



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE GFI GROUP INC.) CONSOLIDATED
STOCKHOLDER LITIGATION) C.A. No. 10136-VCL

**TRANSMITTAL AFFIDAVIT OF JONATHAN M. KASS
IN SUPPORT OF PLAINTIFFS' REPLY BRIEF IN FURTHER SUPPORT
OF PROPOSED SETTLEMENT AND PROPOSED FEE AWARD**

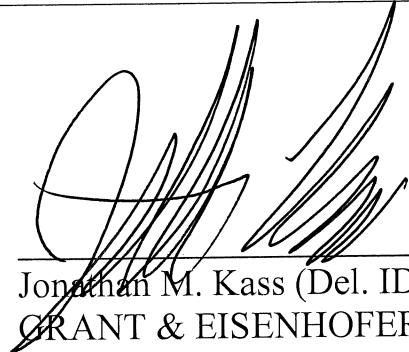
I, Jonathan M. Kass, declare under penalty of perjury as follows:

1. I am an associate at the law firm of Grant & Eisenhofer P.A., Counsel for Plaintiffs Maurene Al-Ammary and Robert Michocki in this action, and am a member in good standing of the Bar of the Supreme Court of the State of Delaware. I submit this affidavit in support of Plaintiffs' Motion for Final Approval of Proposed Settlement and Plan of Allocation, Certification of the Class, and An Award of Attorneys' Fees.

2. A true and correct copy of the following exhibits cited in Plaintiffs' Reply Brief in Further Support of Proposed Settlement Proposed Fee Award are attached hereto, as follows:

Exhibit	Document Description
A	Tender Offer Agreement as amended Feb. 20, 2015
B	FINRA Press Release "Hedge Fund Manager Hillary Shane Barred, to Pay \$1.45 Million to Settle NASD, SEC Fraud and Insider Trading Charges Related to Purchase and Sale of CompuDyne PIPE Shares" (May 18, 2005)


C	U.S. Securities and Exchange Commission Litigation Release No. 19227 (May 18, 2005)
D	Morgan Bettex "Ex-Hedge Fund Mgr. Inks Deal to Avoid Prosecution" (Aug. 19, 2008)



Jonathan M. Kass (Del. ID #6003)
GRANT & EISENHOFER P.A.
123 Justison Street
Wilmington, DE 19801
Tel: (302) 622-7000
Fax: (302) 622-7100

Counsel for Plaintiffs

SWORN TO AND SUBSCRIBED
before me this 19th day of November, 2015.



Notary Public
My commission expires: 10/24/2016

RITA McKEON
Notary Public - State of Delaware
My Commission Expires Oct. 24, 2016



Exhibit A

GFI GROUP INC.
Filed by
BGC PARTNERS, INC.

FORM SC TO-T/A
(Amended tender offer statement by Third Party)

Filed 02/20/15

Address	55 WATER STREET NEW YORK, NY 10041
Telephone	212-968-4100
CIK	0001292426
Symbol	GFIG
SIC Code	6200 - Security & Commodity Brokers, Dealers, Exchanges & Services
Industry	Investment Services
Sector	Financial
Fiscal Year	12/31

“Transfer” means (a) any direct or indirect offer, sale, lease, assignment, encumbrance, pledge, hypothecation, disposition or other transfer (by operation of law or otherwise), either voluntary or involuntary, or entry into any contract, option or other arrangement or understanding with respect to any offer, sale, lease, assignment, encumbrance, pledge, hypothecation, disposition or other transfer (by operation of law or otherwise), of any capital stock or interest in any capital stock or (b) in respect of any capital stock or interest in any capital stock, to enter into any swap or any other agreement, transaction or series of transactions that hedges or transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of such capital stock or interest in capital stock, whether any such swap, agreement, transaction or series of transaction is to be settled by delivery of securities, in cash or otherwise.

“Trayport Business” means the business of developing, marketing and licensing to customers a suite of electronic trading, information sharing, straight-through processing, clearing links and post-trade services for commodities, principally in the energy market, in each case as conducted by GFI and the GFI Subsidiaries.

“U.S.” means the United States of America.

Section 1.2 The Offer .

(a) Amendment of the Existing Offer . Unless this Agreement shall have previously been terminated in accordance with Article VII, on the date of this Agreement (or, if the date of this Agreement is not a date on which the U.S. Securities and Exchange Commission (the “SEC”) accepts filings, the next succeeding day on which such filing may be made), Purchaser shall, and BGCP shall cause Purchaser to, file with the SEC the amended Offer Documents, reflecting the offer to purchase all of the Shares for \$6.10 per Share (such amount or any greater amount per Share to be paid pursuant to the Offer being hereinafter referred to as the “Offer Price”), subject to any required withholding of Taxes, net to the seller in cash, without interest, and subject to other terms of this Agreement, and cause the Offer Documents to be disseminated to the stockholders of GFI as and to the extent required by federal securities Laws. The obligations of Purchaser to, and of BGCP to cause Purchaser to, accept for payment, and pay for, any Shares of GFI Common Stock tendered pursuant to the Offer shall be subject only to the conditions set forth in Exhibit A (as they may be amended in accordance with this Agreement, the “Offer Conditions”).

(b) Expiration of the Offer . The expiration date of the Offer pursuant to the amended Offer Documents shall be 5:00 p.m., New York City time on the fifth Business Day (or such later date as may be required by applicable Law) following the date of this Agreement (such date, the “Initial Expiration Date”) or, if the Offer has been extended in accordance with this Agreement, at the time and date to which the Offer has been so extended (the Initial Expiration Date or such later time and date to which the Offer has been extended in accordance with this Agreement, the “Expiration Date”). Purchaser expressly reserves the right, at any time, to, in its sole discretion, waive, in whole or in part, any Offer Condition or modify the terms of the Offer; provided, however, that, without the prior written consent of GFI, Purchaser shall not (i) reduce the number of Shares of GFI Common Stock subject to the Offer, (ii) reduce the Offer Price or change the form of consideration payable in the Offer, (iii) change, modify or waive the Minimum Tender Condition, (iv) add to the Offer Conditions or modify or change any condition

Section 5.15 **Services Agreements**. GFI acknowledges and agrees for itself and on behalf of its Affiliates that, following the Offer Closing, GFI and its Affiliates will be (a) “subsidiaries” of BGCP as such term is used in the Administrative Services Agreement, dated as of March 6, 2008, as it may be amended from time to time, by and between Cantor Fitzgerald, L.P. and BGC Partners, Inc. and (b) “BGC Entities” as such term is defined in the Administrative Services Agreement, dated August 9, 2007, as it may be amended from time to time, by and among Tower Bridge International Services L.P., BGC International and BGC Partners, L.P., and, as such, shall be subject to the provisions of such agreements. In addition, to the extent that BGCP or any of its Affiliates shall provide any other services to GFI or its Subsidiaries following the Offer Closing Date, GFI agrees that it shall, and shall cause its applicable Affiliates to, enter into additional administrative services agreements with BGCP and/or its Affiliates containing substantially similar terms as the agreements set forth in clauses (a) and (b) of this Section 5.15.

Section 5.16 **Further Acquisitions**. For a period of twenty-one (21) days commencing upon the earlier of (x) the one-year anniversary of this Agreement and (y) the termination of the Support Agreement (the “Election Period”), JPI shall have the right to require by written notice (the “Election”) to BGCP and the GFI Board to effect one or more mergers involving each of JPI (or its successor in interest) and GFI, on the one hand, and BGCP and/or its Affiliates, on the other hand (any such mergers, the “Back-End Mergers”). (a) In the Back-End Merger involving JPI (such merger, the “JPI Merger”), which shall be effected pursuant to the steps set forth in Exhibit J-1, (i) each share of outstanding common stock of JPI (or its successor in interest) (other than any dissenting shares) beneficially owned directly or indirectly by Messrs. Gooch and Heffron shall be converted in the JPI Merger into a number of BGCP Shares equal to a fraction, (A) the numerator of which is the JPI Per Share Merger Consideration *minus* the JPI Per Share Damages Amount (if any), as applicable, and (B) the denominator of which is \$9.46 (appropriately adjusted for any reclassification, recapitalization, stock split or combination, exchange or readjustment of shares, or any stock dividend thereon occurring after the date of this Agreement); and (ii) each other share of outstanding common stock of JPI (or its successor in interest) (other than any dissenting shares) shall be converted in the JPI Merger into (A) an amount of cash equal to the JPI Per Share Merger Consideration *multiplied by* 0.3 and (B) a number of BGCP Shares equal to a fraction, (I) the numerator of which is the JPI Per Share Merger Consideration *multiplied by* 0.7, and (II) the denominator of which is \$9.46 (appropriately adjusted for any reclassification, recapitalization, stock split or combination, exchange or readjustment of shares, or any stock dividend thereon occurring after the date of this Agreement); and (b) in the Back-End Merger involving GFI (such merger, the “GFI Merger”), which shall be effected pursuant to the steps set forth in Exhibit J-2, each share of outstanding GFI common stock (other than dissenting shares and shares held by BGCP or Purchaser) shall be converted into the right to receive an amount in cash equal to the Offer Price (appropriately adjusted for any reclassification, recapitalization, stock split or combination, exchange or readjustment of shares, or any stock dividend thereon occurring after the date of this Agreement). As a result of the Back-End Mergers, all outstanding shares of GFI will be held, directly or indirectly, by BGCP. The issuance of the BGCP Shares in the Back-End Mergers shall be registered under the Securities Act, and the class of such BGCP Shares shall be registered under Securities Exchange Act. Cash shall be paid in lieu of any fractional BGCP Shares that would have otherwise been issued in the JPI Merger. In the event that JPI shall have during the Election Period irrevocably made the Election and irrevocably agreed to vote for and support the

Back-End Mergers, then GFI and BGCP agree that they shall take such actions reasonably requested by BGCP to consummate such Back-End Mergers as soon as reasonably practicable thereafter; provided, however, that neither BGCP nor any of its Affiliates shall have any obligation under this Section 5.16 to pay the applicable merger consideration to Mr. Gooch and Mr. Heffron, as applicable, unless each of the following conditions shall have been satisfied with respect to each such Person (severally and not jointly): (1) neither Mr. Gooch nor Mr. Heffron shall have taken any action that would constitute a breach of any of the conditions, obligations or covenants set forth in Annex A, assuming each of such conditions, obligations and covenants apply to each of them at all times as of and after the Offer Closing, (2) neither Mr. Gooch nor Mr. Heffron shall have taken any action that would constitute a breach of any of the conditions, obligations or covenants set forth in Annex D, (3) neither Mr. Gooch nor Mr. Heffron shall have taken any action that would constitute a breach of any of the conditions, obligations or covenants set forth in the Non-Compete Agreements set forth in Annex C; (4) in connection with the sale of the goodwill of GFI by Mr. Gooch and Mr. Heffron through the Back-End Mergers, each of Mr. Gooch and Mr. Heffron shall have entered into an agreement containing each of the conditions, obligations and covenants set forth in Annex B; (5) neither Mr. Gooch nor Mr. Heffron shall have, at any time prior to the effective time of the Back-End Mergers, Transferred or agreed to Transfer any BGCP Shares; (6) at any election of directors after the date of this Agreement and prior to the consummation of the Back-End Mergers, all Shares held or owned directly or indirectly by JPI shall have been voted in a favor of each nominee for election to the GFI Board and all other proposals submitted to the GFI stockholders that the GFI Board recommends that GFI stockholders vote “FOR” to the extent such other votes are permitted under the Support Agreement; (7) each of Messrs. Gooch and Heffron shall have irrevocably tendered their resignations from the GFI Board, effective upon the completion of the Back-End Mergers and the payment in full of the consideration to be paid to the equityholders of JPI pursuant to the Back-End Mergers; and (8) each of Messrs. Gooch and Heffron shall have certified that the conditions set forth in clauses (1) through (7) above shall have been satisfied.

The term “JPI Per Share Merger Consideration” shall mean a fraction, (a) the numerator of which is equal to the number of Shares, without duplication, held, directly or indirectly, by JPI (or its successor in interest) *multiplied by* the Offer Price (appropriately adjusted for any reclassification, recapitalization, stock split or combination, exchange or readjustment of shares, or any stock dividend thereon occurring after the date of this Agreement), and (b) the denominator of which is the total number of shares of common stock of JPI (or equivalent security of its successor in interest) outstanding as of immediately prior to the effective time of the Back-End Mergers.

The term “JPI Per Share Damages Amount” shall mean an amount equal to (a) the sum of the amount of Damages resulting from, or arising out of, or relating to (i) any action by Mr. Gooch or Mr. Heffron, as the case may be, that would constitute a breach of any of the conditions, obligations or covenants set forth in Annex A, assuming such conditions, obligations and covenants applied to each of them at all times as of and after the Offer Closing, (ii) any breach by Mr. Gooch or Mr. Heffron, as the case may be, of any of the conditions, obligations or covenants set forth in any employment agreement with any of Mr. Gooch or Mr. Heffron as set forth in Annex D, (iii) any breach by Mr. Gooch or Mr. Heffron, as the case may be, of the conditions, obligations or covenants set forth in the Non-Compete Agreements set forth in Annex C, *divided by* (b) the number of Shares of JPI outstanding as of immediately prior to the effective

time of the Back-End Mergers. It is agreed that the JPI Per Share Damages Amount shall only be applied to the consideration to be received by the holders of shares of JPI common stock in the Back-End Mergers and shall not reduce the consideration paid in the GFI Merger.

Section 5.17 **GFI Equity Awards** .

Each GFI RSU outstanding immediately prior to the Offer Closing (or, if applicable, the closing of the subsequent offering period) shall be converted into the right to receive from GFI (or following the closing of the Back-End Mergers, from GFI or BGCP) an amount in cash equal to the Offer Price with respect to each Share underlying such GFI RSU, with such cash payable on and subject to the terms and conditions of the original vesting schedule of such GFI RSU (a “Deferred Cash Award”); provided, however, that if GFI or any of its Affiliates terminates any such Deferred Cash Award holder’s employment with GFI and its Affiliates prior to the end of the applicable vesting period for such holder’s Deferred Cash Award in circumstances that would otherwise result in forfeiture of the corresponding GFI RSU award pursuant to its terms, then if the Chairman of Purchaser and the Executive Chairman of the GFI division (or the senior executive of the GFI division) mutually agree that the Deferred Cash Award should not be forfeited, such Deferred Cash Award will become fully vested and will be settled on such terms as the Chairman of Purchaser and the Executive Chairman of the GFI division (or the senior executive of the GFI division) mutually agree.

Section 5.18 **Equity Award Reimbursement** .

The Parties agree that, from and after the Offer Closing, to the extent that BGCP or any of its Affiliates shall pay any award to an employee of GFI in the form of a BGCP Equity Award and/or forgivable loans of BGCP or its Affiliates, then GFI shall pay to BGCP or such Affiliate an amount of cash equal to the full gross amount, as of the grant date, of any such BGCP Equity Award and/or forgivable loans, as the case may be; provided that, in the event that any Bonus-Eligible Employee forfeits all or a portion of his or her BGCP Equity Award and/or forgivable loans, as the case may be, then BGCP shall repay to GFI an amount of cash equal to the full gross amount, as of the grant date, of the portion of such forfeited BGCP Equity Award and/or forgivable loans, as the case may be.

ARTICLE VI

FINANCIAL INFORMATION COOPERATION

Section 6.1 **Financial Information Cooperation** .

(a) From and after the date of this Agreement until the earlier of (x) the termination of this Agreement pursuant to Section 7.1 and (y) the Offer Closing Date, GFI and its Subsidiaries will use commercially reasonable efforts to provide BGCP and Purchaser with financial and non-financial information, including any pro forma financial information, with respect to GFI and its Subsidiaries and provide other reasonably requested assistance and information to BGCP and Purchaser, in each case at BGCP’s sole expense, to enable BGCP and Purchaser to (i) satisfy their disclosure obligations arising under applicable U.S. securities Laws (both regular reporting obligations and in connection with any securities offering, including in connection with private securities offerings), (ii) satisfy their reporting obligations to any lenders and (iii) provide information for purposes of delivery to ratings agencies.

(b) From and after the date of this Agreement until the earlier of (x) the termination of this Agreement pursuant to Section 7.1 and (y) the Offer Closing Date, GFI and its Subsidiaries will use commercially reasonable efforts to (i) file all reports on Form 10-K and Form 10-Q and Form 8-K, to the extent required to include financial information pursuant to Item 9.01 thereof, (ii) file all other Forms 8-K, in each case, required to be filed with the SEC pursuant to the Exchange Act in accordance with the time periods required by the Exchange Act and (iii) as promptly as reasonably practicable, inform BGCP if the chief executive officer, chief financial officer, treasurer or controller of GFI or any member of GFI Board shall have actual knowledge of any facts as a result of which a restatement of any financial statements for such financial statements to comply with GAAP is probable.

(c) Without limiting Section 6.1(a), from and after the date of this Agreement until the earlier of (x) the termination of this Agreement pursuant to Section 7.1 and (y) the Offer Closing Date, GFI and its Subsidiaries will use commercially reasonable efforts to assist BGCP and its Affiliates (including, as necessary, by causing their auditors to take actions) by participating in due diligence sessions (including accounting due diligence sessions), providing information regarding internal controls and procedures and financial reporting, obtaining auditors consents, providing representation letters, providing comfort letters (including as to customary negative assurances and change period), providing legal opinions (including customary negative assurances) and other customary assistance for BGCP and Purchaser to fulfill their obligations under the U.S. securities Laws and in connection with securities offerings.

ARTICLE VII

TERMINATION

Section 7.1 Termination. This Agreement may be terminated and the Transactions abandoned at any time prior to the Expiration Date:

(a) by mutual written consent of BGCP and GFI; or

(b) by either BGCP or GFI, if:

(i) Termination Date. The Offer Closing shall not have occurred on or before the Outside Date. The “Outside Date” shall mean the later of (A) the Initial Expiration Date and (B) 10 days following the date on which the Regulatory Condition has been satisfied or waived; provided, however, that (1) in the event that any Restraint shall be in effect as of any Expiration Date, then the Outside Date shall be extended until 10 days following the date on which such Restraint is vacated, terminated or withdrawn; and (2) in the event that GFI shall have breached or failed to perform any of its representations, warranties or covenants contained in this Agreement, which breach or failure to perform (x) would result in the failure of any condition set forth in Exhibit A to be satisfied, (y) was not the result of a willful or intentional breach or failure to perform

and (z) is capable of being cured by GFI within fifteen (15) days of such breach or failure to perform, then the Outside Date shall be extended until fifteen (15) days following such breach or failure to perform. Notwithstanding the foregoing, in no event shall the Outside Date be later than March 11, 2015.

(ii) Restraint. Any Restraint (other than a temporary restraining order, preliminary injunction or similar non-permanent Order) having any of the effects set forth in clause (c) of Exhibit A shall be in effect and shall have become final and non-appealable;

(c) by BGCP, if:

(i) Breach by GFI. GFI shall have breached or failed to perform any of its representations, warranties or covenants contained in this Agreement, which breach or failure to perform (A) is incapable of being cured by GFI prior to the Outside Date or is not cured by the earlier of (x) fifteen (15) days following written notice to GFI by BGCP of such breach or (y) the Outside Date and (B) would result in the failure of any condition set forth in Exhibit A to be satisfied; provided that neither BGCP nor Purchaser is then in breach of any representation, warranty, covenant or agreement contained in this Agreement that would permit GFI to terminate this Agreement pursuant to Section 7.1(d)(i);

(ii) Violation of Alternative Proposals. GFI or any of the GFI Subsidiaries or any of its and their respective Representatives shall have breached in any material respect any of their respective obligations under Section 5.4 (Alternative Proposals); or

(iii) Failure to Recommend or Change in Recommendation. The GFI Board or the Special Committee shall (A) fail to include the GFI Recommendation in Schedule 14D-9, (B) effect a Change in Recommendation, (C) following the public disclosure or announcement of a Takeover Proposal, fail to publicly reaffirm the GFI Recommendation within three Business Days after BGCP so requests in writing or (D) in the case of a Takeover Proposal made by way of a tender offer or exchange offer, fail to recommend that GFI's stockholders reject such tender offer or exchange offer within the ten Business Day period specified in Section 14e-2(a) under the Exchange Act; provided, however, that BGCP shall not have the right to terminate this Agreement pursuant to this Section 7.1(c)(iii) from and after the Expiration Date.

(d) by GFI, if:

(i) Breach by BGCP. BGCP or Purchaser shall have breached or failed to perform any of its representations, warranties or covenants contained in this Agreement, which breach or failure to perform (A) is incapable of being cured by BGCP or Purchaser prior to the Outside Date or is not cured by the earlier of (x) fifteen (15) days following written notice to BGCP or Purchaser by GFI of such breach or (y) the Outside Date and (B) such breach or failure has resulted or would reasonably be expected to result in the failure of BGCP or Purchaser to consummate the Offer Closing in

accordance with the terms of this Agreement; provided that GFI is not then in breach of any representation, warranty, covenant or agreement contained in this Agreement that would result in the failure of any condition set forth in Exhibit A to be satisfied.

Section 7.2 **Effect of Termination**. In the event of any termination of this Agreement as provided in Section 7.1 (Termination), the obligations of the Parties hereunder shall terminate and there shall be no liability on the part of any Party with respect thereto, except for the confidentiality provisions of Section 5.2 (Access to Information; Confidentiality) and the provisions of Section 7.3 (Termination Fee) and Article VIII (General Provisions), each of which shall remain in full force and effect; provided, however, that no Party shall be relieved or released from any liability or damages arising from a breach of any provision of this Agreement.

Section 7.3 **Termination Fee**.

(a) If (x) this Agreement is terminated pursuant to (i) Section 7.1(b)(i) (Termination Date) and the Minimum Tender Condition has not been satisfied at the time of such termination and prior to such termination any Person (other than BGCP and Purchaser) shall have made a Takeover Proposal, which shall have been publicly announced or disclosed or disclosed to the GFI Board or any committee thereof, (ii) Section 7.1(c)(i) (Breach by GFI), (iii) Section 7.1(c)(ii) (Violation of Alternative Proposals) or (iv) Section 7.1(c)(iii) (Failure to Recommend or Change in Recommendation) and (y) within twelve months of such termination, (1) GFI enters into a definitive agreement to consummate a transaction contemplated by any Takeover Proposal (regardless of when made and such transaction is thereafter consummated (regardless of when consummated)) or (2) GFI consummates a transaction contemplated by any Takeover Proposal (regardless of when made), then GFI shall pay, or cause to be paid, to BGCP, by wire transfer of immediately available funds, an amount equal to \$27,005,057 (the "Termination Fee"), concurrently with the consummation of such transaction; provided that, solely for purposes of this Section 7.3(a), the term "Takeover Proposal" shall have the meaning ascribed thereto in Section 5.4(f) (Alternative Proposals), except that all references to 20% shall be changed to 50%.

(b) GFI agrees that the agreements contained in this Section 7.3 are an integral part of this Agreement, and that, without these agreements, BGCP would not enter into this Agreement. Accordingly, if GFI fails promptly to pay any amounts due under this Section 7.3 and, in order to obtain such payment, BGCP commences a suit that results in a judgment against GFI for such amounts, GFI shall pay interest on such amounts from the date the payment of such amounts was due to the date of actual payment at the prime rate of the Bank of New York in effect on the date such payment was due, together with the reasonable Expenses of BGCP in connection with such suit.

ARTICLE VIII

GENERAL PROVISIONS

Section 8.1 **Survival of Representations, Warranties and Agreements**. None of the representations, warranties, covenants and other agreements in this Agreement or in any instrument delivered pursuant to this Agreement, including any

rights arising out of any breach of such representations, warranties, covenants and other agreements, shall survive the Offer Closing, except for those covenants and agreements contained herein, including Section 5.5 (Employee Matters), Section 5.6 (Fees and Expenses), Section 5.7 (Directors' and Officers' Indemnification and Insurance), Section 5.14 (BGCP Advance), Section 5.15 (Services Agreements), Section 5.16 (Further Acquisitions), Section 5.17 (GFI Equity Awards) and those other provisions that by their terms apply or are to be performed in whole or in part after the Offer Closing, and this Article VIII.

Section 8.2 **Notices**. All notices and other communications hereunder shall be in writing and shall be deemed duly given on the date of delivery if delivered personally, by email (which is confirmed), or sent by a nationally recognized overnight courier service (providing proof of delivery). All notices hereunder shall be delivered as set forth below or pursuant to such other instructions as may be designated in writing by the Party to receive such notice:

If to BGCP or Purchaser:

BGC Partners, Inc.
499 Park Avenue
New York, NY 10022
Attention: Stephen M. Merkel, Esq., General Counsel
Email: smerkel@bgcpartners.com

with a copy (which shall not constitute notice) to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10023
Attention: David K. Lam, Esq.
Email: dklam@wlrk.com

If to GFI, to:

GFI Group Inc.
55 Water Street
New York, NY 10041
Attention: Christopher D'Antuono, Esq., General Counsel
Email: christopher.dantuono@gfigroup.com

with a copy (which shall not constitute notice) to:

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
Attention: Jeffrey R. Poss, Esq.
Email: jposs@willkie.com

If to the Special Committee, to:

Special Committee
c/o GFI Group Inc.
55 Water Street
New York, NY 10041
Attention: Frank Fanzilli, Jr.
Richard Magee

with a copy (which shall not constitute notice) to:

White & Case LLP
1155 Avenue of the Americas
New York, NY 10036
Attention: Morton A. Pierce, Esq.
Bryan J. Luchs, Esq.
Email: mpierce@whitecase.com
Bryan.Luchs@whitecase.com

Section 8.3 **Interpretation**. When a reference is made in this Agreement to Sections, Exhibits or Schedules, such reference shall be to a Section of or Exhibit or Schedule to this Agreement unless otherwise indicated. The table of contents and headings (including headings contained in parentheticals to Section and Article references) contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” As it relates to GFI, the words “made available” shall be deemed to mean that such information was (a) provided in writing to BGCP or its Representatives, (b) included in GFI’s electronic data room or (c) was otherwise available in GFI’s public filings on the SEC’s public website (www.sec.gov); provided, that the immaterial omission of a document or part of a document shall not mean that such information was not “made available.” The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

Section 8.4 **Counterparts; Effectiveness**. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same instrument. This Agreement shall become effective when each Party shall have received counterparts thereof signed and delivered by the other Parties. Signatures transmitted electronically, including in portable document format (“.pdf”), shall be accepted as originals for all purposes of this Agreement.

Section 8.5 **Entire Agreement; Third Party Beneficiaries**.

(a) This Agreement (including Exhibit A and the Parties' disclosure letters hereto) constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof and thereof.

(b) This Agreement is not intended to and shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns, except for from and after the Offer Closing, (i) the rights of the stockholders of GFI who have tendered into the Offer to receive the Offer Price, (ii) the Indemnified Persons who may enforce the provisions of Section 5.7 (Directors' and Officers' Indemnification and Insurance), (iii) Mr. Gooch may enforce (A) the provisions of Section 5.5(a) (Employee Matters), (B) the provisions of Section 5.16 (Further Acquisitions) on behalf of the stockholders of GFI and JPI, and (C) the provision of the rights of the stockholders of GFI under Section 8.8 (Amendment) and (iv) Mr. Heffron may enforce the provisions of Section 5.5(a)(iv) (Employee Matters). The representations and warranties in this Agreement are the product of negotiations among the Parties and are for the sole benefit of the Parties. Any inaccuracies in such representations and warranties are subject to waiver by the Parties in accordance with Section 8.9 (Extension; Waiver) without notice or liability to any other Person. The representations and warranties in this Agreement may represent an allocation among the Parties of risks associated with particular matters regardless of the knowledge of any of the Parties. Accordingly, Persons other than the Parties may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date of this Agreement or as of any other date.

Section 8.6 **Severability**. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any Law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect. Notwithstanding the foregoing, upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the Transactions are consummated as originally contemplated to the greatest extent possible.

Section 8.7 **Assignment**. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Parties, in whole or in part (whether by operation of Law or otherwise), without the prior written consent of the other Parties, and any attempt to make any such assignment without such consent shall be null and void. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

Section 8.8 **Amendment**. This Agreement may be amended by the Parties, by action taken or authorized by their respective Boards of Directors (and in the case of GFI, upon the recommendation thereof by the Special Committee), at any time before or after the Offer Closing; provided, that any amendment to Section 5.5, Section 5.7, Section 5.16, Section 5.17, Section 8.5(b) and Section 8.8 after the Offer Closing shall require the written consent of holders of a majority of the shares of GFI Common Stock that are not held by BGCP or its

Affiliates; provided, further, however, that, after the Offer Closing, and subject to Section 1.2, no amendment shall be made that decreases the Offer Price. Any amendment to this Agreement shall only be made by an instrument in writing signed by the Persons entitled to consent thereto as provided herein.

Section 8.9 **Extension; Waiver** . At any time prior to the Offer Closing, the Parties, by action taken or authorized by their respective Boards of Directors (and in the case of GFI, upon the recommendation thereof by the Special Committee), may, to the extent legally allowed, (a) extend the time for the performance of any of the obligations or other acts of the other Parties, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or, except as provided Exhibit A, conditions contained herein. Any agreement on the part of a Party to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such Party. The failure of any Party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of those rights.

Section 8.10 **Governing Law and Venue; Waiver of Jury Trial** .

(a) THIS AGREEMENT SHALL BE DEEMED TO BE MADE IN, AND IN ALL RESPECTS SHALL BE INTERPRETED, CONSTRUED AND GOVERNED BY AND IN, ACCORDANCE WITH THE LAW OF THE STATE OF DELAWARE WITHOUT REGARD TO ITS RULES OF CONFLICTS OF LAW THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY STATE OTHER THAN THE STATE OF DELAWARE. The Parties hereby irrevocably submit to the exclusive jurisdiction of the Court of Chancery of the State of Delaware, or, in the event (but only in the event) that such court does not have subject matter jurisdiction over such action or proceeding, the federal courts of the United States of America located in the State of Delaware in respect of all matters arising out of or relating to this Agreement, the interpretation and enforcement of the provisions of this Agreement, and of the documents referred to in this Agreement, and in respect of the Transactions, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof or of any such document, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement or any such document may not be enforced in or by such courts, and the Parties irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined exclusively in such courts. The Parties hereby consent to and grant any such court jurisdiction over the person of such Parties solely for such purpose and over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 8.2 (Notices) or in such other manner as may be permitted by Law shall be valid and sufficient service thereof.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT

OR THE TRANSACTIONS. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS Section 8.10(b).

Section 8.11 **Enforcement**. The Parties agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy, would occur in the event that the Parties do not perform the provisions of this Agreement (including failing to take such actions as are required of it hereunder to consummate the transactions contemplated by this Agreement) in accordance with its specified terms or otherwise breach such provisions. Accordingly, the Parties acknowledge and agree that the Parties (on behalf of themselves and the third-party beneficiaries of this Agreement provided in Section 8.5(b) (Third Party Beneficiaries)) shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which they are entitled at law or in equity. Each of the Parties agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that any other party has an adequate remedy at law or that any award of specific performance is not an appropriate remedy for any reason at law or in equity. Any Party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with any such Order or injunction.

Section 8.12 **Preservation of Privilege**. Recognizing that (a) JPI, New JPI Inc., GFI Holdco Inc., GFI Brokers Holdco Ltd., Mr. Gooch and Mr. Heffron and certain of their affiliates (hereinafter “Management Persons”), (b) the Special Committee and Mr. Magee and Mr. Fanzilli (collectively, the “Special Committee Persons”), and (c) Ms. Cassoni (collectively, with the Management Persons and Special Committee Persons, the “Applicable Persons”) have been involved in litigation prior to the Closing, the Parties hereby agree that the execution and delivery of this Agreement and the consummation of the Transactions shall not affect any privilege or immunity among the Applicable Persons and their respective counsel. Following the Offer Closing, none of BGCP, GFI or their respective Subsidiaries or Affiliates shall be entitled to access any communications or documents related to any privilege that exists between the Applicable Persons and their respective counsel. The Parties further acknowledge that Willkie Farr & Gallagher LLP, White & Case LLP, Young Conaway Stargatt & Taylor, LLP and Reynolds Porter Chamberlain LLP may continue to represent their respective clients in any litigation that was commenced prior to or after the Offer Closing. For the avoidance of doubt, nothing in this Section 8.12 shall affect the transfer, upon the Offer Closing, to BGCP of any privilege solely belonging to GFI.

[*Signature Pages Follow*]

IN WITNESS WHEREOF, GFI, BGCP and Purchaser have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

GFI GROUP INC.

By: /s/ Michael A. Gooch
Name: Michael A. Gooch
Title: Executive Chairman

BGC PARTNERS, INC.

By: /s/ Howard W. Lutnick
Name: Howard W. Lutnick
Title: Chairman and Chief Executive Officer

BGC PARTNERS, L.P.

By: /s/ Howard W. Lutnick
Name: Howard W. Lutnick
Title: Chairman and Chief Executive Officer

[SIGNATURE PAGE TO TENDER OFFER AGREEMENT]

Exhibit A

Offer Conditions

Notwithstanding any other provisions of the Offer, Purchaser shall not be required to, and BGCP shall not be required to cause Purchaser to, accept for payment or, subject to any applicable rules and regulations of the SEC, including Rule 14e-1(c) under the Exchange Act, pay for any validly tendered (and not withdrawn) shares of GFI Common Stock, unless immediately prior to any scheduled Expiration Date of the Offer:

(a) There shall have been validly tendered and not validly withdrawn before the expiration of the Offer (as it may be extended and re-extended in accordance with this Agreement) a number of Shares which, together with the Shares then owned by the Purchaser and its subsidiaries, represents at least 43% of all then outstanding Shares on the Expiration Date (the “Minimum Tender Condition”);

(b) The Regulatory Approvals set forth in Section 3.4(b) of the BGCP Disclosure Letter shall remain in effect and shall not have been revoked by the relevant Regulatory Authority (the “Regulatory Condition”);

(c) No Laws shall have been adopted or promulgated after the date of this Agreement, and no temporary restraining order, preliminary or permanent injunction or other Order shall have been issued and remain in effect, by a Governmental Entity or Self-Regulatory Organization of competent jurisdiction having the effect of making the Offer illegal or otherwise prohibiting consummation of the Offer, or seeking to impose a Burdensome Condition (collectively, “Restraints”) unless such Restraint is vacated, terminated or withdrawn;

(d) (i) The representations and warranties of GFI set forth in this Agreement, other than the representations and warranties set forth in Section 2.1, Section 2.2, Section 2.3, Section 2.4, Section 2.5, Section 2.6(a)(i), Section 2.11 (other than Section 2.11(a)(i)(A)), Section 2.24, and Section 2.25 (collectively, the “GFI Identified Representations”), made as if none of such representations and warranties contained any qualifications or limitations as to “materiality” or Material Adverse Effect, shall be true and correct as of the date of this Agreement and as of the Expiration Date as though made on and as of the Expiration Date (except to the extent in either case that such representations and warranties speak as of another date), except where the failure of such representations and warranties to be true and correct as so made do not constitute a Material Adverse Effect, and (ii) the GFI Identified Representations shall be true and correct in all respects as of the date of this Agreement and as of the Expiration Date as though made on and as of the Expiration Date (except to the extent in either case that such representations and warranties speak as of another date), except with respect to the representations and warranties contained in Section 2.3 for *de minimis* inaccuracies;

(e) GFI shall have performed or complied in all material respects with all agreements and covenants required to be performed by it under this Agreement on or prior to the Expiration Date;

(f) GFI shall have delivered to BGCP a certificate, signed by an executive officer of GFI, confirming the satisfaction of the conditions set forth in clauses (d) and (e) of this Exhibit A; and

(g) This Agreement shall not have been terminated in accordance with its terms.

The foregoing conditions are for the benefit of BGCP and Purchaser, may be asserted by BGCP or Purchaser regardless of the circumstances giving rise to any such conditions and may be waived by BGCP or Purchaser in whole or in part at any time and from time to time in their sole discretion, in each case, subject to the terms of the Agreement and the applicable rules and regulations of the SEC. The failure by BGCP or Purchaser at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right which may be asserted at any time and from time to time.

If the Offer is terminated, all tendered Shares not theretofore accepted for payment shall forthwith be returned to the tendering stockholders.

Exhibit A-2

EX-99.A1G 2 d877852dex99a1g.htm EX-99.(A)(1)(G)

Exhibit (a)(1)(G)

**Amended and Restated Offer to Purchase for Cash
All Outstanding Shares of Common Stock**

of

GFI Group Inc.

At

\$6.10 Net Per Share

by

BGC Partners, L.P.

an operating subsidiary of

BGC Partners, Inc.

**THE OFFER AND WITHDRAWAL RIGHTS EXPIRE AT 5:00 P.M.
NEW YORK CITY TIME ON
FEBRUARY 26, 2015.**

BGC Partners, L.P., a Delaware limited partnership (the “Purchaser”) and an operating subsidiary of BGC Partners, Inc., a Delaware corporation (“BGC”), is offering to purchase all outstanding shares of common stock, par value \$0.01 per share (the “Shares”), of GFI Group Inc., a Delaware corporation (“GFI”), for \$6.10 per Share, net to the seller in cash, without interest and less any required withholding taxes (the “Offer Price”), upon the terms and subject to the conditions set forth in this Amended and Restated Offer to Purchase (as may be subsequently amended and supplemented from time to time, the “Offer to Purchase”) and the related Amended and Restated Letter of Transmittal that accompanies this Offer to Purchase (as may be subsequently amended and supplemented from time to time, the “Letter of Transmittal”) (which, together with any amendments or supplements thereto, collectively constitute the “Offer”). Purchaser does not currently intend to extend the offer unless required by law.

The Offer is being made pursuant to a Tender Offer Agreement (together with any amendments or supplements thereto, the “Tender Offer Agreement”), dated as of February 19, 2015, by and among BGC, the Purchaser and GFI, pursuant to which, promptly after the expiration of the Offer, subject to the satisfaction or waiver of certain conditions, the Purchaser shall, and BGC shall cause the Purchaser to, consummate the Offer and accept for payment and pay for (subject to any applicable withholding of tax) all Shares validly tendered and not validly withdrawn pursuant to the Offer.

THE BOARD OF DIRECTORS OF GFI RECOMMENDS THAT YOU TENDER ALL OF YOUR SHARES INTO THE OFFER.

The board of directors of GFI, upon the recommendation of the Special Committee of Independent Directors, unanimously (i) determined that the terms of the Tender Offer Agreement and the Offer are advisable, fair to and in the best interests of GFI and its stockholders, (ii) approved the Tender Offer Agreement and the Offer and (iii) resolved to recommend that the stockholders of GFI accept the Offer and tender their Shares to the Purchaser pursuant to the Offer.

The consummation of the Offer is conditioned upon, among other things, (i) there being validly tendered and not withdrawn before the expiration of the Offer a number of Shares which, together with the Shares then owned by the

Under the Tender Offer Agreement, the term “Designated Period” means with respect to the obligations of BGC and its affiliates from the date of the Tender Offer Agreement until the earliest to occur of the Offer Closing Date, the time that the GFI Board effects of a Change in Recommendation and the termination of the Tender Offer Agreement in accordance with its terms and with respect to the obligations of GFI, from the date of the Tender Offer Agreement until the earlier of the Offer Closing Date and the termination of the Tender Offer Agreement in accordance with its terms.

13. Purpose of the Offer; Plans for GFI.

The purpose of the Offer is to acquire as much equity as is possible (and at least a 43% equity interest) in GFI. The Offer is available for 100% of the outstanding equity interest in GFI, but the Minimum Tender Condition only requires that there be validly tendered and not withdrawn before the expiration of the Offer a number of Shares which, together with the Shares then owned by the Purchaser and its subsidiaries, represents at least 43% of all then outstanding Shares. Ordinarily, we would seek to acquire any untendered Shares through a second-step merger involving GFI in which the remaining Shares would be converted into merger consideration. However, we may not be able to complete a second-step merger because of the agreements executed in connection with the CME Transaction. Specifically, certain stockholders of GFI, who collectively control approximately 38% of GFI’s issued and outstanding Shares, agreed pursuant to the Support Agreement that such stockholders would vote for the CME Transaction and vote against any alternative transaction. The restrictions in the Support Agreement continue for 12 months following the termination of the CME Merger Agreement

Consequently, it is possible that, if the Offer is completed, any untendered Shares will remain outstanding for some time. If we acquire Shares pursuant to the Offer, depending upon the number of Shares so acquired and other factors relevant to our equity ownership in GFI, we may, subsequent to the consummation of the Offer, seek to acquire the remaining untendered Shares through open market purchases, privately negotiated transactions, a tender or exchange offer or other transactions or a combination of the foregoing on such terms and at such prices as we shall determine, which may be greater than, equal to or less than the price offered in this Offer. We also reserve the right to dispose of Shares that we have acquired or may acquire.

Under the terms of the Tender Offer Agreement, JPI has the right to request, within the period of 21 days following the earlier of the expiration or termination of the Support Agreement or one year from the date of the Tender Offer Agreement, that BGC complete a back-end merger in which each remaining Share of GFI would be converted into up to \$6.10, with holders of GFI other than JPI receiving cash and holders of JPI receiving mixture of cash and BGC Class A common stock. The amount of consideration received in the back-end merger is subject to reduction in certain circumstances and BGC’s obligation to complete the back-end merger on these terms is subject to certain conditions each described under “The Offer—Section 12—The Tender Offer Agreement—Back-End Merger”. We intend to seek to cause GFI to terminate registration of the Shares under the Exchange Act as soon after the consummation of the Offer as the requirements for deregistration are met. See “The Offer—Section 7—Possible Effects of the Offer on the Market for the Shares; Stock Exchange Listing; Registration under the Exchange Act; Margin Regulations”.

Although we have no current intent with respect to the disposition of the Shares, in the event the Offer is consummated, we reserve the right to sell the Shares we hold, including those acquired in the Offer, to a third party. In such event, because we would hold at least a majority of all outstanding Shares on a fully diluted basis, it is possible that we would be able to sell such Shares at a price higher than the offer price.

Except as described above or elsewhere in this Offer to Purchase, BGC and the Purchaser have no present plans or proposals that would relate to or result in an extraordinary corporate transaction involving GFI or any of its subsidiaries (such as a merger, reorganization, liquidation, or sale or other transfer of a material amount of assets), any change in the GFI Board or management, any material change in GFI’s indebtedness, capitalization or dividend rate or policy or any other material change in GFI’s corporate structure or business.

Exhibit B



News Release

Hedge Fund Manager Hilary Shane Barred, to Pay \$1.45 Million to Settle NASD, SEC Fraud and Insider Trading Charges Related to Purchase and Sale of Compudyne PIPE Shares

For Release: Wednesday, May 18, 2005

*Contact(s): Nancy Condon 202-728-8379
Herb Perone 202-728-8464*

Washington, D.C.—NASD announced today that Hilary L. Shane, a hedge fund manager formerly registered with First New York Securities, L.L.C. (FNY), has been permanently barred from associating with any NASD-registered firm and will pay more than \$1.45 million to settle NASD and Securities and Exchange Commission (SEC) charges of fraud and insider trading. The charges arise from Shane's purchase and sale of shares in a PIPE transaction.

Sanctions imposed by NASD include the permanent bar and a \$375,000 fine. Sanctions imposed by the SEC include a one-year suspension from associating with any investment adviser; an injunction from any further violations of securities law; disgorgement of more than \$296,000 in ill-gotten profits from insider trading; disgorgement of more than \$356,000 in ill-gotten profits from selling unregistered shares; an SEC civil penalty of \$296,785, and prejudgment interest of more than \$125,000.

"This case is part of NASD's ongoing commitment to dealing with abuses in the marketing and trading of PIPE shares," said NASD Vice Chairman Mary L. Schapiro. "These abuses are serious and warrant serious sanctions."

A PIPE ("Private Investment in a Public Equity") is a private offering in which accredited investors agree to purchase restricted, unregistered securities of public companies. Only after the PIPE shares registration is approved by the SEC are investors free to sell them on the open market. PIPE shares can only be offered to "accredited" investors - investors with assets of \$1 million or more.

NASD found that in September 2001, Maryland's Compudyne Corporation and its placement agent, Friedman, Billings, Ramsey & Co., Inc. (FBR), offered sophisticated investors - on a confidential basis - a PIPE deal proposing to sell 2.45 million shares of common stock, which raised more than \$29 million. The restricted stock was offered at the below-market price of \$12 per share. NASD found that Shane, after agreeing to buy the Compudyne PIPE shares, established a short position in the stock while in possession of material, non-public information and used the PIPE shares, once they were registered, to cover the short position. In addition, NASD found that Shane made false statements to obtain the right to acquire shares in the PIPE transaction and caused extensive violations of NASD's short sale rules by FNY.

On Oct. 8, 2001, Shane and FNY Millennium Partners, L.P., a hedge fund that she managed, obtained the right to buy 475,000 shares in the Compudyne PIPE. NASD found that Shane obtained the shares by falsely certifying in the purchase agreements that she and the hedge fund had no intention of distributing the shares.

The Compudyne PIPE deal was not announced to the public until 11:44 a.m. on Oct. 9, 2001. Between 8:30 a.m. and 11:44 a.m. that day, before the public announcement, Shane and the hedge fund sold short 122,900 shares of Compudyne, while she was in possession of material, non-public information about Compudyne.

By Oct. 29, 2001, when the SEC approved the registration statement that allowed sale of the PIPE shares, Shane had sold short 455,000 shares of Compudyne. When the PIPE shares were registered, Shane and the hedge fund obtained the PIPE shares at \$12 per share and then used these newly-registered shares to cover the short position at a profit.

In settling this matter with NASD, Shane neither admitted nor denied the charges, but consented to the entry of NASD's findings. In the SEC proceeding, Shane consented to the entry of a final judgment by the U.S. District Court and an SEC administrative order, without admitting or denying the allegations in the SEC's complaint.

NASD's investigation into other individuals and entities involved in the Compudyne PIPE is continuing.

Investors can obtain more information about, and the disciplinary record of, any NASD-registered broker or brokerage firm by using NASD's BrokerCheck. NASD makes BrokerCheck available at no charge to the public. In 2004, members of the public used this service to conduct more than 3.8 million searches and request almost 190,000 reports for existing brokers or firms. Investors can link directly to BrokerCheck at www.nasdbrokercheck.com. Investors can also access this service by calling 1-800-289-9999.

NASD is the leading private-sector provider of financial regulatory services, dedicated to investor protection and market integrity through effective and efficient regulation and complementary compliance and technology-based services. NASD touches virtually every aspect of the securities business - from registering and educating all industry participants, to examining securities firms, enforcing both NASD rules and the federal securities laws, and administering the largest dispute resolution forum for investors and member firms. For more information, please visit our Web Site at www.nasd.com.

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Exhibit C

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U.S. Securities and Exchange Commission

U.S. SECURITIES AND EXCHANGE COMMISSION

Litigation Release No. 19227 / May 18, 2005

SECURITIES AND EXCHANGE COMMISSION v. HILARY L. SHANE,
Civil Action No. 05 CIVIL 4772 (S.D.N.Y.)

**SEC CHARGES HEDGE FUND MANAGER HILARY SHANE WITH
INSIDER TRADING AND UNREGISTERED SALES OF SECURITIES IN
CONNECTION WITH "PIPE" OFFERING**

SHANE AGREES TO PAY OVER \$1 MILLION TO SETTLE CHARGES

On May 18, 2005, the Securities and Exchange Commission (Commission) filed a complaint against Hilary L. Shane in the United States District Court for the Southern District of New York alleging that Shane committed insider trading and registration violations by short selling securities of CompuDyne Corporation prior to the public announcement of a private investment in public equity (PIPE) offering and prior to the effective date of the resale registration statement for the PIPE shares. Without admitting or denying the allegations in the complaint, Shane consented to the entry of a final judgment, subject to the court's approval, in which she is permanently enjoined from further violations of the antifraud and registration provisions of the federal securities laws and agreed to pay disgorgement of the trading profits, plus prejudgment interest and a civil penalty totaling \$1,075,015. Shane also has consented to be barred from the broker-dealer industry and suspended from the investment advisory industry.

The Commission's complaint alleges that, in September of 2001, Shane was asked to participate in a PIPE offering by CompuDyne. In a PIPE offering, investors commit to purchase a certain number of restricted shares from a company at a specified price and the company agrees, in turn, to file a resale registration statement so that the investors can resell the shares to the public. The complaint alleges that the PIPE offering was likely to have a significant dilutive effect on the value of existing CompuDyne shares because the PIPE shares would increase the supply of stock in the market by more than 200% and the PIPE shares were offered at a price of \$12 per share when the current market price was \$17.38. In fact, the market reacted negatively when CompuDyne announced the PIPE offering, with the price dropping to a closing price of \$14.25. The stock price continued to trend downward thereafter to close at \$12.02 on the first trading day after the resale registration statement for the PIPE shares became effective.

The Commission's complaint also alleges that on October 8, 2001, Shane agreed to purchase shares in the PIPE offering for her personal account and for one of the hedge fund accounts she managed. Shane agreed both orally and in writing to keep information about the PIPE offering confidential. The following morning, before the public announcement of the PIPE offering, Shane began short selling CompuDyne securities in both her personal account and the hedge fund's account. Shane continued short selling

CompuDyne shares until she had sold the same number of shares she had been allocated in the PIPE offering. Shane covered all of her short sales with the shares she obtained in the PIPE offering making substantial profits for both accounts.

The Commission's complaint alleges that Shane's short selling of CompuDyne shares prior to the public announcement of the PIPE offering violated Section 17(a) of the Securities Act of 1933 (Securities Act) and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The complaint also alleges that Shane's short selling of CompuDyne shares prior to the effective date of the resale registration statement for the PIPE shares and covering those short sales with the shares she obtained in the PIPE offering violated Sections 5(a) and 5(c) of the Securities Act.

The staff coordinated its investigation with the NASD, which also announced today a separate settlement with Shane of its enforcement proceeding. The Commission's investigation is continuing.

➤ [SEC Complaint in this matter](#)

<http://www.sec.gov/litigation/litreleases/lr19227.htm>

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Modified: 05/18/2005

Exhibit D

Ex-Hedge Fund Mgr. Inks Deal To Avoid Prosecution

By **Morgan Bettex**

Law360, New York (August 19, 2008, 12:00 AM ET) -- A former hedge fund manager accused of fraud after she sold short shares of CompuDyne Corp., a security system maker, has inked a deal with federal prosecutors to avoid a criminal trial.

In a deferred prosecution agreement filed Monday in the U.S. District Court for the Southern District of New York, Hilary L. Shane will avoid federal prosecution if she does not violate any federal, state or local laws for six months, avoids contact with investment advisers for the same amount of time and pays a \$50,000 fine.

The U.S. attorney may at any time revoke or modify the deal over the six-month period, including proceeding with prosecution, the agreement said. If Shane complies with all the rules, no further prosecution will be instituted, and the indictment will be dismissed with prejudice.

The 2006 indictment charged Shane with five counts of insider trading, each of which carries a 20-year maximum sentence.

Shane pleaded not guilty to the charges in September 2006 and was released on her own recognizance.

Shane is accused of securities fraud for allegedly making improper short sales of CompuDyne's stock in connection with a private offering in 2001. CompuDyne is an Annapolis, Md.-based security company whose products range from records management systems to bullet-resistant doors

In May 2005, Shane agreed to shell out more than \$1.45 million to settle charges stemming from the same deal brought by the National Association of Securities Dealers and the U.S. Securities and Exchange Commission.

The agreement also included a lifetime bar from associating with any broker or dealer. Shane didn't admit to or deny the accusations leveled against her by the SEC and NASD.

A civil lawsuit filed by CompuDyne against Shane in May 2005 is pending in the U.S. District Court for the Southern District of New York.

Both regulators and CompuDyne charge that Shane sold short 122,900 shares of CompuDyne just before the company publicly announced a private investment in a public equity, or PIPE, transaction.

PIPE offerings are privately issued and unregistered offerings of stock in companies that are publicly traded. Typically, PIPE shares are discounted, and a PIPE offering usually means a dip in the issuer's stock value.

Hoping to raise capital through a PIPE offering, CompuDyne had hired investment bank Friedman Billings Ramsey Group Inc, which contacted Shane, a hedge fund manager and Series 7 representative registered with the NASD, authorities allege.

Shane agreed to keep the information about the transaction confidential as a condition of learning who would issue the offering, according to prosecutors.

Following the decision by the investment bank and CompuDyne to set the price for the PIPE offering at \$12 per share, Shane was responsible for two purchase agreements. She agreed to buy about 475,000 of CompuDyne's unregistered shares for approximately \$12 each, prosecutors claim.

According to the indictment, Shane bought about 238,000 shares for a hedge fund she managed, and about 237,000 shares for her own account.

On Oct. 8, publicly traded shares of CompuDyne were worth more than \$17 apiece.

On or about Oct. 9, 2001, Shane, acting on her inside knowledge that CompuDyne was about to have a PIPE offering, began to sell short, prosecutors allege.

By Oct. 9, 2001, CompuDyne's shares had dropped almost 20 percent in value, according to the indictment. By the time the PIPE offering was publicly announced, according to prosecutors, Shane was responsible for short sales of 122,900 CompuDyne shares.

After finding out that the PIPE transaction would close on Oct. 29, 2001, Shane paid CompuDyne \$2,844,000 for 237,000 unrestricted, registered shares of CompuDyne stock, according to the indictment.

Shane then used those newly registered shares — which she had bought for \$12 each — to cover her short-selling activity, making \$315,216 for herself and the accounts for which she had established short positions, prosecutors claim.

In November 2006, Friedman Billings Ramsey Group Inc. agreed to pay CompuDyne and William Blair Mezzanine Capital Fund II \$4.5 million to settle insider trading charges related to the 2001 PIPE offering.

A spokeswoman for the criminal division of the U.S. attorney's office in Manhattan declined to comment Tuesday.

Counsel for Shane could not immediately be reached for comment Tuesday.

Shane is represented in this matter by Paul Weiss Rifkind Wharton & Garrison LLP.

The case is the USA v. Hilary Shane, case number: 06-cr-00772, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Ron Zapata, Bailey Somers and Ben James

Related Articles