

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 55024 / December 29, 2006**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-12520**

**In the Matter of**

**TODD W. MILLER,**

**Respondent.**

**ORDER INSTITUTING  
ADMINISTRATIVE PROCEEDINGS,  
MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS PURSUANT TO  
SECTION 15(b) OF THE SECURITIES  
EXCHANGE ACT OF 1934 AS TO TODD  
W. MILLER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Todd W. Miller (“Respondent” or “Miller”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings, Making Findings, and Imposing Remedial Sanctions Pursuant Section 15(b) of the Securities Exchange Act of 1934 (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

1. Miller, 42 years old, is a resident of Edina, Minnesota. From January 2001 through July 2001, Miller was president of MJK Clearing, Inc. ("MJK") and directly supervised MJK's Stock Loan Department ("SL Department"). He became COO of MJK's corporate parent, Stockwalk Group, Inc. ("Stockwalk") in July 2001 and served in that capacity through October 2001. From 1985 to January 2001, when MJK was incorporated, Miller was in charge of the clearing division of MJK's predecessor, Miller, Johnson and Kuehn, Inc. From 1985 to the present, Miller has been a registered representative associated with broker-dealers registered with the Commission. He is currently a registered representative at Stockwalk's sole remaining active subsidiary, Miller Johnson Steichen Kinnard, Inc. ("MJSK").

#### **Other Relevant Entities and Person**

2. Stockwalk is a Minnesota corporation with its principal place of business in Minneapolis, Minnesota, originally incorporated in the 1990s. Its subsidiary, MJK Clearing, Inc. ("MJK") was originally incorporated as Miller Johnson and Kuehn, Inc. in 1980. At all relevant times, Stockwalk's common stock was registered under Section 12(g) of the Exchange Act and was traded on the NASDAQ under the ticker "STOK." The common stock has since been delisted. During the relevant time period, Stockwalk had three subsidiaries: MJK, Stockwalk.com, Inc., and MJSK, a full-service broker-dealer.<sup>2</sup> In 2002, Stockwalk reorganized its debt under Chapter 11 of the Bankruptcy Code.

3. From January 2001, MJK provided securities clearing functions for Stockwalk's three registered broker-dealers and sixty-five other correspondent brokerage firms. MJK became insolvent on September 25, 2001. MJK and its predecessor, Miller Johnson and Kuehn, Inc. had been registered with the Commission as a broker-dealer since 1981.

4. Thomas G. Brooks ("Brooks"), 42 years old, is a resident of Eden Prairie, Minnesota. From January 3, 1999 to October 3, 2001, Brooks was the manager of the SL Department at MJK and vice-president of MJK. From 1993 to October 3, 2001, Brooks was a registered representative associated with MJK.

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> Clearing and transaction settlement services were originally provided by MJK Clearing Services, a division within Miller Johnson & Kuehn, Inc. On January 1, 2001, MJK Clearing, Inc. ("MJK") became a wholly-owned subsidiary of Stockwalk, while the brokerage components of Miller Johnson & Kuehn, Inc. were merged with the recently acquired R.J. Steichen and Co., and John G. Kinnard Co. brokerages, to create MJSK, then a wholly-owned subsidiary of MJK.

## Summary

5. From at least July 2001 through September 2001 (the “relevant time period”), Miller supervised Brooks. Miller failed reasonably to supervise Brooks adequately with a view to preventing Brooks’ violations of the federal securities laws and regulations. Brooks directly through his own actions, and in his direction of the actions of others in the SL Department, failed to collect millions of dollars of cash collateral owed to MJK. This resulted in massive stock borrow deficits, and ultimately caused MJK to lose millions of dollars. Brooks’ conduct also hid MJK’s true financial condition from broker-dealers doing business with MJK. During Brooks’ employment at MJK, Miller failed to establish or implement any supervisory procedures with a view to preventing and detecting Brooks’ violations and instead allowed Brooks to establish and implement all the procedures himself, including the recording of MJK’s stock loan and mark to market<sup>3</sup> activities, without any adequate oversight.

### Miller was Brooks’ Supervisor

6. Miller was the president of MJK from January 2001 until July 2001. Miller was responsible for supervising the clearing activities and the hiring and firing of MJK personnel and developing supervisory procedures. Miller shared the responsibility of supervising Brooks after he was promoted to COO through September 2001.

7. In January 1999, Miller hired Brooks to establish and manage MJK’s fledgling SL Department. Miller gave Brooks full authority and complete discretion over the day-to-day activities of the SL Department with very little supervision from Stockwalk and MJK’s management, including Miller.

### Brooks’ Fraudulent Conduct

8. From November 1, 2000, through September 2001, under Brooks’ direction, the SL Department borrowed at least two securities from another registered broker-dealer, Native Nations Securities, Inc. (“Native Nations”): Imperial Credit bonds and GenesisIntermedia (“GENI”) common stock, which it then loaned out to other broker-dealers.

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<sup>3</sup> Between at least July 2001 and September 2001, MJK’s SL Department engaged in stock loan transactions in which MJK acted as a middleman between two broker-dealers, matching a broker-dealer that had a particular security to lend with a broker-dealer that desired to borrow the security. These transactions are referred to as “conduit” transactions. When securities are borrowed and loaned in a conduit transaction, the borrowing broker-dealer posts cash collateral with the lender equaling or slightly exceeding the value of the borrowed securities.

Generally, if the market value of a security in a conduit transaction declines or increases, the broker-dealers engaged in the transaction “mark to market” or “mark” the positions by adjusting the amount of collateral to reflect the market value of the securities. If the value of the securities decreases, the borrowing broker-dealer records the reduced value of the security on its books and the lending broker dealer returns the excess collateral. Conversely, when the market value of the borrowed securities increases, the borrowing broker-dealer records the increased market value and posts additional collateral with the lending broker-dealer. MJK’s SL Department followed this practice except with respect to the GenesisIntermedia and Imperial Credit transactions with Native Nations on the occasions cited herein.

9. From July 2001 through September 2001, the SL Department failed to collect marks to market owed to MJK by Native Nations on stock loan transactions involving Imperial Credit bonds when the value of those bonds declined. In September 2001, the SL Department failed to collect marks to market owed to MJK by Nation Nations when the value of GENI common stock declined. Brooks directed the SL Department not to collect those marks owed to MJK by Native Nations because he had arranged with Native Nations that it would pay MJK a higher rebate on the money MJK had posted as collateral with Native Nations for those securities.

10. During this same time period, other broker-dealers were marking MJK for the decline in value of the Imperial Credit bonds and GENI common stock, which totaled millions of dollars. Brooks continued to pay daily marks out to these other broker-dealers who borrowed Imperial Credit bonds and GENI common stock from MJK as the value of those securities declined. Brooks' failure to collect marks owed to MJK while paying marks owed to other broker-dealers created substantial stock borrow deficits and significant harm to MJK's financial health.

11. On September 24 and 25, 2001, Miller and others discovered the substantial stock borrow deficits and learned of Native Nations' inability to pay the marks it owed to MJK. Miller immediately contacted the NASD and staff of the Commission regarding MJK's net capital deficiency. MJK was placed under the control of the Securities Investor Protection Corporation ("SIPC") and liquidated. MJK went out of business with Native Nations owing MJK uncollected marks of at least \$129.8 million for the GENI shares and at least \$63.2 million for the Imperial Credit bonds.

12. Based on this conduct, Brooks violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and aided and abetted violations of Sections 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-3, 17a-3, and 17a-5 thereunder.

**Miller Failed to Establish or Implement Supervisory Procedures to Prevent or Detect Brooks' Violations**

13. As described above, from at least July 2001 through September 2001, Brooks, among other things, failed to collect marks against Native Nations, resulting from the decline in value of the securities that MJK borrowed from Native Nations. Without ever conferring with Miller, Brooks directed the SL Department to pay marks to other broker-dealers who borrowed GENI and Imperial Credit bonds from MJK and not to collect marks against Native Nations for the same amount during the relevant time period. Brooks' conduct placed MJK at substantial financial risk.

14. During the relevant time period, Miller gave Brooks the responsibility of ensuring that marks were being paid out and collected as due. Miller did not implement any or establish any supervisory procedures or systems that would have reasonably prevented and detected whether Brooks had actually collected marks owed to MJK as it was paying out marks it

owed to other broker-dealers. Miller did not take any steps himself to verify that Brooks was actually collecting or paying marks.

15. During the relevant time period, Miller did not establish or implement any supervisory procedures or systems to monitor the risk taken in the SL Department and Miller took no adequate steps to monitor Brooks in this regard. Miller did not establish credit limits on the broker-dealers with which MJK did business. Miller did not require Brooks to confer or seek his approval concerning with whom MJK could transact business, in what amount, in what securities, or what the appropriate rebate amount should be for collateral borrowed from MJK. By failing to establish supervisory procedures and systems to address whether Brooks executed stock loan transactions only with appropriate counter-parties, Miller allowed Brooks to place MJK at unnecessary financial risk. If Miller had established and implemented such supervisory procedures and systems, it is likely that Brooks' violations could have been prevented and detected.

#### **Miller's Failure to Supervise**

16. As a result of the conduct described above, Miller failed reasonably to supervise Brooks, a person subject to his supervision within the meaning of Section 15(b)(4)(E) of the Exchange Act, with a view to preventing Brooks from violating the securities laws and regulations by failing to collect marks owed to MJK from Native Nations.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent Miller be, and hereby is, barred from association in a supervisory capacity with any broker or dealer, with the right to reapply for association in a supervisory capacity after eighteen (18) months to the appropriate self-regulatory organization, or if there is none, to the Commission.

B. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

C. It is further ordered that Respondent shall, within thirty (30) days of the entry of this Order, pay a civil money penalty in the amount of \$35,000 to the United States Treasury. Such

payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Todd W. Miller as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Tracy W. Lo, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 900, Chicago, Illinois 60604.

By the Commission.

Nancy M. Morris  
Secretary