

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

**John M. Repine,
Financial and Operations Principal,
General Securities Principal and
General Securities Representative
(CRD No. 1010844)**

and

**John J. Triglia,
General Securities Principal and
General Securities Representative
(CRD No. 2457892)**

Respondents.

Disciplinary Proceeding No. E0420030634-04

Hearing Officer - SNB

November 14, 2007

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

INTRODUCTION

Disciplinary Proceeding No. E0420030634-04 was filed on January 31, 2007 by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA). John J. Triglia submitted an Offer of Settlement to Enforcement on November 12, 2007. Pursuant to NASD Procedural Rule 9270(e), Enforcement 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 Procedural Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Enforcement and approved by the NAC.

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Under the terms of the Offer, Triglia has 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 Triglia's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Triglia entered the securities industry in January 1994. From July 5, 2001 through December 18, 2003, Triglia was associated with Archer and was registered with FINRA as a general securities principal. From December 19, 2003 through October 4, 2004, Triglia was associated with FINRA member Nations Financial Group, and was registered as a general securities principal. From February 3, 2006 through June 5, 2007, Triglia was associated with FINRA member Advanced Planning Securities, Inc., and was registered as a general securities principal. From November 3, 2006 through November 9, 2007, Triglia was associated with FINRA member Rockwell Global Capital LLC, and was registered as a general securities principal.

Triglia is not currently associated with any FINRA member or registered with FINRA in any capacity. However, FINRA retains jurisdiction over Triglia pursuant to Article V, Section 4 of FINRA By-Laws. Triglia has not been the subject of prior formal disciplinary action by FINRA.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:¹

FIRST CAUSE OF COMPLAINT

**(Respondents Repine and Triglia)
Facilitating Market Timing Transactions
Violation of NASD Conduct Rule 2110**

Background on Market Timing

Market timing” is the short-term buying and selling of mutual fund shares to exploit inefficiencies in mutual fund pricing. The share price of a mutual fund is determined by the “net asset value” or NAV of the fund. The NAV is typically calculated once a day from the closing price of the securities in the fund’s portfolio at 4:00 p.m. Eastern. This method for determining NAV allows market timers to engage in arbitrage based on market information not reflected in that day’s NAV. To accomplish this, market timers typically buy and sell shares in mutual funds on a short-term basis, realizing quick gains and then retreating to the previous market position. This strategy is often pursued in international mutual funds.

Market timing harms mutual fund shareholders by diluting the value of their shares by, among other things, requiring the fund to keep a larger percentage of highly liquid assets to cover redemptions and increasing transaction costs for the fund. Long-term mutual fund investors ultimately bear the burden of these increased costs.

As stated in many mutual fund prospectuses, mutual fund companies regularly review trading in their funds to detect market timing. Once a mutual fund company discovers a market timer, it may take a number of steps to prevent further market timing. Typically, mutual fund

¹The findings herein are pursuant to Triglia’s Offer of Settlement and are not binding on any other person or entity named as a respondent in this or any other proceeding.

companies send out communications by letter or e-mail restricting an account from further market timing transactions. They may also reject trades because of market timing and block certain accounts, brokers or entire branches from executing transactions in their mutual funds.

Repine and Triglia Facilitate
Market Timing in Archer Accounts

In May 2002, Repine was working as Archer's chief executive officer in its main office in Overland Park, Kansas. Triglia was working as a registered principal and registered representative in an Archer branch office in Smithtown, New York.

In May 2002, a large hedge fund company, Tower Research Capital, LLC, opened five brokerage accounts at Archer. Triglia was the registered representative for these accounts. Tower named these accounts ASG, KMA, Minaret, Monticle and Spire Fund. Although these accounts had dissimilar names, they had identical mailing addresses, managing directors, and authorized agents with full trading authorization.

In August 2002, another large hedge fund company, Millennium Holding Group, L.P., opened a brokerage account at Archer. Triglia was the registered representative for this account. Millennium named this account Auric Ventures.

The Tower and Millennium accounts cleared through Archer's clearing firm, RBC Dain Rauscher, Inc. Triglia received instructions from Tower and Millennium for the purchases and sales to be made in the accounts. Triglia submitted these trades to Dain for execution.

The activity in the Tower and Millennium accounts at Archer consisted almost exclusively of short-term trading of international mutual funds, with both the purchase and sale of the same fund occurring usually within one week and always within one month. From June through

August 2002, there were dozens of such transactions in these accounts, with the amounts traded ranging from \$300,000 to \$1,700,000.

Mutual Fund Companies Impose Restrictions
Because of Market Timing in the
Tower and Millennium Accounts at Archer

Shortly after the trading in the Tower and Millennium accounts at Archer commenced, Dain began receiving letters and emails restricting the trading in these accounts due to the market timing strategies being employed. Some of these restriction letters referenced language in the prospectuses of the mutual funds that limited market timing and short-term trading in customer accounts. Through these restriction letters, the mutual fund companies warned that market timing was not permitted in their funds and directed Dain to cancel trades and prevent further purchases by Tower and Millennium in their mutual funds. They also instructed Dain to notify the customers and their brokers of these restrictions.

For example, an August 14, 2002 restriction letter from Janus to Dain regarding the market timing activity in Tower's Spire Fund account stated as follows:

As stated in the shareholder's manual section of all Janus prospectuses, excessive trading of Fund shares in response to short-term fluctuations in the market – also known as market timing – make it very difficult to effectively manage a Fund's investments. Janus Capital does not permit excessive trading or market timing. When excessive trading or market timing activity has been identified, Janus Capital reserves the right to refuse purchase orders and exchanges from or into a Fund by any person, group, or commonly controlled account.

Based on the trade activity . . . we have witnessed year to date for [Tower's Spire Fund account], please restrict your client [Tower] from buying additional shares of Janus Advisor Funds and exchanging from or into Janus Advisor Funds. This restriction is necessary due to the trading activity we have witnessed year to date.

As instructed by the mutual fund companies, Dain notified Repine and Triglia by calling them about these restrictions and by sending them copies of the restriction letters from the mutual fund companies. Triglia communicated these restrictions to Tower and Millennium.

Through this process, Repine and Triglia were notified of at least five restriction letters relating to the Tower and Millennium accounts that blocked any further purchases by Tower or Millennium in all funds offered by the mutual fund companies:

<u>Date</u>	<u>Mutual Fund Company</u>	<u>Hedge Fund Restricted</u>
6/14/2002	Scudder	Tower
8/14/2002	Janus	Tower
8/15/2002	Goldman Sachs	Millennium
8/15/2002	Liberty	Millennium
8/26/2002	Liberty	Tower

Due to the numerous restriction letters being sent by the mutual fund companies, Dain sent a separate letter to Repine on August 15, 2002. The letter stated that Dain had become aware that Archer representatives had effected numerous market timing transactions in their customers' accounts. The letter continued:

Effective immediately, RBC Dain CS will no longer accept orders, which, in our judgment appear to be "market-timing" transactions, except in the case of a liquidation of an existing position that was established prior to August 15, 2002. We reserve our right, as granted in the Fully Disclosed Clearing Agreement between our organizations, to reject or cancel any trades that we determine fall into this category.

Because Triglia was handling the Tower and Millennium accounts where the market timing activity was occurring, Repine communicated the restrictions put in place by Dain to Triglia. Triglia in turn notified Tower and Millennium that they would be unable to continue trading in the same manner in their Archer accounts because of the Dain restrictions.

Both Tower and Millennium quickly closed their Archer accounts as a result of the restrictions put in place by Dain and the mutual fund companies. By early September 2002, Tower and Millennium had wired the money out of their Archer accounts and closed them.

Repine and Triglia Approach Shiver
to Retain Tower and Millennium Business

To retain the business of Tower and Millennium, Repine and Triglia called Mark Shiver, another Archer representative in a branch office in Knightdale, North Carolina. Triglia had never met or spoken with Shiver before Repine introduced them over the telephone.

Repine and Triglia proposed that Shiver allow Tower and Millennium to open investment advisory accounts at KCR Advisory Services, LLC, an investment advisory firm owned by Shiver. Triglia would register with KCR so that he could continue to service these accounts. Archer would approve of and supervise this business by receiving duplicate statements from KCR's custodians. The management fees generated by this business would be split as follows: 88.5% to Triglia, 8.5% to Archer, and 3% to KCR.

Shiver agreed to this new business opportunity. This arrangement was memorialized in an October 14, 2002 written agreement that was signed by Repine (on behalf of Archer), Triglia and Shiver (on behalf of KCR).

Repine and Triglia Assist Tower and Millennium
in Using KCR Accounts with Schwab as Custodian
to Circumvent Restrictions Imposed by Mutual Fund Companies

In October and December 2002, Tower opened two accounts at KCR with Charles Schwab & Co. as the custodian. Tower named these accounts KMA and Mur. Although these accounts had dissimilar names, they had identical mailing addresses, managing directors, chief financial officers, fund managers, secretaries, treasurers and authorized agents. In addition, the

people who controlled these accounts were the same as those who controlled the Archer accounts that Tower had just closed. Tower also named one of these accounts – KMA – exactly as it had titled one of its recently-closed Archer accounts.

In October and December 2002, Millennium opened eight accounts at KCR with Schwab as the custodian. Millennium named these accounts Auric Ventures, Gahn & McElroy, Hobart Way, Lemata, Lanckton, Optik Group, Portwine and Valonia. Although these companies had dissimilar names, they had identical chief operating officers, chief financial officers, secretaries and authorized agents. In addition, the people who controlled these accounts were the same as those who controlled the Archer account that Millennium had just closed. Millennium also named one of these accounts – Auric Ventures – exactly as it had titled its recently-closed Archer account.

Triglia was the investment advisor for these Tower and Millennium accounts. He entered trades for these accounts based on instructions he received from Tower and Millennium. Repine arranged for Archer to receive duplicate account statements for these accounts from Schwab.

The activity in these Tower and Millennium accounts consisted almost exclusively of short-term trading of international mutual funds, with both the purchase and sale of the same fund occurring usually within one week and almost always within one month. There were hundreds of such transactions in these accounts, with most of the trades in the \$500,000 to \$1,000,000 range.

Dozens of trades in these accounts violated the restrictions that Scudder, Janus, Goldman Sachs and Liberty had imposed on Tower and Millennium because of the market timing strategies employed in their Archer accounts. These restrictions are detailed in Paragraph 24 of

the Complaint. Further details about the trades that violated these restrictions are provided in Schedule A attached to the Complaint.

Repine and Triglia knew that Tower and Millennium were using their KCR accounts held at Schwab to circumvent the restrictions that Scudder, Janus, Goldman Sachs and Liberty had imposed on them because of the market timing transactions in their Archer accounts. Nevertheless, Repine and Triglia continued to facilitate the market timing strategies of Tower and Millennium in their KCR accounts held at Schwab.

Schwab Blocks KCR Accounts from Purchasing Various Mutual Funds
Based on Restrictions Imposed by Mutual Fund Companies

The KCR accounts of Tower and Millennium held at Schwab also received increased scrutiny from mutual fund companies because of the market timing transactions in these accounts. In November 2002, Schwab began receiving restriction notices from mutual fund companies for these accounts. The mutual fund companies identified these accounts as market timers and instructed Schwab to block all KCR accounts from purchasing certain mutual funds. In fact, in most cases, the mutual fund companies instructed Schwab to block all KCR accounts from purchasing any of their mutual funds.

In accordance with these instructions, Schwab blocked all KCR accounts from purchasing the various mutual funds. Schwab communicated these restrictions to Triglia by telephone. Triglia then notified Tower and Millennium of these restrictions.

From November 2002 through February 2003, Triglia received notice of at least the following seventeen trading restrictions from Schwab on all KCR accounts, which he in turn communicated to Tower and Millennium:

<u>Date</u>	<u>Mutual Fund Company</u>	<u>Funds Restricted from Purchasing</u>
11/26/2002	American Century	All
12/20/2002	SIT	All
12/26/2002	Wells Fargo	Int'l Equity
1/9/2003	Eaton Vance	All
1/10/2003	Fremont	All
1/10/2003	MFS	All
1/15/2003	First American	All
1/29/2003	Liberty	Japan Opportunities, Asia Pacific, Greater China, Tiger
2/3/2003	AIM	All
2/3/2003	ING	All
2/6/2003	Waddell & Reed	All
2/11/2003	Managers	All
2/13/2003	T. Rowe Price	All
2/20/2003	Bernstein	Int'l Value
2/20/2003	RS Investments	All
2/21/2003	Dodge & Cox	All
2/21/2003	Harbor	All

Repine and Triglia Assist Tower and Millennium
in Using KCR Accounts with TDW as Custodian
to Circumvent Restrictions Imposed by Mutual Fund Companies

Faced with mounting restrictions in their KCR accounts held at Schwab, Tower and Millennium began opening KCR accounts with TD Waterhouse Institutional Services (TDW) as the custodian.

In January 2003, Tower opened two accounts at KCR with TDW as the custodian. Tower named these accounts Mur and Sadie. Although these accounts had dissimilar names, they had

identical mailing addresses, managing directors and authorized agents. In addition, the people who controlled these accounts were the same as those who controlled Tower's Archer accounts and Tower's KCR accounts held at Schwab. Tower also named one of these accounts – Mur – exactly as it had titled one of its KCR accounts held at Schwab.

In December 2002 and January 2003, Millennium opened four accounts at KCR with TDW as the custodian. Millennium named these accounts Apulia, Joliette, Mazzard Group Account A and Mazzard Group Account B. Although these accounts had dissimilar names, they had identical mailing addresses and chief operating officers. In addition, the people who controlled these accounts were the same as those who controlled Millennium's Archer accounts and Millennium's KCR accounts held at Schwab.

Triglia was the investment advisor for these Tower and Millennium accounts. He entered trades for these accounts based on instructions he received from Tower and Millennium. Repine arranged for Archer to receive duplicate account statements for these accounts from TDW.

The activity in these Tower and Millennium accounts consisted almost exclusively of short-term trading of international mutual funds, with both the purchase and sale of the same fund occurring usually within one week and almost always within one month. There were hundreds of such transactions in these accounts, with most of the trades in the \$500,000 to \$1,000,000 range.

Dozens of trades in these accounts violated the restrictions that the mutual fund companies had imposed on Tower and Millennium because of the market timing strategies employed in their Archer accounts and their KCR accounts held at Schwab. These restrictions are detailed in Paragraphs 24 and 39 of the Complaint. Further details about the trades that violated these restrictions are provided in Schedule A attached to the Complaint.

Repine and Triglia knew that Tower and Millennium were using their KCR accounts held at TDW to circumvent the restrictions that the mutual fund companies had imposed on them because of the market timing transactions in their Archer accounts and their KCR accounts held at Schwab. Nevertheless, Repine and Triglia continued to facilitate the market timing strategies of Tower and Millennium in their KCR accounts held at TDW.

Repine and Triglia Assist Tower and Millennium
in Using Manna Accounts to Circumvent
Restrictions Imposed by Mutual Fund Companies

In December 2002, Triglia opened his own investment advisory firm, Manna Advisory Services, LLC, to continue to accommodate the market timing of Tower and Millennium.

Repine and Triglia arranged to share the management fees earned on the Manna accounts of Tower and Millennium. Triglia retained 90% of the management fees earned on these accounts, with Archer receiving the remaining 10% of these fees.

In February 2003, Tower opened two accounts at Manna with Schwab as the custodian. Tower named these accounts KMA and Mur.

In February 2003, Tower opened another account at Manna with Ameritrade as the custodian. Tower named this account KMA.

In July 2003, Tower opened another account at Manna with Fidelity as the custodian. Tower named this account Sadie.

Although Tower's accounts at Manna sometimes had dissimilar names, they had identical mailing addresses, managing directors and authorized agents. In addition, the people who controlled these accounts were the same as those who controlled Tower's Archer and KCR accounts. Tower also named these accounts – KMA, Mur and Sadie – exactly as it had titled some of its Archer and KCR accounts.

In February 2003, Millennium opened an account at Manna with Schwab as the custodian. Millennium named this account Valonia.

In February 2003, Millennium opened another account at Manna with Ameritrade as the custodian. Millennium named this account Hobart Way.

In July 2003, Millennium opened two more accounts at Manna with Fidelity as the custodian. Millennium named these accounts Hobart Way and Optik Group.

Although Millennium's accounts at Manna sometimes had dissimilar names, they had identical chief operating officers and authorized agents. In addition, the people who controlled these accounts were the same as those who controlled Millennium's Archer and KCR accounts. Millennium also named these accounts – Hobart Way, Optik Group and Valonia – exactly as it had titled some of its Archer and KCR accounts.

Triglia was the investment advisor for these Tower and Millennium accounts. He entered trades for these accounts based on instructions he received from Tower and Millennium. Repine arranged for Archer to receive duplicate account statements for these accounts from the custodians.

The activity in these Tower and Millennium accounts consisted almost exclusively of short-term trading of international mutual funds, with both the purchase and sale of the same fund occurring usually within one week and almost always within one month. There were hundreds of such transactions in these accounts, with most of the trades in the \$500,000 to \$1,000,000 range.

Dozens of trades in these accounts violated the restrictions that the mutual fund companies had imposed on Tower and Millennium because of the market timing strategies employed in their Archer accounts and their KCR accounts held at Schwab. These restrictions

are detailed in Paragraphs 24 and 39 of the Complaint. Further details about the trades that violated these restrictions are provided in Schedule A attached to the Complaint.

Repine and Triglia knew that Tower and Millennium were using their Manna accounts to circumvent the restrictions that the mutual fund companies had imposed on them while trading in their Archer accounts and their KCR accounts held at Schwab. Nevertheless, Repine and Triglia continued to facilitate the market timing strategies of Tower and Millennium in their Manna accounts.

Results After Months of Market Timing

With the assistance of Repine and Triglia, Tower and Millennium opened at least 30 accounts with various names at Archer, KCR and Manna in order to circumvent the restrictions imposed by the mutual fund companies. Once the mutual fund companies identified certain accounts as market timers and restricted trading in those accounts, Tower and Millennium simply moved their market timing transactions to their other accounts.

Repine and Triglia accommodated Tower and Millennium by providing more avenues to open new accounts so that the market timing could continue unabated.

As shown on Schedule A attached to the Complaint, 526 trades in these accounts violated restrictions imposed by mutual fund companies that were communicated to Repine and Triglia, and in turn to Tower and Millennium. Through these trades, Tower and Millennium collectively made \$2,045,263.23 in profits.

Repine and Triglia also profited personally from this illegal activity. Through his agreements with Shiver and Triglia to share management fees generated on the Tower and Millennium accounts at KCR and Manna, Repine secured at least an additional \$38,450.10 for

Archer. Triglia fared even better; he made at least \$400,901.97 in management fees on the Tower and Millennium accounts at KCR and Manna.

NASD Conduct Rule 2110 requires persons associated with NASD members to observe high standards of commercial honor and just and equitable principles of trade. By facilitating the illegal market timing activities of Tower and Millennium, Repine and Triglia violated NASD Conduct Rule 2110.

THIRD CAUSE OF COMPLAINT

(Respondent Triglia)

Failing to Respond Truthfully to NASD Requests for Information **Violation of NASD Procedural Rule 8210 and Conduct Rule 2110**

On March 1, 2004, NASD staff sent a letter to Triglia requesting information pursuant to NASD Procedural Rule 8210. In that letter, NASD staff asked for copies of all correspondence between Triglia and Repine, Shiver or Archer relating to any type of securities activity, including trading, retail, investment advisory business or processing of transactions.

Triglia responded to this NASD information request through a March 18, 2004 letter. In his response, Triglia stated that there was no correspondence between him and Repine, Shiver or Archer relating to any securities activity.

NASD staff discovered that Triglia's statement was false, after obtaining such correspondence from other sources during the investigation of the illegal market timing. In a March 25, 2004 letter to Triglia that cited NASD Procedural Rule 8210, NASD staff again requested such correspondence from Triglia and attached an example of such correspondence that had been obtained from another source.

In an April 7, 2004 letter to NASD staff, Triglia finally provided some emails that were responsive to the request. Triglia provided the requested information after initially claiming that

such correspondence did not exist and only after NASD staff confronted him with the knowledge that such correspondence existed.

Also in the March 1, 2004 information request, NASD staff asked Triglia for a description of any compensation agreement among Triglia, Archer and Shiver relating to fees generated in the investment advisor accounts of Tower and Millennium.

In his March 18, 2004 response to NASD staff, Triglia described the fee-sharing arrangements but stated that there were no written agreements. However, NASD staff later obtained an October 14, 2002 agreement that set forth the fee-sharing arrangement among these parties. This agreement was signed by Repine, Triglia and Shiver.

Triglia's misleading and false statements and his failure to produce requested documents hindered NASD staff's investigation of the market timing activities.

By failing to respond truthfully to NASD information requests, Triglia violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

Based on the foregoing, Triglia violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Triglia 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 Triglia be barred from association with any FINRA member in any capacity.

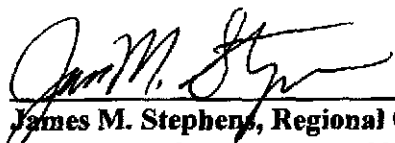
The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to IM-8310-3(e), a bar or expulsion shall become effective upon approval or acceptance of this Order.

SO ORDERED.

FINRA

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

**Dated: November 14, 2007
Kansas City, Missouri**



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