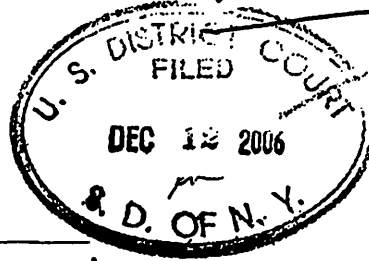


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Ny-07007-B

Hargitt, J

Ny-07007-B,

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

EDWARD J. STRAFACI,
Defendant.

03 Civ 8524 (CSH)

**FINAL CONSENT
JUDGMENT AGAINST
DEFENDANT
EDWARD J. STRAFACI**

Plaintiff Securities and Exchange Commission having filed a Complaint and Defendant Edward J. Strafaci having entered a general appearance; consented to the Court's jurisdiction over him and the subject matter of this action; consented to entry of this Final Consent Judgment ("Final Judgment") without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Strafaci and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of the Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate

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commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Strafaci and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Strafaci, his officers, agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-(6)(1) and 80b-(6)(2)], by directly or indirectly

- (a) employing devices, schemes, or artifices to defraud clients or prospective clients of any investment adviser, or
- (b) engaging in acts, practices or courses of business which operate as a fraud or deceit upon clients or prospective clients of any investment adviser.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Strafaci, his officers, agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 204 of the Advisers Act [15 U.S.C. § 80b-4] and Rules 204-2(a)(16) and 204-2(e)(3) [17 C.F.R. §§ 275.204-2(a)(16) and 275.204(2)(e)(3)] by failing to make and keep for the requisite period all documents necessary to form the basis for, or demonstrate the calculation of, the performance or rate of return of all managed accounts.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Strafacci, his officers, agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating the books and records requirements set forth in Section 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and Rules 17a-3(a)(2), 17a-3(a)(11), 17a-4(b)(8), 17a-5(a), and 17a-5(d) [17 C.F.R. §§ 240.17a-3, 240.17a-3(11), 240.17a-4(b)(8)(iii), 240.17a-5(a) and 240.17a-5(d)] thereunder.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that no disgorgement shall be ordered against Strafacci in this civil action, based upon the restitution ordered in United States v. Edward Strafacci, 03 Crim. 1182 (S.D.N.Y.) (LTS).

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that no civil penalty shall be imposed upon Strafacci in this civil action, based upon Strafacci's criminal conviction and the restitution ordered in United States v. Edward Strafacci, 03 Crim. 1182 (S.D.N.Y.) (LTS).

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent of Edward J. Strafacci is incorporated herein with the same force and effect as if fully set forth herein, and that Strafacci shall comply with all of the undertakings and agreements set forth therein.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for all purposes of enforcing the terms of the Final Judgment.

CONSENT OF DEFENDANT EDWARD J. STRAFACI

1. Defendant Edward J. Strafaci acknowledges having been served with the Complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Strafaci and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as to personal and subject matter jurisdiction, which Strafaci admits), Strafaci hereby consents to the entry of the Final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

(a) permanently restrains and enjoins Strafaci from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (1) to employ any device, scheme, or artifice to defraud;
- (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(b) permanently restrains and enjoins Strafaci from violating Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or

communication in interstate commerce or by use of the mails, directly or indirectly:

- (1) to employ any device, scheme, or artifice to defraud;
 - (2) to obtain money or property by means of any untrue statement of material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
 - (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser;
- (c) permanently restrains and enjoins Strafaci from violating Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-(6)(1) and 80b-(6)(2)] by directly or indirectly
- (1) employing vices, schemes, or artifices to defraud clients or prospective clients of any investment adviser, or
 - (2) engaging in acts, practices or courses of business which operate as a fraud or deceit upon clients or prospective clients of any investment adviser;
- (d) permanently restrains and enjoins Strafaci from violating Section 204 of the Advisers Act [15 U.S.C. § 80b-4] and Rules 204-2(a)(16) and 204-2(e)(3) [17 C.F.R. §§ 275.204-2(a)(16) and 275.204(2)(e)(3)] thereunder by failing to make and keep for the requisite period all documents necessary to form the basis for, or demonstrate the calculation of, the performance or rate of return of all managed accounts.
- (e) permanently restrains and enjoins Strafaci violating the books and records

requirements set forth in Section 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and Rules 17a-3(a)(2), 17a-3(a)(11), 17a-4(b)(8), 17a-5(a), and 17a-5(d) [17 C.F.R. §§ 240.17a-3, 240.17a-3(11), 240.17a-4(b)(8)(iii), 240.17a-5(a) and 240.17a-5(d)] thereunder.

3. Strafaci acknowledges and agrees that no disgorgement shall be ordered against Strafaci in this civil action, based upon the restitution ordered in United States v. Edward Strafaci, 03 Crim.1182 (S.D.N.Y.) (LTS).

4. Strafaci acknowledges and agrees that no civil penalty shall be imposed upon Strafaci in this civil action, based upon Strafaci's criminal conviction and the restitution ordered in United States v. Edward Strafaci, 03 Crim. 1182 (S.D.N.Y.) (LTS).

5. Strafaci waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

6. Strafaci waives the right, if any, to appeal from the entry of the Final Judgment.

7. Strafaci enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Strafaci to enter into this Consent.

8. Strafaci agrees that this Consent shall be incorporated into the annexed Final Judgment with the same force and effect as if fully set forth therein.

9. Strafaci will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

10. Strafaci waives service of the Final Judgment and agrees that its entry by the

Court and filing with the Clerk of the Court will constitute notice to Strafaci of its terms and conditions. Strafaci further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Strafaci has received and read a copy of the Final Judgment.

11. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Strafaci in this civil proceeding. Strafaci acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Strafaci waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Strafaci further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Strafaci understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

12. Strafaci understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegation in the Complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Strafaci agrees: (i) not to take any action or to make or permit to be

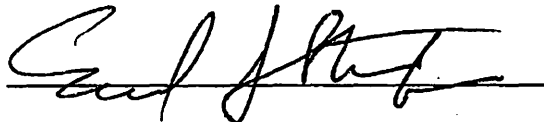
made any public statement denying, directly or indirectly, any allegation in the Complaint or creating the impression that the Complaint is without factual basis; and (ii) that upon the filing of this Consent, Strafaci hereby withdraws any papers filed in this action to the extent that they deny any allegation in the Complaint. If Strafaci breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Strafaci's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

13. Strafaci hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provisions of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Strafaci to defend against this action. For these purposes, Strafaci agrees that Strafaci is not the prevailing party in this action since the parties have reached a good faith settlement.

14. Strafaci agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

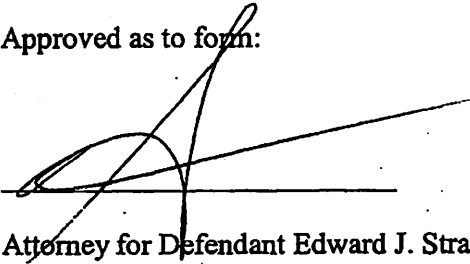
15. Strafaci agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: September 20, 2006



EDWARD J. STRAFACI

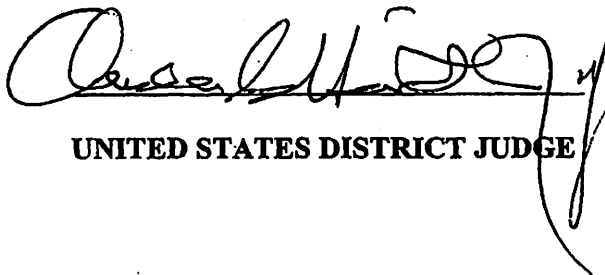
Approved as to form:



Attorney for Defendant Edward J. Strafaci

SO ORDERED:

Dated: ~~11/30~~ ^{12/08}, 2006
New York, New York



UNITED STATES DISTRICT JUDGE

**THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON 12/12/06** ✓