

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Harry Friedman
(CRD No. 2548017),

Respondent.

DISCIPLINARY PROCEEDING
No. 2009016405904

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From September 2006 through June 2009 (the relevant time period), Harry Friedman (Friedman), the Chief Executive Officer (CEO) of Prestige Financial Center, Inc. (Prestige or the Firm), engaged in a fraudulent trading scheme through which improper mark-ups were concealed and customers were denied best execution. The hidden profits were captured in a Firm account, from which Friedman received a 20% share.
2. Friedman perpetrated the trading scheme through Prestige with LK, the Firm's President, and TB, the Firm's Chief Compliance Officer (CCO) and Head Trader. In April 2010, FINRA issued a Letter of Acceptance, Waiver and Consent (AWC) barring TB for his role in the fraudulent trading scheme and other misconduct. In May 2011, FINRA issued an AWC barring LK and expelling the Firm for their

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respective roles in the fraudulent trading scheme and other misconduct.

3. As a result of the foregoing conduct, Friedman willfully violated Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rules 10b-5 and 10b-10 thereunder, and violated NASD Conduct Rules 2120, 2320, 3110, and 2110, IM-2310-2, and FINRA Rules 2020 and 2010.¹
4. During the relevant time period, Friedman also:
 - a. failed to enforce Prestige's written supervisory procedures related to the trading activity at the Firm (for example, Friedman failed to conduct required monthly reviews of order allocation, best execution, trades in the Firm's proprietary accounts and other areas) in violation of NASD Conduct Rules 3010 and 2110, and FINRA Rule 2010;
 - b. failed to reasonably supervise TB's activities as the Head Trader of the Firm (for example, the above-referenced fraudulent trading scheme) in violation of NASD Conduct Rules 3010 and 2110, and FINRA Rule 2010;
 - c. failed to ensure that the Firm established, maintained and enforced a reasonably-designed system of supervisory control policies and procedures (for example, Friedman failed to submit to the Firm's senior management any report in 2007, 2008 or 2009 that detailed its system of supervisory controls, the summary of test results and significant identified exceptions and any additional or amended supervisory procedures created in response to the test

¹ As of July 30, 2007, the National Association of Securities Dealers (NASD) consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). Following the consolidation, FINRA began developing a new consolidated rulebook, the first phase of which became effective on December 15, 2008. This Complaint, however, refers to and alleges violations of both NASD Conduct Rules and FINRA Rules that were in effect at the time of Friedman's misconduct.

results) in violation of NASD Conduct Rules 3012 and 2110, and FINRA Rule 2010; and

- d. falsely certified, as the CEO of Prestige, that the Firm had the requisite processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures that were reasonably designed to attain compliance with applicable securities laws and regulations and that those processes were evidenced in a report reviewed by the Firm's CEO and other officers in violation of NASD Conduct Rules 3013 and 2110, IM-3013 and FINRA Rules 3130 and 2010.

RESPONDENT AND JURISDICTION

5. On October 19, 1994, Friedman first became registered with FINRA as a General Securities Representative. On March 27, 1997, he became registered as a General Securities Principal.
6. Friedman was registered in both capacities with Prestige from May 22, 2006 to November 2, 2010. He was the CEO for Prestige during that time period as well.
7. Friedman has been registered through another FINRA member firm in the same two capacities since November 2, 2010.

FIRST CAUSE OF ACTION

Fraudulent Trading Scheme

(Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, NASD Conduct Rules 2120 and 2110, and FINRA Rules 2020 and 2010)

8. The Department realleges and incorporates by reference paragraphs 1-7 above.
9. Section 10(b) of the Exchange Act makes it "unlawful for any person, ... by the use of any means or instrumentality of interstate commerce or of the mails, or of any

facility of any national security exchange, ... to use or employ, in connection with the purchase or sale of any security ... any manipulative or deceptive device or contrivance."

10. In connection with the purchase or sale of any security, Rule 10b-5 of the Exchange Act makes it unlawful to "employ any device, scheme or artifice to defraud," "to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made ... not misleading," or "to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person."
11. NASD Conduct Rule 2120, renumbered in 2008 to FINRA Rule 2020, prohibits effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.
12. Prior to Friedman becoming employed at the Firm, Prestige was comprised of two registered individuals, TB and LK, and was located at 1501 Broadway, New York, NY.
13. At that time, LK was already the President of the Firm and TB was a trader for transactions effected in accounts for LK's customers.
14. Upon becoming employed with Prestige, Friedman brought with him approximately fifty registered representatives, who became employed at the Firm, at two office locations – New York City (80 Broad) and Garden City, NY. The two offices were established as offices of supervisory jurisdiction (OSJs) of the Firm.

15. After Friedman became employed at Prestige, Friedman promoted TB to Head Trader and CCO and moved TB to the OSJs where Friedman was located.
16. Friedman was responsible for the supervision of the OSJs.
17. Friedman's responsibilities required him to review the OSJs' order tickets, per the Firm's written supervisory procedures established in June 2006 and revised in February 2008.
18. In accordance with the Firm's written supervisory procedures, Friedman was responsible for ensuring that customers received best execution.
19. Friedman was responsible for overseeing the Firm's principal accounts, including reconciling daily positions and trades in those accounts.
20. During the relevant time period, Friedman presided over a fraudulent trading scheme through which TB, then the CCO and Head Trader for the Firm, concealed improper mark-ups and denied customers best execution.
21. The trading scheme was perpetrated in customer accounts that were serviced through the OSJs.
22. The trading scheme took advantage of large orders (generally 1,000 shares or more) to buy or sell equities that were placed for the OSJs' customers. Rather than effecting the trades in the customers' accounts, TB placed the orders in Firm principal accounts. He would then increase or decrease the price per share for the securities purchased or sold, respectively, by approximately \$.02 to \$.05 above or below the market price, before ultimately allocating the shares or proceeds to the customers'

accounts. The Firm then charged a commission or mark-up/mark-down, which was disclosed, in addition to the undisclosed \$.02 to \$.05 price adjustment per share.

23. In furtherance of the fraudulent trading scheme, throughout the relevant time period,

TB entered false information on the corresponding order tickets regarding the share price and the time the customer order tickets were received, entered and executed.

24. The corresponding trade confirmations also inaccurately reflected the price, mark-up and/or commission charged and the order capacity.

25. Friedman was required to review this trading activity, scrutinize the order tickets, evaluate the transactions for best execution, and monitor the Firm's principal accounts. Such a review would have revealed these fraudulent transactions and the fraudulent trading scheme. Moreover, Friedman received a 20% share of the profits generated through the fraudulent trading scheme. Accordingly, Friedman was aware of the fraudulent transactions or was reckless in disregarding the information he had about the transactions.

26. Friedman permitted TB to continue the trading scheme for nearly three years. The improper price changes were not disclosed to or authorized by the customers.

27. This fraudulent trading scheme generated approximately \$1.3 million in profits for the Firm's proprietary accounts during the nearly three-year relevant time period. Those profits were improperly taken from the subject customers' brokerage accounts.

28. As part of this course of conduct, Friedman, in connection with the purchase or sale of securities, directly or indirectly, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities

exchange, knowingly or recklessly: employed devices, schemes or artifices to defraud; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person; and effected transactions in, or induced the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.

29. As a result of the foregoing conduct, which involved trading ahead of customer orders, falsifying order tickets and trade confirmations, and/or failing to arrange for best execution, Friedman willfully violated Section 10(b) of the Exchange Act and Rules 10b-5 thereunder, and NASD Conduct Rules 2110 and 2120 (both NASD rules are charged for conduct before December 15, 2008) and FINRA Rules 2010 and 2020 (both FINRA rules are charged for conduct after December 14, 2008).

SECOND CAUSE OF ACTION

Interpositioning and Failure to Provide Best Execution (NASD Conduct Rules 2320 and 2110, and FINRA Rule 2010)

30. The Department realleges and incorporates by reference paragraphs 1-29 above.
31. Rule 2320 states that customers must receive the most favorable price as possible "under prevailing market conditions" and that a third party cannot be interjected between the member and the best available market.
32. The Firm's customers did not receive the most favorable market price because, as discussed above, Friedman permitted TB to interject the Firm's proprietary account between the customer and the market. Rather than effecting the trades in the

customers' accounts, TB processed a customer trade through an additional step using a proprietary Firm account. After purchasing or selling a security in the market, TB placed the security or proceeds of the sale of the security in a proprietary Firm account where he marked the price of the security up or down before allocating the security or the proceeds to the customer accounts. TB engaged in this practice without disclosing it to the customers.

33. As a result of the foregoing conduct, Friedman violated NASD Conduct Rules 2110 (for conduct before December 15, 2008) and 2320, and FINRA Rule 2010 (for conduct after December 14, 2008).

THIRD CAUSE OF ACTION

Fraudulent Trading Records

(Section 10(b) of the Exchange Act and Rule 10b-10 thereunder, NASD Conduct Rule 2110, and FINRA Rule 2010)

34. The Department realleges and incorporates by reference paragraphs 1-33 above.
35. Rule 10b-10 of the Exchange Act generally requires broker-dealers that effect transactions for customers in securities, other than U.S. savings bonds or municipal securities, to provide those customers with written notification, at or before completion of a securities transaction, disclosing certain information about the terms of the transaction. Specifically, Rule 10b-10 requires, among other things, the disclosure of the date, time, identity, and number of securities bought or sold, the capacity in which the broker-dealer acted and under specified circumstances, the amount of compensation the broker-dealer will receive from the customer and any other parties.

36. Friedman was responsible for ensuring that the Head Trader accurately disclosed on the order tickets the time that the customer orders were received and executed, the capacity in which the broker-dealer acted and the amount of compensation the broker-dealer received from the transaction.
37. However, in furtherance of the fraudulent trading scheme, throughout the relevant time period, TB entered false information on the order tickets for customer transactions regarding the share price and the time the customer order tickets were received, entered and executed, and did not accurately reflect the mark-up and/or commission charged or the order capacity.
38. Friedman knew or was reckless in not knowing the order tickets were mismarked.
39. As a result of the foregoing conduct, Friedman willfully violated Section 10(b) of the Exchange Act and Rules 10b-10 thereunder, and NASD Conduct Rule 2110 (for conduct before December 15, 2008), and FINRA Rule 2010 (for conduct after December 14, 2008).

FOURTH CAUSE OF ACTION

False Order Tickets

(NASD Conduct Rules 3110 and 2110, and FINRA Rule 2010)

40. The Department realleges and incorporates by reference paragraphs 1-39 above.
41. NASD Conduct Rule 3110 requires books and records to be maintained in conformance with all applicable rules, including Exchange Act Rules 17a-3 and 17a-4.
42. Friedman was designated by the Firm as the person who was to insure that order tickets were properly marked by the Head Trader.

43. The order tickets were inaccurate in that they did not reflect that the Firm had paid itself a mark up or include the proper commission, and contained inaccurate information related to the share price, the time the customer order tickets were received, entered and executed, and order capacity.

44. As a result of the foregoing conduct, Friedman violated NASD Conduct Rules 2110 (for conduct before December 15, 2008) and 3110, and FINRA Rule 2010 (for conduct after December 14, 2008).

FIFTH CAUSE OF ACTION

Unfair Dealing with Customers

(NASD Conduct Rule 2110, IM-2310-2 and FINRA Rule 2010)

45. The Department realleges and incorporates by reference paragraphs 1-44 above.

46. IM-2310-2 provides that "Implicit in all member and registered representative relationships with customers and others is the fundamental responsibility for fair dealing."

47. The customers of the Firm were not dealt with fairly, as discussed in the preceding paragraphs.

48. Through the fraudulent trading scheme described above, Friedman took advantage of large customer orders to buy or sell equities. The scheme ultimately generated approximately \$1.3 million in profits for the Firm's proprietary accounts, with Friedman receiving 20% of those illicit profits. None of this was disclosed to the customers.

49. As a result of the foregoing conduct, Friedman violated NASD Conduct Rule 2110 (for conduct before December 15, 2008), IM-2310-2, and FINRA Rule 2010 (for conduct after December 14, 2008).

SIXTH CAUSE OF ACTION

Failure to Enforce Written Supervisory Procedures (NASD Conduct Rules 3010 and 2110, and FINRA Rule 2010)

50. The Department realleges and incorporates by reference paragraphs 1-49 above.
51. NASD Conduct Rule 3010 requires member firms to establish and maintain a system and written procedures to supervise the activities of each registered individual and associated persons reasonably designed to achieve compliance with the securities laws and regulations, and enforce its procedures. In addition, the rule mandates certain required inspections and oversight.
52. During the relevant time period, Friedman was responsible for the review and supervision of all trading activity at the Firm.
53. Friedman failed to enforce written supervisory procedures to supervise the activities of each registered person that were reasonably designed to achieve compliance with the applicable rules and regulations with respect to trading activity of all registered representatives of the Firm's New York City (80 Broad) and Garden City, NY OSJs.
54. The Firm's written supervisory procedures during the relevant time period required Friedman to conduct "monthly reviews in the home and the branch office(s), if any, concentrating on such areas as order allocation, 'best execution,' bunching . . . clearing and settlement procedures, reconciliation of daily positions and trades in the [Firm's] principal accounts."

55. Friedman, however, failed to enforce those procedures. According to Friedman, his only form of supervisory review was to examine the previous day's trade blotter.
56. TB, as the head trader of Prestige, effected transactions for the OSJs. The fraudulent trading scheme was perpetrated utilizing the Firm's principal accounts as described in the First Cause of Action. Friedman failed to perform the required reconciliation of daily positions and trades in the [Firm's] principal accounts.
57. As a result of the foregoing conduct, which involved failures to enforce the Firm's procedures, Friedman violated NASD Conduct Rules 2110 (for conduct before December 15, 2008) and 3010, and FINRA Rule 2010 (for conduct after December 14, 2008).

SEVENTH CAUSE OF ACTION

Deficient Supervisory Controls

(NASD Conduct Rules 3012 and 2110, and FINRA Rule 2010)

58. The Department realleges and incorporates by reference paragraphs 1-57 above.
59. Generally, NASD Conduct Rule 3012 requires member firms to establish, maintain and enforce a supervisory control system.
60. From at least September 2006 through at least June 2009, Prestige, acting through Friedman, failed to establish, maintain and enforce a system of supervisory control policies and procedures that (a) tested and verified that its supervisory procedures were reasonably designed with respect to the activities of the Firm and its registered representatives and associated persons to achieve compliance with applicable securities laws and regulations, and (b) created additional or amended supervisory procedures where the need was identified by such testing and verification.

61. Among other things, Friedman and another designated principal failed to submit to the Firm's senior management any report in 2007, 2008 or 2009 that detailed its system of supervisory controls, the summary of the test results and significant identified exceptions, and any additional or amended supervisory procedures created in response to the test results.

62. Prestige, acting through Friedman, failed to conduct a test of its supervisory procedures in 2008.

63. Moreover, although Prestige conducted some limited testing in 2007 and 2009, that testing was deficient in that the Firm failed to evaluate several aspects of its written compliance policies and written supervisory procedures:

- review and supervision of the customer account activity conducted by the Firm's branch office managers;
- review and monitoring of customer changes of address and the validation of such changes;
- review and monitoring of customer changes of investment objectives and the validation of such changes; and

64. During the relevant time period, Friedman failed to enforce the written supervisory control policies and procedures the Firm had with respect to the three areas described in paragraph 63 above.

65. Friedman also failed to establish written supervisory control policies and procedures reasonably designed to provide heightened supervision over the activities of each producing manager who was responsible for generating 20% or more of the revenue of the business units supervised by that producing manager's supervisor. As a result,

the Firm did not determine whether it had any such producing managers and, to the extent that it did, subject those managers to heightened supervision.

66. As a result of the foregoing conduct, which involved a failure to establish, maintain and enforce a reasonably-designed system of supervisory control policies and procedures, Friedman violated NASD Conduct Rules 2110 (for conduct before December 15, 2008) and 3012, and FINRA Rule 2010 (for conduct after December 14, 2008).

EIGHTH CAUSE OF ACTION

False Certification

(NASD Conduct Rules 3013 and 2110, IM-3013 and FINRA Rules 3130 and 2010)

67. The Department realleges and incorporates by reference paragraphs 1-66 above.
68. FINRA Rule 3130 (formerly NASD Conduct Rule 3013) requires an annual certification by its chief executive officer(s) or an equivalent officer(s) that the firm has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to obtain compliance with applicable FINRA rules, MSRB rules and federal securities laws and regulations, and that the chief executive officer(s) has conducted one or more meetings with the chief compliance officer(s) in the preceding 12 months to discuss such processes.
69. As described above in paragraphs 59-66, Prestige had several deficiencies with respect to such processes, policies and procedures, and the Firm failed to test the effectiveness of them on a periodic basis. Further, as described in paragraph 61 above, Friedman failed to submit the required annual report to senior management on the Firm's supervisory control system in 2007, 2008 or 2009. Nevertheless, in each of

those three years, Friedman falsely certified that the Firm had the requisite processes in place and that those processes were evidenced in a report reviewed by its CEO, CCO and other officers.

70. As a result of the foregoing conduct, which involved a false certification that the Firm had certain processes and supervisory procedures in place, Friedman violated NASD Conduct Rules 3013 and 2110, IM-3013 (both NASD rules and IM-3013 are charged for conduct before December 15, 2008) and FINRA Rules 2010 and 3130 (both FINRA rules are charged for conduct after December 14, 2008).

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that the Respondent be required to disgorge fully any and all ill-gotten gains, and/or make full and complete restitution, together with interest;
- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- C. make specific findings that Respondent willfully violated Section 10(b) of the Exchange Act and Rules 10b-5 and 10b-10 thereunder and Section 17(a) of the Exchange Act and Rule 17a-3 thereunder.

FINRA DEPARTMENT OF ENFORCEMENT

Date:

5/25/11

Michael S. Choi

Michael S. Choi, Senior Counsel
Lynn M. Kaseta, Senior Regional Counsel
Danielle Schanz, Senior Litigation Counsel
FINRA Department of Enforcement
14 Wall Street, 14th Floor
New York, New York 10005
Phone: 646-315-7323
Fax: 202-689-3430
michael.choi@finra.org
lynn.kaseta@finra.org
danielle.schanz@finra.org