

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**KENSINGTON CAPITAL CORP.
(BD No. 1742),**

ABRAM SILVER (CRD No. 1137930),

JEFFREY SIMON (CRD No. 2778935),

AND

[REDACTED]

RESPONDENTS.

Disciplinary Proceeding
No. 2005000094003

Hearing Officer:
Lawrence B. Bernard

ORDER ACCEPTING OFFER OF SETTLEMENT

Date: February 25, 2008

INTRODUCTION

Disciplinary Proceeding No. 2005000094003 was filed on August 31, 2007, by the Department of Enforcement of the Financial Industry Regulatory Authority ("FINRA" or "Complainant"). Respondents Kensington Capital Corp., Abram Silver, Jeffrey Simon and [REDACTED] submitted an Offer of Settlement ("Offer") to Complainant on January 29, 2008. Pursuant to NASD Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC"), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to NASD Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

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Under the terms of the Offer, Respondents each have consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of each Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Kensington Capital Corp. (BD No. 1742) has been a member of FINRA (f/k/a National Association of Securities Dealers or NASD) since 1968. Kensington is also a registered municipal securities dealer. The firm is located in Brooklyn, New York and has 11 registered representatives and no branch offices. The firm is engaged in retail sales and trading, investment banking and market making activity. On December 13, 2004, Kensington was fined \$12,500 by FINRA for violations of NASD Rules 6130(B), 3010 and 2110, and ordered to revise the firm's written supervisory procedures with respect to trade reporting.

Abram Silver (CRD No. 1137930) has worked in the securities industry since 1983, when he became co-partner and co-owner of Kensington. Silver is the majority owner of Kensington and, at all relevant times, served as its President and Head of Compliance; he is currently listed as the firm's Executive Representative. Silver first became registered with FINRA as a General Securities Representative (Series 7) in 1983, and later became licensed as a General Securities Principal (Series 24 – since 1987), Registered Options Principal (Series 4 – since 1987), Registered Commodity Representative (Series 3 – since 1988), and Uniform Securities Agent – State (Series 63 – since 1998). Silver remains registered with FINRA through

Kensington and therefore is subject to FINRA's jurisdiction.

Jeffrey Simon (CRD No. 2778935), Silver's brother-in-law, began working at Kensington as a clerk in 1993. Simon first became registered with FINRA as a General Securities Representative (Series 7) in 1998. Simon later became licensed as a Uniform Securities Agent – State (Series 63 – since 1998) and a Equity Trader Limited Representative (Series 55 – since 2001). Simon remained registered as a General Securities Representative at Kensington through June 2007. Simon is not currently registered or associated with any FINRA member firm. However, FINRA retains jurisdiction over Simon pursuant to Article V, Section 4 of the FINRA By-Laws.

████████████████████ first became associated through Kensington as a Registered Commodity Representative (Series 3) in 1992, and has since registered through FINRA as a Financial and Operations Principal (Series 27 – since 1994), Uniform Securities Agent – State (Series 63 – since 1994), General Securities Representative (Series 7 – since 1997), and Equity Trader Limited Representative (Series 55 – since 2002). At all relevant times, ██████ served as the firm's Financial and Operations Principal and Anti-Money Laundering Compliance Supervisor; he is currently listed as the firm's Chief Executive Officer and Financial and Operations Principal. ██████ remains registered with FINRA through Kensington and therefore is subject to FINRA's jurisdiction.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

During the period from March 2004 through March 2005 (the "relevant period"), Kensington, acting through one of its retail traders, Simon, aided and abetted a manipulation of the price of the common stock of East Delta Resources Corp. ("EDLT"), a thinly traded over-the-

counter bulletin board stock. The manipulation was orchestrated by Mayer Amsel, an individual previously barred from the securities industry, and his brother, David Amsel, who had a retail account at Kensington. Kensington and Simon substantially assisted in the manipulation of the price of EDLT by trading more than 1,800,000 shares of EDLT, based upon orders given by David Amsel and Mayer Amsel. Despite the suspicious nature of the trades, Simon and Kensington executed them without question. The Amsels' manipulation of the price of EDLT was substantially assisted by Simon and Kensington and contributed to an increase of approximately 500 percent in the inside bid price of EDLT during the relevant period. As a result of this manipulation, at the end of March 2005, David Amsel's Kensington account realized profits totaling approximately \$165,300, and that account continued to hold approximately 18,000 shares of EDLT valued at approximately \$13,000. Kensington earned approximately \$16,800 in commissions by executing the Amsels' orders in EDLT. By aiding and abetting this manipulation, Simon and Kensington violated NASD Rules 2120 and 2110.

Further, in violation of NASD Rules 3011 and 2110, Kensington, through its majority owner, its President, and its Head of Compliance, Silver, and through its Anti-Money Laundering ("AML") Compliance Supervisor, [REDACTED] failed to establish and implement AML policies and procedures reasonably designed to monitor, analyze, and investigate suspicious transactions – in this case, manipulative trades – and reasonably designed to achieve compliance with the Bank Secrecy Act, 31 U.S.C. § 5311, *et seq.*, and the implementing regulations promulgated thereunder by the Department of the Treasury. Kensington also violated MSRB Rule G-41, which similarly requires an AML compliance program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act and its implementing regulations.

Finally, Kensington, through Silver, failed to establish, maintain, and enforce a supervisory system and written supervisory procedures appropriate to its market making and retail trading business so as to comply with federal securities laws and regulations and applicable NASD Rules relating to market making and trading. Silver also failed to reasonably supervise the retail trading and market making activities of Simon with the result that Kensington, through Simon, rendered substantial assistance to the Amsels' manipulation of the price of EDLT. Accordingly, Kensington and Silver violated NASD Rules 3010(a) and (b) and 2110.

David and Mayer Amsel: On October 20, 1994, FINRA barred Mayer Amsel from associating with any member firm based upon various forms of "deliberate," "premeditated" and "egregious" fraudulent misconduct at a former employer, A.T. Brod & Co.¹ In a settlement order issued by the United States Securities and Exchange Commission on June 19, 1998, Mayer Amsel was similarly barred from associating with any broker, dealer, municipal securities dealer, investment adviser, or investment company based upon his use of manipulative and deceptive devices in a scheme to defraud the market for a particular stock.² The SEC found that Mayer Amsel used his brother, David Amsel, as a nominee to manipulate the market in the stock and to stabilize the price of the stock. Both FINRA and SEC decisions are public and have been available since the 1990s.

East Delta Resources Corp.: Avic Technologies ("AVIC") was the predecessor to East Delta Resources Corp. Between August 2001 and February 2004, AVIC was a public shell company with very little market activity. According to an SEC filing, in February 2004, AVIC

¹ *NBCC v. Mayer Amsel*, Complaint No. 1093001, 1995 NASD Discip. LEXIS 215, at *57 (NBCC June 26, 1995).

² *Mayer A. Amsel*, 52 S.E.C. 761 (1996).

instituted an acquisition of a private company, Omega Resources, Inc. (formerly known as East Delta Resources Corp.), which held rights to explore and mine gold in China. (Omega Resources had the same address and phone number in Brooklyn, New York as the residential listing for Mayer Amsel. Mayer Amsel was listed as one of the five existing owners of Omega Resources.) On or about June 30, 2004, AVIC purchased Omega Resources with stock and changed its name to East Delta Resources Corp. ("East Delta"). East Delta's business plan became gold exploration.

Since at least September 2002, David Amsel has been listed in press releases and on East Delta's website as its investor relations consultant. The company's Form Schedule 14C Information Statement, filed on March 23, 2004, listed David Amsel as the contact person for any questions concerning East Delta's decision to pursue the exploration and mining of precious minerals. During the relevant period, East Delta issued 16 press releases in which David Amsel was listed as the company's contact person. Since August 2004, Mayer Amsel has also been listed in SEC filings as a consultant for East Delta. As compensation for his consulting services, in August 2004, Mayer Amsel was issued one million shares of EDLT.

The Amsels' Manipulation of the Price of EDLT: Throughout the relevant period, David and Mayer Amsel manipulated the price of EDLT. The manipulation involved at least two firms in the United States, Kensington and Public Securities, Inc., and one Canadian broker-dealer, Golden Capital Securities, Ltd. ("Golden Capital").

At Public Securities, Mayer Amsel directed the trading of EDLT through an equity trader at the firm, John Hull. Between February 2004 and March 2005, Public Securities was a market maker in EDLT. Public Securities' trading of EDLT accounted for approximately 37 percent of the total trading volume of EDLT (*i.e.*, Public Securities traded approximately 7,523,600 shares

out of a total of approximately 20,403,000 shares of EDLT). Approximately 21 percent of the total trading volume in EDLT between February 2004 and March 2005 consisted of transactions in which Public Securities bought and sold shares of EDLT with Golden Capital. All of the transactions between Public Securities and Golden Capital involved the Canadian brokerage accounts of Mayer or David Amsel, and many of the trades were cross-traded between their accounts. In addition, many of the trades were large transactions (10,000 shares or more) and much of the trading involved back-and-forth trades occurring throughout the same day.

At the same time that the Amsels were orchestrating the manipulative trading activity in EDLT at Public Securities and Golden Capital, they also orchestrated additional manipulative trading activity in EDLT at Kensington, which artificially inflated the price of EDLT.

Kensington's Involvement in the Manipulation of the Price of EDLT: Since at least 2002, David Amsel had a retail account at Kensington. According to his account documentation, David Amsel was self-employed as a financial consultant and lived in Montreal, Quebec. On or about March 3, 2004, David Amsel deposited 400,000 shares of AVIC (later, EDLT) into his retail account at Kensington. A stock certificate for an additional 100,000 shares of EDLT was issued on or about August 30, 2004 in the name of David Amsel as compensation for his consulting services for the issuer. On or about September 14, 2004, Mayer Amsel deposited those 100,000 shares of EDLT into David Amsel's retail account at Kensington.

On March 29, 2004, Kensington became a market maker in EDLT. Prior to becoming a market maker in EDLT, Kensington did not conduct any due diligence on the stock. East Delta's SEC filings were available both subsequent to David Amsel's initial deposit of 400,000 shares of EDLT into his account at Kensington (on March 3, 2004) and prior to Kensington becoming a market maker in the stock. However, Kensington failed to review any East Delta SEC filings at

any point during the relevant period. A review of those SEC filings would have revealed David (and later, Mayer) Amsel's relationship(s) to the issuer.

Kensington's initial transaction as a market maker in EDLT was a sell of 130,000 shares by David Amsel's account on March 30, 2004. During the relevant period, from March 2004 through March 2005, Kensington traded approximately 5,600,000 shares of EDLT. This represented approximately 29 percent of the total market volume for that period of time. For approximately 33 days of the relevant period, Kensington's trading activity in EDLT accounted for 70 percent or more of the day's total market volume.

Kensington traded EDLT for approximately 10 retail customers. David Amsel's account was the most active in trading EDLT during the relevant period. David Amsel's account traded EDLT on more than half of the days Kensington traded EDLT, and accounted for approximately 1,800,000 shares traded, or approximately 10 percent of the total volume traded in the market. Both David and Mayer Amsel called Kensington (Jeffrey Simon) to place orders for EDLT in David Amsel's account. During the relevant period, David Amsel's account bought approximately 687,000 shares of EDLT in approximately 53 transactions and sold approximately 1,171,500 shares of EDLT in approximately 52 transactions.

The Amsels' trading orders for EDLT were limit orders which caused Kensington to uptick or match the inside bid. As a result, the inside bid for EDLT increased. For example, on June 16, 2004, while David Amsel's account held more than 136,000 shares of EDLT, Kensington, while at the high bid, bought an additional 45,000 shares of EDLT for David Amsel's account. These shares were purchased in a wash transaction from David Amsel's account at Golden Capital. This same trading pattern – Kensington bidding at the highest bid in the market to buy large blocks of EDLT for David Amsel's account at Kensington from David

Amsel's account at Golden Capital – occurred on a number of other occasions as well, thereby causing the price of EDLT to increase. David Amsel's account repeatedly purchased EDLT at increasingly higher prices. This had the effect of providing support to the market stock price of EDLT. As a result, the market value of David Amsel's account's position in EDLT increased over the course of the relevant period.

From March 30, 2004 through the end of the relevant period, March 31, 2005, Kensington was an active market maker for EDLT. Specifically, Kensington, through Simon, upticked the inside bid for EDLT approximately 96 times during the relevant period (approximately 20 percent of the upticks of the inside bid), approximately 11 of which were to new, all-time highs. The numerous buy trades in EDLT for David Amsel's account gave the appearance of legitimate retail demand. Most of the buy trades were executed in the afternoon and above the bid price. Almost half of all the buy trades were done in the afternoon at the inside offer, the highest price offered by a market maker at that time. On at least 12 days, buy transactions for David Amsel's account created the closing price of the day for EDLT and were priced higher than the transactions that immediately preceded them. For three consecutive days, June 16 through June 18, 2004, those buy transactions were the last trades of the day.

On approximately 14 occasions during the relevant period, Kensington, through Simon, executed in-house cross trades of EDLT. David Amsel's account purchased shares of EDLT in five of those cross trades. For example, on December 28, 2004 at 3:50 p.m., David Amsel sold 20,000 shares of EDLT at \$0.49 per share to another Kensington customer in an in-house cross trade. One minute later, at 3:51 p.m., David Amsel, together with another customer, bought 20,000 shares of EDLT (David Amsel bought 15,000, and the other customer bought 5,000) at \$.50 per share in a cross trade with a customer selling 20,000 shares of EDLT.

On approximately 13 days, David Amsel's account both bought and sold EDLT on the same day, while the account already was holding more than 100,000 shares. On six of those days, those were the only trades executed by Kensington. In general, when David Amsel's account bought and sold EDLT on the same day, the account sold more than it bought and bought at higher prices than the prices at which it sold.

During the relevant period, David and Mayer Amsel placed orders, through Simon, for David Amsel's account to sell shares of EDLT, and then either requested that the funds be wired to David Amsel's bank account(s) in Canada or be used to purchase additional large blocks of EDLT.

Kensington and Simon executed all of the EDLT transactions ordered by the Amsels, without question. As a result, approximately 345,000 shares of EDLT purchased by David Amsel's account were bought from either David or Mayer Amsel's Canadian account(s) at Golden Capital. Most of those shares were purchased while David Amsel's account at Kensington already held more than 100,000 shares of EDLT. On three of the days when David Amsel's account bought from the Amsels' Golden Capital (Canadian) accounts, the purchases accounted for more than 50 percent of the total market volume for EDLT. David Amsel's account also sold approximately 188,500 shares of EDLT to the Amsels' Golden Capital accounts.

Kensington collected approximately \$16,800 in commissions by executing the Amsels' orders in EDLT. David Amsel's retail account at Kensington realized a profit of approximately \$165,300 from its trading of EDLT during the relevant period. In addition, by the end of March 2005, the account held approximately 18,000 shares worth approximately \$13,000. Further, by the end of March 2005, the bid price for EDLT had increased from approximately \$0.12 per

share in March 2004 to \$0.72 per share – an increase of approximately 500 percent.

Kensington's volume and quote movement in EDLT contributed to that increase in price. As a result, the shares of EDLT held by David and Mayer Amsel, including the 1,000,000 shares Mayer Amsel received for "consulting services" in August 2004 (when the closing bid for EDLT was \$0.32 per share) increased in value.

Aiding and Abetting Manipulative Trading

Kensington, acting through Simon, aided and abetted the market manipulation of EDLT by David and Mayer Amsel. Kensington, acting through Simon, had a general awareness that its role in executing the manipulative trade orders for EDLT issued by the Amsels was part of overall activity that was improper or illegal. Simon executed trade orders issued by the Amsels which lacked economic sense and which had the result of creating false volume in EDLT. For example, Simon executed numerous buy trades for David Amsel of significant size, at increasing prices and, in a number of instances, on the same day Amsel was also selling EDLT at lower prices. By executing such trades without question, Kensington and Simon recklessly ignored the red flags associated with those trade orders – red flags that should have alerted them to the improper and illegal conduct. In so doing, Kensington and Simon substantially assisted the Amsels' market manipulation of EDLT.

Failure to Comply with Anti-Money Laundering Requirements

The Anti-Money Laundering Rules and Regulations: NASD Rule 3011, adopted on April 24, 2002 and amended on October 22, 2002, requires all member firms to "develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the firm's compliance with the requirements of the Bank Secrecy Act (31 U.S.C. § 5311, *et seq.*), and the implementing regulations promulgated thereunder by the Department of the Treasury."

Similarly, MSRB Rule G-41 requires an AML compliance program reasonably designed to achieve and monitor ongoing compliance with the requirements of the Bank Secrecy Act and the regulations thereunder. The United States Department of the Treasury issued the implementing regulation, 31 C.F.R. § 103.19(a)(1) on July 2, 2002. That Rule provides that, with respect to any transaction after December 31, 2002, “[e]very broker or dealer in securities within the United States . . . shall file with FinCEN . . . a report of any suspicious transaction relevant to a possible violation of law or regulation.” Section (a)(2) of that regulation specifically provides:

A transaction requires reporting . . . if it is conducted or attempted by, at, or through a broker-dealer, it involves or aggregates funds or other assets of at least \$5,000, and the broker-dealer knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

- (i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;
- (ii) Is designed, whether through structuring or other means, to evade any requirements of this part or any other regulations promulgated under the Bank Secrecy Act, . . . ;
- (iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or
- (iv) Involves use of the broker-dealer to facilitate criminal activity.

In August 2002, FINRA issued Notice to Members 02-47, which set forth the final AML rules promulgated by the United States Department of the Treasury for the securities industry. This Notice to Members further advised broker-dealers of their duty to file a Suspicious Activity Report on Form SAR-SF (Suspicious Activity Report by the Securities and Futures Industries) for any suspicious transactions occurring after December 31, 2002.

Concurrent with its adoption of Rule 3011, in April 2002, FINRA issued Notice to Members 02-21, which reminded broker-dealer firms of the requirements of their AML procedures, including that AML procedures apply to:

- a. account opening and maintenance, including verification of the identity of the customer;
- b. monitoring of account activities, including but not limited to, trading and the flow of money into and out of the account, the types, amount, and frequency of different financial instruments deposited into and withdrawn from the account, and the origin of such deposits and the destination of withdrawals; and
- c. monitoring for, detecting, and responding to "red flags."

Notice to Members 02-21 emphasized each firm's duty to detect red flags and, if it detects any, to "perform additional due diligence before proceeding with the transaction."

Notice to Members 02-21 also set forth examples of "red flags," including but not limited to:

- a. The customer wishes to engage in transactions that lack business sense or apparent investment strategy, or are inconsistent with the customer's stated business strategy;
- and
- b. The customer (or a person publicly associated with the customer) has a questionable background or is the subject of news reports indicating possible criminal, civil, or regulatory violations.

As indicated above, the SAR-SF identifies twenty "Type[s] of suspicious activity" that must be reported, including: "Market manipulation," "Money laundering/Structuring," "Prearranged or other non-competitive trading," "Securities fraud," "Significant wire or other transactions without economic purpose," "Wash or other fictitious trading," and "Other."

Kensington's AML System and Procedures Were Deficient: [REDACTED] (designated as Kensington's AML Compliance Supervisor) and Silver (designated as Kensington's Head of Compliance) had primary responsibility for overseeing AML compliance matters at Kensington. Pursuant to the firm's written supervisory procedures ("WSPs"), Silver also was responsible for

supervising Simon's trading conduct. [REDACTED] and Silver both were responsible for establishing and implementing the firm's written AML program reasonably designed to achieve and monitor the firm's compliance with the BSA and the regulations promulgated thereunder.

Kensington's AML policies, procedures, and internal controls were not reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder. Furthermore, the firm did not adequately establish policies and procedures for monitoring, analyzing, investigating, and reporting suspicious activity associated with the firm's market making business.

[REDACTED] and Silver also were responsible for establishing ongoing AML training for appropriate personnel and for independent testing of the AML program, but they failed to do so. [REDACTED] reviewed Kensington's AML procedures with Kensington's brokers and held periodic AML meetings to discuss any questions the brokers had. However, Kensington never administered any formal training in the area of AML or in the detection of the red flags associated with retail trading and market making to its brokers. Nor was any independent testing ever conducted for AML compliance by either member personnel or by a qualified outside party.

Kensington, through [REDACTED] and Silver, Failed to Adequately Review the Trading of EDLT, thereby Failing to Detect and Report Numerous Red Flags Associated with the Trading: Simon executed numerous suspicious transactions in EDLT for the Amsels in David Amsel's retail account without question. These transactions fell within several of the twenty categories of suspicious activities listed in the SAR-SF, which require reporting, such as: market manipulation; pre-arranged or other non-competitive trading; securities fraud; wash or other fictitious trading; and other. For example, Kensington executed numerous trades of EDLT for David Amsel's account that lacked economic sense (*e.g.*, buying large blocks of EDLT at ever-

increasing prices while the account held a significant number of shares – more than 100,000; and buying and selling EDLT on the same day while the account held a significant number of share).

Kensington improperly understood (and the firm's AML procedures likewise improperly stated) that it could rely upon its clearing firm, Southwest Securities, to detect any red flags associated with suspicious activity/money laundering. As a result, the firm, [REDACTED] and Silver failed to fulfill their AML obligations to monitor, investigate, and analyze suspicious activity.

Because the manipulative trading of EDLT was never adequately monitored and analyzed, Kensington did not further investigate the suspicious activity to determine whether it was appropriate to file a suspicious activity report (SAR-SF) to report the suspicious transactions (including transactions of at least \$5,000), as required by 31 C.F.R. § 103.19(a)(1).

Inadequate Supervisory System and Procedures

Silver, as Kensington's majority owner, its President, and its Head of Compliance, was responsible for establishing, maintaining, and enforcing the firm's supervisory system and written supervisory procedures as they related to the types of business in which Kensington engaged. Kensington, through Silver, failed to establish and maintain a system and written procedures reasonably designed to supervise the acts of the firm's registered representatives and reasonably designed to achieve compliance with applicable securities laws and regulations and applicable NASD Rules. In particular, Kensington's supervisory system and written procedures failed to provide adequate guidance relating to the firm's retail trading and market making practices.

NASD Rules require that written supervisory procedures set forth mechanisms reasonably designed for ensuring compliance and for detecting violations. A firm engaged in market making activities, such as Kensington, must have written procedures in place reasonably designed to

detect and prevent market manipulation. Kensington's did not. Kensington's written supervisory procedures did not adequately address market making, including procedures for selecting securities in which to make a market. Kensington's written supervisory procedures also did not set forth any specific requirements for the review of retail trading for improper trading activities. Rather, the written supervisory procedures generally focused upon insider trading issues and did not specify how patterns of improper trading/suspicious activities should be investigated or reported. Further, the Schedule of Designated Responsibilities (referenced in the written procedures) only generally referred to the "review and approval of transactions," without any specific requirements for monitoring, investigating, and analyzing improper trading activities. As a result, Kensington, through Silver, failed to establish, maintain, and enforce a supervisory system and written procedures reasonably designed to adequately monitor and supervise the firm's retail trading and market making business and the acts of its registered representatives. This allowed Simon and the firm to carry out its market making in EDLT without any due diligence and with little or no oversight. This also allowed Simon and the firm to execute suspicious transactions in EDLT that made little or no economic sense other than to create market volume.

Failure To Supervise

Silver was Simon's designated supervisor. In addition, as Kensington's majority owner, President, and Head of Compliance, and pursuant to the designations and responsibilities specified in the firm's WSPs, Silver was ultimately responsible for proper supervision of Kensington's trading and market making activities, unless he had reasonably delegated those responsibilities to another person and neither knew nor had reason to know that such person's performance was deficient. In this case, however, there were no such delegations of supervisory

responsibility by Silver. Not only was Silver absent from the firm for approximately 50 percent of the time during the relevant period, he had little knowledge of the firm's trading activity even when he was present. Even after he was informed that the firm was executing trade orders issued by a barred individual, Mayer Amsel, Silver deliberately chose not to investigate the firm's involvement with Amsel. Silver failed to adequately monitor and supervise the retail trading and market making at the firm, generally, and the trading and market making in EDLT by Simon, in particular. Silver allowed Kensington and Simon to make a market in EDLT without any due diligence and with little or no oversight. Further, Kensington, through Silver, failed to discern the suspicious trading of EDLT by Simon's trading for David Amsel's account. Because Silver failed to reasonably supervise Simon's trading and market making activities in EDLT, he was unable to detect or prevent Simon from rendering substantial assistance to David and Mayer Amsel in their manipulation of the price of EDLT.

Based on the foregoing:

1. Kensington, acting through Simon, aided and abetted the market manipulation of EDLT by David and Mayer Amsel. Simon and Kensington therefore violated NASD Rules 2120 and 2110;
2. Kensington, through Silver and [REDACTED] failed to establish and implement AML policies and procedures reasonably designed to monitor, analyze, and investigate suspicious transactions – in this case, manipulative trades – and reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations promulgated thereunder by the Department of the Treasury. Kensington, Silver and [REDACTED] therefore violated NASD Rules 3011 and 2110. Kensington also therefore violated MSRB Rule G-41;

3. Kensington, through Silver, failed to establish, maintain, and enforce a supervisory system and written supervisory procedures appropriate to its market making and retail trading business so as to comply with federal securities laws and regulations and applicable NASD Rules relating to market making and trading. Therefore, Kensington and Silver violated NASD Rules 3010(a) & (b) and 2110; and

4. Silver also failed to reasonably supervise the retail trading and market making activities of Simon, with the result that Kensington, through Simon, rendered substantial assistance to the Amsels' manipulation of the price of EDLT. Therefore, Silver violated NASD Rules 3010(a) and 2110.

5. Based upon these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondents from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that the following sanctions shall be imposed:

For Kensington Capital Corp.

1. Kensington shall be censured;
2. Kensington shall pay a fine of \$85,000,³ \$10,000 of which shall be joint and several with Jeffrey Simon's fine. The fine shall be due and payable upon notice that this Offer has been accepted and that such payments are due and payable; and
3. Kensington shall:

³ Pursuant to the General Principles Applicable to all Sanction Determinations contained in the Sanctions Guidelines, FINRA imposed a lower fine in this case for the supervision and AML violations after it considered, among other things, the firm's revenues and financial resources. See Notice to Members 06-55.

- i) Retain, within 60 days of Notice of Acceptance of the Offer, an Independent Consultant, not unacceptable to FINRA staff, to conduct a comprehensive review of the adequacy of the firm's trading and AML policies, systems and procedures (written and otherwise) and training related to trading and AML.
- ii) Exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant.
- iii) Cooperate with the Independent Consultant in all respects, including by providing staff support. Kensington shall place no restrictions on the Independent Consultant's communications with FINRA staff and, upon request, shall make available to FINRA staff any and all communications between the Independent Consultant and the firm and documents reviewed by the Independent Consultant in connection with his or her engagement. Once retained, Kensington shall not terminate the relationship with the Independent Consultant without the FINRA staff's written approval; Kensington shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or other doctrine of privilege to prevent the Independent Consultant from transmitting any information, reports or documents to FINRA.
- iv) At the conclusion of the review, which shall be no more than 120 days after the date of Notice of Acceptance of the Offer, require the Independent Consultant to submit to the firm and FINRA staff a Written Report. The Written Report shall address, at a minimum: (i) the adequacy of the firm's policies, systems, procedures and training relating to trading and AML, (ii) a description of the review performed and the conclusions reached; and (iii) the Independent Consultant's recommendations for modifications and additions to the firm's policies, systems, procedures and training; and
- v) Require the Independent Consultant to enter into a written agreement that provides that, for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any other employment, consultant, attorney-client, auditing or other professional relationship with Kensington, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the Independent Consultant is affiliated in performing his or her duties pursuant to the Offer and this Order shall not, without prior written consent of the FINRA staff, enter in to any employment, consultant, attorney-client, auditing or other professional relationship with Kensington or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity

as such for the period of the engagement and for a period of two years after the engagement.

4. Within 30 days after delivery of the Written Report, Kensington shall adopt and implement the recommendations of the Independent Consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure to the Independent Consultant designed to achieve the same objective. The firm shall submit such proposed alternative(s) in writing simultaneously to the Independent Consultant and the FINRA staff. Within 30 days of receipt of any proposed alternative procedure, the Independent Consultant shall: (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objectives as the Independent Consultant's original recommendation, and (ii) provide the firm with a written decision reflecting his or her determination. The firm will abide by the Independent Consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the Independent Consultant.
5. Within 30 days after the issuance of the latter of the Independent Consultant's Written Report of written determination regarding alternative procedures (if any), Kensington shall provide the FINRA staff with a written implementation report, certified by an officer of Kensington, attesting to, containing documentation of, and setting forth the details of the firm's implementation of the Independent Consultant's recommendations.
6. Upon written request showing good cause, the FINRA staff may extend any of the procedural dates set forth above.

For Abram Silver:

1. Silver shall pay a fine of \$10,000, which shall be independent of and in addition to the firm's fine of \$85,000. The fine shall be due and payable upon notice that this Offer has been accepted and that such payments are due and payable;
2. Silver is suspended from associating with any member firm in a principal capacity for 90 business days;
3. For a period of six months, which shall begin immediately upon the completion of the 90-day principal suspension, Silver shall not serve in the capacity of Chief Compliance Officer; and
4. Silver shall complete 25 hours of AML continuing education, by a provider not unacceptable to FINRA, within 12 months of acceptance of the Order Accepting Offer of Settlement. Within 30 days following completion of such continuing education, Silver must provide FINRA with written proof of his completion of the continuing education.

For Jeffrey Simon:

1. Simon shall pay a fine of \$10,000, which will be joint and several with the firm's fine of \$85,000. The fine shall be due and payable upon notice that this Offer has been accepted and that such payments are due and payable;
2. Simon is suspended from associating with any member firm in any and all capacities for a period of six months and, before again becoming associated with any FINRA member firm in a capacity that requires either a Series 7 or Series 55, Simon shall re-qualify by examination for a Series 7 and/or Series 55.

For [REDACTED]

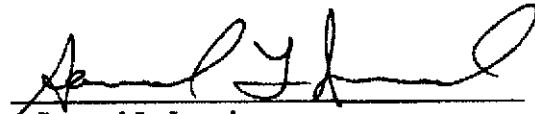
1. [REDACTED] shall pay a fine of \$5,000, which shall be independent of and in addition to the firm's fine of \$85,000. The fine shall be due and payable upon notice that this Offer has been accepted and that such payments are due and payable; and
2. [REDACTED] shall complete 25 hours of AML continuing education, by a provider not unacceptable to FINRA, within 12 months of acceptance of the Order Accepting Offer of Settlement. Within 30 days following completion of such continuing education, [REDACTED] must provide FINRA with written proof of his completion of the continuing education.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

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



Samuel L. Israel
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FINRA – Department of Enforcement
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