

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

John Iarussi
(CRD No. 3035702)



Respondent.

Disciplinary Proceeding
No. E9B2004035501

Hearing Officer - DRP

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: December 27, 2005

INTRODUCTION

Disciplinary Proceeding No. E9B2004035501 was filed on December 14, 2005 by the Department of Enforcement of NASD ("Complainant"). Respondent John Iarussi submitted an Offer of Settlement ("Offer") to Complainant on December 21, 2005. Pursuant to Code of Procedure Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC") Review Subcommittee or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to Code of Procedure 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.

Under the terms of the Offer, Respondent 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 NASD, or to which NASD 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

Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD.

BACKGROUND

Respondent John Iarussi ("Iarussi") first became registered with the NASD on or about September 28, 1998 as a general securities representative (Series 7). Iarussi was registered with member firm First Montauk Securities Corp. ("Montauk") (CRD No. 13755) from in or about March 2003 to on or about June 14, 2004 as both a general securities registered representative (Series 7) and an equity trader registered representative (Series 55). He has not been registered with any member since June 14, 2004. NASD retains jurisdiction over Iarussi for purposes of this Complaint pursuant to Article V, Section 4 of NASD's By-Laws for at least two years after his termination from member firm, Montauk, or June 13, 2006.

FINDINGS AND CONCLUSIONS

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

A. Violation of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 promulgated thereunder, NASD Conduct Rules 2320, 2120, and 2110, and IM-2310-2.

From on or about January 13, 2004 through on or about May 4, 2004 (the "relevant period"), Iarussi, pursuant to an agreement with Montauk, had authorization to conduct trading of securities within the firm's proprietary account. Pursuant to that agreement, Iarussi would receive compensation for net profits derived from the trading that occurred within the proprietary account.

As more fully identified in Exhibit A attached hereto and incorporated herein by reference, Iarussi, on sixteen different occasions during the relevant period, received from brokers customer limit orders to either sell or purchase certain securities. Throughout the day, Iarussi would either buy or sell those securities, to fill the limit orders and/or trade on behalf of the firm, and then allocate trades to specific customers by the end of each day. In the sixteen

separate instances identified in Exhibit A, Iarussi allocated the more profitable transactions to the firm's proprietary account, while allocating the inferior executions to the customer accounts. As a result, in each instance identified in Exhibit A, Iarussi locked in a profit for the firm's proprietary account. The total profit from his activities to the firm's proprietary account was \$4,945.46.

Iarussi's pattern and practice of allocating profitable transactions to the firm's proprietary account and allocating inferior executions within the same securities to customer accounts constitutes a pattern of deceptive acts and practices by Iarussi.

Moreover, Iarussi failed to obtain the best execution for those customer limit orders.

As part of this course of conduct, Iarussi, 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; or effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive or other fraudulent devices or contrivances.

By reason of the foregoing, Iarussi violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, NASD Conduct Rules 2320, 2120 and 2110, and IM-2310-2.

B. Violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

On or about June 16, 2004, district staff received a Form U5, dated June 14, 2004, and filed by Montauk on behalf of Iarussi for "failing to treat customer orders in a fair and equitable manner." As part of the investigation relating to the allegations alleged in the

Form U5, district staff, on or about November 3, 2004, sent larussi a letter pursuant to NASD Procedural Rule 8210 requesting that he provide information related to his termination with Montauk (the "November 3rd request"). This letter was sent to larussi's Central Registration Depository address of record, [REDACTED] (the "CRD address"). The November 3rd request, sent by first-class and certified mail, requested a response by November 17, 2004, and noted that it was being sent pursuant to Rule 8210 and that failure to comply could subject larussi to disciplinary action. The original certified mail receipt card sent to larussi at his CRD address was returned and signed with a signature for "K. larussi." The first-class envelope was not returned to NASD. larussi failed to respond to the November 3rd request.

On or about November 18, 2004, district staff, pursuant to NASD Procedural Rule 8210, sent a second letter to larussi at his CRD address (the "November 18th request"). The November 18th request, sent by first-class and certified mail, requested that larussi provide district staff with information related to his termination with Montauk and requested a response by December 2, 2004. The November 18th request noted that it was being sent pursuant to NASD Procedural Rule 8210 and that failure to respond could subject larussi to disciplinary action. The original certified mail receipt card sent to larussi at his CRD address was returned and was signed by "John larussi." The first-class envelope was not returned to NASD. larussi failed to respond to the November 18th request.

District staff is not aware of a more current business or residential address for larussi.

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

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future

misconduct, and represent a proper discharge by NASD, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be:

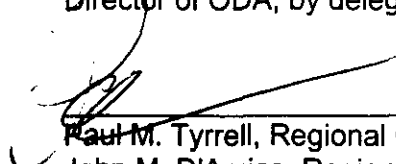
Barred from associating with any NASD member firm in any and all capacities.

Pursuant to IM-8310-2(f), a bar or expulsion shall become effective upon approval or acceptance of this Order by the NAC.

SO ORDERED.

NASD

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



Paul M. Tyrrell, Regional Counsel
John M. D'Amico, Regional Chief Counsel
NASD Department of Enforcement
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EXHIBIT A

Iarussi					
<u>Date</u>	<u>Security</u>	<u>Account</u>	<u>Shares</u>	<u>B/S</u>	<u>Price</u>
1/13/2004	PROX		10000	B	2.40000
1/13/2004	PROX		-10000	S	2.55000
Customers					
<u>Date</u>	<u>Security</u>		<u>Shares</u>	<u>B/S</u>	<u>Price</u>
1/13/2004	PROX		-25000	S	2.50430
1/13/2004	PROX		-20000	S	2.50430
1/13/2004	PROX		-50000	S	2.50430
1/13/2004	PROX		-4200	S	2.50430
1/13/2004	PROX		-10000	S	2.34122
1/13/2004	PROX		-10000	S	2.34122
1/13/2004	PROX		-10000	S	2.34122
1/13/2004	PROX		-10000	S	2.34122

Iarussi					
<u>Date</u>	<u>Security</u>	<u>Account</u>	<u>Shares</u>	<u>B/S</u>	<u>Price</u>
1/16/2004	PROX		1000	B	2.28000
1/16/2004	PROX		-1000	S	2.34000
Customers					
<u>Date</u>	<u>Security</u>		<u>Shares</u>	<u>B/S</u>	<u>Price</u>
1/16/2004	PROX		-12000	S	2.33842
1/16/2004	PROX		-4300	S	2.33842
1/16/2004	PROX		-11000	S	2.33842
1/16/2004	PROX		-9000	S	2.33842
1/16/2004	PROX		-10000	S	2.33842
1/16/2004	PROX		-12500	S	2.33842
1/16/2004	PROX		-9000	S	2.33842
1/16/2004	PROX		-25000	S	2.33842
1/16/2004	PROX		-1500	S	2.33842

EXHIBIT A

Iarussi					
<u>Date</u>	<u>Security</u>	<u>Account</u>	<u>Shares</u>	<u>B/S</u>	<u>Price</u>
1/21/2004	VLNC		2000	B	5.88500
1/21/2004	VLNC		-2000	S	6.27000
Customers					
<u>Date</u>	<u>Security</u>		<u>Shares</u>	<u>B/S</u>	<u>Price</u>
1/21/2004	VLNC		-1300	S	5.82730
1/21/2004	VLNC		-20000	S	5.82730
1/21/2004	VLNC		-1700	S	5.82730
1/21/2004	VLNC		-5000	S	5.82730
1/21/2004	VLNC		-4000	S	5.82730
1/21/2004	VLNC		-15000	S	5.82730
1/21/2004	VLNC		-25000	S	5.82730
1/21/2004	VLNC		-8000	S	5.82730

Iarussi					
<u>Date</u>	<u>Security</u>	<u>Account</u>	<u>Shares</u>	<u>B/S</u>	<u>Price</u>
1/22/2004	VLNC		2200	B	5.74590
1/22/2004	VLNC		-2200	S	5.98180
Customers					
<u>Date</u>	<u>Security</u>		<u>Shares</u>	<u>B/S</u>	<u>Price</u>
1/22/2004	VLNC		-3475	S	5.76000
1/22/2004	VLNC		-3000	S	5.50000
1/22/2004	VLNC		-2000	S	5.75000
1/22/2004	VLNC		-3000	S	5.75000
1/22/2004	VLNC		-2000	S	5.75000

EXHIBIT A

Iarussi					
Date	Security	Account	Shares	B/S	Price
1/27/2004	CVTX		1000	B	17.27400
1/27/2004	CVTX		-1000	S	17.34000
Customers					
Date	Security		Shares	B/S	Price
1/27/2004	CVTX		6000	B	17.32000
1/27/2004	CVTX		7000	B	17.39630
1/27/2004	CVTX		300	B	17.74630
1/27/2004	CVTX		1000	B	17.74630
1/27/2004	CVTX		4000	B	17.39630
1/27/2004	CVTX		4000	B	17.56630
1/27/2004	CVTX		2500	B	17.56630
1/27/2004	CVTX		4000	B	17.56630

Iarussi					
Date	Security	Account	Shares	B/S	Price
3/1/2004	VLNC		1000	B	17.27400
3/1/2004	VLNC		-1000	S	17.34000
Customers					
Date	Security		Shares	B/S	Price
3/1/2004	VLNC		-3000	S	5.06267
3/1/2004	VLNC		-20000	S	5.06267
3/1/2004	VLNC		-5000	S	5.06267
3/1/2004	VLNC		-3000	S	5.06267
3/1/2004	VLNC		-3100	S	5.06267
3/1/2004	VLNC		-1000	S	5.06267

Iarussi					
Date	Security	Account	Shares	B/S	Price
3/2/2004	VLNC		2500	B	3.77000
3/2/2004	VLNC		-4300	S	3.81650
Customers					
Date	Security		Shares	B/S	Price
3/2/2004	VLNC		20000	B	3.89925
3/2/2004	VLNC		8000	B	3.89925

EXHIBIT A

Iarussi					
Date	Security	Account	Shares	B/S	Price
3/4/2004	SIRI		3000	B	2.93400
3/4/2004	SIRI		-3000	S	2.96530
Customers					
Date	Security	Account	Shares	B/S	Price
3/4/2004	SIRI		50000	B	3.05075
3/4/2004	SIRI		50000	B	3.05075
3/4/2004	SIRI		50000	B	3.05075
3/4/2004	SIRI		50000	B	3.05075
3/4/2004	SIRI		5000	B	3.07094
3/4/2004	SIRI		10000	B	3.07094
3/4/2004	SIRI		10000	B	3.07094
3/4/2004	SIRI		10000	B	3.07094
3/4/2004	SIRI		1500	B	3.07094
3/4/2004	SIRI		3500	B	3.07094
3/4/2004	SIRI		20000	B	3.07094
3/4/2004	SIRI		10000	B	3.07094
3/4/2004	SIRI		2500	B	3.07094
3/4/2004	SIRI		3000	B	3.07094
3/4/2004	SIRI		10000	B	3.07094

EXHIBIT A

Iarussi					
Date	Security	Account	Shares	B/S	Price
4/2/2004	SIRI		3000	B	3.55600
4/2/2004	SIRI		-3000	S	3.62500
Customers					
Date	Security	Account	Shares	B/S	Price
4/2/2004	SIRI		-30000	S	3.51000
4/2/2004	SIRI		-5000	S	3.51000
4/2/2004	SIRI		-20000	S	3.54000
4/2/2004	SIRI		-30000	S	3.51000
4/2/2004	SIRI		-30000	S	3.51000
4/2/2004	SIRI		-1250	S	3.45690
4/2/2004	SIRI		-5000	S	3.45690
4/2/2004	SIRI		-500	S	3.45690
4/2/2004	SIRI		-5000	S	3.45690
4/2/2004	SIRI		-750	S	3.45690
4/2/2004	SIRI		-1750	S	3.45690
4/2/2004	SIRI		-5000	S	3.52230
4/2/2004	SIRI		-10000	S	3.45000
4/2/2004	SIRI		-10000	S	3.48000
4/2/2004	SIRI		-5000	S	3.48000
4/2/2004	SIRI		-1000	S	3.58000
4/2/2004	SIRI		-3700	S	3.48000
4/2/2004	SIRI		-125	S	3.58000

EXHIBIT A

Jarussi					
Date	Security	Account	Shares	B/S	Price
4/6/2004	SIRI		1000	B	3.69000
4/6/2004	SIRI		-1000	S	3.89000
Customers					
Date	Security	Account	Shares	B/S	Price
4/6/2004	SIRI		-1250	S	3.69539
4/6/2004	SIRI		-5000	S	3.69539
4/6/2004	SIRI		-5000	S	3.69539
4/6/2004	SIRI		-750	S	3.69539
4/6/2004	SIRI		-3700	S	3.69539
4/6/2004	SIRI		-5000	S	3.75839
4/6/2004	SIRI		-20000	S	3.69539
4/6/2004	SIRI		-20000	S	3.69539
4/6/2004	SIRI		-10000	S	3.69539
4/6/2004	SIRI		-10000	S	3.69539
4/6/2004	SIRI		-5000	S	3.69539
4/6/2004	SIRI		-1750	S	3.69539
4/6/2004	SIRI		-10000	S	3.72539
4/6/2004	SIRI		-1000	S	3.79539
4/6/2004	SIRI		-1000	S	3.79539
4/6/2004	SIRI		-4000	S	3.79539
4/6/2004	SIRI		-125	S	3.79539

EXHIBIT A

Iarussi					
Date	Security	Account	Shares	B/S	Price
4/12/2004	LOOK		3900	B	2.31000
4/12/2004	LOOK		-3900	S	2.34000
Customers					
Date	Security	Account	Shares	B/S	Price
4/12/2004	LOOK		9000	B	2.43556
4/12/2004	LOOK		5000	B	2.38011
4/12/2004	LOOK		10000	B	2.44011
4/12/2004	LOOK		10000	B	2.44011
4/12/2004	LOOK		10000	B	2.44011
4/12/2004	LOOK		7000	B	2.44011
4/12/2004	LOOK		6000	B	2.44011
4/12/2004	LOOK		5000	B	2.44011
4/12/2004	LOOK		5000	B	2.44011
4/12/2004	LOOK		10000	B	2.44011
4/12/2004	LOOK		7000	B	2.44011
4/12/2004	LOOK		5000	B	2.44011
4/12/2004	LOOK		10000	B	2.44011
4/12/2004	LOOK		10000	B	2.44011
4/12/2004	LOOK		1000	B	2.44011

Iarussi					
Date	Security	Account	Shares	B/S	Price
4/13/2004	LOOK		5000	B	2.18000
4/13/2004	LOOK		-5000	S	2.26430
Customers					
Date	Security		Shares	B/S	Price
4/13/2004	LOOK		10000	B	2.26900
4/13/2004	LOOK		15000	B	2.32000

EXHIBIT A

larussi					
Date	Security	Account	Shares	B/S	Price
4/16/2004	VLNC		1000	B	4.05000
4/16/2004	VLNC		-1000	S	4.09000
Customers					
Date	Security		Shares	B/S	Price
4/16/2004	VLNC		2000	B	4.17753
4/16/2004	VLNC		3000	B	4.17753
4/16/2004	VLNC		2000	B	4.17753
4/16/2004	VLNC		2000	B	4.17753
4/16/2004	VLNC		3000	B	4.17753

larussi					
Date	Security	Account	Shares	B/S	Price
4/23/2004	VLNC		600	B	4.41000
4/23/2004	VLNC		-600	S	4.46000
Customers					
Date	Security		Shares	B/S	Price
4/23/2004	VLNC		10000	B	4.48108
4/23/2004	VLNC		5000	B	4.56460
4/23/2004	VLNC		5000	B	4.56460
4/23/2004	VLNC		10000	B	4.56460
4/23/2004	VLNC		10000	B	4.56460

EXHIBIT A

Iarussi					
Date	Security	Account	Shares	B/S	Price
4/26/2004	VLNC		800	B	4.46000
4/26/2004	VLNC		-800	S	4.80500
Customers					
Date	Security		Shares	B/S	Price
4/26/2004	VLNC		10000	B	4.81392
4/26/2004	VLNC		1400	B	4.94500
4/26/2004	VLNC		3000	B	4.81392
4/26/2004	VLNC		5000	B	4.81392
4/26/2004	VLNC		10000	B	4.81392
4/26/2004	VLNC		6000	B	4.81392
4/26/2004	VLNC		900	B	4.71392
4/26/2004	VLNC		1000	B	4.71392
4/26/2004	VLNC		2100	B	4.71392
4/26/2004	VLNC		15000	B	4.96460
4/26/2004	VLNC		5000	B	4.96460
4/26/2004	VLNC		5000	B	4.96460
4/26/2004	VLNC		5000	B	4.96460
4/26/2004	VLNC		5000	B	4.96460
4/26/2004	VLNC		2000	B	4.96460
4/26/2004	VLNC		1000	B	4.98460
4/26/2004	VLNC		1000	B	4.98460
4/26/2004	VLNC		1000	B	4.98460
4/26/2004	VLNC		6000	B	4.94500
4/26/2004	VLNC		3600	B	4.89500
4/26/2004	VLNC		2000	B	4.89500
4/26/2004	VLNC		4000	B	4.89500
4/26/2004	VLNC		5000	B	4.94500

Iarussi					
Date	Security	Account	Shares	B/S	Price
5/4/2004	LOOK		5000	B	2.02000
5/4/2004	LOOK		-5000	S	2.04000
Customer					
Date	Security		Shares	B/S	Price
5/4/2004	LOOK		-20000	S	2.01750