SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 54127 / July 11, 2006

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 2533 / July 11, 2006

Admin. Proc. File No. 3-11179

In the Matter of

IFG NETWORK SECURITIES, INC.,
WILLIAM KISSINGER, and
DAVID LEDBETTER

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

INVESTMENT ADVISER PROCEEDING

CEASE-AND-DESIST PROCEEDING

Grounds for Remedial Action

Fraud

Alleged Aiding and Abetting or Causing Fraud

Alleged Failure to Supervise

Registered representative of broker-dealer committed fraud by negligently omitting to disclose material facts concerning the cost structure associated with different classes of multiple-class mutual funds. Held, it is in the public interest to order registered representative to cease and desist from committing any violations or future violations, and to pay disgorgement.

Charge that broker-dealer and president of broker-dealer failed to exercise reasonable supervision over registered representative with a view to preventing his violations of the antifraud provisions was not sustained. Held, proceedings with respect to broker-dealer and president of broker-dealer are dismissed.

APPEARANCES:

Peter J. Anderson, Lawrence A. Dany III, Olga Greenberg, and Brian L. Rubin, of Sutherland Asbill & Brennan LLP, for IFG Network Securities, Inc. and David Ledbetter.

Matthew J. Siembieda, Timothy D. Katsiff, and Evan H. Lechtman, of Blank Rome LLP, for William Kissinger.

David L. Kornblau, William P Hicks, M. Graham Loomis, and William S. Dixon, for the Division of Enforcement.

Appeal filed: March 3, 2005
Last brief received: June 1, 2005
Oral argument: November 15, 2005 1/

I.

The Division of Enforcement appeals from the decision of an administrative law judge. 2/ The law judge dismissed the Division's charges that William Kissinger violated Section 17(a) of the Securities Act of 1933, 3/ Section 10(b) of the Securities Exchange Act of 1934, 4/ and Rule 10b-5 thereunder, 5/ and that Kissinger aided and abetted or was a cause of violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940. 6/ Kissinger formerly operated an office of supervisory jurisdiction ("OSJ") of registered broker-dealer IFG

1/ Rule of Practice 451(d), 17 C.F.R. § 201.451(d), provides that a member of the Commission who does not attend an oral argument may participate in the decision of the proceeding if that member reviews the oral argument transcript. Commissioner Glassman, who did not attend the oral argument in this matter, has performed the requisite review.

2/ IFG Network Securities, Inc., William Kissinger, Kissinger Advisory, Inc., Bert Miller, Glenn Wilkinson, and David Ledbetter, Initial Decision Rel. No. 273 (Feb. 10, 2005), 84 SEC Docket 3287. On appeal, the Division has dropped respondents Miller and Wilkinson from its case, and it has also dropped Kissinger Advisory, which no longer exists. The Division also does not appeal with respect to Kissinger's sales to one of his customers, Lucy Portier, which were included in the proceeding before the law judge.

3/ 15 U.S.C. § 77q(a).

4/ 15 U.S.C. § 78j(b).

5/ 17 C.F.R. § 240.10b-5.

6/ 15 U.S.C. § 80b-6(1) and (2).

Network Securities, Inc. ("IFG"). Kissinger was an OSJ principal and registered representative associated with IFG, and he was associated with Kissinger Advisory, Inc., a registered investment adviser. The Division's allegations arose in connection with Kissinger's sales to advisory and non-advisory customers of Class B shares of certain mutual funds in the Kemper Funds and Oppenheimer Funds mutual fund families. The law judge also dismissed the Division's allegations that IFG and David Ledbetter, IFG's president, failed to exercise reasonable supervision over Kissinger with a view to preventing his violations of the antifraud provisions, as required by Exchange Act Sections 15(b)(4)(E) and 15(b)(6), 7/ because she found that the Division had failed to establish that Kissinger committed any violations.

The Division argues that the law judge erred in concluding that Kissinger's actions did not constitute fraud and aiding and abetting or causing fraud. The Division contends that Kissinger, in recommending that his customers invest in Class B, rather than Class A, shares of mutual funds, failed adequately to disclose to six of his customers the differences in expense structure of investments in these different share classes. The Division also contends that Kissinger failed to disclose to the customers that Class A shares would outperform Class B shares for investments of at least $250,000, which qualified for a breakpoint discount. The Division further alleges that Kissinger failed to disclose to his customers that he received a larger commission from the investors' purchase of Class B shares than he would have received had the customers invested in Class A shares instead. These alleged omissions are the basis for the Division's charges that Kissinger violated the antifraud provisions of the Securities Act and the Exchange Act and aided and abetted or was a cause of Kissinger Advisory's violations of the antifraud provisions of the Advisers Act. The Division seeks an order barring Kissinger from association with any broker, dealer, or investment adviser and a cease-and-desist order. The Division also seeks $36,170 in disgorgement from Kissinger, an amount that the Division contends is the difference between the commissions he received for selling Class B shares and what he would have received for selling Class A shares in the transactions at issue here. The Division also seeks a civil money penalty of $100,000.

Kissinger contends that he adequately disclosed all material information to the six customers with respect to their investments in Class B shares. He further contends that the disclosures that the Division argues Kissinger should have made were not in accordance with industry practice at the time of the events in question. Kissinger maintains that there is no basis in the public interest for the imposition of the sanctions sought by the Division.

7/ 15 U.S.C. § 78o(b)(4)(E) and (6).

The Division argues that IFG and Ledbetter failed reasonably to supervise Kissinger in that they did not adequately ensure that he disclosed all material facts regarding transactions in multiple-class funds to his customers. The Division asks that the Commission censure IFG and bar Ledbetter from association with any broker or dealer in a supervisory capacity. In addition, the Division seeks $3,604 in disgorgement from IFG, which the Division alleges represents the excess commissions IFG received from selling Class B shares to the six customers at issue in this case. The Division also requests that Ledbetter and IFG pay civil money penalties of $100,000 and $300,000 respectively.

IFG and Ledbetter contend that the Division failed to establish that Kissinger acted fraudulently and, therefore, there can be no failure to supervise. IFG and Ledbetter argue further that, even if Kissinger is found to have acted fraudulently, IFG's supervisory system adequately ensured proper disclosure. IFG and Ledbetter, therefore, assert that no sanctions are warranted. We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal.

II.

A. Background

Kissinger formed Kissinger Financial Services ("KFS"), of which he was the president and controlling owner, in 1984. 8/ KFS included both Kissinger Advisory and an entity referred to as Kissinger Securities, Inc. 9/ During the period from 1994 to 2001, Kissinger operated an OSJ of IFG, a broker-dealer headquartered in Atlanta, Georgia. 10/ Kissinger was an OSJ principal and registered representative associated with IFG. Ledbetter was president of IFG from November 1989 until May 2000, at which time he became IFG's vice president. As IFG's

---

8/ Kissinger is a certified public accountant, and he testified that he "holds the designation of personal financial specialist," is a certified financial planner, and holds Series 7, Series 63, Series 24, and Series 31 securities licenses.

9/ The record does not indicate that Kissinger Securities, Inc. was a registered broker-dealer. However, Kissinger refers to it in his testimony as a commission-based "brokerage" firm. In any event, there is no dispute that the commissions earned through the transactions at issue here ultimately were distributed by IFG -- either through KFS or Kissinger Securities, Inc. -- to Kissinger.

10/ NASD Conduct Rule 3010 defines an OSJ as any office of a member at which occurs any of certain defined functions, including, among other things, the final acceptance of new accounts on behalf of the member or the review and endorsement of customer orders. In 2001, Kissinger ended his association with IFG and associated with registered broker-dealer Sanders Morris Harris, after which Kissinger Advisory ceased doing business. Kissinger is currently a registered representative of Sanders Morris Harris.

president, Ledbetter was ultimately responsible for supervision of OSJ principals such as Kissinger.

During the period from July 1998 to December 2000 (the "relevant period"), Kissinger averaged approximately $2,000,000 in annual revenues, of which approximately 70% comprised commissions from the sale of mutual fund shares and 30% comprised advisory fees. Kissinger had approximately 350 advisory customers and approximately 700 non-advisory customers. In 2000, investments in Class B shares of mutual funds represented approximately 11% of the $300,000,000 that Kissinger had under management. Kissinger described his customer base, including the six customers at issue here, as long term, buy-and-hold investors, who were interested in making a financial plan and organizing their financial futures, as opposed to day traders looking to make rapid trades for quick profits.

B. Class A and Class B Shares of Mutual Funds

The Division's allegations in this matter revolve around Kissinger's disclosures to six of his customers when he recommended that they invest in Class B, rather than Class A, shares of Kemper and Oppenheimer mutual funds. Typically, Class A shares differ from Class B shares with respect to their cost structure. Class A shares usually include an initial sales charge, or front-end load, a fee that is levied upon the purchase of mutual fund shares, while Class B shares do not. Class A shares include breakpoint discounts, which reduce the front-end load incrementally in the event that the investor invests specified amounts in the fund. At each breakpoint, the representative's commission rate is reduced. In Kemper funds, the front-end load for Class A shares was reduced from 3.5% at the $100,000 breakpoint to 2.6% at the $250,000 investment level and 2.0% at the $500,000 level. For Oppenheimer funds, the front-end load was reduced from 3.75% at the $100,000 breakpoint to 2.5% at the $250,000 level and 2.0% at the $500,000 level.

Unlike Class A shares, Class B shares usually include a contingent deferred sales charge ("CDSC"), or back-end load, which is a fee that is levied upon the sale of mutual fund shares. Exchanges between funds in a fund family do not trigger a CDSC, if those exchanges also are into shares of the same class. The CDSC in both Kemper and Oppenheimer funds reduced with each year that the investor held the fund shares, phasing out entirely after six years, at which point the Class B shares would convert into Class A shares. Since there are no breakpoints for Class B shares, there is no reduction in the commission rate for larger investments in Class B shares. This means that, for investments at or above the breakpoint levels, the representative receives a larger percentage commission for Class B shares than for Class A shares.

A mutual fund's expense ratio measures the fund's total annual expenses expressed as a percentage of the fund's net assets. The expense ratio includes asset-based sales charges, such as charges permitted under Investment Company Act Rule 12b-1, 11/ that are taken from the mutual fund's assets to pay to market the fund and distribute its shares. The expense ratios for Class B shares generally are higher than the expense ratios for Class A shares. During the relevant period, Class B shares in both the Kemper and Oppenheimer fund families had annual expense ratios that were 75 basis points higher than the annual expense ratios for Class A shares in the same funds, because of the higher 12b-1 fees associated with Class B share investments.

All of the investments at issue in this proceeding were purchases of the Class B shares of Kemper and Oppenheimer funds in amounts greater than the $250,000 breakpoints established by both fund families. Two of the investments were for $500,000, which was the next breakpoint offered by both fund families. The prospectuses of both Kemper and Oppenheimer funds disclosed the differences in fee structures between the share classes. Oppenheimer's prospectuses stated that, at the $1,000,000 level, Class A shares generally outperformed Class B shares because of the availability of breakpoint discounts; both fund families' prospectuses stated that the fund families would not accept Class B share investments in amounts above $500,000.

C. IFG's and Ledbetter's Supervisory System

IFG's home office consisted of several departments which were headed by general securities principals. These department heads reported to Ledbetter in connection with compliance matters. Julie Ann Sullivan, a registered principal, was IFG's chief compliance officer during a portion of the relevant period, and she reported to Ledbetter. Edward Woll, a registered principal, also worked in IFG's compliance department during this time, and he reported to Sullivan. Supervision of the OSJ principals was diffused among various home office principals (including Business Review Principals ("BRPs"), a trading officer, an operations officer, and an advertising review principal) based on functional responsibilities. In addition, IFG's compliance department conducted annual audits of branch offices and OSJs. IFG also had a mutual fund coordinator to answer representatives' questions about mutual fund sales. 12/ Ledbetter testified that, as president of IFG, he had ultimate responsibility to ensure that adequate supervisory procedures were in place at IFG.

11/ 17 C.F.R. § 270.12b-1.

12/ Ledbetter estimated that IFG had fewer than ten complaints per year related to mutual funds and that, other than the complaint of Kissinger's customer Myrna Moran, discussed in greater detail below, IFG received no complaint concerning the adequacy of disclosures with respect to the sale of Class A and Class B shares.

BRPs reported directly to IFG's Chief Operations Officer who, in turn, reported to the president. It was the responsibility of BRPs to review and approve each transaction by every OSJ principal and registered representative. They reviewed these transactions for issues such as suitability and sales practice violations, including failure to take advantage of breakpoints. During the relevant period, when BRPs reviewed investments of $250,000 or more in Class B shares of a mutual fund, they looked for, but did not require, written documentation that IFG's registered representatives had disclosed the various cost structures associated with Class A and Class B shares. BRPs also reviewed transactions for compliance with the Class B share purchase limits set forth in the applicable mutual fund prospectuses. BRPs referred transactions about which they had concerns to the compliance department.

IFG's Registered Representative Manual ("Manual") included information concerning representatives' disclosure responsibilities with respect to multiple-class mutual funds. In November 1995, material related to the disclosure obligations at issue here was added to the Manual. In February 1998, IFG distributed a pamphlet to all of its OSJs and branch offices entitled "Dos and Don'ts For Registered Representatives Who Provide Mutual Fund Advice," published by the Investment Company Institute, that contained information about multiple-class funds, including information about breakpoints and fund fees.

Subsequently, in November 1998, IFG issued a Compliance Alert, recommending that its representatives utilize what it labeled a Mutual Fund Disclosure Form as part of their regular sales practices for purchases of mutual funds with multiple-share classes. The November 1998 Compliance Alert stated that representatives were not required to use the Mutual Fund Disclosure Form, but that the form would assist in documenting the fact that representatives had made the necessary disclosures. The Mutual Fund Disclosure Form highlighted the features of Class A, B, and C shares. It stated that mutual fund class designations relate to the fee and commission structure employed by the fund. The Mutual Fund Disclosure Form further stated that each fund had its own schedule of fees set forth in its prospectus, and it directed potential investors to review the prospectus carefully.

The Mutual Fund Disclosure Form stated that Class A shares generally are structured such that a sales charge is assessed, and a commission paid to the representative, at the time of purchase. It noted that most Class A shares provide commission discounts called breakpoints for large purchases. The Mutual Fund Disclosure Form stated that generally Class B shares are structured so that no commission is charged at the time of purchase, but that funds usually charge higher marketing fees for Class B shares than for Class A shares in order to pay commissions and marketing expenses. The Mutual Fund Disclosure Form stressed that Class A shares are usually more advantageous than Class B shares for investors able to invest enough to qualify for breakpoint discounts. The form noted that, for this reason, many mutual funds will not accept Class B share purchases in excess of $500,000 because, at this level, Class A shares charge such a reduced commission that they are preferable to other fee and commission structures.

The Mutual Fund Disclosure Form contained a section that identified the customer's investment choice, including the share class of the fund selected and the amount invested. The form also contained a place for the customer's signature to confirm that he or she had received and reviewed the applicable prospectuses, understood the sales charges associated with the class of shares selected, and had an opportunity "to discuss all issues" with the registered representative. Kissinger testified that he could not specifically recall whether he received the November 1998 Compliance Alert, which included the Mutual Fund Disclosure Form, but he testified that he used the form with his customers "when it was suggested." 13/

D. Kissinger's Disclosures to Customers

Kissinger had both advisory and non-advisory customers. Kissinger spent the first meeting with prospective advisory customers analyzing the customer's financial position but did not make any specific investment recommendations or engage in even generic financial planning until the customer had signed the standard advisory contract. The three advisory customers at issue here signed this contract. The contract contained information about the services to be provided by Kissinger and the manner in which Kissinger would receive payment from the customer, including a flat fee for the creation of the customer's financial plan, a periodic fee-based monitoring service, and commissions paid to IFG in the event that the customer accepted Kissinger's specific investment recommendations. 14/

After the customer signed the advisory contract, Kissinger would prepare a generic financial plan that set forth his suggested allocation of assets and investment strategy without reference to specific investments. If the customers agreed to implement the plan, Kissinger would hold another meeting with the customer during which he recommended specific funds. Kissinger testified that, prior to recommending any specific investment to an advisory customer, he would inform the customer that he was acting in his capacity as a salesperson. Kissinger would explain to the customer basic information about the funds he recommended, such as the fund manager, some of the fund's major investments, its overall strategy, and certain other information, and he would provide the customer with the fund prospectuses. Kissinger generally instructed the customer to take the prospectuses home and think about the information provided for a week or two before making any investment decisions. Each customer also signed or initialed an asset positioning form upon investing. 15/

13/ In May 1999, IFG issued to its registered representatives a Compliance Alert stating that, for customers qualifying for breakpoint discounts available for Class A shares, the higher annual expenses associated with Class B share investments generally make Class A shares less expensive than Class B shares.

14/ The customers at issue here, both advisory and non-advisory, used brokerage services provided by Kissinger as an associated person of IFG.

15/ Kissinger referred to this form as a "switching form." It identified the Class B share

(continued...)

Non-advisory customers were individuals who chose not to receive comprehensive financial planning advice from Kissinger. Kissinger recommended investments in specific funds to non-advisory customers, providing them with prospectuses for each recommended investment. Non-advisory customers did not sign the advisory contract, did not have the same types of generic, broad financial planning meetings with Kissinger as advisory customers had, and compensated Kissinger solely by means of commissions from the sales of mutual funds, not through the flat fees and periodic monitoring fees that advisory customers paid.

E. Kissinger's Recommendation of Class B Mutual Fund Shares

Kissinger asserts that many of his customers expressed a strong aversion to paying any up-front fees and that he interpreted such statements as meaning that the customer did not want to purchase Class A shares, because all Class A shares entailed up-front fees. When a customer expressed such a strong preference, Kissinger felt that "there was no need to keep beating [the customers] over the head" by telling them about the availability of breakpoint discounts and other elements of the expense structure of investments in Class A shares and about other distinctions between the two share classes. Kissinger told his customers that Class B shares entailed an early withdrawal penalty (the CDSC), that was reduced each year that the customer held the fund's shares until, after a six-year holding period, the Class B shares converted to Class A shares. Kissinger thought of a fund prospectus as his "Bible" when making recommendations to customers. He believed that, because the Kemper and Oppenheimer prospectuses permitted investors to make purchases of Class B shares up to a $500,000 limit, investments in Class B shares in amounts up to $500,000 would be advantageous for the customer. 16/

It was Kissinger's practice to provide customers with a print-out of a performance analysis of any fund he recommended, using a CDA Weisenberger software program that compared the historical results of a given investment against certain benchmarks. However, Kissinger did not perform such an analysis comparing the expected performance of Class A

15/ (...continued)
investments of the customers, but did not show the differences between Class B and Class A investments.

16/ The relevant Kemper prospectuses at the time stated that orders for Class B shares for $500,000 or more would be declined. The relevant Oppenheimer prospectuses at the time stated that, at the $1,000,000 investment level, Class A shares will generally outperform Class B shares, and that, as a result, Oppenheimer normally will not accept purchase orders of $500,000 or more of Class B shares. Kissinger testified that, because of this language, he believed that the Oppenheimer prospectus was unclear as to the relative advantages of the two share classes at the $500,000 level but that Oppenheimer would approve Class B share transactions in amounts up to and including at least $500,000.

versus Class B shares for either the Kemper or Oppenheimer funds. Kissinger testified that he believed that the reasoning behind the initial creation of Class B shares as an investment option was to provide an investment vehicle for investors who opposed paying up-front fees.

Kissinger told the six customers at issue in this proceeding that Class B shares involved no up-front fees and that all of their money could "go to work" for them in Class B shares. Kissinger testified that he believed that Class B shares were the superior investment for these customers at the time he made the recommendations. All of the customers stated that they did not consider themselves to be expert in investing and finance, and that they relied heavily on Kissinger's expertise in making their investment choices. All of the customers received prospectuses for the funds Kissinger recommended.

The three advisory customers were Mary Ann Cline, Myrna Moran, and Mary Jane Daley. Cline invested approximately $423,000 in April 1999. Although she acknowledged signing and initialing her asset positioning form, which showed that she was investing in Class B shares of the Kemper funds, Cline recalled no discussion with Kissinger of the differences between the two classes of shares. Cline testified that Kissinger did not discuss breakpoint discounts, expenses, or relative commissions that he would receive. Cline testified that she had a long history of working with Kissinger and that she trusted his advice. She testified that she had no understanding of the differences between Class B shares and Class A shares when she invested in the Kemper Class B shares.

Moran invested $500,000 in April 1999 as part of a total investment of $1.7 million. Moran testified that she communicated to Kissinger that her investing goal was to preserve her money and earn enough to live on for the rest of her life. She thought of herself as a long-term investor. Although Moran acknowledged signing and initialing her asset positioning form, which showed that she was investing in Class B shares of the Kemper funds, Moran recalled no discussion with Kissinger of the differences between the two classes of shares. Moran said that she knew that different share classes existed, but did not know what the differences between the classes were. She testified that Kissinger did not discuss breakpoint discounts, expenses, or relative commissions that Kissinger would receive. Moran testified that Kissinger told her nothing about any disadvantages of investing in Class B shares. Moran testified that she had no understanding of the differences between Class B shares and Class A shares at the time she invested in the Kemper Class B shares. Moran acknowledged signing Kissinger's standard advisory contract and initialing the asset positioning form, but she said that she did not read these documents carefully and did not understand what they said when she signed them.

Moran came to Kissinger in or around June 1998. Because her $1.7 million investment amount was much larger than that typically invested by Kissinger's customers, Kissinger contacted IFG with a request for documents necessary to ensure that he properly disclosed relevant facts about Moran's investments, including the $500,000 purchase of Class B shares of Kemper funds at issue here. In response, Sullivan provided Kissinger with a document called a

"Mutual Fund Disclosure Form." 17/ This June 1998 disclosure form did not specifically explain the cost differences between investments in Class A and Class B shares. It included a paragraph that said, "Please note that the above-referenced fund families offer other share classes, with different fees and compensation structures. Please refer to the prospectuses provided for more detailed explanation of fund classes available and their respective fees." The form originally provided by Sullivan included a sentence for each fund that was being recommended to Moran (Kissinger recommended certain Fidelity funds in addition to the Kemper Class B funds), which said, "First year charges related to compensation are estimated to be XXX, and XX per year, thereafter." Kissinger suggested to Sullivan that this sentence was improper in projecting future performance and that it should be deleted. Sullivan agreed to remove this language from the document. Moran signed this revised version of the Mutual Fund Disclosure Form on June 12, 1998. 18/

Daley invested approximately $326,000 in January 2000. Daley stated that she believed that Kissinger had her best interests in mind when he recommended that she invest in Class B shares, that she knew Kissinger would receive commissions for the sales of mutual fund shares in her account, and that she remains a satisfied customer. Daley also stated that she recalls no specific discussion of breakpoint discounts or expense differences between share classes.

The three non-advisory customers were William Moulyn, Barry Hart, and Satwant Chona. Moulyn invested approximately $250,000 in December 1999. He testified that he relied on Kissinger's investment advice "100%" and that he had never heard of the concept of different share classes until the time he received his subpoena to testify in this proceeding. 19/

Hart invested approximately $426,000 in January 2000. He testified that he came to Kissinger seeking rapidly to invest his retirement money because his former employer's 401(k)

17/ This was a different document from the Mutual Fund Disclosure Form included with IFG's November 1998 Compliance Alert, discussed above.

18/ On November 7, 1999, Moran wrote Kissinger a letter complaining about the way in which he was handling her investments. Kissinger sent the letter to Sullivan who forwarded it to Ledbetter. Ledbetter investigated Moran's complaint on behalf of IFG and participated in a mediation with Moran and her attorney that resolved her complaint by converting her Class B shares into Class A shares and by IFG's paying of her legal expenses. Ledbetter testified that, based on speaking with Moran and participating in the mediation, he believed that her complaint was related to the performance of the funds that Kissinger had recommended, not to the differences between share classes of the Kemper funds.

19/ Moulyn is no longer a customer of Kissinger, largely because he wished to invest in individual stocks and sought to make frequent trades in and out of positions in those stocks, which is not the investment model that Kissinger typically employs with his customers.

plan was about to close, and he needed to transfer his funds into a new account. Hart testified that he entrusted his retirement funds to Kissinger. Hart recalled that Kissinger stressed the lack of up-front fees for Class B shares. Hart understood from Kissinger that the main drawback to an investment in Class B shares was that he would have to maintain his investment for an extended period of time in order to avoid early withdrawal penalties, but this did not concern Hart because he thought of himself as a long-term investor, not seeking to turn quick profits. Hart acknowledged that he communicated to Kissinger a strong desire not to lose any of his money in the course of transferring his account from his employer's 401(k) plan, and Hart told Kissinger that he opposed paying up-front fees for that reason. Hart acknowledged having signed and initialed his asset positioning form, which indicated that he would be investing in Class B shares, and he also signed the version of the Mutual Fund Disclosure Form recommended in IFG's November 1998 Compliance Alert, but he said that he did not truly understand the distinction between share classes. Hart testified that he trusted Kissinger as an expert to explain all of the salient facts about his investments.

In January 2000, an Oppenheimer representative contacted Kissinger's office and asked that IFG's compliance department approve the $426,000 trade by Hart before Oppenheimer processed the trade because the value of the transaction was "substantially large" for a purchase of Class B shares. Woll reviewed the trade. In an e-mail addressed to Sullivan and others, but not to Ledbetter, Woll concluded that "the difference between A share and B share returns are real and significant," and urged Sullivan to obtain additional information from Kissinger before IFG approved the transaction. IFG's compliance department requested that Kissinger's office forward the Mutual Fund Disclosure Form that Hart had signed. The record indicates that Oppenheimer subsequently processed the transaction. 20/

Chona invested $500,000 in June 2000. He explained that he sought to retire and entrusted Kissinger to invest his money in a way that would permit this to happen. Chona told Kissinger that the return on his investments was very important to him and that he disliked paying up-front charges. Chona acknowledged that he signed his asset allocation "switching form" and another document asserting that he had read all the prospectuses that Kissinger

---

20/ Kissinger testified that he does not recall receiving a telephone call from Oppenheimer about Hart's transaction. Christopher Pollitt, an employee of Kissinger, testified that he received Oppenheimer's initial telephone call requesting approval of the transaction by IFG's compliance department. Pollitt then telephoned IFG's compliance department, where he spoke to Richard Dunston. Dunston asked that Pollitt fax documentation related to Hart's transaction. Pollitt testified that after he faxed the relevant documents to Dunston explaining the transaction, he never heard from Oppenheimer or IFG again regarding Hart's transactions. Pollitt recalled that Oppenheimer did not state that the transaction was per se improper. Pollitt testified that he processed all of Kissinger's trades, and he did not recall that any transactions in Class B shares for the other five investors at issue here drew any questions from a fund family regarding the size of the transaction.

provided to him, but he testified that he had not actually read the prospectuses. Chona also signed the version of the Mutual Fund Disclosure Form recommended in the November 1998 Compliance Alert but testified that Kissinger never told him about the availability of breakpoint discounts for his investment or the relative expenses of the different share classes.

III.

A. Kissinger's Violations of Antifraud Provisions

______ The antifraud provisions of the Securities Act prohibit fraudulent and deceptive acts and practices in connection with the offer, purchase, or sale of a security; the Advisers Act prohibits advisers from defrauding customers. Proof of scienter is required to establish violations of Securities Act Section 17(a)(1), Exchange Act Section 10(b) and Rule 10b-5 thereunder, and Advisers Act Section 206(1); 21/ to establish violations of Securities Act Sections 17(a)(2) and 17(a)(3), and Advisers Act Section 206(2), negligence is sufficient. 22/ Securities Act Sections 17(a)(2) and 17(a)(3) make it unlawful for any person in the offer or sale of any securities to obtain money or property by means of any material misrepresentations or omissions, or to engage in any transaction, practice, or course of business that operates as a fraud or deceit on the purchaser. Advisers Act Section 206(2) makes it unlawful for any investment adviser to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon a client. It is undisputed that all of Kissinger's conduct was in connection with the offer, purchase, or sale of a security and that the omissions alleged to have been fraudulent were made to Kissinger's customers, whether advisory or non-advisory. The issues before us are whether the omissions were misleading and, if so, whether they were material and made with the requisite mental state to constitute a violation.

Misleading Omissions

The Division alleged that Kissinger omitted to disclose to his customers: (1) that Class A shares were likely to produce higher returns than Class B shares for them at the investment amounts at which they purchased Class B shares; (2) the availability of breakpoint discounts at the $250,000 and $500,000 levels, as applicable, if they had purchased Class A shares; 23/

21/ See Aaron v. SEC, 446 U.S. 680, 695, 697 (1980); Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 (1976); Steadman v. SEC, 603 F.2d 1126, 1134 (5th Cir. 1979), aff'd, 450 U.S. 91 (1981).

22/ Aaron, 446 U.S. at 680, 697 & 701-02 (establishing that a showing of scienter is not required for findings of violations of Securities Act Sections 17(a)(2) and 17(a)(3)); SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 195 (1963) (finding that mere negligence may establish a violation of Advisers Act Section 206(2)).

23/ All of the customers here invested amounts that qualified for the $250,000 breakpoint

(continued...)

(3) that Class B shares of the Kemper and Oppenheimer funds had expense ratios that were 75 basis points higher than the expense ratios for Class A shares in the same funds, because of the higher Rule 12b-1 fees associated with the Class B shares; and (4) the fact that Kissinger received a larger commission for the sale of Class B shares than he would have received if the customers had purchased Class A shares instead. Kissinger acknowledges that he made none of these disclosures to the six customers at issue here.

Class A and Class B shares of any particular fund own the same underlying assets; thus, any difference in the relative performance levels of the two share classes (the first omitted disclosure alleged by the Division) will result from the differences in the cost structures of the two classes (the latter omitted disclosures), together with the impact of the Class B CDSC, or early withdrawal penalty. We find that Kissinger's failure to make full disclosures as to the differences in cost structures between the two classes of shares was misleading, in light of his admitted recommendations to these customers that they should invest in Class B shares, rather than Class A shares, because all of their money could "go to work" with such an investment. Without knowledge of these cost differences, the customers were not in a position to make fully informed decisions as to the appropriate choice between the two classes of shares. While the information Kissinger disclosed to his customers about their Class B share investments (that they entail no up-front fees and have a CDSC) is literally true, it presented an incomplete picture of the relative cost structure of the two share classes and the potential impact of the cost structure on the returns on their investments and therefore made his recommendation to invest in Class B shares misleading. 24/

Moreover, in support of its position that it was misleading to omit any disclosure of the relative performance of Class A versus Class B shares, the Division offers an expert opinion and mathematical calculations showing that, for investors with a certain investment profile, Class A investments will produce higher returns than Class B shares. The investment profile of the six customers in this case presented many characteristics tending to suggest that Class A shares were likely to be advantageous for them. These customers intended to hold their investments for the long term without withdrawals and, with the exception of customer Moulyn, invested in tax-advantaged accounts. The Division's model in its brief on appeal and expert testimony presented by the Division before the administrative law judge indicate that, under reasonable assumptions for these particular investors, relatively simple mathematical calculations would have shown that

---

23/ (...continued)
discount, and Moran and Chona qualified for the $500,000 breakpoint discount.

24/ See John J. Kenny, Securities Act Rel. No. 8234 (May 14, 2003), 80 SEC Docket 564, 576 ("Although the letters contain some truthful statements, the letters are misleading because of the omitted information"), aff'd, Kenny v. S.E.C., 87 Fed. Appx. 608 (8th Cir. 2004).

Class A shares were the superior investment. 25/ Kissinger's defense that, under certain circumstances, Class B shares will produce higher returns (e.g. if the customer takes maximum annual withdrawals throughout the six-year CDSC period), while technically true, does not render any less misleading his omissions, in light of his affirmative recommendation of Class B shares to these particular customers based on his assurances that Class B shares would allow all of their money to "go to work."

Materiality

Generally speaking, "[a]n omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important." 26/ The rate of return of an investment is important to a reasonable investor. In the context of multiple-share-class mutual funds, in which the only bases for the differences in rate of return between classes are the cost structures of investments in the two classes, information about this cost structure would accordingly be important to a reasonable investor. Kissinger's argument that his customers' stated desire to avoid up-front fees in their investments rendered additional information about the cost structure differential between the two share classes not material conflicts with his concession that the rate of return on the investments was the issue of greatest importance to all six customers at issue here. Without additional information about the cost differences between share classes, his customers did not have the "total mix of information" necessary to make their investment decisions. 27/ We find that there is a substantial likelihood that a reasonable investor would consider information that might have enabled them to understand the likely return differences between an investment in Class A shares and an investment in Class B shares to be important in making the decision about which share class to purchase.

Requisite Mental State

25/ Respondents argue that the Division's case is based on a theory that Class A shares always outperform Class B shares, a premise that they contend is not supported by the record. However, as discussed in the text, we believe that the Division amply demonstrated at the hearing below that its case with respect to Kissinger and Kissinger Advisory was based on the theory that, under the facts and circumstances of this case, Kissinger's omissions as to the differences in cost structure between share classes were misleading. For these six customers of Kissinger, who intended to hold their investments for the long term without systematic withdrawals, Kissinger's omission to disclose the availability of breakpoints at their investment levels and the higher expense ratios and commissions in Class B shares was misleading. This is especially true in light of his advice that Class B shares would satisfy the goal of avoiding up-front fees.

26/ SEC v. Steadman, 967 F.2d 636, 643 (D.C. Cir. 1992) (quoting TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976)).

27/ See Basic, Inc. v. Levinson, 485 U.S. 224, 231 (1988).

______Negligence is the failure to exercise reasonable care. 28/ The IFG Compliance Manual, the Investment Company Institute pamphlet distributed by IFG in February 1998, and the IFG Compliance Alerts of November 1998 and May 1999 all discussed the differences in cost structure of multiple-class mutual funds and the importance of ensuring that investors understood the impact of these costs on their investments. 29/ These documents would have given notice to a reasonable securities industry professional that some analysis of the impact of these different cost structures on the return on an investment was required before recommending one class of shares rather than the other, especially in amounts above the breakpoint levels. Kissinger never attempted such an analysis, nor did he request that IFG or the fund families provide him with an analysis of which share class would likely outperform, given these customers' investment profiles. All of the investments at issue occurred after IFG's November 1998 Compliance Alert, and all but the Cline and Moran investments occurred after the May 1999 Compliance Alert.

Kissinger was aware of the existence of breakpoint discounts available for the purchase of Class A shares, and that Class B shares entailed higher expense ratios and greater commissions to Kissinger than Class A shares. He knew that, in advising his customers that an investment in Class B shares would avoid the up-front fees of Class A shares and enable all of their money to "go to work," he was omitting information about the difference in cost structure between the share classes. Kissinger testified that, at the time he recommended the Class B shares at issue here, he believed that the recommendations presented a "win-win" situation for both him and his customers because he received a greater commission than he would have received had the customers invested in Class A shares, and the customers would enjoy greater returns on their investments because they did not have to pay any up-front fees on the Class B shares. Kissinger had not, however, performed any mathematical analysis (or made any sort of inquiry) to support this belief, although the software for doing so was readily available to him. Thus, he did not have a reasonable basis for concluding that disclosure of these additional costs were unnecessary and his failure to do so was a departure from the standard of reasonable prudence and was negligent. 30/

28/ SEC v. Hughes Capital Corp., 124 F.3d 449, 453-54 (3d Cir. 1997). See also Ira Weiss, Securities Act Rel. No. 8641 (Dec. 2, 2005), __ SEC Docket ____, ____.

29/ Kissinger claimed that he never received the January 1995 document and testified that he did not recall whether he received the November 1998 and May 1999 Compliance Alerts. He was not questioned about and did not testify whether he received the Investment Company Institute pamphlet distributed by IFG in February 1998.

30/ Lieb v. Merrill Lynch, 461 F.Supp. 951, 953 (E.D. Mich. 1978) (holding that brokers must study recommended securities sufficiently to become informed as to the nature, price, and financial prognosis of the security), aff'd, 647 F.2d 165 (6th Cir. 1981) (Table). Kissinger's failure to conduct any analysis that included the impact of expense ratios and breakpoint discounts on the recommended investments, or even to request that such an inquiry be done before he recommended an investment in Class B shares, falls short of

(continued...)

In his defense, Kissinger points out that Oppenheimer and Kemper both permitted investments in Class B shares in amounts up to $500,000, and he notes that neither the fund families nor IFG stopped the execution of his customers' transactions when he submitted the transactions for execution. In addition, he argues that under certain assumptions, which did not apply to the customers at issue here, Class B shares may be the better investment. These factors do not provide a reasonable basis for an unequivocal recommendation of Class B shares without full disclosure of the cost structure differences.

Kissinger argues that it was not customary securities industry practice during the relevant period to make the disclosures at issue here. Kissinger states that neither industry practice, Commission regulations, nor any rules implemented by the relevant fund families, obligated him to make such disclosures and that, therefore, he was not obligated to make them. Kissinger points out that IFG (and Kemper and Oppenheimer, as applicable) processed all of the relevant transactions, and Kissinger claims that he interpreted the lack of comments or questions about the transactions as providing implicit approval of the transactions. Kissinger claims that IFG never specifically instructed him to make the disclosures at issue here, although he acknowledges that IFG told all of its registered representatives to make full and accurate disclosures about any investments recommended to their customers.

Kissinger's claim that non-disclosure of the differences between share classes was standard industry practice at the time is without merit. The courts and the Commission have repeatedly held that a practice may be prevalent in the industry and still be fraudulent. 31/ Moreover, Kissinger has not shown that the practice in which he engaged was universal in the industry. He told the customers that Class B shares did not have an up-front fee and would allow all of their money to "go to work," even though he was aware of a number of other elements of the cost structure (besides the lack of an up-front fee) that could have made an investment in Class B shares at these amounts less advantageous for the customer. He failed to take any steps to determine if B shares were in fact most advantageous for his customers.

30/ (...continued)
this requirement. Given Kissinger's knowledge that investments in Class B shares did not include the possibility of taking advantage of breakpoint discounts and also involved higher expense ratios than Class A shares, we find that his failure to make further inquiry beyond merely considering the impact of the up-front fees for Class A shares to have been unreasonable.

31/ Newton v. Merrill Lynch, Pierce, Fenner & Smith, 135 F.3d 266, 274 (3d Cir. 1998); Fundamental Portfolio Advisors, Inc., Securities Act Rel. No. 8574 (May 23, 2005), 85 SEC Docket 1754, 1760 n.16; Marc N. Geman, 54 S.E.C. 1226, 1256 and n. 64 (2001), aff'd, Geman v. SEC, 334 F.3d 1183 (10th Cir. 2003).

Accordingly, we find that Kissinger negligently omitted to disclose material information to his customers that made the disclosures relating to his recommendation of Class B shares misleading, thereby violating Securities Act Sections 17(a)(2) and 17(a)(3). 32/

B. IFG's and Ledbetter's Supervision of Kissinger

The Commission may censure, suspend, limit the activities of, or revoke the registration of, any broker or dealer if we find that (1) such sanction is in the public interest and (2) the broker or dealer "failed reasonably to supervise, with a view to preventing [securities] violations . . . , another person who commits such a violation, if such other person is subject to his supervision." 33/ We also may sanction any natural person associated with a broker or dealer if we find that such individual has failed to supervise. 34/ No firm or individual shall be disciplined for failure to supervise, however, if there were in place "procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect" the securities violation in question, and the person responsible for administering such procedures and system "reasonably discharged [his] duties and obligations . . . without reasonable cause to believe that such procedures and system were not being complied with." 35/

The Division contends that IFG and Ledbetter failed reasonably to supervise Kissinger in that the process for reviewing and approving Class B share transactions was unreasonable, and that IFG and Ledbetter did not adequately ensure that Kissinger disclosed all material facts to his customers. For example, the Division argues that, because IFG and Ledbetter lacked any system for contacting customers making large Class B share investments to inquire about the basis for their investments, as provided for in IFG's dealer agreements with Oppenheimer and Kemper, the system established by IFG and Ledbetter for complying with the dealer agreements was ineffective, thereby making it more difficult for IFG and Ledbetter to identify whether adequate disclosures were made by IFG's registered representatives. The Division further argues that BRPs reviewed only whether a Class B share transaction complied with the fund family's dollar share limits on Class B investments. Under the Division's theory, a closer inspection of the transactions would have included analysis of whether the investments would have received breakpoint discounts if they had been made in Class A shares instead of Class B shares. The Division theorized that a transaction review policy that included such an analysis would have been more reasonably designed to prevent Kissinger's violations.

32/ In light of Kissinger's violations of Securities Act Sections 17(a)(2) and 17(a)(3) and, as discussed below, the sanctions imposed, we do not reach the Division's allegations that Kissinger aided and abetted or was a cause of Kissinger Advisory's violations of Section 206 of the Advisers Act.

33/ Exchange Act Section 15(b)(4)(E), 15 U.S.C. § 78o(b)(4)(E).

34/ Exchange Act Section 15(b)(6), 15 U.S.C. § 78o(b)(6).

35/ Exchange Act Section 15(b)(4)(E), 15 U.S.C. § 78o(b)(4)(E).

Although the evidence and arguments presented by the Division in this case are not without force, we find that the Division has not established that IFG and Ledbetter failed to exercise reasonable supervision. IFG and Ledbetter implemented procedures that were addressed specifically to disclosure by IFG's associated persons of material facts with respect to the different cost structures of Class A and Class B shares and that could reasonably have been expected to prevent Kissinger's violations. IFG discharged its supervisory duties in two ways: through written materials and through specific oversight and investigation of individual offices and transactions. With respect to IFG's written materials, IFG had in place a Registered Representative Manual that addressed the disclosure obligations with respect to multiple-class mutual funds. IFG also distributed the pamphlet "Dos and Don'ts For Registered Representatives Who Provide Mutual Fund Advice" in February 1998 and Compliance Alerts in November 1998 and May 1999, each of which provided information about the differences in cost structure and commissions in multiple-class funds.

In addition to its written compliance materials, IFG and Ledbetter had in place procedures and a system for reviewing and approving purchases of multiple-class mutual funds that would have reasonably been expected to ensure that its associated persons disclosed all material facts to their customers. BRPs reviewed and approved every transaction by every OSJ principal and registered representative. BRPs also reviewed transactions for compliance with the Class B share purchase limits set forth in the applicable mutual fund prospectuses. 36/ In addition, IFG's compliance department conducted annual audits of branch offices and OSJs and annually reviewed OSJ principals' customer files. Accordingly, we conclude that under the circumstances of this case, the Division has not established that IFG and Ledbetter failed to exercise reasonable supervision with a view to preventing Kissinger's antifraud violations within the meaning of Sections 15(b)(4)(E) and 15(b)(6) of the Exchange Act.

IV.

Securities Act Section 8A(a) authorizes the Commission to impose a cease-and-desist order upon any person who "is violating, has violated, or is about to violate" any provision of either of these acts or any rule or regulation thereunder, or against any person who "is, was, or would be a cause of [a] violation, due to an act or omission the person knew or should have known would contribute to such [a] violation." 37/ In determining whether a cease-and-desist order is an appropriate sanction, we look to whether there is some risk of future violations. 38/ The risk of future violations required to support a cease-and-desist order is significantly less than

---

36/ We note that the amounts in question in the transactions at issue here represent a relatively small portion of Kissinger's business.

37/ 15 U.S.C. §§ 77h-1(a).

38/ KPMG Peat Marwick, 54 S.E.C. 1135, 1185 (2001), petition denied, 289 F.3d 109 (D.C. Cir. 2002).

that required for an injunction. 39/ We also consider whether other factors demonstrate a risk of future violations, but not all factors need to be considered, and no factor is dispositive. Beyond the seriousness of the violation, these include the isolated or recurrent nature of the violation, whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, the respondent's state of mind, the sincerity of assurances against future violations, recognition of the wrongful nature of the conduct, opportunity to commit future violations, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions sought in the proceeding. 40/

We conclude that Kissinger's violations are sufficiently serious, were recurrent, and raise a sufficient risk of future violation to warrant imposition of a cease-and-desist order against him. Kissinger's failure to disclose all of the material facts concerning Class A and Class B shares harmed customers by making it more difficult for the customers to make an informed investment decision. At stake in that decision were the amount of fees the customers would pay, the amount of returns they would receive, and the amount of commissions Kissinger would receive, on the customers' investments. Although a small portion of Kissinger's business, his violations were committed in transactions with six customers over a period from July 1998 to December 2000; thus, his violations were recurrent. In addition, a cease-and-desist order will serve the remedial purpose of encouraging Kissinger to take his responsibilities more seriously in the future.

Exchange Act Section 21B authorizes orders of disgorgement in, among others, cases involving willful violations of the Securities Act. 41/ Disgorgement is an equitable remedy designed to deprive wrongdoers of unjust enrichment and to deter others from violating the securities laws. 42/ The Division asks that we order Kissinger to disgorge $36,170, an amount it states represents the difference in commissions that Kissinger received for selling Class B shares instead of Class A shares to the six customers at issue. Kissinger does not contest this amount. Disgorgement here will prevent Kissinger from reaping substantial financial gain from his violations. Disgorgement also will impress upon him and other securities professionals the need to make full and accurate disclosures in connection with sales of multi-class mutual fund shares.

39/ Id. at 1191.

40/ Id. at 1192.

41/ 15 U.S.C. §§ 78u-2(e). Kissinger's conduct was willful. Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) ("Generally, [willful] means. . . that [a] person . . . knows what he is doing. It does not mean that, in addition, he must suppose that he is breaking the law").

42/ S.E.C. v. First City Financial Corp., 890 F.2d 1215, 1230 (D.C. Cir. 1989); S.E.C. v. Robert Johnston and Fiduciary Planning, Inc., 143 F.3d 260, 263 (6th Cir. 1998); John J. Kenny, 80 SEC Docket at 595.

Accordingly, we order Kissinger to pay $36,170 in disgorgement together with prejudgment interest pursuant to Rule 600 of the Commission's Rules of Practice. 43/

An appropriate order will issue. 44/

By the Commission (Chairman COX and Commissioners GLASSMAN, ATKINS and CAMPOS); Commissioner NAZARETH not participating.

Nancy M. Morris
Secretary

43/ 17 C.F.R. § 201.600.

44/ We have considered all of the parties' contentions. We have rejected or sustained these contentions to the extent that they are inconsistent or in accord with the views expressed herein.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 54127 / July 11, 2006

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 2533 / July 11, 2006

Admin. Proc. File No. 3-11179

In the Matter of the Application of

IFG NETWORK SECURITIES, INC.,
WILLIAM KISSINGER, and
DAVID LEDBETTER

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's opinion issued this day it is

ORDERED that William Kissinger cease and desist from committing any violations or future violations of Section 17(a)(2) and 17(a)(3) of the Securities Act of 1933; and it is further

ORDERED that Kissinger disgorge the amount of $36,170, plus prejudgment interest, as calculated in accordance with Commission Rule of Practice 600;

Payment of the amount to be disgorged shall be: (i) made by United States postal money order, certified check, bank cashier's check, or bank money order; (ii) made payable to the Securities and Exchange Commission; (iii) mailed or delivered by hand to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Virginia 22312; and (iv) submitted under cover letter that identifies the

respondent and the file number of this proceeding. A copy of the cover letter and check shall be sent to William P. Hicks, counsel for the Division of Enforcement, Securities and Exchange Commission, 3475 Lenox Road, NE, Suite 1000, Atlanta, Georgia 30326-1232.; and it is further

ORDERED that the proceeding with respect to IFG Network Securities Inc. and David Ledbetter be, and it hereby is, dismissed.

By the Commission.

Nancy M. Morris
Secretary