision ("Motion"), supported by the declaration of Gerard M. Babendreier, Esq., Senior Attorney, and 13 exhibits. For the reasons set forth below, Market Regulation's Motion is granted.¹

II. Respondent's Default

Market Regulation served Respondent with copies of the Complaint and Notice of Complaint on September 21, 2005, via certified and first class mail, at (i) his current residential address as reflected in the Central Registration Depository (the "CRD address"), (ii) the address of his former employer, Hold Brothers On-Line Investment Services LLC ("Hold Brothers"), and (iii) the business address of Respondent's then-current, non-NASD member employer Vita Color ("business address").² (CX-2; DECL at ¶ 5). On October 21, 2005, Market Regulation mailed the Second Notice of Complaint and Complaint to Respondent, via certified and Express mail, at his CRD address and his business address.³ (CX-7; DECL at ¶ 11). On November 1, 2005, Market Regulation sent a second copy of the Second Notice of Complaint and Complaint to Respondent, via first class and certified mail, at his CRD address and the Hold Brothers address. (DECL at ¶ 14). To date, Respondent has not filed an Answer to the Complaint. (DECL at ¶ 17).

¹ Hereinafter, the statements in the Motion for Entry of Default Decision will be designated as "Motion, p.;" the statements in the Babendreier Declaration will be designated as "DECL at ¶;" and Market Regulation's exhibits will be designated as "CX-" with the appropriate page or paragraph number.

² Respondent's CRD address is [REDACTED] (CX-2; DECL at ¶ 6). Market Regulation reviewed Respondent's CRD record and noted that Respondent's former employer was Hold Brothers On-Line Investment Services, LLC, Washington Boulevard, Jersey City, NJ 07310. (DECL at ¶ 8; CX-3). During the spring of 2005, Respondent advised Market Regulation that his business address was Vita Color, 3767 Victory Boulevard, Staten Island, NY 10314. (DECL at ¶ 9). In addition to mailing a copy of the Complaint and Notice of Complaint to Respondent's business address, Market Regulation sent a copy to Respondent at Vita Color via facsimile transmission, at telephone number [REDACTED] (Id.).

³ Market Regulation also sent a copy of the Complaint and Second Notice of Complaint to Respondent's business address at Vita Color via facsimile transmission. (DECL at ¶ 12).

The Hearing Officer finds that Respondent received constructive notice of this proceeding because Market Regulation complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address. By failing to file an Answer to the Complaint, Respondent defaulted.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent first became registered with an NASD member in 1997. (CX-1, p. 1). Respondent was registered with Sonic Technologies LLC ("Sonic")⁴ as a general securities representative from December 10, 2001 to June 7, 2003, and as an equities trader from February 20, 2002 to June 7, 2003. (CX-1, p. 2; DECL at ¶ 4). Subsequently, Respondent was registered as a general securities representative and equities trader with Hold Brothers from June 11, 2003 to December 17, 2004. (CX-1, p. 1; DECL at ¶ 4). Respondent is not currently registered with any NASD member firm. (*Id.*).

NASD has jurisdiction to bring this proceeding, pursuant to Article V, Section 4 of the NASD By-Laws, because Market Regulation filed the Complaint within two years after Respondent's registration terminated, and the Complaint alleges misconduct while he was registered.

B. Manipulation

The Complaint alleges that Respondent engaged in a series of transactions designed to improve the national best bid or offer quote ("NBBO"),⁵ for two NASDAQ securities, the symbols of which are GREY and FARM, to enable him to trade in those securities at more

⁴ Sonic was formerly known as Evolution Financial Technologies, LLC. (CX-1, p. 2).

⁵ Best bid or offer is defined under SEC Rule 11Ac1-2 as the "highest bid or lowest offer for [a reported security] made available by any reporting market center."

favorable prices. (Complaint at ¶¶ 4-8). Specifically, the Complaint alleges that on December 12, 2002, while at Sonic, Respondent entered 25 priced limit orders to buy or sell one share of GREY and FARM into an electronic communications network ("ECN"), at prices that he knew would improve, and were intended to improve, the NBBO in such securities. (Complaint at ¶¶ 3-4).

Respondent knew or should have known that the ECN to which he sent the 25 orders would respond to his one-share limit order by displaying a bid or an offer of 100 shares at the price of his one-share order.⁶ (Complaint at ¶ 4). After the ECN responded to his one-share limit order by displaying an offer or bid at the improved NBBO, Respondent knowingly entered orders no larger than 100 shares to buy (sell) shares of such securities into SuperMontage for execution against the new inside offer (bid) displayed by the ECN. (Complaint at ¶ 5).

Respondent placed the one-share limit orders not with a bona fide intent to purchase or sell securities, but rather as the first step in a plan to manipulate the NBBO so that he could execute a larger purchase or sale on the opposite side of the market at a more favorable price. (Complaint at ¶ 5). The execution of Respondent's larger order at the improved price occurred simultaneously with Respondent's initial one-share order to the ECN. (Exhibit 1 to Complaint). For example, on December 12, 2002, at 10:18:09 a.m., Respondent sent a limit order to buy one share of GREY at the price of \$611.04. (Exhibit 1 to Complaint). When sending the limit order

⁶ In 1997, the SEC implemented SEC Rule 11Ac1-4, which required, during 2002, that a NASDAQ market maker display in the market maker's public quote a customer limit order that was priced better than the market maker's quote or represented more than a de minimis increase to the size of the market maker's quote if the market maker's quote was at the NBBO when the customer's limit order was received. See Order Execution Obligations, Exchange Act Release No. 37,619A (1996). SEC Rule 11Ac1-4 permitted an ECN to fulfill these obligations on behalf of market makers or specialists using its system by submitting the ECN's best-priced market maker or specialist quotations to a self-regulatory organization for inclusion into public quotation displays. In connection with the SEC's adoption of Regulation NMS, SEC Rules 11Aa2-1 through 11Ac1-6 were removed effective August 29, 2005. See Regulation NMS, Exchange Act Release No. 52,355 (2005).

to buy one share at the price of \$611.04, Respondent concurrently sent an order to sell 50 shares of GREY at \$611.04; the displayed price of GREY before Respondent's one-share limit order was \$603. (Exhibits 1 and 2 to Complaint). In 16 transactions, Respondent altered the ECN's quote and the NBBO by entering a sell order; in nine transactions, he altered the market by entering a buy order.⁷ (Exhibit 2 to Complaint). As a result of these transactions, Respondent obtained advantageous price gains totaling \$11,586.44. (Complaint at ¶ 8).

Under Rule 9215(f) and NASD Notice to Members 99-77, the allegations of the Complaint are deemed admitted, and they are hereby incorporated into this Default Decision as findings of fact.

Section 10(b) of the Exchange Act,⁸ SEC Rule 10b-5 thereunder,⁹ and NASD Conduct Rule 2120¹⁰ prohibit the use of any manipulative, deceptive, or otherwise fraudulent device or contrivance in connection with the purchase or sale of securities. The Securities and Exchange Commission ("SEC") has defined manipulation as follows:

In essence, a manipulation is intentional interference with the free forces of supply and demand. Proof of manipulation almost always depends on inferences drawn from a mass of factual detail. Findings must be gleaned from patterns of behavior, from apparent irregularities, and from trading data. When all of these are considered together, they can emerge as

⁷ The details of all of the individual transactions at issue are listed in Exhibits 1 and 2 to the Complaint.

⁸ "It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange . . . to use or employ, in connection with the purchase or sale of any security . . . any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors."

⁹ "It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, (a) to employ any device, scheme, or artifice to defraud, . . . or (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security."

¹⁰ "No member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance."

ingredients in a manipulative scheme designed to tamper with free market forces.¹¹

The SEC has consistently taken action against small-scale market manipulators who misuse the limit order display rule to move briefly the NBBO for a particular stock by entering orders on one side of the market followed immediately by orders on the other side of the market as a manipulative trading practice that violates the antifraud provisions of the federal securities laws.¹² The repeated sequence of events—placing a small limit order through ECN, which had the effect of changing the NBBO, followed immediately by the execution of a larger order at the new NBBO—constituted evidence of manipulative trading activity, which “interfere[d] with the free forces of supply and demand and undermine[d] the integrity of the NBBO.”¹³

The Complaint also alleges that by engaging in the foregoing conduct, Respondent violated NASD Conduct Rules 3310 and IM-3310,¹⁴ which prohibit any member or associated person from causing to be published or circulated any communication of any kind which purports to report any transaction as a purchase or sale of any security unless such member or associated person believes that such transaction was a bona fide purchase or sale of such security, or which

¹¹ Pagel, Inc., 48 SEC 223, 226 (1985), aff’d, 803 F.2d 942 (5th Cir. 1986).

¹² Ian Fishman, Exchange Act Release No. 40,115, 1998 SEC LEXIS 1247, at *9 (1998).

¹³ Israel M. Shenker, Exchange Act Release No. 45,017, 2001 SEC LEXIS 2321, at *6, (2001).

¹⁴ Conduct Rule 3310 provides that “No member shall publish or circulate, or cause to be published or circulated, any . . . communication of any kind which purports to report any transaction as a purchase or sale of any security unless such member believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such member believes that such quotation represents a bona fide bid for, or offer of, such security.” IM-3310 explains that it is “inconsistent” with the provisions of NASD Conduct Rule 3310, NASD Conduct Rule 2110, and NASD Conduct Rule 2120, to “publish or circulate, or to cause to be published or circulated, . . . any quotation for any security without having reasonable cause to believe that such quotation is a bona fide quotation, is not fictitious and is not published or circulated or caused to be published or circulated for any fraudulent, deceptive or manipulative purpose.”

purports to quote the bid price or asked price for any security, unless such member or associated person believes that such quotation represents a bona fide bid for, or offer of, such security.¹⁵

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent violated Section 10(b) of the Exchange Act, SEC Rule 10b-5 promulgated thereunder, and NASD Conduct Rules 2120 and 2110, and does not find it necessary to determine whether the actions also violated NASD Conduct Rule 3310 and IM-3310.

IV. Sanction

There is no sanction guideline for market manipulation. Thus, in determining the appropriate sanctions, the Hearing Officer looked to precedent regarding the gravity of the violation and to the general considerations in determining sanctions, as set forth in the Sanction Guidelines.¹⁶

Market Regulation recommended that Respondent be barred and ordered to pay restitution to TRAC Data ECN, the entity which he defrauded, in the amount of \$3,086.44. Market Regulation calculated the amount of restitution by subtracting \$8,500, which Sonic had previously reimbursed to TRAC Data ECN, from the \$11,586.44 advantageous price gain that resulted from Respondent's misconduct.¹⁷

Looking to the general considerations in determining sanctions, the Hearing Officer notes that: (1) Respondent engaged in numerous manipulative trades, demonstrating a pattern; (2) Respondent's misconduct was deliberate; and (3) Respondent's misconduct was intended to

¹⁵ Although Respondent's misconduct affected the ECN's quotations, because he accomplished his manipulation by placing one-share limit orders rather than by reporting transactions or publishing quotations, it is not clear that his misconduct was covered by NASD Conduct Rule 3310 or IM-3310. See Dept. of Market Regulation vs. Yoshikawa, No. CMS020247 at n. 23 (Aug. 31, 2005), appeal pending, No. 3-12057 (SEC Sep. 26, 2005).

¹⁶ Id.

¹⁷ After reimbursing TRAC Data ECN, Sonic garnished Respondent's pay in the amount of \$8,500, over a period of time to recoup its cost. (DECL at ¶ 26, n. 4).

achieve, and resulted in, monetary gain for Respondent.¹⁸ All of these are aggravating factors; there were no mitigating factors presented.

Fraudulent market manipulation is a very serious violation. The National Adjudicatory Council observed in Market Surveillance Committee v. Markowski, a case involving two respondents who had engaged in fraudulent market manipulation through the publication of non bona fide quotations, that "[t]he integrity of the securities markets is paramount, and those who engage in activities that manipulate markets cause great harm not only to investors who are involved in the manipulated markets, but to the overall public perception that the markets are driven by the free forces of supply and demand."¹⁹

The Hearing Officer, therefore, considers Respondent's misconduct to be egregious, and concludes that to adequately protect the integrity of the market, Respondent must be barred from associating with any member firm in any capacity. Because TRAC Data ECN suffered a quantifiable loss as a result of Respondent's misconduct, Respondent is also ordered to pay \$3,086.44 in restitution to TRAC Data ECN plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from December 12, 2002, the date of the violative conduct, until paid.²⁰

¹⁸ NASD Sanction Guidelines, pp. 6-7 (2005).

¹⁹ No. CMS920091, 1998 NASD Discip. LEXIS 35, at **56-57 (NAC July 13, 1998), aff'd, Exchange Act Release No. 43,259, 2000 SEC LEXIS 1860 (Sept. 7, 2000), aff'd, 274 F.3d 525 (D.C. Cir. 2001).

²⁰ Guidelines, at p. 4.

V. Order

Respondent Philip B. Melnick is barred from associating with any NASD member firm in any capacity for engaging in market manipulation, in violation of Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder, and NASD Conduct Rules 2110 and 2120. In addition to the bar, Respondent is directed to reimburse TRAC Data ECN \$3,086.44 plus interest, from December 12, 2002, until paid. The interest to be charged is at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2).

These sanctions shall become effective on a date set by NASD, but not before the expiration of 30 days after the date this *Default Decision* becomes the final disciplinary action of NASD; provided, however, that the bar shall become effective immediately upon this Default Decision becoming the final disciplinary action of NASD.

SO ORDERED.


Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
March 3, 2006

Copies to:
Philip B. Melnick (via FedEx and first class mail)
Gerard M. Babendreier, Esq. (via electronic and first class mail)
Peter D. Santori, Esq. (via electronic and first class mail)
Jeffrey K. Stith, Esq. (via electronic and first class mail)

NASD
OFFICE OF HEARING OFFICERS

Department of Market Regulation

Complainant,

v.

Philip B. Melnick
CRD # 2930299
[REDACTED]

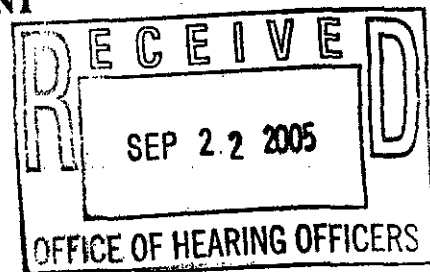
Philip B. Melnick
c/o VitaColor
3767 Victory Blvd.
Staten Island, NY 10314,

Respondent.

Disciplinary Proceeding
No. 20042000038-01

Hearing Officer _____

COMPLAINT



Upon information and belief, Complainant, the Department of Market Regulation, alleges as follows:

1. Philip B. Melnick ("Melnick" or "Respondent") was, at all times relevant to this Complaint, a registered Equities Trader at Sonic Technologies, L.L.C. ("GESE"). Respondent entered the securities industry in July 1997 and was employed at the following NASD members: Barron Chase Securities, Inc. from July 1997 to November 1997 (General Securities Representative); Landmark Securities Corporation from March 1999 to October 1999 (General Securities Representative and General Securities Principal); Momentum Securities, Inc. (formerly known as E*Trade Professional Trading, LLC and TradeScape) from July 1999 to October 1999 (Equities Trader, General Securities Representative, and General Securities

Principal); Sonic Technologies LLC (formerly known as Evolution Financial Technologies, LLC) from October 2001 to June 2003 (Equities Trader and General Securities Representative); and Hold Brothers On-Line Investment Services L.L.C. ("Hold Brothers") from June 2003 to December 2004 (Equities Trader and General Securities Representative.) Respondent terminated his relationship with Hold Brothers on December 17, 2004 and since that date has not been associated with any NASD member. Respondent is subject to NASD jurisdiction pursuant to Article V, Section 4 of the NASD By-Laws.

CAUSE ONE

Market Manipulation

Violations of NASD Conduct Rules 2110, 2120, and 3310 and IM-3310 thereunder, and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder

2. The allegations contained in paragraph one are realleged and incorporated by reference.
3. On or about December 12, 2002 (the "review date"), Melnick was a proprietary trader at GESE.
4. On the review date, Melnick engaged in manipulative, deceptive, or fraudulent conduct by knowingly and intentionally entering 25 priced limit orders to buy or sell one share of two Nasdaq securities into an Electronic Communications Network ("ECN"), at prices that he knew would improve, and were intended to improve, the National Best Bid or Offer ("NBBO") in such securities. At the time Melnick knew, or should have known, that the ECN to which he sent these 25 orders would respond to his one-share order by displaying a bid or an offer of 100 shares at the price of his one-share order. Melnick entered these orders for the purpose of obtaining executions of orders no larger than 100 shares that he entered into SupereMontage on the opposite side of the market for execution at the new inside displayed on the same ECN. A

schedule of these 25 instances is attached as Exhibit 1.

5. After Melnick entered each of the 25 one-share orders into the ECN that improved the NBBO and the ECN responded by displaying a 100-share offer or bid at the improved NBBO, he knowingly and intentionally entered orders no larger than 100 shares to buy (sell) shares of such securities into SuperMontage for execution against the new inside offer (bid) displayed by the same ECN.

6. By knowingly and intentionally engaging in this course of conduct, Melnick bought (sold) shares of these securities at prices that were lower (higher) than he would otherwise have been able to buy (sell) shares of these securities, but for his entry of the one-share orders referenced in paragraph four above into the ECN.

7. Each of the 25 instances of entering and receiving executions of the one-share orders and the larger orders on the other side of the market as reflected on Exhibit 1 constitutes a separate and distinct violation of NASD Conduct Rule 2120, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder, in that, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, Melnick employed a device, scheme, or artifice to defraud, or made an untrue statement of a material fact or omitted to state material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

8. In all, Melnick bought and sold these two Nasdaq securities, in the manner described in paragraphs four through six, in 25 instances, thereby obtaining a financial benefit of approximately \$11,586. The advantageous price gain calculations are reflected in Exhibit 2. By

engaging in the foregoing conduct, Melnick also violated NASD Conduct Rule 3310 and IM-3310, which prohibits causing to be published or circulated any communication of any kind which purports to report any transaction as a purchase or sale of any security unless such member or associated person believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such member believes that such quotation represents a bona fide bid for, or offer of, such security.

9. By engaging in the foregoing conduct, Melnick also violated NASD Conduct Rule 2110, which requires observance of high standards of commercial honor, and adherence to just and equitable principles of trade.

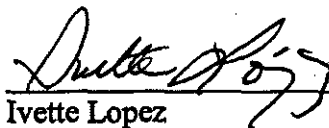
PRAYER FOR RELIEF

WHEREFORE, the Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent Melnick committed the violations charged and alleged herein;
- B. An Order imposing fitting sanctions upon Respondent Melnick in accordance with NASD Procedural Rule 8310;
- C. An Order requiring Respondent Melnick to disgorge fully any and all ill-gotten gains and/or make full and complete restitution to any and all persons and/or entities harmed by his misconduct, together with interest;
- D. An Order imposing such costs of any proceeding against Respondent Melnick as are deemed fair and appropriate under the circumstances, in accordance with NASD Procedural Rule 8330; and
- E. An Order imposing any other fitting sanction.

Date: September 21, 2005

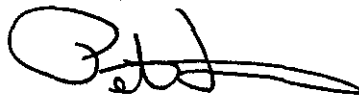
Respectfully submitted,



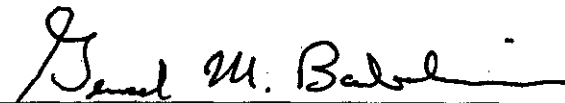
Ivette Lopez
Vice President



Richard G. Wallace
Vice President & Chief Counsel



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Assistant Chief Counsel



Gerard M. Babendreier
Senior Attorney

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Signed on behalf of the Director
of ODA, by delegated authority

Jeffrey K. Stith, Of Counsel
NASD
9509 Key West Avenue
Rockville, MD 20850
(240) 386-4591

EXHIBIT 1
25 Focus Instances

Instance	Trade Date	Security	Report Time	Execution Time	Executing Firm	Buy/Sell	Quantity	Price	Contra Executing Firm
1	12/12/02	GREY	10:18:09	10:18:09	GESE	Buy	1	611.04	TRAC
	12/12/02	GREY	10:18:09	10:18:09	GESE	Sell	50	611.04	TRAC
2	12/12/02	GREY	10:25:29	10:25:29	GESE	Sell	1	607	TRAC
	12/12/02	GREY	10:25:29	10:25:29	GESE	Buy	49	607	TRAC
3	12/12/02	GREY	11:04:27	11:04:27	GESE	Sell	1	604.2	TRAC
	12/12/02	GREY	11:04:27	11:04:27	GESE	Buy	100	604.2	TRAC
4	12/12/02	GREY	11:05:23	11:05:23	GESE	Buy	1	606.5	TRAC
	12/12/02	GREY	11:05:23	11:05:23	GESE	Sell	100	606.5	TRAC
5	12/12/02	GREY	11:25:27	11:25:27	GESE	Buy	1	609.85	TRAC
	12/12/02	GREY	11:25:27	11:25:27	GESE	Sell	100	609.85	TRAC
6	12/12/02	GREY	11:27:37	11:27:37	GESE	Sell	1	603.2	TRAC
	12/12/02	GREY	11:27:37	11:27:37	GESE	Buy	100	603.2	TRAC
7	12/12/02	GREY	11:29:25	11:29:25	GESE	Sell	1	603.5	TRAC
	12/12/02	GREY	11:29:25	11:29:25	GESE	Buy	100	603.5	TRAC
8	12/12/02	GREY	11:32:10	11:32:10	GESE	Sell	1	607.99	TRAC
	12/12/02	GREY	11:32:10	11:32:10	GESE	Buy	100	607.99	TRAC
9	12/12/02	GREY	11:32:28	11:32:28	GESE	Buy	1	607.5	TRAC
	12/12/02	GREY	11:32:28	11:32:28	GESE	Sell	100	607.5	TRAC
10	12/12/02	GREY	11:32:45	11:32:45	GESE	Buy	1	607.3	TRAC
	12/12/02	GREY	11:32:45	11:32:45	GESE	Sell	97	607.3	TRAC
11	12/12/02	GREY	11:33:33	11:33:33	GESE	Buy	1	606.97	TRAC
	12/12/02	GREY	11:33:33	11:33:33	GESE	Sell	100	606.97	TRAC
12	12/12/02	GREY	11:36:27	11:36:27	GESE	Sell	1	601.9	TRAC
	12/12/02	GREY	11:36:27	11:36:27	GESE	Buy	100	601.9	TRAC
13	12/12/02	GREY	11:36:34	11:36:34	GESE	Sell	1	601.9	TRAC
	12/12/02	GREY	11:36:34	11:36:34	GESE	Buy	100	601.9	TRAC
14	12/12/02	GREY	11:36:46	11:36:46	GESE	Sell	1	601.9	TRAC
	12/12/02	GREY	11:36:46	11:36:46	GESE	Buy	100	601.9	TRAC
15	12/12/02	FARM	9:47:17	9:47:17	GESE	Buy	1	309.99	TRAC
	12/12/02	FARM	9:47:17	9:47:16	GESE	Sell	60	309.99	TRAC
16	12/12/02	FARM	9:57:52	9:57:52	GESE	Sell	1	306	TRAC
	12/12/02	FARM	9:57:52	9:57:52	GESE	Buy	63	306	TRAC
17	12/12/02	FARM	10:14:17	10:14:17	GESE	Sell	1	306.23	TRAC
	12/12/02	FARM	10:14:17	10:14:17	GESE	Buy	100	306.23	TRAC
18	12/12/02	FARM	10:28:15	10:28:15	GESE	Buy	1	312.5	TRAC
	12/12/02	FARM	10:28:15	10:28:15	GESE	Sell	100	312.5	TRAC
19	12/12/02	FARM	10:28:53	10:28:53	GESE	Buy	1	311.3	TRAC
	12/12/02	FARM	10:28:53	10:28:53	GESE	Sell	100	311.3	TRAC
20	12/12/02	FARM	10:33:38	10:33:38	GESE	Sell	1	307.3	TRAC
	12/12/02	FARM	10:33:38	10:33:38	GESE	Buy	90	307.3	TRAC

EXHIBIT 1
25 Focus Instances

Instance	Trade Date	Security	Report Time	Execution Time	Executing Firm	Buy/Sell	Quantity	Price	Contra Executing Firm
21	12/12/02	FARM	10:34:06	10:34:06	GESE	Sell	1	307.8	TRAC
	12/12/02	FARM	10:34:06	10:34:06	GESE	Buy	29	307.8	TRAC
22	12/12/02	FARM	10:36:16	10:36:16	GESE	Sell	1	308.85	TRAC
	12/12/02	FARM	10:36:16	10:36:16	GESE	Buy	90	308.85	TRAC
23	12/12/02	FARM	11:39:28	11:39:28	GESE	Sell	1	311.3	TRAC
	12/12/02	FARM	11:39:28	11:39:28	GESE	Buy	90	311.3	TRAC
24	12/12/02	FARM	11:39:34	11:39:34	GESE	Sell	1	311.3	TRAC
	12/12/02	FARM	11:39:34	11:39:34	GESE	Buy	90	311.3	TRAC
25	12/12/02	FARM	11:42:21	11:42:21	GESE	Sell	1	311.7	TRAC
	12/12/02	FARM	11:42:21	11:42:21	GESE	Buy	90	311.7	TRAC

EXHIBIT #2
ADVANTAGEOUS PRICE GAIN CALCULATION

INCIDENTS WHERE A 1 SHARE SELL ORDER WAS SENT TO TRAC									
Incident	Date	Security	Net Shares	Purchase Price	Prior Price	Price Difference	APG	Disadv. Firm	Advant Firm
2	12/12/2002	GREY	48	607	614	\$7.00	\$336.00	TRAC	GESE
3	12/12/2002	GREY	99	604.2	609.85	\$5.65	\$559.35	TRAC	GESE
6	12/12/2002	GREY	99	603.2	609.75	\$6.55	\$648.45	TRAC	GESE
7	12/12/2002	GREY	99	603.5	609.75	\$6.25	\$618.75	TRAC	GESE
8	12/12/2002	GREY	99	607.99	608	\$0.01	\$0.99	TRAC	GESE
12	12/12/2002	GREY	99	601.9	609.93	\$8.03	\$794.97	TRAC	GESE
13	12/12/2002	GREY	99	601.9	609.93	\$8.03	\$794.97	TRAC	GESE
14	12/12/2002	GREY	99	601.9	609.93	\$8.03	\$794.97	TRAC	GESE
16	12/12/2002	FARM	62	306	311.68	\$5.68	352.16	TRAC	GESE
17	12/12/2002	FARM	99	306.23	311.68	\$5.45	\$539.55	TRAC	GESE
20	12/12/2002	FARM	89	307.3	312	\$4.70	\$418.30	TRAC	GESE
21	12/12/2002	FARM	28	307.8	315.29	\$7.49	\$209.72	TRAC	GESE
22	12/12/2002	FARM	89	308.85	312.5	\$3.65	\$324.85	TRAC	GESE
23	12/12/2002	FARM	89	311.3	317.5	\$6.20	\$551.80	TRAC	GESE
24	12/12/2002	FARM	89	311.3	317.5	\$6.20	\$551.80	TRAC	GESE
25	12/12/2002	FARM	89	311.7	319.3	\$7.60	\$676.40	TRAC	GESE
						Sub-Total	\$8,173.03		
INCIDENTS WHERE A 1 SHARE BUY ORDER WAS SENT TO TRAC									
Incident	Date	Security	Net Shares	Selling Price	Prior Price	Price Difference	APG	Disadv. Firm	Advant Firm
1	12/12/2002	GREY	49	611.04	603	\$8.04	\$393.96	TRAC	GESE
4	12/12/2002	GREY	99	606.5	605.1	\$1.40	\$138.60	TRAC	GESE
5	12/12/2002	GREY	99	609.85	606.25	\$3.60	\$356.40	TRAC	GESE
9	12/12/2002	GREY	99	607.5	605	\$2.50	\$247.50	TRAC	GESE
10	12/12/2002	GREY	96	607.3	603	\$4.30	\$412.80	TRAC	GESE
11	12/12/2002	GREY	99	606.97	603	\$3.97	\$393.03	TRAC	GESE
15	12/12/2002	FARM	59	309.99	304	\$5.99	\$353.41	TRAC	GESE
18	12/12/2002	FARM	99	312.5	307	\$5.50	\$544.50	TRAC	GESE
19	12/12/2002	FARM	99	311.3	305.51	\$5.79	\$573.21	TRAC	GESE
						Sub-Total	\$3,413.41		
						Total	\$11,586.44		