SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 54708 / November 3, 2006

Admin. Proc. File No. 3-11813

In the Matter of

IRFAN MOHAMMED AMANAT

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

CEASE-AND-DESIST PROCEEDING

Grounds for Remedial Action

Antifraud Violations

Respondent, who was associated as chief technology officer with former registered broker-dealer firm, engaged in fraudulent scheme to obtain market data rebates from Nasdaq by executing thousands of wash trades and matched orders through automated trading program that he designed. His wash and matched trades enabled firm to receive nearly $50,000 in rebates. Respondent willfully violated antifraud provisions of federal securities laws. Held, it is in the public interest to bar Respondent from association with any broker or dealer subject to a right to reapply after five years, impose a cease-and-desist order, and assess civil money penalties.

APPEARANCES:

Martin S. Siegel, David J. Molton, and John J. W. Inkeles, of Brown Rudnick Berlack & Israels LLP, for Irfan Mohammed Amanat.

Valerie A. Szczepanik, Nancy A. Brown, and Kathleen L. Furey, for the Division of Enforcement.

Appeal filed: January 26, 2006
Last brief filed: May 10, 2006

I.

The Division of Enforcement ("Division") appeals from an administrative law judge's decision dismissing all charges against Irfan Mohammed Amanat, who was associated as chief technology officer 1/ with MarketXT, Inc. ("MarketXT"), an electronic communications network ("ECN"), 2/ registered broker-dealer, and NASD member. In the order instituting proceedings ("OIP"), the Division alleged that, during a three-day period in March 2002, MarketXT reported thousands of wash trades and matched orders 3/ on the Nasdaq Stock Market, Inc. ("Nasdaq"). It alleged that Amanat executed those trades through two accounts at a broker-dealer affiliated with MarketXT, using a computerized program that he designed. As a result of the trading, MarketXT improperly qualified for Nasdaq's market data revenue rebate program for the first quarter of 2002 (ending March 31, 2002), and received from Nasdaq approximately $50,000 in rebates. The OIP charged Amanat with willfully violating Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934, 4/ and willfully aiding and abetting, and causing, MarketXT's violations

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1/   As an officer and employee of MarketXT, Inc., Amanat was "associated" with the firm. See 15 U.S.C. § 78c(a)(18) ("person associated with a broker or dealer" or "associated person" includes any officer, employee, or person "directly or indirectly controlling, controlled by, or under common control with such broker or dealer").

2/   An ECN is an electronic trading system that automatically matches buy and sell orders at specified prices. See 17 C.F.R. § 240.11Ac1-1(a)(8) (defining an "ECN"). In January 2000, MarketXT obtained from the Commission's Division of Market Regulation a no-action letter that effectively permitted it to operate as an ECN. In August 2002, Market Regulation revoked the firm's ECN no-action letter, after NASD ordered the firm to cease doing business as a broker-dealer for failure to maintain required net capital.

3/   Wash trades are "transactions involving no change in beneficial ownership." SEC v. U.S. Envtl., Inc., 155 F.3d 107, 109 (2d Cir. 1998) (quoting Ernst & Ernst v. Hochfelder, 425 U.S. 185, 205 n.25 (1976)), cert. denied, 526 U.S. 1111 (1999). Matched orders are "orders for the purchase [or] sale of a security that are entered with the knowledge that orders of substantially the same size, at substantially the same time and price, have been or will be entered by the same or different persons for the sale [or] purchase of such security." Id.

4/   15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.

of Exchange Act Section 15(c)(1)(A). 5/ We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal. Based on that review, we have determined that a preponderance of the evidence supports the allegations in the OIP. 6/ For the reasons set forth below, we conclude that Amanat willfully violated Exchange Act Section 10(b) and Exchange Act Rule 10b-5.

<div align="center">II.</div>

Amanat is a self-taught computer programmer who received a bachelor's degree in biomedical engineering from Johns Hopkins University in 1993. The following year, while pursuing graduate studies, he began working part-time as a programmer for an order entry firm owned by his brother. 7/ In late 1997 or early 1998, Amanat joined his brother's business full-time. By 2002, that business had grown into Tradescape Corporation, 8/ the parent company of several subsidiaries, including MarketXT and Momentum Securities, LLC ("Momentum"), 9/ a registered broker-dealer (collectively, "Tradescape").

At all relevant times, Amanat acted as chief technology officer for MarketXT and its affiliates. His responsibilities included developing new trading strategies and programming trading systems. As part of Amanat's role as chief technology officer, he supervised a staff of

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5/   15 U.S.C. § 78o(c)(1)(A) (prohibiting brokers or dealers from using "any manipulative, deceptive, or other fraudulent device or contrivance" in connection with securities transactions). MarketXT was named as a respondent in this proceeding, but settled charges that it violated antifraud, net capital, and recordkeeping provisions. Without admitting or denying the findings, MarketXT consented to the revocation of its broker-dealer registration and an order to disgorge the revenue rebated by Nasdaq. Payment of disgorgement was waived, however, based on sworn financial statements demonstrating the firm's inability to pay. MarketXT, Inc., Securities Exchange Act Rel. No. 51864 (June 17, 2005), 85 SEC Docket 2665.

6/   See Steadman v. SEC, 450 U.S. 91, 101 (1981)

7/   Order entry firms are broker-dealers that route customer orders to market makers for execution.

8/   Amanat's family owned fifty-three percent of Tradescape Corporation through a combination of direct ownership and family trusts. Amanat was a beneficiary of the family trust that held the largest ownership interest and a member of Tradescape Corporation's board of directors. His brother was Tradescape Corporation's chief executive officer ("CEO").

9/   Momentum was not a respondent in this proceeding.

software developers, technicians, and engineers on MarketXT's order execution and routing programs. He thus was familiar with and understood MarketXT's technical systems.

Amanat was considered to be a skilled programmer who was knowledgeable about the securities industry and new developments in the field. A Momentum manager, Brian Ignatowitz, testified that "[Amanat] knew everything. He would always stay on top of everything in the industry, [and] he always knew what the new hot thing was in the market, what all the traders were doing." Other Tradescape employees called Amanat "a very effective programmer" and "extremely competent" at programming.

A. Nasdaq's Rebate Program

Nasdaq, like other Consolidated Tape Association ("CTA") participants, received market data revenue for trades that it reported to the CTA 10/ in securities listed on the New York Stock Exchange, Inc. ("Tape A" securities) and on the American Stock Exchange, LLC ("Amex") or regional exchanges ("Tape B" or "Amex-listed" securities). During the period at issue, Nasdaq had a market data rebate program under which it shared a portion of its market data revenue with NASD member firms that exceeded certain levels of reported trading activity in exchange-listed securities. 11/ Nasdaq gave qualifying firms, i.e., those averaging at least five hundred trades per day in Tape A or Tape B securities in a calendar quarter, forty percent of the market data revenue it received from the CTA that was attributable to the firms' trades.

Amanat first learned of Nasdaq's rebate program in December 2001. He acknowledged that he was aware that MarketXT had "cash flow" problems in March 2002. 12/ He decided to

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10/   The CTA administers the consolidated tape system, which disseminates transaction information for exchange-listed securities. In the first quarter of 2002, the CTA was comprised of representatives from nine market centers, including the American Stock Exchange, LLC, New York Stock Exchange, Inc., and NASD. Nasdaq participated in the CTA pursuant to NASD's participation. The CTA operates by virtue of the CTA Plan, a national market system plan approved by the Commission in accordance with Exchange Act Section 11A, 15 U.S.C. § 78k-1.

11/   See Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Exchange Act Rel. No. 41174 (Mar. 16, 1999), 69 SEC Docket 1039 (establishing NASD's rebate program). The rebate program subsequently was extended in January 2002.

12/   The record reflects that the auditors had considered issuing a "going concern" opinion on MarketXT's financial statements. Furthermore, not only MarketXT but also its affiliates had financial problems during the relevant period. Tradescape employees testified that

attempt to qualify MarketXT for Nasdaq's rebate program in Tape B securities for the quarter ending March 31, 2002. 13/ On March 6, 2002, a Nasdaq official sent Amanat "background information" on the rebate program. In response, he asked whether trades that crossed within a firm would count towards earning rebates, and was told that they would. He also asked whether MarketXT could qualify for rebates for the March 2002 quarter. On March 11, 2002, Amanat heard from Nasdaq that, with three weeks left in the quarter, the firm was averaging only forty-nine qualifying trades per day, far less than the required daily average of five hundred trades.

B. Amanat Develops a Trading Strategy to Earn Rebates

During the first quarter of 2002, Amanat was working on computer programs for various trading strategies, including arbitrage programs, pairs trading, and what he described as mirror trading. In early to mid-March 2002, he began modifying an arbitrage program he had designed for another trader in order to increase MarketXT's number of trades and qualify for rebates. He called this new program "RLevi2." Amanat stated that RLevi2's sole purpose was to earn rebates for MarketXT. He believed that rebate trading would be a profitable, long-term strategy. He calculated that MarketXT could obtain $50,000 in rebates from Nasdaq if RLevi2 generated the requisite number of qualifying trades in the time remaining in the March 2002 quarter.

Amanat had been monitoring the volume of MarketXT's trades in Tape B securities, and was aware of who at the firm was engaging in automated trading. He selected exchange-traded funds, or "ETFs," 14/ for his automated trading. He understood that ETFs were considered Tape B securities, and that ETFs, as Tape B securities, generated larger rebates than Tape A

12/   (...continued)
        telephones and data centers had been disconnected, and that salaries and benefits were cut.

13/   Prior to March 2002, MarketXT was reporting insignificant trading in Tape B securities. For example, in January 2002, the firm executed a total of thirty-seven trades in Amex-listed securities, averaging about two Tape B trades per day. In February 2002, the firm executed a total of 2,064 trades in Amex-listed securities, averaging about 109 Tape B trades per day.

14/   An "ETF" is an investment vehicle that allows investors to participate in the performance of an established market index without having to purchase the basket of individual stocks that comprise the index. ETFs track indices such as the Nasdaq-100 ("QQQs"), S&P 500 ("SPYs"), and Dow Jones Industrial Average ("DIAs").

securities. 15/ He also understood that ETFs could be bought and sold easily because they were highly liquid securities.

Amanat admitted that he alone conceived, wrote, and operated RLevi2. He testified that Tradescape compliance and other personnel knew "in general" that he wanted to trade ETFs for the rebates, but that they left the "coding details" to him. Amanat seemed to have been secretive about RLevi2. He did not show the program to anyone, despite urging his superiors to encourage ETF trading. Amanat claimed that he did not think that other traders would be interested in using RLevi2, although he believed that it would be a profitable, long-term strategy. None of the Tradescape employees who testified at the hearing understood RLevi2 or knew how it operated.

C. RLevi2's Characteristics

Amanat wrote RLevi2 so that it automatically sent pairs of buy and sell market orders to MarketXT at regular, timed intervals (originally a pair every five to six seconds). 16/ RLevi2 covered every purchase order with a sell order to ensure that his position remained flat. Amanat testified that MarketXT's computer processed orders in milliseconds. He could adjust RLevi2's parameters for the time interval between a buy and sell order. He also could shorten the time interval between buy and sell pairs of orders, thereby increasing the number of trades executed.

Amanat acknowledged that he knew that MarketXT "swept" its order book and matched any new order against outstanding orders on MarketXT's system before sending that order to be filled in the marketplace. His expert opined that RLevi2 was designed to match orders within MarketXT's system. The expert further concluded, based on "conversations" and the trading generated by RLevi2, that Amanat coded RLevi2 to hold a MarketXT buy order on the firm's book while it waited to execute against a MarketXT sell order.

Amanat was familiar with the term "wash trade." He knew that it referred to the purchase and sale of securities "within some short frame of time for the same account." He also knew that wash trading was illegal because he previously had assisted Tradescape compliance personnel in monitoring for wash trades. Nonetheless, Amanat admitted that he did not program RLevi2 to

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15/ Historically, trades in Tape B securities have resulted in larger revenues than trades in Tape A securities, and that was true in the first quarter of 2002. The "print value," or revenue allocation to a CTA participant per trade, was $0.37 for Tape A securities and $4.02 for Tape B securities.

16/ A market order is an order to buy or sell a security at the best available price. Robert J. Prager, Exchange Act Rel. No. 51974 (July 6, 2005), 85 SEC Docket 3413, 3418 n.12.

prevent wash trading, although he could have done so. 17/ He stated that no one asked or told him to do this.

D. Amanat Begins Trading to Earn Rebates

Sometime after March 14, 2002, Amanat began running RLevi2, which he described as a "work-in-progress," in his personal, or "Irfan," account at Momentum. He then sought and obtained permission to open a proprietary account for his rebate trading. 18/ The new account was opened in the name of Momentum's vice president of technology affairs, Scott Ignall, and designated "Signr" for "Scott Ignall rebate." 19/ Amanat ran RLevi2 in the Signr account as well.

On Friday, March 22, 2002, Momentum manager Ignatowitz asked Amanat by e-mail for the number of trades required to qualify for rebates for the March 2002 quarter. In one e-mail to Ignatowitz, Amanat responded, "Sheesh – It's close. If we don't ramp up [the ETF trading] next week, we won't make it!" In another e-mail to Ignatowitz, he wrote, "We needed about 30,000 transactions this quarter. We've had about 15-20,000, so maybe we need 10,000 more. I'll get the exact #."

Amanat asked Nasdaq for the information several minutes later. After receiving from Nasdaq a printout of MarketXT's trading through March 19, Amanat inquired, "[C]an you tell me how many more trades are needed to qualify for Tape A and B? Is it about 18,000 trades needed?" A Nasdaq official replied, "[R]ight -- 18,000 trades gets you qualified for Tape B. Tape A, well, we'll get their [sic] next quarter." Amanat relayed this information to his brother, who was Tradescape's CEO. In an e-mail, he wrote that he was "18,000 trades short for the tape revenue."

17/ In his brief, Amanat notes that Nigito testified that it was impossible to program to prevent wash trades. However, Amanat's own hearing testimony contradicts that proposition. Amanat testified that he subsequently modified the "code" to include "wash trade preventions."

18/ Amanat did not hold any securities licenses and knew that, pursuant to Momentum's internal policies, a proprietary account could not be set up for him without assigning a registered representative to supervise the account. At the hearing, Momentum manager Ignatowitz stated that a proprietary account had "a lot more buying power" than a retail account. He stated further that gains or losses in a proprietary account "go to the firm."

19/ In his investigative testimony, Amanat stated that he understood that the account was in Ignall's name only, but that he did not keep Ignall informed about Amanat's trading in the Signr account. Amanat affirmed that testimony at the hearing.

E. Monday, March 25, 2002

On March 25, 2002, beginning at 10:42 a.m., Amanat ran RLevi2 in the Irfan account, sending simultaneous buy and sell one hundred share market orders in DIAs to MarketXT every six seconds. At 11:44 a.m., in an e-mail to two traders with the heading, "ETF Trades!," Amanat exclaimed, "1008 [ETF] trades and counting! . . . I gotta get to 3600 a day for the next 5 days to make it." He continued to run RLevi2 in the Irfan account until 1:30 p.m. The orders entered by Amanat executed against each other, resulting in 1,696 wash trades in DIAs by day's end. The 1,696 wash trades in DIAs accounted for over ninety-nine percent of the DIA trading volume at MarketXT that day and ninety-nine percent of the DIA trades sent from the Irfan account and effected on MarketXT. Almost no one else at MarketXT was trading DIAs. Indeed, for the entire quarter up until March 25, 2002, MarketXT had executed only thirty trades in DIAs.

Amanat admitted that the 1,696 trades in DIAs were "wash trades" as he understood that term, but denied that he designed RLevi2 intending to produce wash trades. Amanat's expert testified that the orders for the 1,696 DIA trades were submitted simultaneously and paired up against each other, and that the element of risk involved in those trades was "close to de minimis."

Amanat's trading on March 25, 2002, caught the attention of Brian Nigito, a MarketXT programmer who reported to Amanat. Nigito had accepted a job at another firm, and March 25 was his last day at MarketXT. That morning, Nigito observed what he described as an "unusual" pattern of buy and sell orders for one hundred share DIAs being executed on MarketXT at regular intervals, several seconds apart. Nigito found the transactions to be unusual because they involved "[v]ery regular trades, a fixed number [of seconds] apart, [and] not as much quote activity as [he] would expect for [the] . . . number of trades." Nigito concluded that most likely Amanat was responsible because the regularity of the trading indicated to him that it was automated, and Amanat was the only Tradescape employee engaged in automated ETF trading on MarketXT. Amanat testified that he was not speaking to Nigito because Nigito was changing jobs. As Nigito left the office that day, he announced in a loud voice that Amanat was "painting the tape." Nigito testified that he used this phrase to mean that Amanat was buying from and selling to himself or engaging in wash trading.

Nigito also called another programmer, Michael Bundy, and alerted him to Amanat's trading. Bundy viewed the trading and agreed with Nigito's assessment that it was "unusual." He noted that the trades were occurring at a "fixed and regular interval . . . like a clock, ticking on a wall, regardless of market activity." He contacted Momentum's executive vice-president, J. William Lauderback, and compliance officer Elizabeth Cummins. [20]

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[20]   The record is not clear as to when Cummins learned of the nature of Amanat's trading. While Bundy testified that he and Lauderback brought the trading to her attention on

Several people informed Amanat on March 25 that Nigito had accused him of "painting the tape." Amanat acknowledged at the hearing that he "understood [that] 'painting the tape' was the term used when people think you are trying to manipulate the market." However, he took no steps to determine if his trading violated any legal or regulatory requirements. Amanat explained that the trades "were meant . . . to gain market data rebates and that was legitimate in [his] eyes." When asked on cross-examination why he did not contact Tradescape compliance personnel and request that they examine his trading in light of Nigito's accusations, Amanat replied, "They [compliance personnel] knew the type of trading I was doing. I didn't have to notify them, they were viewing it." On further questioning, however, Amanat admitted that, even if compliance personnel were viewing his trading on Momentum's computer screens, they would be unable to ascertain, without further investigation, the contra parties to the trades.

F. Tuesday, March 26, 2002

On March 26, 2002, Amanat adjusted RLevi2, decreasing the number of seconds between each pair of trades. In the morning, he ran RLevi2 in both the Irfan and Signr accounts, sending pairs of buy and sell market orders in SPYs to MarketXT every two to three seconds. The SPY orders in the Irfan and Signr accounts executed against each other, resulting in 1,516 wash trades and matched orders. The 1,516 wash trades and matched orders in SPYs accounted for nearly eighty-one percent of the SPY trading volume on MarketXT that day, making Amanat's trades a significant part of MarketXT's volume in that security. In the afternoon, Amanat ran RLevi2 in the Irfan account. He sent buy and sell market orders in DIAs to MarketXT every two to three seconds, resulting in an additional forty-nine wash trades.

G. Wednesday, March 27, 2002

After two days of running RLevi2 in the Irfan and Signr accounts, Amanat was still thousands of trades short of the 18,000 trades needed to qualify for rebates. He decided to decrease again the number of seconds between his paired market orders. He also adjusted the program so that each buy order preceded a sell order by seven hundred milliseconds.

On March 27, 2002, Amanat ran RLevi2 in the Irfan and Signr accounts, sending pairs of buy and sell one hundred share market orders in SPYs to MarketXT every one to three seconds. This activity resulted in over 11,000 wash trades and matched orders in SPYs. It accounted for over ninety-three percent of the trading volume in SPYs on MarketXT that day and ninety-three percent of the total SPY trades sent from the Irfan and Signr accounts and effected on MarketXT.

Several people noticed Amanat's trading in SPYs. Nasdaq Market Operations staff called MarketXT early in the afternoon of March 27 and asked if there was a "system problem." The

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20/   (...continued)
        March 25, 2002, Cummins did not recall whether she first spoke to Bundy on that day or on March 27, 2002.

staff remarked on the large volume of one hundred share trades, which was out of the ordinary for the firm. A MarketXT employee replied that there was no problem of which he was aware, but that he would inquire further. Meanwhile, Bundy also had observed the SPY trading that day. He noted that the trading pattern was similar to that on March 25, but instead of one trade occurring in each time interval, there seemed to be three trades occurring. Bundy reported the trading to Lauderback and Cummins.

Cummins testified that, when she investigated the SPY trading on March 27, 2002, she discovered that Amanat was on both sides of the trades. Cummins told Momentum's chief operating officer, R. Daniel Connell, to stop the trading. Ignall located the RLevi2 program running on Amanat's computer and shut it down. Cummins sent an e-mail to Amanat, who she understood was responsible for the trading, and instructed him to call her.

Amanat had been out of the office for several hours, letting RLevi2 operate automatically in his absence. Upon his return, he discovered that RLevi2 had stopped running. Without determining why the program had stopped running, he restarted it. Amanat testified that, when he did so, "all hell broke loose." Telephones started ringing, and he received an e-mail from Connell ordering him to stop the RLevi2 program immediately. 21/ Amanat shut down the program. Connell thereafter informed Amanat that the thousands of March 27 SPY trades in the Signr account were wash trades and that such trading was "wrong." 22/

Amanat testified that, during the three trading days in question, he made numerous adjustments to the RLevi2 program, monitored his open position, profits and losses, and net number of open buy and sell orders, and reviewed his limit orders. 23/ However, Amanat claimed that he did not monitor the trading that RLevi2 produced while it was operating because the computer would have been slowed down and a trade would have been missed. He claimed that he also did not review RLevi2's results after it stopped running each day.

H. Amanat Pursues Rebates for his Trading

On March 28, 2002, the day after he was told by Tradescape compliance and supervisory personnel that his trading was wrong, Amanat sent an e-mail to Nasdaq inquiring about rebates

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21/ Around this same time, Connell sent an e-mail to Ignall stating that Nasdaq had called "again," apparently about the trading.

22/ Another contemporaneous e-mail from Connell indicates that, while Connell (along with Ignall) had been out of town the prior week, Connell had instructed that RLevi2 be "shut down" because it was "experiencing problems." At the hearing, Amanat claimed that he did not know that Connell previously had ordered his program to be shut down.

23/ A limit order is an order to buy or sell a security at a specific price or better. Robert J. Prager, 85 SEC Docket at 3418 n.12.

for his trades. He asked, "[C]ould you send me the list of trades we've done on [T]ape A and B, and tell me if we [MarketXT] qualified (crossing my fingers here!) Thanks!" Amanat did not reveal to Nasdaq that he had been on both sides of his trades, or that the firm had told him that his trading must stop. 24/ At the hearing, Amanat was asked why he pursued rebates after being told that the March 27 SPY trades were wash trades. Amanat answered, "I didn't know what percent or what was the problem. All I know is that Dan Connell said there was a problem, [and] I had to stop trading in that [Signr] account." He added, "I didn't know there was any reason why I couldn't ask about those rebates."

The trading data reveals that a total of 20,483 trades in Tape B securities were effected on MarketXT between March 25 and 27, 2002. 25/ Of those trades, seventy percent or over 14,000 of them were Amanat's wash and matched trades in and between the Irfan and Signr accounts. The thirty percent that were not wash or matched trades included trading by other Tradescape employees and Amanat's trading using programs other than RLevi2. 26/ Amanat, his expert, and

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24/   The Tape B administrator testified that CTA participants consider wash trades and matched orders to be illegitimate and non-qualifying for purposes of allocating market data revenues. She stated that, if a CTA participant receives market data revenue based on wash trades and matched orders, it "should return that revenue to the administrator of the tape and the revenue should be reallocated based on the correct trade allocation."

25/   Contrary to the law judge, we find, based on our review of the resulting trading, that the substantial majority of orders generated by RLevi2 were executed on MarketXT, and not routed to SuperSOES, a Nasdaq trading system, or otherwise exposed to the rest of the market. According to the Division's analysis, on March 25, 2002, the Irfan account generated 1,696 trades in DIAs (in which the Irfan account was on both sides of the trade) on MarketXT. The total number of DIA trades on all markets from the Irfan and Signr accounts was 1,710. On March 26, 2002, the Irfan and Signr accounts generated 1,608 SPY trades (in which Irfan and/or Signr appeared on both sides of the trade) on MarketXT, and 2,290 SPY trades on all markets. On March 27, 2002, the Irfan and Signr accounts generated 11,405 SPY trades (in which Irfan and/or Signr appeared on both sides of the trade) on MarketXT, and a total of 12,218 SPY trades on all markets.

26/   The law judge faulted the Division's expert for, among other things, failing to "compute the thousands of trades that were excluded from the Division's exhibits." However, the Division's expert, using Momentum's audit trail data, identified patterns suggestive of wash and matched trades. Based on those patterns, he requested from MarketXT trading data for March 25 through 28, 2002, in order to identify the parties to those trades. From the data, the Division's expert identified trades in which the Irfan and/or Signr accounts were involved, and trades which appeared sufficiently close in time to be wash or matched trades. The Division's expert testified that he excluded Amanat's limit orders and certain market orders in and between the Irfan and Signr accounts from his analysis

(continued...)

the Division's expert all agreed that the greater than 14,000 trades in question executed with Amanat on both sides of the trades. The trading data reveals that, on March 25, 2002, the DIA orders that Amanat, using RLevi2, sent and executed on MarketXT matched one hundred percent of the time. On March 26, 2002, ninety-four percent of the SPY orders and seventy-five percent of the DIA orders matched. On March 27, 2002, the SPY orders sent using RLevi2 matched ninety-nine percent of the time. 27/ As a result, MarketXT averaged six hundred thirty-one trades per day in Tape B securities for the first quarter of 2002, thereby qualifying for rebates. 28/ In June 2002, MarketXT received from Nasdaq nearly $50,000, which represented the revenue earned, in part, because of Amanat's trading. 29/

26/   (...continued)
because, although some of the trades were suggestive of wash or matched trades, the patterns were not as clear.

From the record, we understand that the trading data used by the Division was provided to Amanat. While at the hearing, Amanat objected to the data, asserting that trades were missing, he identified only "OTC" and "World Com" trades and trades that assertedly had routed out of MarketXT. Amanat stated that he had not sought to obtain any additional data from any Tradescape entity. Moreover, he did not offer an alternative analysis of the data produced by the Division.

27/   These percentages contradict the law judge's findings that there were only a "few pairings among the thousands of trades," and that the wash and matched trades were a "small percentage of the market orders in ETFs . . . placed by the RLevi2 program."

28/   Apart from the rebates, Amanat did not make any profits on his trading between March 25 and 27, 2002, using the RLevi2 program. In his brief, Amanat asserts that the RLevi2 program generated profits of $20,000 and that this fact, among others, demonstrates that his trading was not riskless, and therefore was not wash or matched trading. However, Amanat's own testimony contradicts the assertion that he made a profit using RLevi2. At the hearing, he acknowledged that the $20,000 figure reflected "arbitrage profits" from his "mirroring trading and the rest."

29/   In January 2005, Nasdaq reimbursed the CTA for Tape B revenue received based on MarketXT's March 2002 trading. In February 2005, the Commission issued a report of investigation arising out of that trading. See Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the Nasdaq Stock Market, Inc., as Overseen by its Parent, the National Association of Securities Dealers, Inc., Exchange Act Rel. No. 51163 (Feb. 9, 2005), 84 SEC Docket 3129.

III.

A. Amanat Willfully Violated Section 10(b) and Rule 10b-5

Exchange Act Section 10(b) makes it unlawful for any person "[t]o use or employ in connection with the purchase or sale of any security . . . any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors." 30/ Rule 10b-5, which implements this section, prohibits fraud, misleading statements or omissions, and any act, practice, or course of business that operates as a fraud "in connection with the purchase or sale of any security." 31/

1. Amanat Engaged in a Fraudulent Scheme

Amanat engaged in a fraudulent scheme to earn rebates for MarketXT. By generating thousands of wash trades and matched orders that MarketXT falsely reported to Nasdaq, Amanat misrepresented the number of legitimate trades in Tape B securities executed by MarketXT for the March 2002 quarter. Amanat's misrepresentations were material because they caused Nasdaq to believe that MarketXT had reached the trading threshold required to qualify for rebates. His misrepresentations triggered Nasdaq's payment to MarketXT of rebates for all of its reported trades, both legitimate and illegitimate. Moreover, Amanat's trades through MarketXT caused Nasdaq to receive more than its proper share of market data revenue, thereby defrauding other CTA participants. 32/

30/   15 U.S.C. § 78j(b).

31/   17 C.F.R. § 240.10b-5; see SEC v. Zandford, 535 U.S. 813, 825 (2002) (a scheme to defraud is "in connection with" with a securities transaction if it "coincides" with that transaction).

32/   Amanat claims that Section 10(b)'s materiality requirement was not met because the $50,000 in Tape B revenue that MarketXT gained was so small in comparison to the total amount of Tape B revenue in fiscal year 2002 as to be immaterial. Amanat's conduct in misrepresenting his wash trades was material. Nasdaq and CTA participants reasonably would have wanted to know that trades were illegitimate because those trades enabled MarketXT improperly to qualify for market data revenue. See, e.g., TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 445 (1976) (question of materiality involves significance of omitted or misrepresented fact to reasonable investor). Moreover, the firm earned only $50,000 because Amanat's trading, which he viewed as a long-term strategy, was stopped in its early stages.

Amanat contends that his wash trading could not have violated Section 10(b) and Rule 10b-5 because it did not affect the market price of the ETFs. 33/ However, those provisions have been broadly construed. 34/ Wash and matched trades have long been recognized as fraudulent devices proscribed by Section 10(b) and Rule 10b-5. 35/ In SEC v. Graham, 36/ for example, the court held that wash trades and matched orders arranged by a customer "for the purpose of obtaining a float in a scheme similar to check-kiting" constituted fraud under Section 10(b) and Rule 10b-5. The court found that the customer defrauded the broker-dealers through which he traded by causing those broker-dealers to remit sale proceeds to him that they would not have paid had they known the true nature of the transactions. 37/ Quoting the Supreme Court's decision in United States v. Naftalin, 38/ the court stated that the antifraud provisions were broad

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33/ The OIP did not allege that Amanat's wash trading affected the price of the ETFs. Nor did the Division "stipulate[] that Amanat's trades did not have a deceptive impact on the marketplace," as represented in Amanat's brief. The Division has maintained throughout this proceeding that Amanat used wash and matched trades to defraud Nasdaq and other CTA participants.

34/ See, e.g., Chiarella v. United States, 445 U.S. 222, 226 (1980) ("Section 10(b) was designed as a catch-all clause to prevent fraudulent practices"); Affiliated Ute Citizens v. United States, 406 U.S. 128, 151 (1972) (Section 10(b) and Rule 10b-5 "are broad and, by repeated use of the word 'any,' are obviously meant to be inclusive"); Superintendent of Ins. v. Bankers Life & Cas. Co., 404 U.S. 6, 11 n.7 (1971) (Section 10(b) and Rule 10b-5 prohibit all fraudulent schemes in connection with the purchase and sale of securities, whether they involve "a garden type variety of fraud, or present a unique form of deception. Novel or atypical methods should not provide immunity from the securities laws.") (internal quotation marks and citations omitted); SEC v. Nat'l Sec., Inc., 393 U.S. 453, 467 (1969) (courts must look to see whether the "alleged conduct is the type of fraudulent behavior that was meant to be forbidden by the statute and the rule," and ask whether "[t]he broad antifraud purposes of the statute and the rule would clearly be furthered by their application to this type of situation").

35/ See Santa Fe Indus., Inc. v. Green, 430 U.S. 462, 476-77 (1977).

36/ 222 F.3d 994 (D.C. Cir. 2000).

37/ Id. at 1000; see also Orlando Joseph Jett, Securities Act Rel. No. 8395 (Mar. 5, 2004), 82 SEC Docket 1211 (trader's trading strategy of generating illusory profits constituted fraud on firm that employed him because it caused firm to pay trader bonuses and other benefits in reliance on those illusory profits). The Graham court therefore found it unnecessary to address the argument that the customer's trades constituted a fraud on the market.

38/ 441 U.S. 768 (1979).

prohibitions designed to "achieve a high standard of business ethics . . . *in every facet of the securities industry.*" 39/

As in Graham, we find that the wash trades and matched orders entered by Amanat for the purpose of obtaining rebates for MarketXT constituted fraud under Section 10(b) and Rule 10b-5. 40/ Amanat committed fraud by generating Tape B rebates in a manner that deceived Nasdaq and CTA participants as to Nasdaq's proper share of market data revenue. 41/

Amanat also contends that his wash trades could not violate Section 10(b) and Rule 10b-5 because they did not meet the "definition" of wash trades on the Commission's website. The website contains a general statement that wash trades violate Rule 10b-5 "if they are done to create the false or misleading appearance of active trading in a security." 42/ However, the website expressly states that this information is provided as a "service" to investors and is

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39/   Graham, 222 F.3d at 1002 (internal quotation marks omitted and emphasis in original).

40/   Amanat's expert testified that Amanat's trading was not fraudulent because it was "common" for traders to engage in trading with "themselves" to generate market data revenue. However, on cross-examination, Amanat's expert could identify only one other instance of such trading, involving Swift Trade Securities USA, Inc. Swift Trade was the subject of an NASD enforcement action for engaging in a deceptive trading scheme from April 2002 to May 2002 to earn rebates, using a computer software program to generate wash trades in QQQs. That action settled in 2002, with NASD imposing censures, fines, and disgorgement against Swift Trade and its president. See NASD Notices to Members (Disciplinary Actions Nov. 2002), 2002 WL 31548129.

41/   We reject Amanat's assertion that his wash and matched trading should have been addressed through rulemaking rather than adjudication. The fact that Amanat used wash and matched trades in connection with a novel scheme to obtain market data rebates does not obviate our broad discretion in determining which method to pursue. See SEC v. Chenery Corp., 332 U.S. 194, 202-03 (1947) ("[A]n administrative agency must be equipped to act either by general rule or by individual order."). "[B]ecause we cannot foresee every possible application of rules, we may determine specific applications on a case-by-case basis in adjudication." KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1173 n.94 (2001), reh'g denied, 55 S.E.C. 1 (2001), pet. denied, 289 F.2d 109 (D.C. Cir. 2002).

We also reject Amanat's assertion that the Division "transform[ed] what, at most, is a claim that [his] activities caused Nasdaq to breach the CTA Plan into a claim for securities fraud." Amanat's conduct was designed to deceive Nasdaq into paying rebates to which MarketXT was not lawfully entitled.

42/   See http://www.sec.gov/answers/wash.htm.

"neither a legal interpretation nor a statement of [Commission] policy." 43/ Furthermore, the fact that Amanat's purpose was to generate rebates for the firm based on trading activity is consistent with the statement on the website.

  2. Amanat Acted With Scienter

  Violations of Section 10(b) and Rule 10b-5 require scienter, "a mental state embracing intent to deceive, manipulate, or defraud." 44/ It includes recklessness, which is defined as "an extreme departure from the standards of ordinary care" presenting a danger of defrauding others that is "either known to the [respondent] or so obvious that the [respondent] must have been aware of it." 45/ Amanat acted with scienter. 46/ He knew or was, at a minimum, reckless in not knowing that the thousands of ETF trades he was executing on MarketXT in the Irfan and Signr accounts through RLevi2 matched against each other at least seventy-five percent of the time on each of the trading days in question.

43/ Id.; see SEC v. Calvo, 378 F.3d 1211, 1218 (11th Cir. 2004) (summary of telephone interpretation on SEC's website could not afford any relief to defendant where website unambiguously stated that interpretation was not binding).

44/ Ernst & Ernst v. Hochfelder, 425 U.S. at 193 n.12.

45/ Steadman v. SEC, 967 F.2d 636, 641-42 (D.C. Cir. 1992) (quoting Sundstrand Corp. v. Sun Chem. Corp., 553 F.2d 1033, 1045 (7th Cir.), cert. denied, 434 U.S. 875 (1977)). In this case, the law judge, citing The Rockies Fund, Inc. v. SEC, 428 F.3d 1088 (D.C. Cir. 2005), erroneously concluded that the specific intent standard under Section 9(a) of the Exchange Act (prohibiting wash sales and matched orders conducted "[f]or the purpose of creating a false or misleading appearance of active trading" of a registered security on a national exchange) should be applied to wash sales and matched orders under Section 10(b) and Rule 10b-5. The Rockies Fund declined to reach the issue of what standard of intent should be applied to wash trades and matched orders under the statute and rule. In fact, the court observed that "Rule 10b-5 generally requires only extreme recklessness." Id. at 1093 (internal quotation marks and citation omitted). Amanat was not charged with violating Section 9(a).

46/ Amanat argues that we must defer to the law judge's credibility findings. However, the law judge made no explicit credibility findings here. Even if she had, we do not accept those findings "blindly." Kenneth R. Ward, Securities Act Rel. No. 8210 (Mar. 19, 2003), 79 SEC Docket 3035, 3055, aff'd, 75 Fed. Appx. 320 (5th Cir. 2003). Rather, we have stated previously that "there are circumstances where, in the exercise of our review function, we must disregard explicit determinations of credibility." Id. Based on our close review of the record, we find that Amanat's testimony that he did not design his RLevi2 program to generate wash or matched trades was internally inconsistent and belied by substantial, contrary evidence.

The record shows that Amanat knew that MarketXT had "cash flow" problems. He also believed that trading for rebates would be a profitable, long-term strategy. E-mails in the record reflect that Tradescape personnel, including Amanat, viewed rebates as a source of cash. Amanat inquired about the specifics of Nasdaq's rebate program and what it took to earn rebates. He knew that trades that crossed internally within a firm would qualify toward rebates. He knew that a firm, such as MarketXT, that averaged at least five hundred or more daily trades in Tape A or Tape B securities in a calendar quarter would qualify for rebates; that the rebates for trades in Tape B securities were larger than those for Tape A securities; and that trades in ETFs qualified for the larger Tape B rebates. 47/

Amanat conferred with Nasdaq officials and knew that, with one trading week left in the first quarter of 2002, MarketXT needed 18,000 trades to qualify for Nasdaq's rebates. Amanat resolved to "ramp up" his rebate trading in the short time left in the quarter by using RLevi2, a computerized program that he alone designed and operated, and that no one else at Tradescape had seen or understood. Amanat coded RLevi2 to send simultaneous or near simultaneous pairs of buy and sell orders. 48/ We find that the program held the buy order on MarketXT while it waited for a sell order to arrive and execute on MarketXT's system, a system that he knew swept its order book and matched any new buy order against outstanding orders before sending that order to be filled in the marketplace. As a result, the RLevi2 program minimized the risk that Amanat's buy order would execute with a sell order from any market participant other than himself.

Amanat has not disputed that his wash and matched trades involved no change in beneficial ownership. He nonetheless claims that he did not design RLevi2 to generate wash or matched trades. In his brief, Amanat hypothesizes that former MarketXT programmer, Brian Nigito, "reconfigured" MarketXT's system so that his purchase and sell orders would not "route out consecutively as intended, and that the MarketXT program would first sweep the MarketXT

47/ Amanat contends that he also chose to trade in ETFs because the Commission "has acknowledged [in no-action letters] that ETFs are not subject to manipulation by exempting ETFs from [Exchange Act] Rule 10a-1," which requires that short sales must occur at a price above the price at which the immediately preceding sale was affected. Those no-action letters make clear that ETFs are not exempt from the Exchange Act's antifraud provisions. We also have stated that "[n]o-action letters are staff determinations not to recommend enforcement action. They do not necessarily reflect the views of the Commission nor do they have the force of law." Enron Corp., Public Utility Holding Act Rel. No. 27782 (Dec. 29, 2003), 81 SEC Docket 3802, 3821 n.50.

48/ Amanat disputes the characterization of his March 26 and 27, 2002, orders as "simultaneous" or "near simultaneous," arguing that the "cycle time of MarketXT is in milliseconds, not in seconds." We find those trades to be nearly simultaneous and nearly riskless, particularly since the buy orders were held on the firm's system waiting for the corresponding sell orders.

book for matches." He further hypothesizes that "[i]t was this unexpected and unintended circumstance that resulted in the heretofore unheard of washes of market orders in ETFs, creating a 'perfect storm' of 'unintended, inadvertent and unforeseeable' results."

Even assuming that Amanat did not design RLevi2 to generate wash or matched trades, his development and operation of an automated system with a high probability of producing wash and matched trades was reckless. 49/ Operating a computer program that he described as a "work in progress," Amanat continually adjusted RLevi2's parameters between March 25 and 27, 2002, without, according to his testimony, reviewing any of the trades RLevi2 was producing on each of those days. Amanat did not examine his trading even when he learned that he had been accused of "painting the tape" with his trades. 50/ Amanat knew from prior experience assisting Tradescape compliance personnel what wash trades were and that they were illegal. He knew how to safeguard a program against wash trades, but RLevi2 contained nothing to prevent wash trades.

Moreover, Amanat's hypothesis appears to be inconsistent with the evidence. We find particularly significant Amanat's admission at the hearing that he knew that MarketXT's system swept its order book for matches. His own expert confirmed that RLevi2 was configured to hold and match orders on MarketXT before an order would be sent to the marketplace. Furthermore, Amanat acknowledged on cross-examination that he was speculating about whether Nigito had, in fact, changed MarketXT's system. Amanat stated, "These are things I'm assuming from afterwards. . . . I'm not trying to say that is what necessarily happened." While Nigito appeared and testified at the hearing, Amanat never asked Nigito whether, during the time that they were not speaking, Nigito had somehow reconfigured MarketXT's system.

People who saw the trading produced by RLevi2, including Nigito, Bundy, Lauderback, Cummins, Connell, and Nasdaq Market Operations staff, recognized that Amanat's trading was

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49/ At the hearing, Amanat testified that some thirty percent of the RLevi2 trades routed out of MarketXT. However, as indicated previously, he failed to substantiate that claim. While, in his brief, he cites Division Exhibit 27, that exhibit, which discusses trading solely on MarketXT, states that seventy percent of all the trades effected on MarketXT between March 25 and 27, 2002, were wash and matched trades. It says nothing about the percentage of trades routed out of MarketXT. Thus, contrary to the law judge's findings, the substantial majority of orders generated by RLevi2 were held on MarketXT, and not sent out to SuperSOES or otherwise exposed to the rest of the market.

50/ Amanat asserted that, after being accusing by Nigito of "painting the tape," he thought the problem in the trading was caused by limit orders, so he stopped his limit order trading in response. However, on March 25, 2002, Amanat was using market orders, and not limit orders, in DIAs, the security in which his trades were matching on that day. Moreover, Amanat did not stop his limit order trading; rather, he continued to use limit orders on March 26 and 27, 2002.

problematic. Although Amanat claimed that he was ignorant of that fact before March 27, 2002, he was on notice by that afternoon, at the latest, that his program was producing wash and matched trades. Amanat admitted that Connell and Cummins informed him that he had engaged in wash sales in the Signr account and that his trading was "wrong." Nevertheless, he proceeded to ensure that Nasdaq paid MarketXT the rebates that his trading had earned, without revealing to Nasdaq that he had been ordered to stop the trading. 51/

Amanat suggests that, when he contacted Nasdaq on March 28, 2002, he did not know how many trades were "wrong," and therefore non-qualifying, for rebate purposes. However, he knew that, without the thousands of March 27 SPY trades, MarketXT could not possibly meet Nasdaq's trading threshold for rebates. If Amanat was still unsure of the number of MarketXT's qualifying trades, he could have waited to pursue rebates until that number was ascertained. 52/ He had to know by June 2002, when Nasdaq paid $50,000 53/ in rebates to MarketXT, that his

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51/   Amanat claims that "his trading was intended to do exactly what Nasdaq encouraged him to do, i.e., to execute many trades that, with the promised rebates, would be profitable." Clearly, Nasdaq was encouraging legitimate trading, not wash trading. Nasdaq staff considered the March 27, 2002, trading to be unusual for MarketXT, and called the firm to inquire about a "system problem." Amanat also claims that he relied on Nasdaq to insure that RLevi2 complied with applicable regulatory requirements. However, Nasdaq staff never saw the RLevi2 program, nor did they know the nature of Amanat's trading. In any event, Amanat cannot shift his responsibility for compliance to Nasdaq. See, e.g., Castle Sec. Corp., Exchange Act Rel. No. 52580 (Oct. 11. 2005), 86 SEC Docket 1466, 1469 n.8.

Amanat also blames his colleagues for failing to ensure that RLevi2 did not produce wash trades, or for failing to break his trades and stop him from trading once they knew what it had produced. As stated earlier, no one at Tradescape saw the RLevi2 program or knew how RLevi2 operated. Once the nature of Amanat's trading was discovered, Tradescape personnel disabled the program, and subsequently told Amanat to stop the trading after he restarted it. Even if they had failed to stop him sooner, Amanat was responsible for his own actions. See, e.g., Jett, 82 SEC Docket at 1249 ("Even if, contrary to the record, Jett's supervisors and co-workers knew about his fraud on the firm – indeed even if they ordered him to commit it – that would not relieve Jett of responsibility for what he knew or was reckless in not knowing and for what he did.").

52/   Amanat did not argue or point to any evidence that he was under a time deadline in pursuing rebates from Nasdaq.

53/   Amanat asserts that only a portion of the trades that qualified MarketXT for a $50,000 rebate were attributable to his wash trading and that some of the trading was legitimately

(continued...)

trading improperly had qualified the firm for that revenue. 54/ Amanat willfully violated Section 10(b) and Rule 10b-5. 55/

IV.

A. Bar from Association

Exchange Act Section 15(b)(6) 56/ authorizes the Commission to bar a person associated with a broker-dealer if he has willfully violated the federal securities laws and such sanction is in the public interest. In determining whether a bar is in the public interest, we consider the factors identified in Steadman v. SEC. 57/ Those factors include the degree of scienter involved, the isolated or recurrent nature of the infraction, the sincerity of any assurances against future violations, and the likelihood that a respondent's occupation will present opportunities for future violations. 58/

Amanat committed serious violations of the antifraud provisions. He defrauded Nasdaq and, through Nasdaq, other CTA participants of valuable market data revenue when he executed over 14,000 wash and matched trades that MarketXT reported to Nasdaq. Amanat's conduct

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53/ (...continued)
done by others. However, Amanat would not have met the trading threshold necessary to obtain rebates without his wash and matched trades on March 25, 26, and 27, 2002.

54/ Amanat raises a vague claim that he was the victim of "selective prosecution." To prevail on such a claim, he must establish that he was singled out for enforcement action while others similarly situated were not, and that his prosecution was motivated by arbitrary or unjust considerations, such as race, religion, or the desire to prevent his exercise of a constitutionally-protected right. See, e.g., Amato v. SEC, 18 F.3d 1281, 1285 (5th Cir.), cert. denied, 513 U.S. 928 (1994). Amanat has not substantiated any of those elements.

55/ A willful violation of the securities laws means the intentional commission of an act that constitutes the violation; there is no requirement that the actor must "also be aware that he is violating one of the Rules or Acts." Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (internal quotation marks and citation omitted). In light of our conclusion that Amanat willfully violated Section 10(b) and Rule 10b-5, we do not address whether he willfully aided and abetted, and was a cause of, MarketXT's violations.

56/ 15 U.S.C. § 78o(b)(6).

57/ 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981).

58/ Id. at 1140.

demonstrates at least recklessness. He continued trading despite accusations that he was "painting the tape" with his trades. After being warned that his trading was "wrong" and had to stop, he continued to pursue rebates for the trades, concealing from Nasdaq what he had been told about the improper nature of his trading. Amanat's trading was not an isolated incident, but a recurrent pattern that stopped only after it was detected.

Amanat has offered no assurances against future violations. His involvement in the financial industry presents opportunities for future violations. While Amanat asserts in his brief that he has been "effectively unemployed" as of January 2003, the record reflects that he has held at least two positions since then. In 2003, he was a consultant for Computer Clearing Services, Inc. ("CCS"), a clearing firm and broker-dealer, where he was paid $100,000 a year. From 2004 or 2005 until recently, he was associated with FX Trading, LLC ("FXT"), a futures commission merchant, where he served as "chief technical officer" and was responsible for the firm's financial records. 59/ Given his age (30's) and prior experience, Amanat will have ample opportunities to commit future violations if a bar is not imposed.

In addition, we note that, in February 2005, NASD found that Amanat omitted to describe his role at CCS or tell NASD that our enforcement staff had requested a "Wells submission" 60/ in this matter during NASD's consideration of CCS's application to transfer a controlling interest in CCS to an Amanat family-owned and controlled entity. In denying CCS's application, NASD concluded that CCS failed to demonstrate that it and its associated persons, including Amanat, were capable of complying with the federal securities laws and NASD rules. 61/ In a June 2006 proceeding against FXT, the National Futures Association ("NFA") found that Amanat was acting as a principal of FXT, without being registered as one, in violation of NFA registration

59/   The Division has moved, pursuant to Rule of Practice 452, for leave to adduce this new evidence concerning Amanat's activities. See 17 C.F.R. § 201.452 (motion for leave to adduce additional evidence "shall show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously"). We have determined to grant the motion. The documents are material because they contradict representations made by Amanat in his submissions on appeal. There were reasonable grounds for the Division's failure to adduce the documents previously because they did not exist until after the hearing before the law judge.

60/   A "Wells submission" is an opportunity for a person involved in an investigation to provide a written statement to the Commission setting forth the person's interests and position with regard to the subject matter of the investigation. 17 C.F.R. § 202.5(c).

61/   See Membership Continuance Application of Computer Clearing Services, Inc., Application No. A02036058 (NASD National Adjudicatory Council Feb. 10, 2005) (finding that CCS's application contained inaccurate statements concerning Amanat's role at CCS and his failure to disclose the investigation that led to this proceeding).

rules. 62/ The record as a whole, especially the evidence regarding the seriousness of Amanat's violations, the degree of scienter involved, the lack of assurances against future violations, and the opportunity to commit future violations, leads us to conclude that imposition of a bar with a right to reapply in five years is a measured response to Amanat's wrongdoing when evaluated against the Steadman factors and is appropriate in the public interest.

B. Cease-and-Desist Order

Exchange Act Section 21C authorizes the Commission to enter a cease-and-desist order against any person who "is violating, has violated, or is about to violate" any provision of the Exchange Act or rule or regulation thereunder. 63/ In considering whether a cease-and-desist order is appropriate, we look to whether there is some risk of future violations. 64/ We also consider whether other factors demonstrate a need for a cease-and-desist order, including the seriousness of the violation, its isolated or recurrent nature, 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, the opportunity to commit future violations, and the remedial function to be served by a cease-and-desist order in the context of any other sanctions sought in the proceeding. 65/

Amanat engaged in multiple acts producing thousands of wash and matched trades in three days. His trading fraudulently induced Nasdaq to pay MarketXT rebates and improperly inflated Nasdaq's volume to the detriment of other CTA participants, a harm that likely would have increased if the trading had not been detected and stopped. As we have found, Amanat's conduct was at least reckless. He has remained involved in the financial industry, and thus has opportunities to commit future violations. The recent findings made by NASD and the NFA underscore his failure or refusal to comply with applicable regulatory requirements. Moreover, his wash or matched trading to generate market data revenue detracted from the accuracy and usefulness of the market data streams. We conclude that Amanat poses a substantial, continuing risk of harm to investors and the marketplace. A cease-and-desist order is in the public interest.

62/ See FX Trading, LLC & Shaheryar Khan, NFA Case No. 06-BCC-001 (NFA Business Conduct Committee June 7, 2006) (finding numerous violations of NFA rules and imposing permanent bar against FXT and Khan).

63/ 15 U.S.C. § 78u-3.

64/ KPMG, 54 S.E.C. at 1185. The risk of future violations required to support a cease-and-desist order is significantly less than that required for an injunction. Id. at 1191. A single violation can be sufficient to indicate some risk of future violation. See Geiger v. SEC, 363 F.3d 481, 489 (D.C. Cir. 2004).

65/ KPMG, 54 S.E.C. at 1192.

C. Civil Money Penalties

Exchange Act Section 21B(a) authorizes the Commission to assess a civil money penalty where a respondent has willfully violated the Exchange Act or rules and regulations thereunder, and such a penalty is in the public interest. 66/ It specifies a three-tier system identifying the maximum amount of a penalty. For each "act or omission" by a person, the maximum amount of a penalty is $6,500 in the first tier, $60,000 in the second tier, and $120,000 in the third tier. 67/ A second-tier penalty is permissible if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. 68/

The Division seeks a second-tier penalty against Amanat. Because his conduct involved fraud, a second-tier penalty is permissible. Although the Division has requested $60,000 for each violative act or trading day, for a total of $180,000, we have determined to consider the three-day trading period as one act. A $60,000 civil money penalty is within statutory limits.

We further find that Amanat's violations harmed Nasdaq and other CTA participants. 69/ While MarketXT, and not Amanat, was directly enriched by his conduct, Amanat and his family held an ownership interest in Tradescape, which included MarketXT as a subsidiary. Amanat does not appear to have been the subject of prior regulatory action. However, findings in recent proceedings by other regulatory bodies indicate a strong likelihood of future violations. The need

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66/   15 U.S.C. § 78u-2(a). In deciding whether a penalty is in the public interest, the Commission may consider the following six statutory factors: (1) fraud; (2) harm to others; (3) unjust enrichment; (4) prior violations; (5) need for deterrence; and (6) such other matters as justice requires. 15 U.S.C. § 78u-2(b).

67/   Pursuant to the Debt Collection Improvement Act of 1996, the Commission has increased the maximum penalty amounts for violations. See 17 C.F.R. § 201.1002, Subpt. E, Table II.

68/   15 U.S.C. § 78u-2(b)(2). A third-tier penalty not only must have involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement, but also must have "directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission." 15 U.S.C. § 78u-2(b)(3).

69/   See supra text at pp.15 &17.

to deter misconduct by others is present. 70/ A second-tier civil money penalty of $60,000 is in the public interest.

An appropriate order will issue. 71/

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

Nancy M. Morris
Secretary

70/   Amanat's assertion that he cannot pay a civil money penalty is unsubstantiated. He has not filed any required documentation, such as a sworn financial statement demonstrating an inability to pay. The Division's newly-produced evidence indicates that, at a February 2006 district court hearing on a preliminary injunction motion brought by the Commodity Futures Trading Commission against FXT, Amanat appeared and did not dispute evidence that he had a personal bank account at the Bank of Dubai containing at least $350,000, as of November 2005.

71/   We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 54708 / November 3, 2006

Admin. Proc. File No. 3-11813

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In the Matter of

IRFAN MOHAMMED AMANAT

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ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Irfan Mohammed Amanat be, and he hereby is, barred from association with any broker or dealer subject to a right to reapply for association after five years to the appropriate self-regulatory organization or, if there is none, to the Commission; and it is further

ORDERED that Amanat cease and desist from committing or causing any violations or future violations of Section 10(b) or Rule 10b-5 of the Securities Exchange Act of 1934; and it is further

ORDERED that Amanat pay a civil money penalty of $60,000.

Payment of the civil money penalty 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, VA 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 Valerie A. Szczepanik, Division of Enforcement, Securities and Exchange Commission, Northeast Regional Office, 3 World Financial Center, Room 4300, New York, NY 10281-1022.

By the Commission.

Nancy M. Morris
Secretary