



## U.S. Securities and Exchange Commission

### U.S. SECURITIES AND EXCHANGE COMMISSION

Litigation Release No. 18593 / February 25, 2004

*SECURITIES AND EXCHANGE COMMISSION v. MOISES SABA MASRI, ET AL.*, 04 CV 1584 (S.D.N.Y.) (RJH)

### SEC CHARGES MOISES SABA AND ALBERT SUTTON WITH FRAUD

On February 25, 2004, the Commission filed a civil action in the United States District Court for the Southern District of New York against Moises Saba Masri ("Saba"), a Mexican national, and Albert Sutton, a broker at Middlegate Securities in New York City, New York. The Commission's complaint alleges that on August 20, 1999, the defendants violated the anti-fraud provisions of the federal securities laws by unlawfully "marking the close" and thereby manipulating the price of T.V. Azteca American Depository Receipts ("TZA"), which are listed on the New York Stock Exchange. The complaint seeks permanent injunctions and civil penalties against both defendants, and disgorgement with pre-judgment interest from Saba.

According to the Commission's complaint, in February, March, and May 1999, Saba used the brokerage account of Tentafin Limited, an offshore corporation controlled by Saba and his family, at Middlegate to sell a large number of TZA put options having strike prices of \$5 and \$7.50 and an expiration date of August 20, 1999. These options, if exercised by their holders, contractually obligated Saba to buy nearly 860,000 shares of TZA at \$5 per share, and nearly 500,000 shares of TZA at \$7.50 per share, on the August 20, 1999 expiration date.

The Commission's complaint alleges that on August 20, 1999, the price of TZA ranged from \$4.9375 to \$5.1875, ultimately hovering at \$5 ten minutes prior to the close of trading. According to the complaint, at that point, Saba could reasonably expect that the holders of the TZA put options with a \$7.50 strike price would exercise their options, causing a \$3.7 million liability in Saba's Tentafin account. If the holders of the TZA put options with a \$5 strike price also exercised their options, the complaint further alleges, Saba would likely incur a further liability of \$4.3 million. The complaint charges that, in order to avoid incurring this additional liability, Saba instructed Sutton, his broker at Middlegate Securities, to begin buying TZA in the open market during the last ten minutes of trading so as to cause the per share price to close above \$5. According to the complaint, Sutton then executed a series of precisely timed purchases with the purpose and effect of causing TZA's per share price to close above \$5, thereby enabling Saba to avoid the \$4.3 million additional liability on the \$5 put options. The complaint alleges that Sutton's incremental purchases of

200,000 TZA during the last ten minutes of trading on August 20, 1999 constituted approximately 94% of the buy-side activity for that security during the last hour of the trading day. The complaint further alleges that, by engaging in these manipulative trades, Saba and Sutton violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

The Commission wishes to acknowledge the assistance of the Chicago Board Options Exchange in this matter.

► [SEC Complaint in this matter](#)

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## U.S. Securities and Exchange Commission

### Securities and Exchange Commission

Litigation Release No. 17828 / November 5, 2002

*Securities and Exchange Commission v. Michael J. Rivers and Thomas E. Hall*, 02-4213 JRT/FLN (U.S.D.C. Minn. 2002)

#### Commission Files Complaint Against Michael J. Rivers and Thomas E. Hall in Alleged "Marking the Close" Market Manipulation Scheme

#### Thomas E. Hall Consents To Permanent Injunction and \$50,000 Civil Penalty

#### U.S. Bancorp Piper Jaffray Inc. Consents To Administrative Order Requiring Remedial Undertakings and the Payment of a \$100,000 Civil Penalty in Connection With Supervisory Failures

On October 31, 2002, the Commission filed a complaint in the United States District Court for the District of Minnesota against Thomas E. Hall ("Hall") and Michael J. Rivers ("Rivers") alleging that Hall and Rivers perpetrated a fraudulent scheme to artificially increase the closing price of First Federal Capital Corporation ("First Federal") common stock. Hall, of Sioux Falls, South Dakota, was employed as a registered representative and branch manager for U.S. Bancorp Piper Jaffray Inc. ("Piper Jaffray"). Rivers, of Winona, Minnesota, was a customer of Hall at Piper Jaffray. The Commission's complaint alleges that the purpose of this scheme was to prevent or reduce numerous margin calls Rivers received on his trading accounts at Piper Jaffray. The complaint also alleges that Hall and Rivers' scheme artificially increased the closing price of First Federal common stock, which constituted violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder.

Hall consented, without admitting or denying the allegations in the complaint, to the entry of an order of permanent injunction enjoining him from violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and imposing a civil penalty of \$50,000. The litigation against Rivers is pending.

Separately, on November 5, 2002, the Commission entered an Order Instituting Proceedings Making Findings and Imposing Remedial Sanctions (Order) against U.S. Bancorp Piper Jaffray Inc. (Piper Jaffray). Piper Jaffray,

while neither admitting nor denying the Order's findings, consented to the entry of the Order and the imposition of sanctions against it.

The Commission's Order found that from January 1998 through September 2001, Rivers and Hall engaged in a "marking the close" scheme. The Commission's Order found that Rivers and Hall placed day-end trades at artificially higher prices in this stock thereby increasing improperly the stock's closing price so as to satisfy or reduce margin calls on his brokerage accounts at Piper Jaffray.

The Commission's Order found that Piper Jaffray failed to supervise Hall and failed to have adequate systems in place to detect or prevent this marking the close scheme. Because of deficiencies with Piper Jaffray's surveillance procedures and with its structure for supervising "producing" branch managers, i.e., managers who also act as registered representatives for customers, the firm failed to detect and prevent Hall's misconduct. The Order found that there was one supervisor primarily responsible for the supervision of more than 70 "producing" branch managers. In addition, Piper Jaffray did not provide this supervisor with information regarding the time the trades were executed and thus was unable to detect marking the close violations. The Commission's Order also found that Piper Jaffray did not have an exception report capable of identifying end-of-the-day trades in its customer accounts; it instead relied on order ticket approval and/or review to detect possible marking the close violations.

The Order censures Piper Jaffray and requires it to maintain the following undertakings: creating a marking the close exception report, and the creation of at least eight District Sales Supervisors to replace the single position previously responsible for supervising "producing" branch managers. The Order also requires Piper Jaffray to pay a civil monetary penalty of \$100,000.

The Commission would like to thank the National Association of Securities Dealers Regulation, Inc. ("NASDR") for its assistance in this matter.

➤ [SEC Complaint in this matter](#)

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Modified: 11/06/2002



U.S. Securities and Exchange Commission

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BURTON G. FRIEDLANDER,  
FRIEDLANDER INTERNATIONAL LIMITED,  
FRIEDLANDER MANAGEMENT LIMITED,  
FRIEDLANDER CAPITAL MANAGEMENT  
CORPORATION,  
OPAL INTERNATIONAL FUND, and  
FRIEDLANDER LIMITED PARTNERSHIP,

Defendants.

**FIRST AMENDED  
COMPLAINT**

Case No. 01-CV-4596  
(KMW)

The Securities and Exchange Commission ("SEC") alleges that:

**NATURE OF THE ACTION**

1. In May 2001, the SEC brought this action to stop a massive fraud perpetrated by Defendants Friedlander, Friedlander Management Limited ("FML"), Friedlander Capital Management Corporation ("FCMC"), Opal International Fund ("Opal") and Friedlander Limited Partnership ("FLP") in connection with an investment entity known as Friedlander International Limited ("the Hedge Fund"). Since August 2000, or earlier, Defendants Friedlander, FML, and FCMC had misrepresented and inflated the net asset value ("NAV") of the Hedge Fund to its shareholders by overstating the value of certain assets of the Hedge Fund, had induced investments in the Hedge Fund based upon misrepresented and inflated statements of performance results, and had redeemed their own interests in the Hedge Fund at misrepresented and inflated values, to the detriment of the Hedge Fund's other investors. In perpetrating their fraudulent scheme, Friedlander and FCMC had used the assets of Opal and FLP, other investment funds managed by Friedlander and FCMC, to make month-end purchases of a security, in order to manipulate the price upward and thereby artificially inflate the value of securities held by the Hedge Fund.

2. The SEC hereby amends its Complaint to include an additional and separate fraudulent scheme involving the management of a pooled

investment fund ("pooled fund") by Friedlander and FCMC, including the generation and distribution of false and misleading reports regarding the investors' returns in this pooled fund, the fraudulent use of an accounting firm's letterhead and signature, and the conversion by Friedlander and FCMC of investor funds for Friedlander's personal use.

3. By engaging in the conduct set forth in paragraphs 1 and 2, Friedlander, the Hedge Fund, FML, FCMC, Opal and FLP have violated, and unless enjoined will continue to violate, Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5. In addition, Friedlander, FML and FCMC have violated, and unless enjoined will continue to violate, Section 206(1) and (2) of the Investment Advisors Act of 1940 ("Adviser's Act"), 15 U.S.C. § 80b-6.

4. The SEC seeks permanent injunctions against the Defendants from engaging in the wrongful conduct alleged in this Complaint. The SEC also seeks a final judgment ordering the Defendants to account for and to disgorge any ill-gotten gains and to pay prejudgment interest thereon, and ordering the Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

#### **JURISDICTION AND VENUE**

5. This court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), Sections 21(e) and 27 of the Exchange Act, 15 U.S.C. §§ 77u(e) and 78aa, and Section 214 of the Advisors Act, 15 U.S.C. § 80b-14.

6. Venue in this Court is proper because certain of the transactions, acts, practices and courses of business alleged occurred within the Southern District of New York, including the purchase of investments on behalf of the Hedge Fund by Friedlander, FML, FCMC, Opal and FLP through accounts at Bear Stearns Securities Corp. ("Bear Stearns") as well as other brokerage and bank accounts located in this District. Substantially all of the assets of the Hedge Fund are located in an account at Bear Stearns, which is located in this District. In addition, the primary bank account for FCMC, into which pooled fund deposits were made, was located in this District at Citibank, NA.

#### **DEFENDANTS**

7. BURTON G. FRIEDLANDER, age 64, is an unregistered investment advisor who lives and works in Greenwich, Connecticut. Friedlander is a director of Friedlander International Limited (the Hedge Fund), and is a director of and controls both Friedlander Management Limited (FML) and Friedlander Capital Management Corporation (FCMC), which act as the investment advisor for the Hedge Fund.

8. FRIEDLANDER INTERNATIONAL LIMITED (the Hedge Fund) is a hedge fund incorporated as an International Business Company in the Commonwealth of the Bahamas, with its registered office in Nassau,