

**NASD
OFFICE OF HEARING OFFICERS**

DEC - 1 2005

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

KIRLIN SECURITIES, INCORPORATED.
BD No. 21210;

ANTHONY J. KIRINCIC
Registered Securities Principal
CRD No. 1499511;

██████████
Registered Securities Principal
CRD No. ██████████

ANDREW J. ISRAEL
Registered Securities Principal
CRD No. 1980476

RESPONDENTS.

: DISCIPLINARY PROCEEDING
: No. EAF0400300001

: HEARING OFFICER: SNB

AMENDED COMPLAINT

Upon information and belief, the Department of Enforcement ("the Department")
alleges the following:

Summary

1. From March 2002 to April 2002, Kirlin Securities, Incorporated ("Kirlin"), its then co-CEO, Anthony J. Kirincic ("Kirincic"), and its Head Trader, Andrew J. Israel ("Israel"), manipulated the market of the common stock of the firm's parent company - - Kirlin Holding Corporation (symbol *KILN*). Their manipulation was

00006634205
1

prompted by a February 20, 2002 notice from the Nasdaq National Market ("NNM") that the stock was to be delisted for failing to maintain the minimum closing price requirement. Nasdaq informed Kirlin Holding in that notice that it could avoid delisting if the stock price closed at or above \$1.00 per share for 10 consecutive trading days by May 21, 2002. Kirincic was the largest shareholder of Kirlin Holding at the time and delisting would have decreased the value of his shares.

2. Kirlin, through Kirincic and Israel, used several devices to increase artificially the price of the stock and maintain its price at over \$1.00 per share, as required by the NNM listing requirements. Kirincic began using his sister's account to place large and frequent purchase orders at prices in excess of the inside bid. The size of these transactions often dwarfed what had been the average daily volume for this thinly-traded security. In coordination with Kirincic, Israel put these orders on the open market and used the orders to raise the inside bid for the stock.
3. After placing orders, Kirincic often cancelled orders that had been partially filled and replaced them with higher-priced orders designed to escalate the price of the security.
4. During the period of manipulation, from March 18, 2002 through April 22, 2002, Kirincic's orders through his sister's account, and the trades associated with filling those orders, represented a significant majority of the trading volume and number of transactions in KILN. Israel's trading of the security over that time period, including the placement of many orders at increasing prices, dominated and controlled the market for the securities. The trading in the sister's account during the period of manipulation was atypical of the trading in the account during

other periods, which had not had a single purchase or sell transaction since at least January 1, 2002.

5. Through these deceptive devices, Kirlin, Kirincic, and Israel successfully created an illusion that the demand for KILN was increasing based on genuine customer demand. This scheme by respondents Kirlin, Kirincic, and Israel succeeded in raising the inside bid price of Kirlin Holding's common stock from \$.64 per share at the open of the market on March 18, 2002, to more than \$1.00 per share as of April 2, 2002. This price increase occurred despite the lack of any news or press releases regarding the company in March 2002 that might have supported such an increase.
6. After April 2, 2002, Respondents Kirlin, Kirincic, and Israel successfully maintained KILN's stock price at or over \$1.00 per share for at least 10 trading days, using the same manipulative methods to artificially inflate the stock price. Kirincic entered or maintained reserve purchase orders for his sister's account at or above \$1.00 per share at the close of several trading days in April 2002 to ensure that KILN closed at or above \$1.00 per share on those trading days. These activities allowed KILN to avoid delisting from the NNM in May 2002.
7. To further manipulate the stock prices, Kirincic forged his parents' signatures on Kirlin stock certificates for the sale of the stock, and on letters of authorization to transfer funds from his parents' account to his sister's account.
8. On April 22, 2002, while the stock was still trading at more than \$1.00 per share, Kirlin, through then Kirlin co-CEO [REDACTED] and Israel, failed to provide best execution on a sale of KILN to one of its retail customers.
9. Specifically, [REDACTED] and Israel executed the sale of the customer's KILN position

at \$.80 per share as an agency cross with Kirlin Holding. The customer received this price for the stock despite the fact that the inside bid for the stock at the time of sale was \$1.04 per share, and that two of Kirincic's own relatives had received \$1.05 per share in the sale of their stock that same day. In executing the sale of stock for the customer, Kirlin, through Israel, never displayed any part of the order to the market. Israel also failed to give a partial fill of the customer sell order by crossing the order with outstanding purchase orders to buy approximately 30,000 shares of the stock at more than \$1.00 per share.

10. As a result, Kirlin, Kirincic, and Israel violated Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder, and NASD Conduct Rules 2120 and 2110 for manipulating Kirlin Holding's common stock. Kirincic violated NASD Conduct Rule 2110 by forging his parents' signatures on multiple stock certificates and letters of authorization. Kirlin, [REDACTED] and Israel violated NASD Conduct Rules 2110 and 2320 because they failed to obtain best execution. Finally, Kirlin, Kirincic, and [REDACTED] failed to establish adequate supervisory systems, and failed to establish adequate written supervisory procedures in violation of NASD Conduct Rules 2110 and 3010(a) and (b).

Respondents

11. Kirlin has been an NASD member since March 1988, and has been registered with the Securities and Exchange Commission since December 1987. During all periods relevant to this Complaint, Kirlin was based in Syosset, New York. Kirlin is a wholly-owned subsidiary of Kirlin Holding Corporation, a publicly held company.
12. Anthony J. Kirincic was, at all times relevant to this Complaint, the President and

co-CEO (with [REDACTED] of Kirlin Holding and Kirlin. During the relevant period Kirincic was, and remains today, the largest single shareholder of Kirlin Holding, owning or controlling through family-related accounts approximately 22 percent of the voting common stock of Kirlin Holding. He is registered as a General Securities Representative, a General Securities Principal, a Registered Options Principal, and a Financial and Operations Principal with Kirlin. Kirincic first became registered as a General Securities Representative, a Registered Options Principal, and a Financial and Operations Principal of an NASD member in 1986.

13. [REDACTED] was, at all times relevant to this Complaint, the co-CEO of Kirlin Holding and Kirlin. During the relevant period, [REDACTED] was, and remains today, the second-largest single shareholder of Kirlin Holding, owning or controlling through family-related accounts approximately 21 percent of the voting common stock of Kirlin Holding. He is registered as a General Securities Representative, and a General Securities Principal with Kirlin. [REDACTED] first became registered as a General Securities Representative in 1985, and registered as a General Securities Principal in 1988.
14. Andrew J. Israel was, at all times relevant to this Complaint, the head equity trader at Kirlin. Israel executed the trades that furthered the manipulation of KILN and the trade in which a customer failed to obtain best execution. He is registered as a General Securities Representative, a General Securities Principal, an Equities Trader, and a Municipal Securities Principal with Kirlin. Israel first became registered as a General Securities Representative in 1989, an Equity Trader in 2000, and as a General Securities Principal and a Municipal Securities

Principal in 2002, before the review period.

FIRST CAUSE OF ACTION

Respondents Kirlin, Kirincic, and Israel Used Deceptive Techniques to Manipulate Kirlin Holding Corp.'s Common Stock (KILN)

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

15. The Department repeats and realleges paragraphs 1 through 14 above.

Notice of De-listing from Nasdaq National Market
16. Before and during the period of February 20, 2002 through April 22, 2002, Kirlin Holding common stock was listed on the NNM under the trading symbol *KILN*.
17. In a letter dated February 20, 2002, Nasdaq notified [REDACTED] as an officer of Kirlin Holding, that for the last 30 consecutive trading days, KILN had closed below the minimum of \$1.00 per share requirement for continued inclusion on the NNM in accordance with Marketplace Rule 4450(a)(5).
18. On February 20, 2002, the closing price for KILN on the NNM was \$.94 per share.
19. The Nasdaq letter further instructed [REDACTED] and Kirlin Holding that, in accordance with Marketplace Rule 4450(e)(2), Kirlin Holding had 90 calendar days, until May 21, 2002, to regain compliance with the listing requirements.
20. Specifically, Nasdaq informed Kirlin Holding that, for KILN to remain a listed security on the NNM, the price of KILN needed to close at or above \$1.00 per share for a minimum of 10 consecutive trading days prior to May 21, 2002.
21. The Nasdaq letter further advised Kirlin Holding that "[if] compliance with [Marketplace Rule 4450(a)(5)] cannot be demonstrated by May 21, 2002,

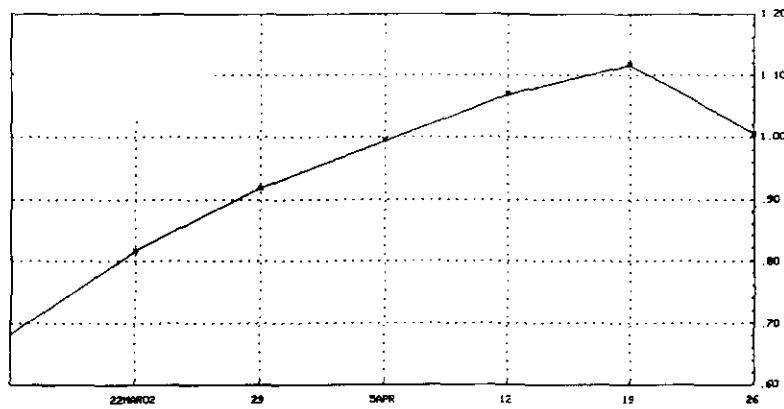
[Nasdaq] Staff will provide written notification that its securities will be delisted.”

22. Kirincic and Israel learned of Nasdaq’s February 20, 2002 letter describing that Kirlin Holding was going to be delisted for noncompliance with the minimum closing price requirement on or about the time Kirlin Holding received the letter.
23. Kirlin Holding, through Kirincic and others, disclosed the Nasdaq de-listing notice in its Form 10-K for the period ending December 31, 2001, filed on April 1, 2002. The Form 10-K stated that Kirlin Holding intended to take one or more actions to maintain its listing on the NNM. It further stated: “If we are delisted from the Nasdaq National Market the liquidity of our common stock may be adversely affected which may result in a decline in our stock price.”

Kirincic’s Trading of Family Accounts Through Israel to Manipulate KILN Common Stock to \$1.00 per Share

24. During the relevant period, Kirincic was the account executive for several of his family members’ accounts, including those of his sister (“Sister’s Account”) and his parents (“Parents’ Account”).
25. To generate funds to purchase KILN in the Sister’s Account necessary to increase and maintain the price to \$1.00 or higher, Kirincic arranged for Kirlin Holding to purchase KILN from the Parents’ Account through Kirlin Holding’s stock repurchase program. Kirincic forged his parents’ signatures on stock certificates and letters of authorization to transfer money from the Parents’ Account to the Sister’s Account.
26. On March 15, 2002, the closing price for KILN on the NNM was \$.64 per share.
27. On March 18, 2002, Kirincic began placing KILN purchase orders with Israel for the Sister’s Account.

28. There were no news announcements or press releases regarding Kirlin Holding or its subsidiaries that immediately preceded the purchasing in the Sister's Account.
29. The purchase orders for KILN placed by Kirincic for the Sister's Account starting on March 18, 2002 were the first purchase or sale transactions effected in that account since at least the beginning of 2002.
30. Between March 18, 2002 and April 22, 2002, Kirincic placed orders that generated approximately 116 separate purchase executions and zero sale executions of KILN for the Sister's Account.
31. The orders to purchase KILN placed by Kirincic for the Sister's Account from March 18, 2002 through April 22, 2002 often were above the current inside bid *for the stock*.
32. Israel was aware that the orders for KILN being placed by Kirincic for the Sister's Account often were above the current inside bid. Israel nonetheless entered the buy orders at the higher prices.
33. Israel's placement of the orders on the market at prices higher than the inside bid price acted to move the inside bid price higher for KILN on the NNM.
34. As a result of Israel entering Kirincic's purchase orders for trading of the Sister's Account at increasing prices above the published inside bid price, Kirlin, Kirincic and Israel were able to move the inside bid of KILN from \$.64 per share, as of the open of the market on March 18, 2002, to \$1.04 per share as of April 2, 2002.
35. The average prices for KILN on the NNM for trading from March 18, 2002 through April 26, 2002 are as follows:



Kirlin Holding's Board of Directors Announce Stock Repurchase Plan

36. On April 2, 2002, Kirlin Holding announced a Stock Repurchase Program. According to a press release issued on April 2, 2002, Kirlin's "Board of Directors ... authorized the repurchase of up to \$1 million dollars worth of its common stock in the open market from time to time."
37. In determining whether to implement the stock repurchase program, Kirlin Holding's Board of Directors, including Kirincic, considered that the repurchase of stock might help to restore the price of the stock, which it considered to be undervalued.
38. The Kirlin Holding Board funded the stock repurchase program with funds its clearing firm gave Kirlin for its business.

Kirincic's Trading of Sister's Account Through Israel to Maintain KILN Closing Price at Over \$1.00 per Share for Ten Consecutive Business Days

39. Once Kirlin, through Kirincic and Israel, succeeded in raising the inside bid for KILN to \$1.00 or higher on April 2, 2002, they needed to ensure that the stock closed at or above \$1.00 for 10 consecutive trading days to avoid delisting from the NNM. To accomplish this, from April 2, 2002 through April 22, 2002, on almost each trading day, Kirincic, through Israel, placed buy orders for KILN of between 25,000 and 75,000 shares for the Sister's Account.

40. Each order displayed a smaller number of shares with a reserve amount for the balance. Those orders were each for more than \$1.00 per share and remained in effect for the balance of the trading day, unless canceled and replaced with other orders that likewise were each for more than \$1.00 per share and likewise remained in effect until closing of the market. These orders were so large that they exceeded the average daily share volume for KILN on the NNM. The effect of these orders was to ensure that sales of KILN on the NNM during that time period were effected at or above \$1.00 per share, so that the market closed at or above \$1.00 per share on each of those days.

Kirlin's Domination of the KILN Market During the Review Period

41. Between March 18, 2002 and April 22, 2002, Kirlin, through Kirincic and Israel, dominated and controlled the market for KILN by their trading of stock through the Sister's Account. During that period, their trading of the Sister's Account and other relatives' accounts, and the trading volume associated with them at other broker-dealers, accounted for more than 78 percent of KILN trading volume.
42. Between March 18, 2002 and April 22, 2002, Kirlin, through Kirincic and Israel, placed orders that resulted in approximately 116 purchase executions in KILN on behalf of the Sister's Account. Kirincic's purchase orders for the Sister's Account resulted in approximately 62 increases in the inside bid for KILN. By trading the Sister's Account during this time period, Kirincic and Israel, through Kirlin, held the inside bid for KILN on the NNM for approximately 73 percent of the time.
43. Between March 18, 2002 and April 22, 2002, during those periods when there was no active purchase order from Kirincic's Sister's Account, the KILN market often declined in value below the bid amounts placed by the Sister's Account. When

Kirlin came back into the market with a purchase order for the Sister's Account, it was usually for a price higher than the inside bid and usually at or higher than the price of the last purchase order placed for the Sister's Account.

44. By maintaining the bid orders at above \$1.00 per share during this time period, Kirlin, through Kirincic and Israel, caused KILN to close above \$1.00 per share on the NNM for ten consecutive trading days, thus averting a delisting of KILN from the NNM.
45. On or about April 18, 2002, Kirincic received an e-mail from a Nasdaq representative confirming their conversation that Kirlin Holding had met its obligation for continued listing on the NNM by closing above \$1.00 per share for ten consecutive trading days.
46. Kirlin, through Kirincic and Israel, maintained the price of KILN at above \$1.00 per share through at least April 22, 2002, when Kirincic's parents and cousin sold an aggregate of more than 239,000 shares to Kirlin Holding. Thereafter, the price of KILN declined, ending 2002 trading at just \$.35 per share.
47. By virtue of this conduct, Kirlin, Kirincic and Israel used means or instrumentalities of interstate commerce to directly or indirectly employ a scheme or artifice to defraud or engage in an act, practice or course of business that operates or would operate as a fraud or deceit in connection with the trading of KILN on the Nasdaq National Market. These acts by the respondents constituted, both jointly and independently, violations of Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder, and NASD Conduct Rules 2120 and 2110.

SECOND CAUSE OF ACTION

**Respondent Kirincic Forged Customer Signatures on
Stock Certificates and Letters of Authorization Forms**

Violation of NASD Conduct Rule 2110

48. The Department repeats and realleges paragraphs 1 through 47 above.
49. Between April 2002 and June 2002, Kirincic signed the signatures of both of his parents (MK and AK) on four stock certificates of KILN for an aggregate of more than 465,000 shares. Kirincic held those documents out to bear the actual signatures of his parents.
50. Kirincic acknowledged that he signed his parents' signatures to these documents in a sworn statement made on January 11, 2005.
51. Kirincic's forging of his parent's signatures to the stock certificates enabled him to deposit the KILN stock into the Parents' Account. After depositing the stock into the Parents' Account, Kirincic then sold it and transferred \$325,000 of the proceeds to the Sister's Account.
52. In transferring these assets from the Parents' Account to the Sister's Account, Kirincic signed both of his parents' signatures to three Letters of Authorization that were used to facilitate the transfer.
53. Kirincic signed his parents' signatures to these documents in disregard of: (a) NASD's Conduct Rules that prohibit that behavior, and (b) Kirlin's written supervisory procedures that specifically prohibit employees from signing documents on behalf of their customers. The firm's own procedures state, "Employees are not permitted to sign documents on behalf of customers, even when doing so is meant to accommodate a customer request. Customer signatures

must be original by the customer on all documents.”

54. By virtue of this conduct, Kirincic violated NASD Conduct Rule 2110.

THIRD CAUSE OF ACTION

**Respondents Kirlin, [REDACTED] and Israel Failed to Comply with
Requirements for Best Execution of a Customer Order**

Violation of NASD Conduct Rules 2110 and 2320

55. The Department repeats and realleges paragraphs 1 through 54 above.
56. On or about April 22, 2002, customer DL, a retail customer of Kirlin, placed a market order with Kirlin to liquidate all securities in his account.
57. At the time customer DL placed the order, he was long 114,000 shares of KILN in his Kirlin account.
58. Customer DL’s sell order was in the form of a fax transmission to his Kirlin broker, PB, that was received by Kirlin on April 22, 2002, at approximately 13:24 Eastern Standard Time.
59. On April 22, 2002, the inside bid for KILN on the NNM ranged from \$.85 to \$1.10 per share.
60. On April 22, 2002, at or before the time Kirlin received customer DL’s fax transmission order, the firm bought 125,498 shares of KILN from Kirincic’s parents at a price of \$ 1.05 per share. That transaction with Kirincic’s parents was conducted as an agency cross with Kirlin Holding as part of the stock repurchase program.
61. On April 22, 2002, at or before the time customer DL’s faxed transmission order was received at Kirlin, the firm bought 114,502 shares of KILN from JM, a cousin of Kirincic, at a price of \$1.05 per share. The transaction with Kirincic’s cousin

was conducted as an agency cross with Kirlin Holding as part of the stock repurchase program.

62. On April 22, 2002, [REDACTED] directed Israel to offer customer DL only \$.80 per share for his shares in KILN instead of the current market price of the stock.
63. On April 22, 2002, Israel executed the sale transaction for customer DL, selling his 114,000 KILN shares for \$.80 per share. Israel executed this transaction as an agency cross with Kirlin Holding as part of the repurchase program.
64. Israel executed customer DL's trade for the 114,000 shares at a reported time of 15:18 Eastern Standard Time. At that time, the inside bid for KILN on the NNM was \$1.04.
65. By reason of the foregoing, Kirlin, [REDACTED] and Israel failed to provide best execution to customer DL in his sale of KILN on April 22, 2002, in violation of NASD Conduct Rules 2110 and 2320.

FOURTH CAUSE OF ACTION

Kirlin, Through Kirincic and [REDACTED] Failed to Establish, Maintain and Enforce an Adequate Supervisory System and Written Supervisory Procedures

Violations of NASD Conduct Rules 2110 and 3010(a) and (b)

66. The Department repeats and realleges paragraphs 1 through 65 above.
67. From February 2002 through June 2002, Kirincic and [REDACTED] were responsible, as co-CEOs of Kirlin, to establish and maintain an adequate supervisory system, and to maintain and enforce written procedures reasonably designed to achieve compliance with applicable securities laws and regulations and NASD rules.
68. From February 2002 through June 2002, Kirlin, Kirincic, and [REDACTED] failed to establish and maintain an adequate supervisory system, and to maintain and

enforce written procedures reasonably designed to achieve compliance with applicable securities laws and regulations, and NASD rules.

69. Among other things, the supervisory system, and written supervisory procedures in effect during the relevant period failed to adequately address:
- a. Compliance and operations procedures to monitor and keep in check the actions of the co-CEOs, Kirincic and [REDACTED]
 - b. Compliance and operations procedures for transactions involving stock of the firm's holding company, KILN;
 - c. Compliance and operations procedures for approval of trades for relatives of Kirlin employees;
 - d. Compliance and operations procedures to ensure that the firm does not use a dominating and controlling position in a security to effect the price of the stock due to an improper motive;
 - e. Compliance and operations procedures reasonably ensuring that retail customers obtain best execution for equity transactions; and
 - f. Compliance and operations procedures for reasonably ensuring that customers, rather than Kirlin employees, were signing documents requiring their signatures.

70. By virtue of this conduct, Kirlin, Kirincic and [REDACTED] violated NASD Conduct Rules 2110 and 3010(a) and (b).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the Department of Enforcement, respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the

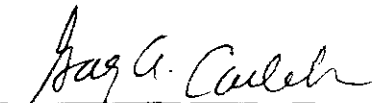
violations charged and alleged herein;

B. An order imposing sanctions upon Respondent in accordance with NASD Rule 8310;

C. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and

D. An order imposing any other fitting sanction.

Dated: December 1, 2005



Gary A. Carleton, Senior Counsel
Leo Kane, Senior Attorney
Department of Enforcement
NASD
1801 K Street, N.W., 8th Floor
Washington, D.C. 20006
Telephone No. 202-974-2860
Facsimile No. 202-974-2805

Rory C. Flynn, Of Counsel
Department of Enforcement
NASD
1801 K Street, NW, 8th Floor
Washington, DC 20006
Telephone No. 202-974-2800