SECURITIES AND EXCHANGE COMMISSION

This file is maintained pursuant to the Freedom of Information Act (5 U.S.C. 552). It contains a copy of each decision, order, rule or similar action of the Commission, for May 2006, with respect to which the final votes of individual Members of the Commission are required to be made available for public inspection pursuant to the provisions of that Act. Chairman Donaldson resigned from the Commission on June 30, 2005. Commissioner Glassman was Acting Chairman from July 1, 2005 through August 2, 2005. Commissioner Goldschmid resigned from the Commission on July 31, 2005. Chairman Cox took office on August 3, 2005. Commissioner Nazareth took office on August 4, 2005.

Unless otherwise noted, each of the following individual Members of the Commission voted affirmatively upon each action of the Commission shown in the file:

CHRISTOPHER COX, CHAIRMAN

CYNTHIA A. GLASSMAN, COMMISSIONER

PAUL S. ATKINS, COMMISSIONER

ROEL C. CAMPOS, COMMISSIONER

ANNETTE NAZARETH, COMMISSIONER

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53739 / April 28, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12282

In the Matter of Philip J. Hourican, Respondent.	: : : : : : :	ORDER INSTITUTING PUBLIC ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Philip J. Hourican ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Hourican, 38 years old, is a resident of North Babylon, New York. Hourican worked at Kimberly Securities, Inc. ("Kimberly Securities"), a broker-dealer formerly registered with the Commission, as a registered representative ("RR") from November 1999 to July 2000 and from April 2001 until August 2002.

2. On April 10, 2006, a final judgment was entered by consent against Hourican, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Kimberly J. Carrella, et al., Civil Action Number 04-CV-3754, in the United States District Court for the Eastern District of New York.

3. The Commission's complaint alleges that, from early 2000 until September 2002, RRs at Kimberly Securities, including Hourican, engaged in a scheme to defraud Kimberly Securities' customers by repeatedly executing unauthorized, unsuitable trades in customer accounts, and churning those accounts. Specifically, Hourican and other RRs misrepresented, and failed to disclose, material information to investors to persuade them to open brokerage accounts at Kimberly Securities and to invest significant amounts of money. Once the customers invested funds, Hourican and other RRs disregarded their customers' investment objectives. Hourican and other RRs repeatedly executed securities transactions that were unauthorized by, and unsuitable for, their customers, and churned their customers' accounts. This frequent trading typically depleted the customers' capital investments through trading losses and commission charges. After there were no remaining funds in the customers' accounts, or the customers closed their accounts, Hourican and other RRs lured new, unsuspecting customers into opening accounts at Kimberly Securities, and repeated the same conduct. Through this scheme, Hourican and other RRs generated substantial commissions, while the customers lost their entire investment.

IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act, that Respondent Philip J. Hourican be, and hereby is, barred from association with any broker or dealer.

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

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Glassman
Not Participating

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53744 / May 1, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12224

In the Matter of **M & A WEST, INC.,** **Respondent.**	**ORDER MAKING FINDINGS AND REVOKING REGISTRATION OF SECURITIES PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

In these proceedings instituted on February 28, 2006, pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act"), M & A West, Inc. ("M & A West" or "Respondent") has made an Offer of Settlement ("Offer"), which the Securities and Exchange Commission ("Commission") has determined to accept.

II.

Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, Respondent consents to the entry of this Order Making Findings and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. M & A West is a Colorado corporation which, until mid-2001 when it relocated to Liberty, Texas, had its principal place of business in San Bruno, California. M & A West has a class of common stock registered with the Commission pursuant to

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Section 12(g) of the Exchange Act, and its stock was quoted on the Over-the-Counter Bulletin Board Service. Respondent's stock is currently quoted on the "Pink Sheets," disseminated by Pink Sheets LLC, under the symbol "MAWI.PK."

2. M & A West has failed to comply with Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder, while its common stock was registered with the Commission in that it has not filed any quarterly reports with the Commission since on or about October 22, 2001, when M & A West filed its Form 10-QSB for the quarter ended August 31, 2001, nor any annual reports since on or about October 17, 2001, when M & A West filed its Form 10-KSB for the year ended May 31, 2001.

IV.

Section 12(j) of the Exchange Act provides as follows:

The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means of instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

In view of the foregoing, the Commission finds that it is necessary and appropriate for the protection of investors to impose the sanction specified in Respondent's Offer.

Accordingly, it is hereby ORDERED, pursuant to Section 12(j) of the Exchange Act, that registration of each class of Respondent's securities registered pursuant to Section 12 of the Exchange Act be, and hereby is, revoked.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-53755]

DESCRIPTION OF DUTIES OF THE GENERAL COUNSEL

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (Commission) is amending its description of the duties of the General Counsel to include preliminary investigations, in which no process is issued or testimony compelled, where it appears that an attorney appearing and practicing before the Commission may have violated Rule 102(e) of the Commission's Rules of Practice. The Office of the General Counsel of the Commission already has the authority to conduct Commission-authorized proceedings and formal investigations under Section 21 of the Securities Exchange Act of 1934 (Exchange Act), including for violations by attorneys of Rule 102(e) of the Commission's Rules of Practice.

An amendment of the description of the duties of the General Counsel to include preliminary investigations makes it clear that the General Counsel may gather evidence in Rule 102(e) cases without compulsory process where witnesses are willing to testify or provide information voluntarily. This amendment would enable the General Counsel to identify, through informal means, those matters that do not warrant full-blown investigation and compulsory process.

EFFECTIVE DATE: May 3, 2006

FOR FURTHER INFORMATION CONTACT: Laura Walker, 202-551-5031, Office of the General Counsel, Office of Litigation and Administrative Practice.

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SUPPLEMENTARY INFORMATION: Section 21(a)(1) of the Exchange Act authorizes the Commission to conduct investigations regarding violations of the Exchange Act or its related rules or regulations. Under 17 CFR 201.102(e), the Commission may discipline attorneys who practice before it who lack integrity or competence, engage in improper professional conduct, or who are determined to have violated the federal securities laws. Under 17 CFR 200.21(a), the General Counsel is responsible for conducting administrative proceedings relating to the disqualification of lawyers from practice before the Commission.

The Commission is amending its description of the duties of the General Counsel to include preliminary investigations, in which no process is issued or testimony compelled, where it appears that an attorney may have violated Rule 102(e) of the Commission's Rules of Practice.

The Commission finds, in accordance with the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(A), that this revision relates solely to agency organization, procedures, or practices. It is therefore not subject to the provision of the APA requiring notice and opportunity for comment. Accordingly, it is effective May 3, 2006.

TEXT OF AMENDMENT:

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, authority delegations (Government agencies).

For the reasons set out in the Preamble, title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200–ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200, subpart A, continues to read in part as follows:

Authority: 15 U.S.C. 77s, 77o, 77sss, 78d, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 79t, 80a-37, 80b-11, and 7202, unless otherwise noted.

* * * * *

2. Section 200.21 is amended by revising the fourth sentence of paragraph (a) to read as follows:

§ 200.21 The General Counsel.

(a) * * * In addition, he or she is responsible for advising the Commission at its request or at the request of any division director or office head, or on his or her own motion, with respect to interpretations involving questions of law; for the conduct of administrative proceedings relating to the disqualification of lawyers from practice before the Commission; for conducting preliminary investigations, as described in 17 CFR 202.5(a), into potential violations of 17 CFR 201.102(e) by attorneys; for the preparation of the Commission comments to the Congress on pending legislation; and for the drafting, in conjunction with appropriate divisions and offices, of legislative proposals to be sponsored by the Commission. * * *

* * * * *

By the Commission

Nancy M. Morris

Nancy M. Morris
Secretary

May 3, 2006

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
May 4, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12285

In the Matter of

MCSi, Inc.,

Respondent.

ORDER INSTITUTING PUBLIC PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against MCSi, Inc. ("MCSi" or "Respondent").

II.

The Commission's public official files disclose that the common stock of MCSi, a Maryland corporation formerly based in Dayton, Ohio and currently based in Atlanta, Georgia, is registered under Section 12(g) of the Exchange Act.

III.

After an investigation, the Division of Enforcement alleges that:

A. At all relevant times, MCSi was required pursuant to Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder to timely file, in proper form, its annual reports on Form 10-K and its quarterly reports on Form 10-Q.

B. MCSi did not file its annual report on Form 10-K for the year ended December 31, 2002 and has not filed any periodic report for any subsequent reporting period since it filed its last quarterly report, for the quarter ended September 30, 2002. The company's securities were

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previously traded on the NASDAQ National Market, but were delisted, and since such time they have been quoted in the pink sheets.

C. As a result of the foregoing, MCSi has failed to comply with Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder.

IV.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public proceedings be instituted pursuant to Section 12(j) of the Exchange Act to determine:

A. Whether the allegations set forth in Section III. above are true and, in connection therewith, to afford respondent MCSi an opportunity to establish any defense to such allegations; and

B. Whether the registration of each class of MCSi's securities registered pursuant to Section 12 of the Exchange Act should be suspended for a period, not exceeding twelve months, or revoked pursuant to Section 12(j) of the Exchange Act.

V.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section IV. hereof shall be convened at a time and place to be fixed and before an Administrative Law Judge to be designated by further order as provided by Rule 200 of the Commission's Rules of Practice, 17 C.F.R. § 201.200.

IT IS HEREBY FURTHER ORDERED that respondent file an Answer to the allegations contained in this Order within 20 days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file an answer or fails to appear at a hearing after being duly notified, it may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true, as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon the respondent personally or by certified mail.

IT IS HEREBY FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Nancy M. Morris

Nancy M. Morris
Secretary

Commissioner Glassman Not Participating

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

May 4, 2006

In the Matter of **MCSi, Inc.,** **File No. 500-1**	**ORDER OF SUSPENSION OF TRADING**

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MCSi, Inc., because it has not filed a periodic report since the quarter ending September 30, 2002.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, IT IS ORDERED, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on May 4, 2006, through 11:59 p.m. EDT on May 17, 2006.

By the Commission.

Nancy M. Morris

Nancy M. Morris
Secretary

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Commissioner Atkins
Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
May 5, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12288

In the Matter of

David Henry Disraeli and Lifeplan Associates, Inc.,

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15(b)(6) and 21C OF THE SECURITIES EXCHANGE ACT OF 1934, AND SECTIONS 203(e), 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b)(6) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against David Henry Disraeli ("Disraeli"), and pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act against Lifeplan Associates, Inc. ("Lifeplan") (collectively "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

A. **Respondents**

1. **David Henry Disraeli**, 42, of Austin, Texas, is registered with the Commission as an investment adviser (File No. 801-62429), under the primary business name "David Henry Disraeli DBA Lifeplan Associsates (sic)."[1] Disraeli presently provides discretionary investment advisory services, with approximately $5 million in assets under management, to 19 clients, 18 of whom reside in Texas. Disraeli has worked in the securities industry, as an

[1] Lifeplan Associates is the sole proprietorship under which Disraeli does business.

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investment adviser or a registered representative of a broker-dealer, since 1988. He holds Series 6, 7, 22, 24 and 63 licenses from the NASD. Disraeli was registered with the SEC as an investment adviser from November 1993 until his voluntary withdrawal in June 1997, after it became apparent he would no longer qualify for Commission registration as an investment adviser under the National Securities Market Improvement Act of 1996, which added Section 203A to the Advisers Act. In or about March 1999, Disraeli registered as an investment adviser with the Texas State Securities Board ("TSSB"), and in or about December 2000, Disraeli allowed his TSSB registration to lapse. In late 2003, Disraeli registered with the Commission for a second time as an investment adviser.

2. **Lifeplan Associates, Inc.** is a Texas corporation, based in Austin, Texas, which Disraeli incorporated on or about September 30, 2003. Disraeli holds 80 percent of its outstanding stock, and approximately 11 of his advisory clients hold the remaining 20 percent. Disraeli is Lifeplan's sole officer, director and employee. Lifeplan was registered briefly with the Commission as an investment adviser from on or about October 13, 2003 to on or about November 13, 2003.

B. Disraeli's Investment Adviser Registration with the Commission

1. On or about April 2, 2003, Disraeli consented on a neither-admit-nor-deny basis to the entry of a cease-and-desist order by the TSSB. *See In the Matter of David Henry Disraeli d/b/a Disraeli and Associates*, TSSB Order No. CDO-1504 (April 2, 2003). The order found, among other things, that Disraeli had made misleading statements indicating that he was registered with the Texas Securities Commissioner as an investment adviser, that Disraeli had failed to disclose a federal tax lien, and that Disraeli had offered for sale unregistered securities issued for the development of a retirement community. The order required Disraeli to cease and desist from offering the unregistered retirement community securities, conducting fraudulent offerings and rendering services as an investment adviser without registering as such.

2. During the investigation leading to the April 2003 TSSB order, Disraeli had resigned from the broker-dealer employing him. On or about August 13, 2003, Disraeli applied to re-register with the TSSB as a registered representative of a broker-dealer. The TSSB opposed his application, and on or about September 3, 2003, Disraeli requested a hearing on his application.

3. In or about October 2003, Disraeli filed a Form ADV with the Commission by which he registered Lifeplan as an investment adviser. Although Section 203A of the Advisers Act prohibits investment advisers with less than $25 million under management from registering with the Commission, Lifeplan's Form ADV claimed it met the exemption under Advisers Act Rule 203A-2(d), which allows a newly-formed investment adviser to register if it reasonably expects to qualify for Commission registration within 120 days.

4. Since Disraeli was the advisory representative of Lifeplan, which had advisory clients in Texas, Disraeli was required under Texas law to register with the TSSB as an advisory representative. Therefore, on or about October 21, 2003, Disraeli submitted his advisory

representative application to the TSSB, which notified Disraeli on or about November 12, 2003 that it would oppose the application.

5. On or about November 13, 2003, Disraeli amended Lifeplan's Form ADV to substitute Disraeli, operating as a sole proprietorship, as the registered adviser. In the amended Form ADV filing, Disraeli claimed that he was a newly-formed adviser expecting to qualify for Commission registration within 120 days. By registering personally with the Commission, Disraeli avoided registering with the TSSB as either an adviser or advisory representative.

6. When Disraeli filed the November Form ADV with the Commission, he had only 14 clients (all residing in Texas) and approximately $4.5 million in assets under management. Disraeli had provided advisory services to these clients for several years. Therefore, at the time he filed the Form ADV Disraeli was not a newly-formed investment adviser. Further, Disraeli did not meet the general $25 million threshold for Commission registration, and had no reasonable basis for expecting to meet that threshold within 120 days.

7. On or about February 11, 2004, Disraeli entered into a written undertaking with the TSSB. The undertaking, which resolved the proceedings arising from the TSSB's opposition to his applications to register as a representative of a broker-dealer and a representative of an investment adviser, required Disraeli to withdraw all applications pending before the TSSB, to refrain from re-applying for registration for 18 months, and to refrain from acting as a broker-dealer's registered representative or providing advisory services, until registered or exempt from registration.

8. On or about February 13, 2004, Disraeli filed an amended Form ADV with the Commission, to claim that he met the Rule 203A-2(e) multi-state adviser exemption, which permits Commission registration by advisers who are required by the laws of 30 or more states to register as an adviser in those respective states. Disraeli claimed he qualified for the same exemption in each of the amendments to his Form ADV filed on or about July 1, 2004, March 31, 2005 and November 9, 2005.

9. Contrary to Disraeli's statements in his Commission filings, Disraeli was not required to register as an adviser in 30 or more states, and thus, was not qualified for the multi-state exemption. At the time of his Commission filings referenced in paragraph B.8., Disraeli's only office was in Texas and all but one of his clients resided in Texas.

C. **The Lifeplan Offering**

1. From in or about September 2003 to in or about December 2003, and also in or about December 2004 and in or about March 2005, ("the relevant period") Disraeli offered and sold 220,000 shares of Lifeplan common stock to approximately 11 of his investment advisory clients. The offering, at $0.50 per share, raised a total of $105,000.

2. During the relevant period, Disraeli solicited his clients by means of material misrepresentations and omissions. Disraeli initially offered and sold Lifeplan stock with a summary memorandum (the "Summary Memorandum") and then, beginning in mid-to-late 2003, through a full private offering memorandum (the "Final Memorandum"). Both documents outlined essentially the same business plan—that Lifeplan would apply the offering proceeds to the operation of various wealth management services and ventures, including the operation of the advisory business and the creation of a limited partnership that would purchase and collect distressed consumer debt.

3. While the two memoranda differed in some respects, they contained the same essential terms. Both memoranda stated that a maximum of $100,000 would be raised with a $50,000 minimum and that Lifeplan would apply the offering proceeds to administrative and start up expenses and working capital. The Final Memorandum further specified that Lifeplan would hold and segregate the offering proceeds, for return to investors, until reaching a $50,000 minimum. The Final Memorandum also specified that, assuming $100,000 was raised, Lifeplan would apply $42,000 to various administrative and start up expenses, and approximately $58,000 to working capital.

4. Both memoranda represented that Disraeli would not receive a salary from Lifeplan. The memoranda further stated that Disraeli's compensation would be calculated based on net profit, split pro-rata, between Disraeli and the other Lifeplan shareholders, according to their ownership of Lifeplan. The Summary Memorandum further stated that the profits would be calculated and paid quarterly.

5. Lifeplan and Disraeli's bank records reflect that Disraeli misappropriated as much as $60,000 of investor funds for personal and non-business related expenditures contrary to the representations in the offering memoranda. For example, on or about October 9, 2003, after raising only $30,000 of the stated minimum $50,000, Disraeli transferred $12,000 from the Lifeplan account to his personal bank account to cover the purchase of a $9,300 cashier's check payable to the IRS toward the release of a personal tax lien. Thereafter, between on or about October 9 and December 31, 2003, Disraeli spent at least $50,700 of investor funds for various personal items, debts and expenses, including rent on his personal residence, groceries, medical fees, entertainment, charitable donations and dining. No investor funds were used for the purchase and collection of distressed consumer debt and Lifeplan never launched any of the ventures contemplated by the offering memoranda.

6. As of December 31, 2003, $90,000 of investor funds had been deposited and expended from Lifeplan's bank account, including $83,500 transferred directly to Disraeli's personal bank account.

7. During the relevant period, Disraeli did not disclose the use of investor funds as described in paragraphs C.5. and C.6., above.

8. Disraeli had discretionary authority and he received more than $500 in fees more than six months in advance. During the relevant period, Disraeli never disclosed to his clients his precarious financial condition as evidenced by, among other things, his federal tax liens, his inability to pay rent on his personal residence for several months, and his indebtedness to Lifeplan resulting from his misappropriations, all of which were reasonably likely to impair his ability to meet his contractual commitments to his clients to implement and manage the Lifeplan business plan.

9. During the Commission's January 2005 examination of Disraeli's advisory business, Disraeli produced a personal promissory note to Lifeplan, undated as to execution, for $84,300, plus 8 percent annual interest to accrue from November 10, 2003, payable in a single balloon payment of $106,193 on November 9, 2006. The purported loan to Disraeli was not disclosed in the Lifeplan offering memoranda.

D. Disraeli's Lack of Record-Keeping and Form ADV Delivery

1. Disraeli failed to keep books and records, such as journals, ledgers and financial statements, for his advisory business.

2. Disraeli only gave Form ADV Part II disclosures to his advisory clients in November 2003. At no point thereafter did Disraeli deliver (or offer to deliver) updated ADV Part II disclosures to his clients, annually or otherwise.

E. Violations

1. As a result of the conduct described above, Disraeli willfully violated, and Lifeplan committed violations of, Section 17(a) of the Securities Act, which prohibits fraudulent conduct in the offer or sale of securities, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

2. As a result of the conduct described above, Disraeli willfully violated Sections 206(1), 206(2) and 206(4) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser, and Rule 206(4)-4(a)(1) thereunder. Rule 206(4)-4(a)(1) makes it a fraudulent, deceptive, or manipulative act, practice, or course of business, for an adviser registered with the Commission to fail to disclose to any client all material facts with respect to a financial condition reasonably likely to impair the ability of the adviser to meet contractual commitments, if the adviser has discretionary authority or custody over such client's funds or securities, or requires prepayment of advisory fees of more than $500 from such client, six months or more in advance.

3. As a result of the conduct described above, Disraeli willfully violated Section 203A of the Advisers Act, which provides that no investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business shall register under Section 203, unless the adviser has not less than $25 million in assets under management or is an adviser to a registered investment company.

4. As a result of the conduct described above, Disraeli willfully violated Section 204 of the Advisers Act, which requires registered investment advisers to make, keep, furnish and disseminate reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors, and Rules 204-2(a)(1), 204-2(a)(2), 204-2(a)(6), 204-3(a) and 204-3(c)(1) promulgated thereunder. Rule 204-2(a)(1) requires an investment adviser registered with the Commission to make and keep a true, accurate and current journal or journals, including cash receipts and disbursements, records, and any other records of original entry forming the basis of entries in any ledger. Rule 204-(2)(a)(2) requires an investment adviser registered with the Commission to make and keep true, accurate and current general and auxiliary ledgers (or other comparable records) reflecting assets, liability, reserve, capital, income and expense accounts. Rule 204-2(a)(6) requires an investment adviser registered with the Commission to make and keep true, accurate and current trial balances, financial statements, and internal audit work papers relating to the business of such investment adviser. Rule 204-3(a) generally requires a Commission-registered investment adviser to furnish each client with a written disclosure statement that is either Part II of Form ADV or contains at least the information required therein. Rule 204-3(c)(1) states that an investment adviser annually shall, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the information required in Part II of Form ADV.

5. As a result of the conduct described above, Disraeli willfully violated Section 207 of the Advisers Act, which makes it unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission or willfully to omit to state in any such application or report any material fact that is required to be stated therein.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent Disraeli pursuant to Section 15(b)(6) of the Exchange Act and Sections 203(e) and 203(f) of the Advisers Act including, but not limited to, civil money penalties;

C. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, and Section 203(k) of the Advisers Act, Respondent Disraeli should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Sections 203A, 204, 206(1), 206(2) 206(4), and 207 of the Advisers Act, and Rules 204-2(a)(1), 204-2(a)(2), 204-2(a)(6), 204-3(a), 204-3(c)(1) and 206(4)-4(a)(1) thereunder, and whether Respondent Disraeli should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act, Section 21C(e) of the Exchange Act and Section 203(k)(5) of the Advisers Act; and

D. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Lifeplan should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Nancy M. Morris
Secretary

J. Lynn Taylor

By: J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 27313 / May 5, 2006

INVESTMENT ADVISERS ACT OF 1940
Release No. 2512 / May 5, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12287

In the Matter of **VAUGHN WEIMER** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 9(f) OF THE INVESTMENT COMPANY ACT OF 1940 AND SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940 AS TO VAUGHN WEIMER.**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 9(f) of the Investment Company Act of 1940 ("Investment Company Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Vaughn Weimer ("Weimer" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 9(f) of the Investment Company Act of 1940 and Section 203(f) of the Investment Advisers Act as to Vaughn Weimer ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

SUMMARY

1. Vaughn Weimer, portfolio manager for the Liquid Green Money Market Fund ("Liquid Green") and its predecessor, the Unified Taxable Money Market Fund ("UTMM") (collectively, the "Funds"), purchased bonds that exceeded the maturity limit for money market fund securities under Rule 2a-7 under the Investment Company Act. As a result, the Funds were unable to hold themselves out as money market funds. By this conduct, Weimer willfully[2] violated or caused violations of the Investment Company Act.

RESPONDENT

2. **Vaughn Weimer,** age 51, is a Certified Financial Planner. From 1989 to 2004, Weimer was employed as a financial planner by Fiduciary Counsel, Inc., a registered investment adviser located in New York, New York. Since 2004, Weimer has been employed in the same capacity by Oaktree Asset Management, LLC ("Oaktree"), a successor to Fiduciary Counsel. From early 2001 until September 2002, Weimer served as President of Fiduciary Counsel. Weimer has provided investment advisory services to individuals since 1997.

OTHER RELEVANT ENTITIES

3. **Unified Funds,** an Indiana corporation, was a registered investment company from 1996 until 2001. Unified Funds had a service contract with Unified Fund Services, Inc. ("Unified"), pursuant to which Unified provided fund accounting and administrative services to Unified Funds' portfolios. Among other things, Unified calculated net asset values ("NAVs"), prepared and filed regulatory reports with the Commission, and performed compliance testing for each fund of Unified Funds. One of Unified Funds' portfolios was UTMM. On October 1, 2001, UTMM dissolved after it transferred all of its assets to Liquid Green.

4. **AmeriPrime Advisors Trust ("AAT"),** an Ohio business trust, is an open-end series investment company[3] that has been registered with the Commission since 1999. Currently, AAT has eight portfolios with over $307 million in assets. In October 2001, AAT formed Liquid Green as one of its portfolios. In February 2002, Liquid Green dissolved after transferring all of its assets to another money market fund.

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[1]The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

[2] "Willfully" as used in this Order means intentionally committing the act which constitutes the violation. *Cf. Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). There is no requirement that the actor also be aware that he is violating one of the Rules or Acts.

[3] Although a series investment company such as Unified Funds or AAT is organized as a single corporate entity, it may be comprised of several different series or portfolios that function as separate investment companies.

5. **Unified Investment Advisers, Inc. ("UIA"),** was an Indiana corporation and registered investment adviser from February 1995 until it terminated its registration in October 2002. UIA was a wholly-owned subsidiary of Unified Financial Services, Inc. ("UFS"). UIA's only client was UTMM and later Liquid Green, which ceased operations in February 2002. In October 2002, UIA merged into another subsidiary of UFS, Unified Fund Services, Inc., the mutual fund administrator for both Unified Funds and AAT.

FACTS

6. Prior to 1997, personnel at Fiduciary Counsel managed the UTMM portfolio on behalf of UIA. In early 1997, at the request of Fiduciary Counsel management, Weimer took over the role of UTMM portfolio manager from another individual at Fiduciary Counsel. Weimer had no previous experience with managing money market funds, and has not had any other money market fund experience apart from his role as portfolio manager for UTMM and later Liquid Green. Weimer was never compensated for his services as portfolio manager for UTMM or Liquid Green.

7. Upon becoming portfolio manager for UTMM, and at all relevant times, Weimer coordinated with staff at Unified when making purchases for the Funds. As securities in the portfolio matured, Unified staff advised Weimer on the amounts and maturities of new securities that he could purchase and still remain within the portfolio diversification and weighted average maturity limitations of Rule 2a-7. If purchases resulted in the portfolio not being in compliance with these limitations of Rule 2a-7, Unified's procedures called for its staff to notify Weimer to unwind the trades.

8. Between March 20, 2001 and December 6, 2001, Weimer purchased 28 callable government agency bonds for UTMM and later Liquid Green with maturities of between two and a half and twelve years. By September 30, 2001, these bonds made up approximately 53% of the Funds' assets. Under Rule 2a-7(c)(2)(i) under the Investment Company Act, a mutual fund generally cannot acquire securities with maturities in excess of 397 days and hold itself out as a money market fund, unless the securities have a maturity shortening feature called for by Rule 2a-7. In this case, the bonds were callable within 397 days at the discretion of the government agency (and not at the option of the purchaser), but did not have a maturity shortening feature provided for by Rule 2a-7. Thus, UTMM and Liquid Green could not hold themselves out as money market funds.

9. By purchasing bonds with maturities over 397 days, Weimer caused UTMM and Liquid Green to have a dollar weighted average portfolio maturity that exceeded 90 days. Under Rule 2a-7(c)(2)(ii), a fund holding itself out as a money market fund must maintain a dollar weighted average portfolio maturity of 90 days or less.

10. Staff at Unified was informed each time Weimer made a purchase for the Funds' portfolios and compiled information about the purchased securities. Unified compliance personnel produced periodic reports on the portfolios' compliance with Rule 2a-7. The compliance reports were reviewed by Unified compliance personnel and the Funds' legal counsel. Neither Unified compliance personnel nor the Funds' legal counsel

advised Weimer that the agency bonds he purchased were not eligible for a money market fund or that the bonds otherwise caused the Funds' portfolio not to comply with Rule 2a-7. However, as portfolio manager, Weimer failed to exercise reasonable care at the point of purchase to confirm whether the callable agency bonds were eligible for a money market fund under Rule 2a-7.

11. In October 2001, Weimer drafted responses for the "Investment Review" section of the Liquid Green annual report for the year ended September 30, 2001. (The Investment Review section was presented in a Q&A format.) Weimer's responses stated that Liquid Green was a money market fund. However, Rule 2a-7(b)(1) makes it an untrue statement of material fact within the meaning of Section 34(b) of the Investment Company Act for a mutual fund to hold itself out as a money market fund when it does not meet the risk limiting conditions of Rule 2a-7(c)(2), (c)(3) and (c)(4). Here, Liquid Green could not hold itself out as a money market fund because the bonds Weimer purchased did not meet the risk limiting conditions of Rule 2a-7(c)(2). Weimer also wrote in the Investment Review section of the annual report that during 2001 he had "endeavored to maximize our yields" by investing in agency bonds "with a duration of many years but with a right for the agency to 'call' or redeem" the bonds. Although this statement accurately described his investment strategy for the fund, it was misleading because it suggested that this strategy was appropriate for a money market fund. An investment company cannot purchase these bonds and hold itself out as a money market fund. The correct maturity dates for the agency bonds were set forth in the audited financial statements that were part of the fund's September 30, 2001 annual report. The fund's legal counsel reviewed both Weimer's draft responses for the Investment Review section and the Fund's draft financial statements prior to the release of the annual report.

12. By purchasing the ineligible bonds, Weimer also caused UTMM and Liquid Green to adopt a materially misleading and deceptive name. Rule 2a-7(b)(2) provides that "it shall constitute the use of a materially deceptive or misleading name within the meaning of Section 35(d) of the Act for a registered investment company to adopt the term "money market" as part of its name ... unless such registered investment company meets the conditions of paragraphs (c)(2), (c)(3), and (c)(4) of [Rule 2a-7]." As described above, UTMM and Liquid Green did not meet the risk limiting conditions of Rule 2a-7(c)(2). From March 2001 through December 2001, UTMM and Liquid Green filed prospectuses and semi-annual and annual reports, and the Funds' administrator, Unified, maintained a website for the Funds, which held them out as money market funds.

13. In mid-December 2001, Liquid Green's NAV per share dropped below \$.995. This caused compliance staff at Unified to investigate further and, with the advice of fund counsel, resulted in the determination that the callable agency bonds held in the Fund's portfolio were ineligible under Rule 2a-7. Weimer sold the ineligible bonds in late December 2001 and early January 2002. As a result of the sale, Liquid Green incurred a loss of over \$517,000, which UIA reimbursed in January 2002.

14. As a result of the purchases of the callable agency bonds, UFS, Fiduciary Counsel's then corporate parent, demoted Weimer from his position as President of Fiduciary Counsel and reduced his pay. Weimer's role as portfolio manager for Liquid

Green ceased commensurate with the dissolution of Liquid Green and transfer of its assets to another money market fund in 2002. Weimer continues to provide advisory services to individuals on behalf of Fiduciary Counsel's successor, Oak Tree.

VIOLATIONS

15. As a result of the conduct described above, Weimer willfully violated Section 34(b) of the Investment Company Act. Section 34(b) prohibits any person from making any untrue statement of a material fact in any report, account, record or other document filed or required to be kept under Section 31(a) of the Investment Company Act. Section 34(b) also prohibits any person filing or keeping those documents from omitting to state any fact necessary in order to prevent the statements made in those documents from being misleading. A violation of Section 34(b) does not require a finding of scienter. *In the matter of Fundamental Portfolio Advisers, Inc. et al.*, Investment Company Act Release No. 26099, 2003 SEC LEXIS 1654, *29 (July 15, 2003). Rule 2a-7(b)(1) provides that it is a material misrepresentation in violation of Section 34(b) for a fund to hold itself out as a money market where it does not meet the risk limiting conditions of Rule 2a-7(c).

16. As a result of the conduct described above, Weimer caused Unified Funds and AAT to violate Section 35(d) of the Investment Company Act. Section 35(d) prohibits any registered investment company from adopting as a part of its name or title any word or words that the Commission finds are materially deceptive or misleading. Rule 2a-7(b)(2) provides that "it shall constitute the use of a materially deceptive or misleading name within the meaning of Section 35(d) of the Act for a registered investment company to adopt the term 'money market' as part of its name . . . unless such registered investment company meets the conditions of paragraphs (c)(2), (c)(3), and (c)(4) of [Rule 2a-7]." Because a violation of Section 35(d) does not require a finding of scienter, negligence is sufficient for liability for causing such violation. *See Howard v. SEC*, 376 F.3d 1136 (D.C. Cir. 2004).

IV.

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

Accordingly, pursuant to Section 9(f) of the Investment Company Act and Section 203(f) of the Advisers Act, it is hereby **ORDERED** that:

A. Respondent Weimer is hereby ordered to cease and desist from committing or causing any violations and any future violations of Sections 34(b) and from causing any violations and any future violations of Section 35(d) of the Investment Company Act;

B. Respondent Weimer is hereby censured pursuant to Section 203(f) of the Advisers Act.

C. It is further ordered that Respondent Weimer shall, within thirty (30) days of the entry of this Order, pay a civil money penalty in the amount of $15,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Weimer as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Robert J. Burson, Senior Associate Regional Director, Midwest Regional Office, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 900, Chicago, Illinois 60604.

By the Commission.

Nancy M. Morris
Secretary

J Lynn Taylor

By: J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53762 / May 5, 2006

INVESTMENT COMPANY ACT OF 1940
Release No. 27312 / May 5, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2426 / May 5, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12286

In the Matter of UNIFIED FUND SERVICES, INC. AND MICHAEL E. DURHAM Respondents.	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTIONS 9(b) AND 9(f) OF THE INVESTMENT COMPANY ACT OF 1940

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), and Sections 9(b) and 9(f) of The Investment Company Act of 1940 ("Investment Company Act") against Unified Fund Services, Inc. ("Unified") and pursuant to Section 9(f) of the Investment Company Act against Michael E. Durham ("Durham") (Unified and Durham are referred to collectively herein as "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act

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of 1934, and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

OVERVIEW

1. Unified Fund Services, Inc. ("Unified"), a mutual fund services company, provided fund administration services to the Liquid Green Money Market Fund ("Liquid Green") and its predecessor, the Unified Taxable Money Market Fund ("UTMM"). From March 2001 through December 2001, the portfolio manager for Liquid Green and UTMM purchased callable bonds that exceeded the maturity limit for securities eligible for purchase by a money market fund under Investment Company Act Rule 2a-7. Unified incorrectly substituted the call dates for the maturity dates of the bonds in the fund accounting records and also used the call dates for purposes of determining compliance with Rule 2a-7. As a result of these errors, Unified caused the funds to hold themselves out as money market funds when they were not entitled to do so because they did not meet the risk limiting conditions of Rule 2a-7 resulting in violations of Sections 35(d) and 34(b) of the Investment Company Act.

2. Unified also provided fund administration services and served as the fund accountant for the Florida Street Bond Fund ("Florida Street"), a high-yield bond fund. In August 1999, when Unified began providing accounting services to Florida Street, the assets on Florida Street's balance sheet included a substantial interest receivable that was uncollectible. Unified carried this balance over when it began providing accounting services, and Unified did not receive accounting records from the predecessor accountant that adequately substantiated the receivable. From August 1999 through June 2001, Unified caused Florida Street to continue to carry and accrue uncollectible interest on bonds and to fail to write off interest on bonds no longer owned by the fund. As a result of these errors, Unified (1) caused Florida Street to materially overstate its interest receivable; (2) computed an incorrect net asset value ("NAV"), and (3) caused Florida Street to sell and redeem its shares at incorrect NAVs. Finally, from 2000 through 2002, Unified was late in filing several mutual funds' semi-annual reports and Form N-SARs with the Commission. By this conduct, Unified willfully[2] violated or aided and abetted and caused violations of pricing, books and records, and naming provisions of the Investment Company Act, and reporting provisions of the Exchange Act. Michael Durham ("Durham"), a Unified executive, caused or substantially assisted these violations.

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[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

[2] "Willfully" as used in this Order means intentionally committing the act that constitutes the violation. *Cf. Wonsover v. SEC*, 205 F.3d 408,411 (D.C. Cir. 2000); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

RESPONDENTS

3. **Unified**, a mutual fund services company, is an Indiana corporation formed in 1990 with its principal place of business in Indianapolis, Indiana. Unified has been registered with the Commission as a transfer agent since 1990. Unified provides mutual fund administration, transfer agency and other services to over 137 mutual funds with over $15 billion in assets. Unified is a wholly-owned subsidiary of Unified Financial Services, Inc. From 1999 through 2002, Unified provided certain mutual fund accounting and administrative services to UTMM, Liquid Green and Florida Street, pursuant to service contracts then in place between Unified and the funds. Among other things, Unified calculated NAVs, prepared and filed regulatory reports with the Commission, and performed compliance testing.

4. **Michael E. Durham**, a 45-year-old resident of Greenwood, Indiana, was the Vice President of Fund Accounting at Unified from 1995 until his termination in August 2003.

OTHER RELEVANT ENTITIES

5. **Unified Funds**, an Indiana corporation, was an open-end series investment company[3] from 1996 until 2001. One of Unified Funds' portfolios was UTMM. On October 1, 2001, UTMM dissolved after it transferred all of its assets to Liquid Green, a portfolio of AmeriPrime Advisors Trust.

6. **AmeriPrime Advisors Trust** ("AAT"), an Ohio business trust, is an open-end investment company that has been registered with the Commission since 1999. Currently, AAT has eight portfolios with over $307 million in assets. In October 2001, AAT formed Liquid Green as one of its portfolios. In February 2002, Liquid Green dissolved after transferring all of its assets to another money market fund.

7. **AmeriPrime Funds** ("AF"), an Ohio business trust, is an open-end investment company that has been registered with the Commission since 1995. Currently, AF has six portfolios with over $103 million in assets. In July 1999, Florida Street, a high-yield bond fund, became a portfolio under AF. In November 2001, AF's board decided to liquidate Florida Street as a result of the problems described herein.

8. **Unified Investment Advisers, Inc.** ("UIA") was an Indiana corporation and registered investment adviser from February 1995 until it terminated its registration in October 2002. UIA was a wholly-owned subsidiary of Unified Financial Services, Inc. UIA's only client was UTMM, and later Liquid Green, which ceased operations in February 2002. In October 2002, UIA merged into Unified.

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[3] Although a series investment company such as Unified Funds, AAT or AF is organized as a single corporate entity, it may be comprised of several different series or portfolios that function as separate investment companies.

FACTS

UTMM and Liquid Green Held Ineligible Securities

9. Investment Company Act Rule 22c-1 prohibits an investment company issuing redeemable securities from selling, redeeming or repurchasing any such security except at a price based on the current NAV of the security. In determining the NAV, an investment company must value portfolio securities for which market quotations are readily available at their current market value, and other securities at their fair value as determined in good faith by the investment company's board of directors. This NAV determination, which generally must be made on each business day on which the investment company sells, redeems or repurchases its securities, is commonly referred to as the "daily mark-to-market" requirement.

10. Investment Company Act Rule 2a-7 is an exemptive rule which exempts investment companies from the daily mark-to-market requirement for certain investment companies characterized as money market funds. Rule 2a-7 permits a money market fund to use the amortized cost method of valuation to value its portfolio securities. Under the amortized cost method of valuation, portfolio securities are valued at the investment company's cost of acquisition, adjusted for the amortization of premium or the accumulation of discount, rather than at their market or fair values.

11. Rule 2a-7 provides that an investment company which holds itself out as a money market fund and uses the amortized cost method of valuation to value its portfolio securities must meet certain conditions. In particular, such a money market fund may not acquire any instrument with a remaining maturity of more than 397 calendar days, unless the securities have a maturity-shortening feature as defined in Rule 2a-7, or maintain a dollar-weighted average portfolio maturity that exceeds 90 days.

12. Between March 20, 2001 and December 6, 2001, UIA purchased 28 fixed-rate government agency bonds for UTMM and Liquid Green with remaining maturities of between two and a half and twelve years (the "Ineligible Securities"). By September 30, 2001, the Ineligible Securities made up approximately 53.1% of Liquid Green's assets. Each of these securities contained a call provision that provided the issuer of the security with an option or right, at its discretion, to call the instrument during its term on specified dates at par. Unified used these call dates, rather than the stated maturity dates, for purposes of determining compliance with the conditions of Rule 2a-7. Unified's use of the call dates rather than the stated maturity dates was impermissible under the rule, however, because UTMM and Liquid Green did not have any right or privilege to put back, or sell, the Ineligible Securities to the issuer prior to the stated maturity and thereby ensure that the maturity of the Ineligible Securities would not actually be greater than 397 days.

13. Pursuant to its fund servicing contracts with Unified Funds and AAT, the sponsors of UTMM and Liquid Green respectively, Unified was responsible for monitoring the funds' compliance with their stated investment restrictions, which included the conditions of Rule 2a-7. Unified was also responsible for keeping the funds' books and preparing quarterly Rule 2a-7 compliance reports for the funds' boards of directors.

14. In performing its duties for the funds, Unified erroneously substituted the call dates for the maturity dates of the Ineligible Securities in the source accounting records of UTMM and Liquid Green. By doing so, Unified made misstatements in UTMM's and Liquid Green's books and records. The misstatements appeared in both funds' security master files, which are part of the funds' accounting records, and in their portfolio listings. Although the correct maturity dates for the Ineligible Securities were also entered into the source records and were set forth on the audited and unaudited financial statements of UTMM and Liquid Green, Unified prepared quarterly Rule 2a-7 compliance reports based upon a portion of the source records containing the call dates. Unified also used the call dates to calculate the funds' average portfolio maturities. As a result, Rule 2a-7 compliance reports generated by Unified between May and December 2001 showed the average portfolio maturities to be under 90 days when the actual average portfolio maturities were between 730 and 1,825 days. The reports also misrepresented UTMM's and Liquid Green's longest maturity investments. For example, the May 1, 2001 Rule 2a-7 report disclosed the longest maturity investment as 381 days instead of 3,642 days.

15. Between March 2001 and December 2001, Unified prepared and filed with the Commission prospectuses and reports for UTMM and Liquid Green. These prospectuses and reports, which were also reviewed by the funds' outside counsel and accountants, described UTMM and Liquid Green as money market funds when they were no longer entitled to hold themselves out as money market funds. The prospectuses also represented that the funds could and did use the amortized cost method to price their securities, without disclosing that the funds held Ineligible Securities and therefore were not entitled to use the amortized cost method.

16. On or about December 14, 2001, Unified employees observed a deviation between the market value of the Liquid Green portfolio and its value based on the amortized cost method of valuation. As a result, Unified reviewed the eligibility of the Ineligible Securities and determined that such securities were not in compliance with Rule 2a-7. After making the determination, Unified notified UIA and the Liquid Green board of directors that the fund held ineligible securities.

17. Between December 17, 2001 and January 4, 2002, UIA sold all of the Ineligible Securities at a net loss of approximately $517,000. In January 2002, UIA reimbursed Liquid Green for the full loss incurred in the sale of the Ineligible Securities. Shortly thereafter, UIA entered into agreements to recover $100,000 from the fund's independent auditor and $125,000 from the fund's counsel, the latter in the form of a partial forgiveness of a receivable due to the law firm. Unified informed the Commission staff of the loss resulting from the sale of the Ineligible Securities in conjunction with an SEC examination in mid-January 2002.

Florida Street - Improper Interest Accruals

18. On August 1, 1999, Florida Street became a portfolio of AF and Unified began providing fund accounting services pursuant to AF's contract with Unified. As of that date, the assets on Florida Street's balance sheet included an unsubstantiated interest receivable of approximately $913,264, at least $195,120 of which was uncollectible. Unified carried this balance over when it began providing accounting services to Florida Street, and for over a year it did not take any steps to substantiate the accuracy and collectibility of the receivable that had

been recorded by the predecessor accountant. Additionally, starting in August 1999, Unified's fund accounting group failed to write off uncollectible interest for bonds in default and previously accrued interest for bonds no longer owned by the fund (*i.e.*, bonds that were sold "flat" or for principal only). This occurred at least in part because Unified failed to employ internal accounting controls adequate to assure that the interest receivable was accurate.

19. Beginning in August 1999, when Unified became the fund's administrator, Durham knew or acted with reckless disregard for whether Florida Street was carrying unsubstantiated interest on its books and records. Among other things, Durham knew that the predecessor accountant had not provided Unified with accounting records needed to substantiate certain interest receivables on the books of Florida Street and that, as a result, the fund's interest receivable balance had not been tied out to the interest sub-ledger for each bond in the fund. Durham also knew that the fund accountants could not reconcile the interest for bonds sold without the subledgers and did not create aged interest receivable reports. Finally, Durham received a letter in April 2000 from Florida Street's independent auditor warning him of unsubstantiated interest on Florida Street's books. Prior to late 2000, however, Durham continued to rely on the work product of the predecessor accountant, did not make any attempt to substantiate the accuracy and collectibility of the receivable that had been recorded by the predecessor accountant, and failed to put in place internal accounting controls adequate to assure that the interest receivable was accurate. As a result, Durham was a cause of Florida Street's failure to write off uncollectible interest on its books.

20. During the 2000 year-end audit, the fund's independent auditor requested that Unified substantiate Florida Street's interest receivable. From November 2000 through June 2001, Unified reviewed the interest receivable for collectibility. By June 2001, Unified determined that Florida Street's interest receivable was overstated by approximately $796,356 as of October 31, 2000 and by approximately $285,794 more for the first four months of the fiscal year ending October 31, 2001. These amounts represented accrued interest that Unified determined to be uncollectible. Starting in June 2001, Unified wrote off the uncollectible interest back to December 1, 1999. The write off reduced the fund's NAV for the year ending October 31, 2000 by approximately 4.7%.

21. After writing off the interest, Unified re-priced the fund. The repricing revealed that Florida Street's daily NAV was overstated from December 1, 1999 through June 25, 2001 by amounts ranging from $.01 to $.34 per share. At its worst, the fund's NAV was overstated by approximately 6.1%. After the repricing, Unified recomputed shareholder transactions during the same period to ensure that no shareholders were harmed by the mispricing. As a result of the recomputation, Unified voluntarily reimbursed the fund for investors who redeemed out during the period of the repricing and were consequently overpaid.

22. By carrying the uncollectible interest on Florida Street's books, Unified caused material misstatements in Florida Street's April 30, 2000 semi-annual report, which Unified filed on December 12, 2000. As a result of the failure to write off the uncollectible interest described above, the report overstated the fund's interest receivable by approximately 35.2%, overstated the fund's NAV by approximately 2%, and overstated the net investment income by approximately 21.56%. The reported NAV per share was $7.33 but should have been $7.16. Unified knew or should have known, at the time it filed the report on behalf of the fund, that the

report contained material misstatements resulting from the failure to write off the uncollectible interest.

23. The uncollectible interest also resulted in material misstatements and omissions in Florida Street's audited October 31, 2000 annual report and unaudited April 30, 2001 semi-annual report, both of which were prepared and filed by Unified. The annual reports were also reviewed by the funds' outside counsel and auditors. Florida Street's audited 2000 annual report, which was filed on March 22, 2002, four months after the fund closed, failed to disclose the interest write-off and subsequent repricing, which resulted in a lower NAV. In addition, the 2000 annual report misrepresented the fund's distribution to shareholders from net investment income and failed to disclose a return of capital. Florida Street reported $2,541,908 in net investment income after the interest write-offs. Nevertheless, the fund also reported that it paid $3,338,264 in distributions to investors from net investment income. Since the fund had no prior year net investment income from which it could make a positive distribution, only $2,541,908 of the $3,338,264 distributed to shareholders could possibly be attributed to net investment income. The difference, $796,356, was actually an undisclosed return of capital to investors, not a distribution of net investment income, on which some investors may have unknowingly paid taxes. Unified prepared and filed the audited October 31, 2000 annual report which failed to disclose the repricing and return of capital even though Unified knew about the repricing and the return of capital no later than June 2001. Some portion of this $796,356 difference should have been reflected on Forms 1099 for the 2000 taxable year that were issued to shareholders on January 15, 2001, and some portion of the remainder should have been reflected on Forms 1099 for the 1999 and earlier taxable years.

Late Filings by Unified Administered Funds

24. From 2000 through 2002, portfolios of AF and AAT made late filings or failed to file required reports with the Commission. As administrator, Unified was responsible for filing these reports. At least 21 portfolios under AAT and AF failed to file their annual or semi-annual shareholder reports on time. In addition, at least 27 portfolios failed to timely file their Form N-SARs. Finally, at least 9 portfolios under AF and AAT either failed to file Form 12b-25s notifying the Commission of an inability to timely file a Form N-SAR or filed the forms incorrectly. These late filings were in part due to Unified's failure to put in place adequate procedures to ensure that it timely received documents necessary to make the filings on or before their respective due dates.

VIOLATIONS

25. As a result of the conduct described above, Unified willfully aided and abetted and caused, and Durham caused, AF to violate Rule 22c-1, promulgated pursuant to Section 22(c) of the Investment Company Act. Rule 22c-1 requires registered investment companies to sell and redeem shares only "at a price based on the current net asset value of such security."

26. As a result of the conduct described above, Unified willfully violated Section 34(b) of the Investment Company Act. Section 34(b) prohibits any person from making any untrue statement of a material fact in any report, account, record, or other document filed or

required to be kept under Section 31(a) of the Investment Company Act. Section 34(b) also prohibits any person filing or keeping those documents from omitting to state any fact necessary in order to prevent the statements made in those documents from being misleading. Rule 2a-7(b)(1) provides that it is a material misrepresentation in violation of Section 34(b) for a fund to hold itself out as a money market where it does not meet the risk limiting conditions of Rule 2a-7(c).

27. As a result of the conduct described above, Durham violated Section 34(b) of the Investment Company Act by making an untrue statement of a material fact in a report, account, record, or other document filed or required to be kept under Section 31(a) of the Investment Company Act.

28. As a result of the conduct described above, Unified willfully aided and abetted and caused Unified Funds and AAT to violate Section 35(d) of the Investment Company Act. Section 35(d) prohibits any registered investment company from adopting as a part of its name or title any word or words that the Commission finds are materially deceptive or misleading. Rule 2a-7(b)(2) provides that "it shall constitute the use of a materially deceptive or misleading name within the meaning of Section 35(d) of the Act for a registered investment company to adopt the term "money market" as part of its name ... unless such registered investment company meets the conditions of paragraphs (c)(2), (c)(3), and (c)(4) of [Rule 2a-7]."

29. As a result of the conduct described above, Unified willfully aided and abetted and caused AAT and AF to violate Section 30(e) of the Investment Company Act and Rule 30e-1 thereunder. Section 30(e) of the Investment Company Act and Rule 30e-1 thereunder requires every registered investment company to transmit to shareholders, at least semiannually, reports containing the financial statements and other information. These reports must be transmitted to shareholders no later than sixty days after the close of the period for which the report is being made.

30. As a result of the conduct described above, Unified willfully aided and abetted and caused AAT and AF to violate Section 30(b)(1) of the Investment Company Act and Rule 30b1-1 thereunder and Rule 12b-25 under the Exchange Act. Section 30(b)(1) and Rule 30b1-1 thereunder require every registered investment company to file a semi-annual report on Form N-SAR not more than sixty days after the close of each fiscal year and second quarter. Rule 12b-25(a) promulgated under the Exchange Act requires that if a registered management investment company cannot timely file its Form N-SAR, the company shall file a Form 12b-25 no later than one business day after the due date for the N-SAR filing.

UNIFIED'S REMEDIAL EFFORTS

31. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Unified in connection with the conduct described herein, including the following:

a. firing or demoting four individuals;
b. hiring a new Chief Executive Officer;
c. hiring a new Chief Compliance Officer;

d. hiring a new Vice President in charge of mutual fund administration; and

e. hiring several consulting firms to assist Unified in updating its fund accounting, fund administration and compliance procedures.

UNDERTAKINGS

32. *Independent Compliance Consultant.* Unified has undertaken:

a. to hire, within 90 days of the entry of the Order, an Independent Compliance Consultant not unacceptable to the staff of the Commission. Unified shall cause the Independent Compliance Consultant to review Unified's (i) accounting and compliance procedures applicable to Rule 2a-7, (ii) accounting policies and procedures applicable to interest accruals, and (iii) compliance procedures applicable to the timely filing of reports of the type described in paragraph 24 above. The Independent Compliance Consultant's compensation and expenses shall be borne exclusively by Unified or its affiliates. Unified shall cooperate fully with the Independent Compliance Consultant and shall provide the Independent Compliance Consultant with access to its files, books, records and personnel as reasonably requested for the review;

b. to require that, at the conclusion of the review, which in no event shall be more than 120 days after the date of entry of the Order, the Independent Compliance Consultant shall submit a Report to Unified and the staff of the Commission. The Report shall address the issues described in subparagraph 32.a. of these undertakings, and shall include a description of the review performed, the conclusions reached, the Independent Compliance Consultant's recommendations for changes in or improvements to policies and procedures of Unified and a procedure for implementing the recommended changes in or improvements to Unified's policies and procedures;

c. to adopt all recommendations contained in the Report of the Independent Compliance Consultant; provided, however, that within 150 days after the date of entry of the Order, Unified shall in writing advise the Independent Compliance Consultant and the staff of the Commission of any recommendations that it considers to be unnecessary or inappropriate. With respect to any recommendation that Unified considers unnecessary or inappropriate, Unified need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose;

d. that as to any recommendation with respect to Unified's policies and procedures on which Unified and the Independent Compliance Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 180 days of the date of entry of the Order. In the event Unified and the Independent Compliance Consultant are unable to agree on an alternative proposal acceptable to the staff of the Commission, Unified will abide by the determinations of the Independent Compliance Consultant;

e. that Unified (i) shall not have the authority to terminate the Independent Compliance Consultant, without the prior written approval of the staff of the Commission; (ii) shall compensate the Independent Compliance Consultant, and persons engaged to assist the Independent Compliance Consultant, for services rendered pursuant to the Order at their reasonable and customary rates; (iii) shall not be in and shall not have an attorney-client relationship with the Independent Compliance Consultant and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Independent Compliance Consultant from transmitting any information, reports, or documents to the Directors of Unified or its parent, Unified Financial Services, Inc. or the Commission; and

f. to require the Independent Compliance Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Compliance Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Unified, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Compliance Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Compliance Consultant in performance of his/her duties under this Order shall not, without prior written consent of the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Unified, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

33. *Certification and Extension of Procedural Dates*. Unified undertakes that, no later than twenty-four months after the date of entry of the Order, its chief executive officer shall certify to the Commission in writing that Unified has fully adopted and complied in all material respects with the undertakings set forth in paragraph 32 above or, in the event of material non-adoption or non-compliance, shall describe such material non-adoption and non-compliance. For good cause shown, the Commission's staff may extend any of the procedural dates set forth in paragraph 32 above.

34. *Record-keeping*. Unified undertakes to preserve for a period not less than five years from the date of this Order, the first two years in an easily accessible place, any record of their compliance with the undertakings set forth in paragraph 32 above.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offers. Accordingly, pursuant to Section 21C of the Exchange Act and Sections 9(b) and 9(f) of the Investment Company Act it is hereby **ORDERED** that:

A. Unified cease and desist from committing or causing any violations and any future violations of Section 34(b) of the Investment Company Act, and to cease and desist from causing any violations and any future violations of Rule 12b-25 under the Exchange Act and Sections 30(b)(1), 30(e), 34(b) and 35(d) of the Investment Company Act and Rules 22c-1, 30e-1 and 30b1-1 thereunder.

B. Durham cease and desist from committing or causing any violations and any future violations of Sections 34(b), and causing any violations and any future violations of Rule 22c-1 under the Investment Company Act.

C. *Payment of Civil Monetary Penalty by Unified.* It is further ordered that Unified shall, within thirty days of the entry of this Order, pay a civil money penalty in the amount of $125,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Unified as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Robert J. Burson, Senior Associate Regional Director, Midwest Regional Office, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 900, Chicago, Illinois 60604.

D. *Unified's Compliance with Undertakings.* Unified shall comply with the undertakings set forth in paragraphs 32-34 above.

By the Commission.

Nancy M. Morris
Secretary

J. Lynn Taylor

By: J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53766 / May 8, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2427 / May 8, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12289

In the Matter of **JAMES R. AHRNS, JR., CPA,** **Respondent**	**ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against James R. Ahrns, Jr., CPA ("Respondent" or "Ahrns") pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.[1]

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these

[1] Rule 102(e)(1)(iii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found…to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

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proceedings, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[2] that:

A. RESPONDENT

Ahrns has been a certified public accountant licensed in the state of Ohio since 1985. From 1999 through early 2004, Ahrns was the controller of MCSi, Inc. ("MCSi"), a Maryland corporation headquartered in Dayton, Ohio. In his capacity as controller, Ahrns made accounting entries on the books and records of MCSi, and also provided documents and information to its auditor in connection with its annual audits of the financial statements of MCSi. Ahrns reported to the company's chief financial officer.

B. FACTS

1. Background

MCSi is a publicly-traded company whose stock is currently quoted in the "pink sheets" centralized quotation service for over-the-counter securities. However, at all times relevant to the matters described herein the stock of MCSi was quoted on the NASDAQ National Market System. MCSi sold and installed audio-visual presentation and broadcast integrated systems, as well as computer products. For the year ended December 31, 2001, MCSi reported net sales of over $800 million. In June 2003, the company filed a voluntary petition for reorganization under Chapter 11 of the United States Bankruptcy Code.

2. MCSi's accounting system.

a. MCSi used a system called JD Edwards as its accounting software. When a sales transaction was input into JD Edwards, the system automatically generated documents such as invoices and packing lists, and recorded the appropriate accounting transactions on the books and records of the company. Non-recurring, less routine transactions, however, had to be entered into JD Edwards manually.

b. At MCSi, journal entries for these non-recurring transactions were first handwritten on sheets headed "journal voucher." These manual journal voucher sheets were placed in three-ring binders, together with any relevant backup documentation, and were maintained in Ahrns' office. The transactions shown on the journal vouchers were then entered into JD Edwards. Some of these transactions were entered into the system by Ahrns.

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[2] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

c. MCSi's CFO was not familiar enough with JD Edwards to enter accounting transactions into the system himself. Therefore, he gave Ahrns handwritten journal entry sheets reflecting transactions he wished Ahrns to enter into the books and records of the company. On other occasions the CFO simply instructed Ahrns orally which journal entries to record.

d. During the first quarter of 2002, the CFO gave Ahrns several journal vouchers which the CFO had completed himself, and instructed Ahrns to enter those transactions into the JD Edwards accounting system. These journal vouchers had no backup documentation attached, and did not reference any customer. The entries they contained were headed "major projects" and "major projects 2." The CFO did not explain to Ahrns what transactions were referenced by these journal vouchers.

3. Concealment of company records from the auditors.

a. MCSi's CFO had instructed Ahrns not to provide the manual journal vouchers to the company's auditors, even if the auditors requested them specifically, without his prior approval. During the audit of MCSi's financial statements for the 2000 year, however, the auditors asked to see the binder of journal vouchers. When Ahrns informed the CFO of this request, the CFO directed Ahrns to hand him the binder. The CFO removed some of the journal vouchers from the binder and placed them in his desk drawer. He then told Ahrns to give the binder to the auditors.

b. The CFO removed journal vouchers from the books and records of MCSi on more than one occasion during the audits of MCSi's financial statements for the years ended 2000 through 2002. Among the vouchers that were removed, and concealed from the auditors, were those relating to "major projects" and "major projects 2." These two entries added $30,203,901 to the revenue MCSi reported for the quarter ended March 31, 2002, with $16,432,341 being charged to cost of goods sold, for an increase in net income of $13,771,560 for the quarter. The effect of these entries was to change what would have been a net loss of $7,293,112 to net income of $6,478,448.

c. The inflated revenue caused the financial statements of MCSi, for the quarter ended March 31, 2002, to fail to comport with generally accepted accounting principles.

4. Ahrns signed the management representation letters to the auditors.

a. For each audit of MCSi's financial statements from the 2000 year through the 2001 year, both the CFO and Ahrns signed the management representation letter to the auditor. In this letter, MCSi's management was asked to confirm to the auditor that:

i. all financial records and related data had been made available to them;

ii. there were no material transactions, agreements or accounts that had not been properly recorded in the company's books and records; and

iii. there had been no fraud involving management or employees having significant roles in the company's internal control.

b. Ahrns had concerns regarding certain manual journal entries on the books of the company because the CFO had never provided him with any backup documentation. He also knew that manual journal vouchers had been concealed from the auditors, denying them access to certain financial records and related data of MCSi. Nevertheless, both the CFO and Ahrns signed the management representation letters for the audits of the company's financial statements for the years ended 2000 through 2001.

C. VIOLATIONS

1. Aiding and abetting liability arises when there is: (a) a violation of the securities laws by some other party; (b) a general awareness by the aider and abetter that his role is part of an overall activity that was improper; and (c) substantial assistance by the aider and abetter in the achievement of the primary violation. Either willfulness or "reckless indifference (to a known obligation or set of facts)" will satisfy the scienter requirement.

2. Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder require issuers with securities registered under Section 12 of the Exchange Act to file quarterly and annual reports with the Commission and to keep this information current. The obligation to file such reports embodies the requirement that they be true and correct.

3. Rule 12b-20 provides that, in addition to information specifically required to be included in reports, registrants are obligated to include any material information necessary to make the statements made in the reports not misleading.

4. Section 13(b)(2)(A) of the Exchange Act requires every issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act to "make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer. . . ." Rule 13b2-1 generally prohibits the falsification of books and records.

5. Ahrns rendered substantial assistance to MCSi in its primary violations of Sections 13(a) and 13(b)(2)(A) and Rules 12b-20, 13a-1 and 13a-13 thereunder, and to MCSi's CFO in his primary violations of Rule 13b2-2. Not informing the auditors that the CFO had removed manual journal vouchers from the company's books, and signing the management representation letter made it more difficult to discover the fraudulent revenue the CFO had recorded. This fraudulent revenue rendered the books and records of MCSi, and its public filings with the Commission, materially false. Ahrns, as a CPA and the company controller, knew that he was involved in an activity that was improper.

6. By making journal entries at the direction of the CFO, when he knew or should have known that those entries did not properly reflect company transactions, Ahrns violated Rule 13b2-1.

7. Rule 13b2-2, as in effect at the time of the conduct described herein, states that "no officer or director of an issuer shall, directly or indirectly . . . omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with any audit, review or examination of the financial statements of the issuer. . . ."[3]

8. By providing the manual journal vouchers to the auditors without disclosing that certain of them had been removed, and by signing the management representation letter, the CFO omitted to state a material fact to an accountant in connection with an audit. Ahrns aided and abetted these violations of Rule 13b2-2.

D. COOPERATION

Ahrns has rendered substantial assistance to the staff in its investigation of MCSi and its officers.

E. FINDINGS

Based on the foregoing, the Commission finds that Ahrns (a) willfully violated Rule 13b2-1 promulgated under the Exchange Act; and (b) willfully aided and abetted and caused MCSi's violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13, and the CFO's violations of Rule 13b2-2 thereunder. As a consequence of these willful violations, and by aiding and abetting others in their violations of the federal securities laws, Ahrns should be sanctioned under Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanction and cease-and-desist order agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Ahrns shall cease and desist from committing or causing any violations and any future violations of Rules 13b2-1 and 13b2-2 promulgated under the Exchange Act, and from causing any violations and any future violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder.

B. Ahrns is denied the privilege of appearing or practicing before the Commission as an accountant.

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[3] Rule 13b2-2 has since been amended by the Sarbanes-Oxley Act of 2002.

C. After two years from the date of this order, Ahrns may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Ahrns' work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Ahrns, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Ahrns, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in his or the firm's quality control system that would indicate that he will not receive appropriate supervision;

(c) Ahrns has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Ahrns acknowledges his responsibility, as long as he appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

D. The Commission will consider an application by Ahrns to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependant on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to his character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Nancy M. Morris
Secretary

By: J. Lynn Taylor
Assistant Secretary

DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
[Docket No. 06-06]

Office of Thrift Supervision
[No. 2006-20]

FEDERAL RESERVE SYSTEM
[Docket No. OP-1254]

FEDERAL DEPOSIT INSURANCE CORPORATION

SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-53773; File No. S7-08-06]

INTERAGENCY STATEMENT ON SOUND PRACTICES CONCERNING ELEVATED RISK COMPLEX STRUCTURED FINANCE ACTIVITIES

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Office of Thrift Supervision, Treasury (OTS); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Securities and Exchange Commission (SEC) (collectively, the Agencies).

ACTION: Notice of revised interagency statement with request for public comment.

SUMMARY: On May 19, 2004, the Agencies issued and requested comment on a proposed Interagency Statement on Sound Practices Concerning Complex Structured Finance Activities ("Initial Statement") of national banks, state banks, bank holding companies, federal and state savings associations, savings and loan holding companies, U.S. branches and agencies of foreign banks, and SEC registered broker-dealers and investment advisers (collectively, "financial institutions" or "institutions"). The Initial Statement described some of the internal controls and risk management procedures that may help financial institutions identify, manage, and address the heightened reputational and legal risks that may arise from certain complex structured finance transactions ("CSFTs"). After reviewing the comments received on the Initial Statement, the Agencies are requesting comment on a revised proposed interagency statement ("Revised Statement"). The Revised Statement has been modified in numerous respects to address issues and concerns raised by commenters, clarify the purpose, scope and effect of the statement, and make the statement more principles-based. These changes include reorganizing and streamlining the document to reduce redundancies and to focus the statement on those CSFTs that may pose heightened levels of legal or reputational risk to the relevant institution (referred to as "elevated risk CSFTs"). In addition, the Agencies have modified the examples of transactions that may present elevated risk to make these examples more risk-focused, and have recognized more explicitly that an institution's review and approval process for elevated risk CSFTs should be commensurate with, and focus on, the potential risks presented by the transaction to the institution. As discussed below, the Revised Statement will not affect or apply to the vast majority of small financial institutions, nor does it create any private rights of action.

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DATES: Comments on the Revised Statement should be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES:

OCC: You should include OCC and Docket Number 06-06 in your comment. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- OCC Web site: http://www.occ.treas.gov. Click on "Contact the OCC," scroll down and click on "Comments on Proposed Regulations."
- E-mail address: regs.comments@occ.treas.gov.
- Fax: (202) 874-4448.
- Mail: Office of the Comptroller of the Currency, 250 E Street, SW, Mail Stop 1-5, Washington, DC 20219.
- Hand Delivery/Courier: 250 E Street, SW, Attn: Public Information Room, Mail Stop 1-5, Washington, DC 20219.

Instructions: All submissions received must include the agency name (OCC) and docket number or Regulatory Information Number (RIN) for this notice of proposed rulemaking. In general, OCC will enter all comments received into the docket without change, including any business or personal information that you provide.

You may review comments and other related materials by any of the following methods:

- Viewing Comments Personally: You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW, Washington, DC. You can make an appointment to inspect comments by calling (202) 874-5043.
- Viewing Comments Electronically: You may request e-mail or CD-ROM copies of comments that the OCC has received by contacting the OCC's Public Information Room at: regs.comments@occ.treas.gov.
- Docket: You may also request available background documents and project summaries using the methods described above.

OTS: You may submit comments, identified by No. 2006-20 by any of the following methods:

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- E-mail: regs.comments@ots.treas.gov. Please include No. 2006-20 in the subject line of the message, and include your name and telephone number in the message.
- Fax: (202) 906-6518.
- Mail: Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Attention: No. 2006-20.
- Hand Delivery/Courier: Guard's Desk, East Lobby Entrance, 1700 G Street, NW, from 9:00 a.m. to 4:00 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2006-20.

Instructions: All submissions received must include the agency name and document number. All comments received will be posted without change to http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW, by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906-7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10:00 a.m. and 4:00 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

BOARD: You may submit comments, identified by Docket No. OP-1254, by any of the following methods:

- Board's Web site: http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.
- Federal eRulemaking Portal: http//www.regulations.gov. Follow the instructions for submitting comments.
- E-mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.
- Fax: (202) 452-3819 or (202) 452-3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

All public comments are available from the Board's Web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified, for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments also may be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (C and 20th Streets, NW) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (Fax number: (202) 898-3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC, between 9:00 a.m. and 4:30 p.m. on business days.

SEC: Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/policy.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-08-06 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-08-06. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/policy.shtml). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549-1090. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT:

OCC: Kathryn E. Dick, Deputy Comptroller, Credit and Market Risk, (202) 874-4660; Grace E. Dailey, Deputy Comptroller, Large Bank Supervision, (202) 874-4610; or Ellen Broadman, Director, Securities and Corporate Practices Division, (202) 874-5210, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

OTS: Fred J. Phillips-Patrick, Director, Credit Policy, Examinations and Supervision Policy, (202) 906-7295; Deborah S. Merkle, Project Manager, Credit Policy, Examinations and Supervision Policy, (202) 906-5688; or David A. Permut, Senior Attorney, Business Transactions Division, (202) 906-7505, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

BOARD: Sabeth I. Siddique, Assistant Director, (202) 452-3861, Virginia Gibbs, Senior Supervisory Financial Analyst, (202) 452-2521, Division of Banking Supervision and Regulation; or Kieran J. Fallon, Assistant General Counsel, (202) 452-5270, Anne B. Zorc, Attorney, (202) 452-3876, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Users of Telecommunication Device for Deaf (TTD) only, call (202) 263-4869.

FDIC: Jason C. Cave, Associate Director, (202) 898-3548; Division of Supervision and Consumer Protection; or Mark G. Flanigan, Counsel, Supervision and Legislation Branch, Legal Division, (202) 898-7426, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

SEC: Mary Ann Gadziala, Associate Director, Office of Compliance Inspections and Examinations, (202) 551-6207; Catherine McGuire, Chief Counsel, Linda Stamp Sundberg, Senior Special Counsel (Banking and Derivatives), or Randall W. Roy, Branch Chief, Division of Market Regulation, (202) 551-5550, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

Financial markets have grown rapidly over the past decade, and innovations in financial instruments have facilitated the structuring of cash flows and allocation of risk among creditors, borrowers and investors in more efficient ways. Financial derivatives for market and credit risk, asset-backed securities with customized cash flow features, specialized financial conduits that manage pools of assets, and other types of structured finance transactions serve important purposes, such as diversifying risks, allocating cash flows, and reducing cost of capital. As a result, structured finance transactions, including the more complex variations of these transactions, now are an essential part of U.S. and international capital markets.

When a financial institution participates in a CSFT, it bears the usual market, credit, and operational risks associated with the transaction. In some circumstances, a financial institution also may face heightened legal or reputational risks due to its involvement in a CSFT. For example, a financial institution involved in a CSFT may face heightened risk if the customer's regulatory, tax or accounting treatment for the CSFT, or disclosures concerning the CSFT in its public filings or financial statements, do not comply with applicable laws, regulations or accounting principles.

In some cases, certain CSFTs appear to have been used in illegal schemes that misrepresented the financial condition of public companies to investors and regulatory authorities. Those cases highlight the substantial legal and reputational risks that financial institutions may face when they participate in a CSFT that is used by the institution's customer to circumvent regulatory or financial reporting requirements or further other illegal behavior.[1] After conducting investigations, the OCC, Federal Reserve System and the SEC took strong and coordinated civil and administrative enforcement actions against certain financial institutions that engaged in CSFTs that appeared to have been designed or used to shield their customers' true financial health from the public. These actions involved significant financial penalties on the institutions and required the institutions to take several measures to strengthen their risk management procedures for CSFTs.[2] The complex structured finance relationships involving

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[1] For a memorandum on the potential liability of a financial institution for securities laws violations arising from participation in a CSFT, see Letter from Annette L. Nazareth, Director, Division of Market Regulation, Securities and Exchange Commission, to Richard Spillenkothen and Douglas W. Roeder, dated December 4, 2003 (available at http://www.federalreserve.gov/boarddocs/srletters/2004/ and www.occ.treas.gov).

[2] See, e.g. In the Matter of Citigroup, Inc., Securities Exchange Act Release No. 48230 (July 28, 2003), Written Agreement by and between Citibank, N.A. and the Office of the Comptroller of the Currency, No. 2003-77 (July 28, 2003) (pertaining to transactions entered into by Citibank, N.A. with Enron Corp.), and Written Agreement by and between Citigroup, Inc. and the Federal Reserve Bank of New York, dated July 28, 2003 (pertaining to transactions involving Citigroup Inc. and its subsidiaries and Enron Corp. and Dynegy Inc.); SEC v. J.P. Morgan Chase, SEC Litigation Release No. 18252 (July 28, 2003) and Written Agreement by and among

these financial institutions also sparked an investigation by the Permanent Subcommittee on Governmental Affairs of the United States Senate,[3] as well as numerous lawsuits by private litigants.

Following these investigations, the OCC, Board and SEC also conducted special reviews of several large banking and securities firms that are significant participants in the market for CSFTs. These reviews were designed to evaluate the new product approval, transaction approval, and other internal controls and processes used by these institutions to identify and manage the legal, reputational and other risks associated with CSFTs. These assessments indicated that many of the large financial institutions engaged in CSFTs already had taken meaningful steps to improve their control infrastructure relating to CSFTs. The Agencies also focused attention on the complex structured finance activities of financial institutions in the normal course of the supervisory process.

II. Initial Statement

To further assist financial institutions in identifying, managing, and addressing the risks that may be associated with CSFTs, the Agencies developed and requested public comment on the Initial Statement.[4] As a general matter, the Initial Statement provided that financial institutions engaged in CSFTs should have and maintain a comprehensive set of formal, firm-wide policies and procedures that are designed to allow the institution to identify, document, evaluate, and control the full range of credit, market, operational, legal, and reputational risks that may arise from CSFTs. The Initial Statement also described the types of policies and procedures that financial institutions should have for CSFTs in the following specific areas: (1) transaction approval; (2) approval of new complex structured finance products; (3) identification and management of the potential reputational and legal risk associated with CSFTs; (4) review of the customer's proposed accounting and disclosures for CSFTs; (5) documentation of CSFTs; (6) management reporting for CSFTs; (7) independent monitoring and analysis of the institution's compliance with its internal policies regarding CSFTs; (8) role of internal audit; and (9) training of personnel involved in CSFTs.

Among other things, the Initial Statement provided that financial institutions should establish a clear process for identifying those CSFTs that may create heightened legal or reputational risk for the institution, and included a list of transaction characteristics that may indicate that a CSFT (or series of CSFTs) creates elevated levels of legal or reputational risk for the institution. The Initial Statement also provided that an institution should ensure that

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J.P. Morgan Chase & Co., the Federal Reserve Bank of New York, and the New York State Banking Department, dated July 28, 2003 (pertaining to transactions involving J.P. Morgan Chase & Co. and its subsidiaries and Enron Corp.).

[3] See Fishtail, Bacchus, Sundance, and Slapshot: Four Enron Transactions Funded and Facilitated by U.S. Financial Institutions, Report Prepared by the Permanent Subcomm. on Investigations, Comm. on Governmental Affairs, United States Senate, S. Rpt. 107-82 (2003).

[4] See 69 FR 28980, May 19, 2004.

transactions identified as being elevated risk CSFTs are thoroughly reviewed by the institution's control functions and management during the institution's transaction or new product approval processes. As part of this review, the Initial Statement indicated that the institution should obtain and document complete and accurate information about the customer's business objectives for entering into the transaction, as well as about the customer's proposed accounting treatment and financial disclosures relating to the transaction.

III. Overview of Comments

The Agencies collectively received comments on the Initial Statement from more than 40 persons, although many commenters submitted multiple comments or submitted identical comments to multiple Agencies. Commenters included banking organizations, trade associations, investment banks, consulting firms, public accounting firms, law firms, an association of state officials, and individuals. In addition to submitting written comments, some commenters also met with Agency representatives to discuss their views of the Initial Statement.

Commenters generally supported the Agencies' efforts to describe the types of risk management procedures and internal controls that may help financial institutions identify and mitigate the legal and reputational risks associated with CSFTs. In this regard, many commenters recognized that financial institutions need a robust risk management and control framework to help institutions avoid becoming involved in CSFTs that are used for illegal or abusive purposes and to manage the risks associated with CSFTs.

Virtually all of the commenters, however, recommended changes to the Initial Statement. For example, many commenters argued that the characteristics of CSFTs in general and of elevated risk CSFTs in particular identified in the Initial Statement were too broad and would encompass many structured finance products that are not novel or complex and that do not present heightened legal or reputational risks for participating financial institutions. These commenters argued, for example, that the Initial Statement could be read as requiring financial institutions to identify any structured finance transaction that involves a special purpose entity ("SPE") or cross-border elements as an elevated risk CSFT.

Many commenters also asserted that the internal controls and risk management processes described in the Initial Statement for CSFTs and elevated risk CSFTs were overly prescriptive and burdensome. For example, many commenters expressed concern that the Initial Statement could be read as requiring a financial institution to conduct a detailed and extensive pre-transaction review of all CSFTs regardless of the role that the institution played in the transaction, and regardless of whether the transaction's characteristics suggested that it may create significant legal, reputational or other risks for the institution. Similarly, many commenters argued that the Initial Statement imposed new and inappropriate obligations on financial institutions to confirm the validity of a customer's financial disclosures or accounting or tax treatment for a CSFT, and would establish new and extensive documentation requirements for CSFTs.

Commenters asserted that, in light of these and other concerns, the Initial Statement had the potential to increase the legal risks faced by financial institutions participating in CSFTs. In addition, commenters argued that the Initial Statement, if implemented, would disrupt the market for legitimate structured finance products and place U.S. financial institutions at a competitive disadvantage in the market for CSFTs both in the United States and abroad.

As a general matter, commenters recommended that the Agencies modify the Initial Statement to make it more principles-based and focused on transactions that may create elevated risks for a participating financial institution. For example, many commenters recommended that the Agencies modify the list of characteristics of elevated risk CSFTs to focus on factors that are likely indicators that a transaction may, in fact, create heightened legal or reputational risks for a participating institution. In addition, commenters recommended that the Agencies provide financial institutions greater flexibility to design internal controls and risk management procedures for CSFTs that are tailored to the size, activities and general internal control framework of the institution. Finally, many commenters recommended that the Agencies republish a revised statement for a new round of public comment.

IV. Overview of Revised Statement

The Agencies have substantially revised the Initial Statement in light of the comments. In particular, the Revised Statement has been shortened and reorganized to be more principles-based and to focus on elevated risk CSFTs. Because these revisions are substantial, and the Revised Statement is an important explanation of the key principles and best practices governing CSFT activities, the Agencies invite public comment on the Revised Statement.

The Agencies continue to believe that it is important for a financial institution engaged in CSFTs to have policies and procedures that are designed to allow the institution to effectively manage and address the risks associated with its CSFT activities. These policies and procedures should, among other things, be designed to allow the institution to identify during its transaction and new product approval processes those CSFTs that may present elevated legal or reputational risks to the institution. In addition, an institution's policies and procedures should provide that CSFTs identified as potentially having elevated legal or reputational risks are reviewed by appropriate levels of control and management personnel at the institution, including personnel from control areas that are independent of the business line(s) involved in the transaction. The level and amount of due diligence conducted by an institution for an elevated risk CSFT should be commensurate with the transaction's potential risk to the institution. In conducting this due diligence, the institution may find it useful or necessary to obtain additional information from the customer or to obtain specialized advice from qualified in-house or outside accounting, tax, legal or other professionals.

If, after evaluating an elevated risk CSFT, a financial institution determines that its participation in the CSFT would create significant legal or reputational risks for the institution, the financial institution should take appropriate steps to manage and address these risks. Such steps may include modifying the transaction or conditioning the institution's participation in the transaction upon the receipt of representations or assurances from the customer that reasonably address the heightened risks presented by the transaction. A financial institution should decline to participate in an elevated risk CSFT if, after conducting appropriate due diligence and taking appropriate steps to address the risks from the transaction, the institution determines that the transaction presents unacceptable risks to the institution or would result in a violation of applicable laws, regulations or accounting principles.

With these broad principles in mind, the Agencies have made a number of changes to the Initial Statement to address the issues and concerns raised by commenters, to clarify the purpose, scope and effect of the Revised Statement, and to make the document more risk-focused. The Agencies believe that, with these changes, the Revised Statement promotes sound risk management principles while providing an individual financial institution greater flexibility to develop implementing policies, procedures and systems that are appropriately tailored to the nature, scope, complexity and risks of its CSFT activities and to the institution's general internal control framework. In particular, the Agencies have, among other things:

- Focused the statement more clearly on those CSFTs that may present heightened legal or reputational risks to a participating institution;

- Clarified that the statement does not apply to structured finance transactions, such as standard public mortgage-backed securities transactions, that are familiar to participants in the financial markets and have well-established track records and, for this reason, will not affect or apply to the vast majority of small financial institutions;

- Modified the examples of CSFTs that may warrant additional scrutiny by an institution to focus on transactions that are more likely to present elevated levels of legal or reputational risk to an institution (e.g., transactions that raise concerns that the client will report or disclose the transaction in its public filings or financial statements in a manner that is materially misleading);

- Clarified that the due diligence conducted by a financial institution for an elevated risk CSFT should focus on those issues identified by the institution as potentially creating heightened levels of legal or reputational risk for the institution;

- Recognized that the role a financial institution plays in a CSFT may affect both the amount of information it has concerning the transaction and the level of legal or reputational risks presented by the transaction to the institution;

- Streamlined and modified the documentation and general control portions of the statement to focus on the proper goals of an institution's policies and procedures in these areas; and

- Provided that a financial institution operating in foreign jurisdictions may tailor its policies and procedures as appropriate to account for, and comply with, the applicable laws, regulations and standards of those foreign jurisdictions.

Because many of the core elements of an effective control infrastructure are the same regardless of the business line involved, the Revised Statement continues to draw heavily on controls and procedures that the Agencies previously have found to be effective in assisting a financial institution to manage and control risks and identifies ways in which these controls and procedures can be applied effectively to elevated risk CSFTs. Moreover, as noted above, many of the large financial institutions that are actively involved in CSFT-related activities have taken steps in recent years to bolster and improve their risk management and internal control processes for CSFTs. Based on the Agencies' supervisory experience, the Agencies believe that the Revised Statement generally is consistent with the controls and processes used by large financial institutions to manage the risks arising from their CSFT activities.

The Agencies propose to adopt the Revised Statement as supervisory guidance (in the case of the Federal banking agencies) or a policy statement (in the case of the SEC) and to use the Revised Statement in reviewing the internal controls and risk management systems of those financial institutions that are engaged in CSFTs as part of the Agencies' supervisory processes. Accordingly, the Revised Statement does not create any private rights of action, nor does it alter or expand the legal duties and obligations that a financial institution may have to a customer, its shareholders or other third parties under applicable law. The Agencies have added a statement to this effect in the Revised Statement.

The Agencies request comment on all aspects of the Revised Statement.

V. Paperwork Reduction Act

The Agencies have determined that certain provisions of the Revised Statement contain collection of information requirements as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA). An Agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

OMB has reviewed and approved the proposed information collections for the FDIC, OTS, and OCC; the SEC is submitting their proposed information collection to OMB for review and approval; and the Board has reviewed the Revised Statement under the authority delegated to the Board by OMB (5 CFR 1320, appendix A.1).

OMB control numbers:

OCC:	1557-0229
OTS:	1550-0111
FRB:	7100-0311
FDIC:	3064-0148
SEC:	3235-0xxx

Comment was requested on the proposed information collections contained in the Initial Statement published for comment on May 19, 2004. As discussed above, many commenters asserted that the Initial Statement in general, and its documentation provisions in particular, were unduly burdensome and prescriptive. For this reason, some commenters asserted that the estimates of the burden (100 hours per respondent) were too low.

In light of this and the modifications made to the Initial Statement, the Agencies have reconsidered the burden estimates previously published and are once again requesting comment before finalizing this statement. In response to the comments, the Agencies have made significant modifications to make the Revised Statement more principles-based and risk-focused than the Initial Statement, and to provide an individual institution greater flexibility in developing policies, procedures, and systems that are appropriate and tailored to the nature of the institution's CSFT activities and general internal control framework. The Agencies believe that the information collection requirements contained in the Revised Statement, as discussed earlier in the notice, are generally consistent with the types of policies and procedures that the large financial institutions actively involved in CSFTs have already developed and implemented as a matter of usual and customary business practices. Therefore, the information collections contained in the Revised Statement are significantly less burdensome than those estimated in the Initial Statement and, thus, the Agencies have revised the hourly estimate down from 100 hours per response to an average of 25 hours per response.

New Estimates:

OCC

Number of Respondents: 21
Estimated Time per Response: 25 hours
Total Estimated Annual Burden = 525 hours

OTS

Number of Respondents: 5
Estimated Time per Response: 25 hours
Total Estimated Annual Burden = 125 hours

BOARD

Number of Respondents: 20
Estimated Time per Response: 25 hours
Total Estimated Annual Burden = 500 hours

FDIC

Number of Respondents: 5
Estimated Time per Response: 25 hours
Total Estimated Annual Burden = 125 hours

SEC

Number of Respondents: 5
Estimated Time per Response: 25 hours
Total Estimated Annual Burden = 125 hours

Comments continue to be invited on:
(a) Whether the collections of information contained in the Revised Statement are necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;
(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;
(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and
(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments on the information collections contained in the Revised Statement should be addressed to:

OCC: You should direct your comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1-5, Attention: 1557-0229, 250 E Street, SW, Washington, DC 20219. In addition, comments may be sent by fax to (202) 874-4448, or by electronic mail to regs.comments@occ.treas.gov. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW, Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874-5043. Additionally, you should send a copy of your comments to OCC Desk Officer, 1557-0229, by mail to U.S. Office of Management and Budget, 725, 17th Street, NW, #10235, Washington, DC 20503, or by fax to (202) 395-6974.

You can request additional information or a copy of the collection from Mary Gottlieb, OCC Clearance Officer, or Camille Dickerson, (202) 874-5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552; send a facsimile transmission to (202) 906-6518; or send an e-mail to infocollection.comments@ots.treas.gov. OTS will post comments and the related index on the OTS internet site at www.ots.treas.gov. In addition, interested persons may inspect the comments at the Public Reading Room, 1700 G Street, NW, by appointment. To make an appointment, call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906-7755.

To obtain a copy of the submission to OMB, contact Marilyn K. Burton at marilyn.burton@ots.treas.gov, (202) 906-6467, or fax number (202) 906-6518, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

BOARD: You may submit comments, identified by Docket No. OP-1254, by any of the following methods:

- Agency Web site: http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.
- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- E-mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.
- Fax: (202) 452-3819 or (202) 452-3102.

- Mail: Michelle Long, Federal Reserve Board Clearance Officer (202) 452-3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202) 263-4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

All public comments are available from the Board's Web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, NW) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: Interested parties are invited to submit written comments to the FDIC concerning the Paperwork Reduction Act implications of this proposal. Such comments should refer to "Complex Structured Financial Transactions, 3064-0148." Comments may be submitted by any of the following methods:

- http://www.FDIC.gov/regulations/laws/federal/propose.html
- E-mail: comments@FDIC.gov. Include "Complex Structured Financial Transactions, 3064-0148" in the subject line of the message
- Mail: Steven F. Hanft (202) 898-3907, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.
- Hand Delivery: Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

SEC: You should direct your comments to:
Office of Management and Budget, Attention Desk Officer of the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503, with a copy sent to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090 with reference to File No. S7-08-06.

The proposed Revised Statement follows:

INTERAGENCY STATEMENT ON SOUND PRACTICES CONCERNING ELEVATED RISK COMPLEX STRUCTURED FINANCE ACTIVITIES

I. INTRODUCTION

Financial markets have grown rapidly over the past decade, and innovations in financial instruments have facilitated the structuring of cash flows and allocation of risk among creditors, borrowers and investors in more efficient ways. Financial derivatives for market and credit risk, asset-backed securities with customized cash flow features, specialized financial conduits that manage pools of assets and other types of structured finance transactions serve important business purposes, such as diversifying risks, allocating cash flows, and reducing cost of capital. As a result, structured finance transactions now are an essential part of U.S. and international capital markets. Financial institutions have played and continue to play an active and important role in the development of structured finance products and markets, including the market for the more complex variations of structured finance products.

When a financial institution participates in a complex structured finance transaction ("CSFT"), it bears the usual market, credit, and operational risks associated with the transaction. In some circumstances, a financial institution also may face heightened legal or reputational risks due to its involvement in a CSFT. For example, in some circumstances, a financial institution may face heightened legal or reputational risk if a customer's regulatory, tax or accounting treatment for a CSFT, or disclosures concerning the CSFT in its public filings or financial statements, do not comply with applicable laws, regulations or accounting principles. Indeed, some financial institutions have incurred significant legal costs and liability and suffered reputational harm due to their role in certain transactions that were used by customers to misrepresent the customers' financial condition to investors, regulatory authorities or others. Reputational risk poses a significant threat to financial institutions because the nature of their business requires them to maintain the confidence of customers, creditors and the general marketplace.

The Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Securities and Exchange Commission (the regulatory Agencies) have long expected financial institutions to develop and maintain robust control infrastructures that enable them to identify, evaluate and address the risks associated with their business activities. Financial institutions also must conduct their activities in accordance with applicable statutes and regulations.

II. SCOPE AND PURPOSE OF STATEMENT

The regulatory Agencies are issuing this Statement to describe the types of risk management principles that we believe may help a financial institution to identify CSFTs that may pose heightened legal or reputational risks to the institution ("elevated risk CSFTs") and to evaluate, manage and address these risks within the institution's internal control framework.[5]

Structured finance transactions encompass a broad array of products with varying levels of complexity. Most structured finance transactions, such as standard public mortgage-backed securities transactions, public securitizations of retail credit cards, asset-backed commercial paper conduit transactions, and hedging-type transactions involving "plain vanilla" derivatives and collateralized loan obligations, are familiar to participants in the financial markets, and these vehicles have a well-established track record. These transactions typically would not be considered CSFTs for the purpose of this Statement.

Because this Statement focuses on sound practices related to CSFTs that may create heightened legal or reputational risks – transactions that typically are conducted by a limited number of large financial institutions – it will not affect or apply to the vast majority of financial institutions, including most small institutions. As in all cases, a financial institution should tailor its internal controls so that they are appropriate in light of the nature, scope, complexity and risks of its activities. Thus, for example, an institution that is actively involved in structuring and offering CSFTs that may create heightened legal or reputational risk for the institution should have a more formalized and detailed control framework than an institution that participates in these types of transactions less frequently. The internal controls and procedures discussed in this Statement are not all inclusive, and, in appropriate circumstances, an institution may find that other controls, policies, or procedures are appropriate in light of its particular CSFT activities.

Because many of the core elements of an effective control infrastructure are the same regardless of the business line involved, this Statement draws heavily on controls and procedures that the Agencies previously have found to be effective in assisting a financial institution to manage and control risks and identifies ways in which these controls and procedures can be effectively applied to elevated risk CSFTs. Although this Statement highlights some of the most significant risks associated with elevated risk CSFTs, it is not

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[5] As used in this Statement, the term "financial institution" or "institution" refers to national banks in the case of the Office of the Comptroller of the Currency; federal and state savings associations and savings and loan holding companies in the case of the Office of Thrift Supervision; state member banks and bank holding companies (other than foreign banking organizations) in the case of the Federal Reserve Board; state nonmember banks in the case of the Federal Deposit Insurance Corporation; and registered broker-dealers and investment advisers in the case of the Securities and Exchange Commission. The U.S. branches and agencies of foreign banks supervised by the Office of the Comptroller, the Federal Reserve Board and the Federal Deposit Insurance Corporation also are considered to be financial institutions for purposes of this Statement.

intended to present a full exposition of all risks associated with these transactions. Financial institutions are encouraged to refer to other supervisory guidance prepared by the Agencies for further information concerning market, credit, operational, legal and reputational risks as well as internal audit and other appropriate internal controls.

This Statement does not create any private rights of action, and does not alter or expand the legal duties and obligations that a financial institution may have to a customer, its shareholders or other third parties under applicable law. At the same time, adherence to the principles discussed in this Statement would not necessarily insulate a financial institution from regulatory action or any liability the institution may have to third parties under applicable law.

III. IDENTIFICATION AND REVIEW OF ELEVATED RISK COMPLEX STRUCTURED FINANCE TRANSACTIONS

A financial institution that engages in CSFTs should maintain a set of formal, firm-wide policies and procedures that are designed to allow the institution to identify, evaluate, assess, document, and control the full range of credit, market, operational, legal and reputational risks associated with these transactions. These policies may be developed specifically for CSFTs, or included in the set of broader policies governing the institution generally. A financial institution operating in foreign jurisdictions may tailor its policies and procedures as appropriate to account for, and comply with, the applicable laws, regulations and standards of those jurisdictions.[6]

A financial institution's policies and procedures should establish a clear framework for the review and approval of individual CSFTs. These policies and procedures should set forth the responsibilities of the personnel involved in the origination, structuring, trading, review, approval, documentation, verification, and execution of CSFTs. Financial institutions may find it helpful to incorporate the review of new CSFTs into their existing new product policies. In this regard, a financial institution should define what constitutes a "new" complex structured finance product and establish a control process for the approval of such new products. In determining whether a CSFT is new, a financial institution may consider a variety of factors, including whether it contains structural or pricing variations from existing products, whether the product is targeted at a new class of customers, whether it is designed to address a new need of customers, whether it raises significant new legal, compliance or regulatory issues, and whether it or the manner in which it would be offered would materially deviate from standard market practices. An institution's policies should require new complex structured finance products to receive the approval of all relevant control areas that are independent of the profit center before the product is offered to customers.

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[6] In the case of U.S. branches and agencies of foreign banks, the institution should coordinate these policies with the foreign bank's group-wide policies developed in accordance with the rules of the foreign bank's home country supervisor. In addition, the U.S. branches and agencies of foreign banks should implement a control infrastructure for CSFTs, including management, review and approval requirements, that is consistent with the institution's overall corporate and management structure as well as its framework for risk management and internal controls.

A. Identifying Elevated Risk CSFTs

As part of its transaction and new product approval controls, a financial institution should establish and maintain policies, procedures and systems to identify elevated risk CSFTs. Because of the potential risks they present to the institution, transactions or new products identified as elevated risk CSFTs should be subject to heightened reviews during the institution's transaction or new product approval processes. Examples of transactions that an institution may determine warrant this additional scrutiny are those that (either individually or collectively) appear to the institution during the ordinary course of its transaction approval or new product approval process to:

- Lack economic substance or business purpose;
- Be designed or used primarily for questionable accounting, regulatory, or tax objectives, particularly when the transactions are executed at year end or at the end of a reporting period for the customer;
- Raise concerns that the client will report or disclose the transaction in its public filings or financial statements in a manner that is materially misleading or inconsistent with the substance of the transaction or applicable regulatory or accounting requirements;
- Involve circular transfers of risk (either between the financial institution and the customer or between the customer and other related parties) that lack economic substance or business purpose;
- Involve oral or undocumented agreements that, when taken into account, would have a material impact on the regulatory, tax, or accounting treatment of the related transaction, or the client's disclosure obligations;[7]
- Have material economic terms that are inconsistent with market norms (e.g., deep "in the money" options or historic rate rollovers); or
- Provide the financial institution with compensation that appears substantially disproportionate to the services provided or investment made by the financial institution or to the credit, market or operational risk assumed by the institution.

The examples listed previously are provided for illustrative purposes only, and the policies and procedures established by financial institutions may differ in how they seek to identify elevated risk CSFTs. The goal of each institution's policies and procedures, however, should remain the same – to identify those CSFTs that warrant additional scrutiny in the transaction or new product approval process due to concerns regarding legal or reputational risks.

Financial institutions that structure or market, act as an advisor to a customer regarding, or otherwise play a substantial role in a transaction may have more information concerning the customer's business purpose for the transaction and any special accounting, tax or financial disclosure issues raised by the transaction than institutions that play a more limited role.

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[7] This item is not intended to include traditional, non-binding "comfort" letters or assurances provided to financial institutions in the loan process where, for example, the parent of a loan customer states that the customer (i.e., the parent's subsidiary) is an integral and important part of the parent's operations.

Thus, the ability of a financial institution to identify the risks associated with an elevated risk CSFT may differ depending on its role.

B. Due Diligence, Approval and Documentation Process for Elevated Risk CSFTs

Having developed a process to identify elevated risk CSFTs, a financial institution should implement policies and procedures to conduct a heightened level of due diligence for these transactions. The financial institution should design these policies and procedures to allow personnel at an appropriate level to understand and evaluate the potential legal or reputational risks presented by the transaction to the institution and to manage and address any heightened legal or reputational risks ultimately found to exist with the transaction.

Due Diligence. If a CSFT is identified as an elevated risk CSFT, the institution should carefully evaluate and take appropriate steps to address the risks presented by the transaction with a particular focus on those issues identified as potentially creating heightened levels of legal or reputational risk for the institution. In general, a financial institution should conduct the level and amount of due diligence for an elevated risk CSFT that is commensurate with the level of risks identified. A financial institution that structures or markets an elevated risk CSFT to a customer, or that acts as an advisor to a customer or investors concerning an elevated risk CSFT, may have additional responsibilities under the federal securities laws, the Internal Revenue Code, state fiduciary laws or other laws or regulations and, thus, may have greater legal and reputational risk exposure with respect to an elevated risk CSFT than a financial institution that acts only as a counterparty for the transaction. Accordingly, a financial institution may need to exercise a higher degree of care in conducting its due diligence when the institution structures or markets an elevated risk CSFT or acts as an advisor concerning such a transaction than when the institution plays a more limited role in the transaction.

To appropriately understand and evaluate the potential legal and reputational risks associated with an elevated risk CSFT that a financial institution has identified, the institution may find it useful or necessary to obtain additional information from the customer or to obtain specialized advice from qualified in-house or outside accounting, tax, legal, or other professionals. As with any transaction, an institution should obtain satisfactory responses to its material questions and concerns prior to consummation of a transaction.[8]

In conducting its due diligence for an elevated risk CSFT, a financial institution should independently analyze the potential risks to the institution from both the transaction and the institution's overall relationship with the customer. Institutions should not conclude that a transaction identified as being an elevated risk CSFT involves minimal or manageable risks solely because another financial institution will participate in the transaction or because of the size or sophistication of the customer or counterparty. Moreover, a financial institution should carefully consider whether it would be appropriate to rely on opinions or analyses prepared by or for the customer concerning any significant accounting, tax or legal issues associated with an elevated risk CSFT.

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[8] Of course, financial institutions also should ensure that their own accounting for transactions complies with applicable accounting standards, consistently applied.

Approval Process. A financial institution's policies and procedures should provide that CSFTs identified as having elevated legal or reputational risk are reviewed and approved by appropriate levels of control and management personnel. The designated approval process for such CSFTs should include representatives from the relevant business line(s) and/or client management, as well as from appropriate control areas that are independent of the business line(s) involved in the transaction. The personnel responsible for approving an elevated risk CSFT on behalf of a financial institution should have sufficient experience, training and stature within the organization to evaluate the legal and reputational risks, as well as the credit, market and operational risks to the institution.

The institution's control framework should have procedures to deliver the necessary or appropriate information to the personnel responsible for reviewing or approving an elevated risk CSFT to allow them to properly perform their duties. Such information may include, for example, the material terms of the transaction, a summary of the institution's relationship with the customer, and a discussion of the significant legal, reputational, credit, market and operational risks presented by the transaction.

Some institutions have established a senior management committee that is designed to involve experienced business executives and senior representatives from all of the relevant control functions within the financial institution, including such groups as independent risk management, accounting, policy, legal, compliance, and financial control, in the oversight and approval of CSFTs identified as having elevated risks. While this type of management committee may not be appropriate for all financial institutions, a financial institution should establish processes that assist the institution in consistently managing its elevated risk CSFTs on a firm-wide basis.[9]

If, after evaluating an elevated risk CSFT, the financial institution determines that its participation in the CSFT would create significant legal or reputational risks for the institution, the institution should take appropriate steps to address those risks. Such actions may include declining to participate in the transaction, or conditioning its participation upon the receipt of representations or assurances from the customer that reasonably address the heightened legal or reputational risks presented by the transaction. Any representations or assurances provided by a customer should be obtained before a transaction is executed and be received from, or approved by, an appropriate level of the customer's management. A financial institution should decline to participate in an elevated risk CSFT if, after conducting appropriate due diligence and taking appropriate steps to address the risks from the transaction, the institution determines that the transaction presents unacceptable risk to the institution or would result in a violation of applicable laws, regulations or accounting principles.

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[9] The control processes that a financial institution establishes for CSFTs should take account of, and be consistent with, any informational barriers established by the institution to manage potential conflicts of interest, insider trading or other concerns.

Documentation. The documentation that financial institutions use to support CSFTs is often highly customized for individual transactions and negotiated with the customer. Careful generation, collection and retention of documents associated with elevated risk CSFTs are important control mechanisms that may help an institution monitor and manage the legal, reputational, operational, market, and credit risks associated with the transaction. In addition, sound documentation practices may help reduce unwarranted exposure to the financial institution's reputation.

A financial institution should create and collect sufficient documentation to allow the institution to:

- Document the material terms of the transaction;
- Enforce the material obligations of the counterparties;
- Confirm that customers have received any required disclosures concerning the transaction; and
- Verify that the institution's policies and procedures are being followed and allow the internal audit function to monitor compliance with those policies and procedures.

When an institution's policies and procedures require an elevated risk CSFT to be submitted for approval to senior management, the institution should maintain the transaction-related documentation provided to senior management as well as other documentation that reflect management's approval (or disapproval) of the transaction, any conditions imposed by senior management, and the reasons for such action. The institution should retain documents created for elevated risk CSFTs in accordance with its record retention policies and procedures as well as applicable statutes and regulations.

C. Other Risk Management Principles for Elevated Risk CSFTs

General Business Ethics. The board and senior management of a financial institution also should establish a "tone at the top" through both actions and formalized policies that sends a strong message throughout the financial institution about the importance of compliance with the law and overall good business ethics. The board and senior management should strive to create a firm-wide corporate culture that is sensitive to ethical or legal issues as well as the potential risks to the financial institution that may arise from unethical or illegal behavior. This kind of culture coupled with appropriate procedures should reinforce business-line ownership of risk identification, and encourage personnel to move ethical or legal concerns regarding elevated risk CSFTs to appropriate levels of management. In appropriate circumstances, financial institutions may also need to consider implementing mechanisms to protect personnel by permitting the confidential disclosure of concerns.[10] As in other areas of financial institution management, compensation and incentive plans should be structured, in the

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[10] The agencies note that the Sarbanes-Oxley Act of 2002 requires companies listed on a national securities exchange or inter-dealer quotation system of a national securities association to establish procedures that enable employees to submit concerns regarding questionable accounting or auditing matters on a confidential, anonymous basis. See 15 U.S.C. 78j-1(m).

context of elevated risk CSFTs, so that they provide personnel with appropriate incentives to have due regard for the legal, ethical and reputational risk interests of the institution.

Monitoring Compliance with Internal Policies and Procedures. The events of recent years evidence the need for an effective oversight and review program for elevated risk CSFTs. Financial institutions should conduct periodic independent reviews of their CSFT activities to verify that their policies and controls relating to elevated risk CSFTs are being implemented effectively and that elevated risk CSFTs are accurately identified and receive proper approvals. Such monitoring may include more frequent assessments of the risk arising from elevated risk CSFTs, both individually and within the context of the overall customer relationship, and the results of this monitoring should be provided to an appropriate level of management in the financial institution.

Training. An institution should identify relevant personnel who may need specialized training regarding CSFTs to be able to effectively perform their oversight and review responsibilities. Appropriate training on the financial institution's policies and procedures for handling elevated risk CSFTs is critical. Financial institution personnel involved in CSFTs should be familiar with the institution's policies and procedures concerning elevated risk CSFTs, including the processes established by the institution for identification and approval of elevated risk CSFTs and new complex structured finance products and for the elevation of concerns regarding transactions or products to appropriate levels of management. Financial institution personnel should be trained to identify and properly handle elevated risk CSFTs that may result in a violation of law.

Audit. The internal audit department of any financial institution is integral to its defense against fraud, unauthorized risk taking and damage to the financial institution's reputation. The internal audit department of a financial institution should regularly audit the financial institution's adherence to its own control procedures relating to elevated risk CSFTs, and further assess the adequacy of its policies and procedures related to elevated risk CSFTs. Internal audit should periodically validate that business lines and individual employees are complying with the financial institution's standards for elevated risk CSFTs and appropriately identifying any exceptions. This validation should include transaction testing for elevated risk CSFTs.

Reporting. A financial institution's policies and procedures should provide for the appropriate levels of management and the board of directors to receive sufficient information and reports concerning the institution's elevated risk CSFTs to perform their oversight functions.

IV. CONCLUSION

Structured finance products have become an essential and important part of the U.S. and international capital markets, and financial institutions have played an important role in the development of structured finance markets. In some instances, however, CSFTs have been used to misrepresent a customer's financial condition to investors and others, and financial institutions involved in these transactions have sustained significant legal and reputational harm. In light of the potential legal and reputational risks associated with CSFTs, a financial institution should have effective risk management and internal control systems that are designed to allow the institution to identify elevated risk CSFTs, to evaluate, manage and address the risks arising from such transactions, and to conduct those activities in compliance with applicable law.

Dated: May 4, 2006.

John C. Dugan (signed)
Comptroller of the Currency.

Dated: May 8, 2006

By the Office of Thrift Supervision.
John M. Reich (signed)
Director

By order of the Board of Governors of the Federal Reserve System, May 9, 2006.

Jennifer J. Johnson (signed)
Secretary of the Board.

Dated at Washington, DC, the 9th day of May, 2006.

By order of the Federal Deposit Insurance Corporation.
Robert E. Feldman (signed)
Executive Secretary.

Dated: May 9, 2006

By the Securities and Exchange Commission
Nancy M. Morris (signed)
Secretary

Nancy M. Morris

Commissioner Glassman Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2514 / May 9, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12290

In the Matter of HUTCHENS INVESTMENT MANAGEMENT, INC. and WILLIAM HUTCHENS, Respondents.	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTIONS 203(e), 203(f), AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Hutchens Investment Management, Inc. ("HIM") and pursuant to Sections 203(f) and 203(k) of the Advisers Act against William Hutchens ("Hutchens") (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, each Respondent has submitted an Offer of Settlement, which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings and Imposing Remedial Sanctions and a Cease-and- Desist Order Pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers of Settlement, the Commission finds that:

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RESPONDENTS

1. **HIM** (SEC File No. 801-49607) is a New Hampshire corporation that has been registered with the Commission as an investment adviser since 1995. HIM's principal place of business is in Concord, New Hampshire. HIM has approximately 5 employees, 100 clients, and $200 million in assets under management.

2. **William Hutchens**, 48, of Concord, New Hampshire, is the founder and President of HIM. Hutchens is the largest shareholder of HIM.

Summary

3. HIM and William Hutchens, HIM's president, failed to comply fully with their solicitation, trading, and record-keeping responsibilities. In particular, HIM violated the antifraud and record-keeping provisions of the Advisers Act by failing to disclose that it paid a solicitor for referring certain clients. In addition, HIM failed to comply fully with the Advisers Act requirement that it establish, maintain, and enforce policies and procedures to prevent the misuse of material, nonpublic information. Further, HIM misstated its turnover rate to prospective clients in responses it made to requests for proposals. Further, HIM failed to maintain required records relating to soft dollars and other matters. Finally, HIM filed Forms ADV signed by Hutchens that were materially misleading with respect to these matters. By these actions, HIM violated Sections 204, 204A, 206(1), 206(2), 206(4) and 207 of the Advisers Act and Rules 204-2(a)(5), 204-2(e), 204-3, and 206(4)-3 thereunder, and Hutchens violated Section 207 of the Advisers Act and aided and abetted and caused violations of Sections 204, 204A, 206(1), 206(2) and 206(4) of the Advisers Act and Rules 204-3, and 206(4)-3 thereunder.

Background

4. In February 1997, the Boston District Office examination staff conducted an examination of HIM. That examination revealed that HIM had made improper use of soft dollars.[1] The examination staff sent a deficiency letter following the examination to inform HIM that the firm had improperly used soft dollars in some instances and that it lacked internal controls necessary to ensure that its use of soft dollars was consistent with its brokerage allocation disclosures. HIM, in a letter signed by Hutchens, responded that it would address these problems.

5. In August 1998, the Boston District Office examination staff conducted a routine examination of HIM. That examination revealed that HIM was not in full compliance with the Advisers Act rules relating to fees paid for client referrals. Although HIM did have written contracts with some solicitors, in one instance, HIM had received three referrals from a solicitor with whom HIM had no written contract. In addition, those clients had not been advised in writing of the arrangement between HIM and the solicitor as required. That examination also

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1 "Soft dollar" practices generally describe arrangements whereby an adviser uses commission dollars generated by its advisory clients' securities trades to pay for research, brokerage, or other products, services or expenses. See S Squared Technology Corp., Advisers Act Rel. No. 1575, 62 SEC Docket 1560, 1561 (August 7, 1996).

found that HIM had no employee trading policy in place to prevent conflicts of interest with client trading and, therefore, might be in violation of Section 204A of the Advisers Act. The staff advised HIM of these violations in a deficiency letter. In HIM's written response to the deficiency letter, Hutchens stated that HIM had since obtained written contracts from all solicitors and representations from the solicitors that they would disclose the solicitation arrangements to clients. Hutchens further stated that it was the policy of HIM that "employees may buy or sell securities for their own account after completing all transaction [sic] for clients."

6. In February 2002, the Boston District Office examination staff conducted another examination of HIM. During the course of that examination, the staff determined that certain of the deficiencies identified during the 1997 and 1998 examinations persisted notwithstanding HIM's representations that those deficiencies would be addressed.

7. HIM retained compliance personnel who had some responsibility for HIM's regulatory compliance, including compliance with the matters discussed above. The staff determined that in some respects HIM's compliance personnel did not adequately perform those functions and that Hutchens and HIM did not ensure that the firm's compliance function was operating effectively.

Undisclosed Solicitor

8. HIM paid cash fees for client solicitations to an individual without making the necessary disclosures in its Form ADV and to clients. From 1996 through 2001, an HIM client who was also an HIM shareholder (referred to hereafter as "the Solicitor") referred three accounts to HIM. During that same period, HIM paid the Solicitor approximately $10,000 per year as a purported "consulting fee." The Solicitor and Hutchens consulted with attorneys who informed them (incorrectly) that the Solicitor would be unable to receive referral fees from HIM because the Solicitor was not a registered investment adviser. To compensate the Solicitor for the referrals, Hutchens and the Solicitor verbally agreed that Hutchens would pay the Solicitor what the two agreed to call a "consulting fee." This fee was calculated by taking a percentage of management fees generated from accounts that the Solicitor brought into the firm.

9. There was no written agreement memorializing the arrangement between the Solicitor and Hutchens. The three clients the Solicitor brought into the firm were not informed of the arrangement and were unaware that the Solicitor was receiving a percentage of the management fee that they paid to HIM, but they were not charged any additional fee as a result of the arrangement. HIM's Forms ADV filed during the relevant time period, six of which were signed by Hutchens, did not disclose that HIM compensated the Solicitor for client referrals.

Hutchens' Trading in HIM's Proprietary Account

10. Hutchens used HIM's proprietary brokerage account as his personal trading account. HIM had a written policy prohibiting employees from trading in their personal accounts until client trades had been placed. This policy should have been applied to trading by Hutchens in the HIM proprietary account because Hutchens' trades in that account included trades that were made the same day and in the same stocks as some client trades. Nevertheless, HIM had no procedures in place to ensure compliance with the policy. As a result, Hutchens sometimes traded stocks in the HIM proprietary account the same day that HIM traded those

stocks for its clients before the client transactions were completed. In some instances, Hutchens received a better price for the stock while in other instances the client received the better price. At no time did any HIM employee ever question Hutchens' trades.

11. In response to Item 9E, Part II of its Forms ADV filed between 1997 and 2000, six of which Hutchens signed, HIM disclosed the fact that it buys or sells securities for itself that it also recommends to clients. However, the firm also stated, "[e]mployees may buy or sell securities for their own account after completing all transactions for clients in accordance with applicant's policy on ethical behavior. Quarterly records are kept and checked for compliance with this policy." Those representations were false in that Hutchens frequently purchased or sold stock in HIM's proprietary account before client transactions were completed. In addition, there was no mechanism in place to ensure compliance with the policy, and HIM took no steps to determine whether Hutchens complied with the policy himself.

HIM's Lack of Procedures to Prevent Misuse of Non-public Information

12. Following its 1998 examination, the Boston District Office examination staff informed HIM, among other things, that it was not in compliance with the Advisers Act because it had no written policies and procedures to prevent the misuse of material non-public information. Although Hutchens represented to the staff in 1998 that HIM had appropriate written policies, HIM did not have such policies. Moreover, Hutchens did nothing to establish the necessary procedures in response to the 1998 examination notwithstanding his representations to the staff, and, as a result, HIM continued to have no written policies and procedures in place in 2002.

Misrepresentations to Prospective Clients

13. From HIM's inception in June 1995 until July 2001, the firm stated to potential clients that its asset turnover rate was 50%.[2] Hutchens knew or was reckless in not knowing that HIM's turnover was much greater than 50% but nonetheless signed responses to requests for proposals (RFPs) HIM had received from prospective clients that misrepresented the firm's turnover rate. While the RFPs in question did not result in any contract awards to HIM, these misrepresentations were material.

14. Hutchens signed at least four responses to RFPs that misrepresented the firm's asset turnover rate for its large cap product. As HIM's president, portfolio manager, and member of the firm's investment committee, Hutchens knew or was reckless in not knowing that the firm's turnover rate in the relevant period was greater than 50% and that it had been increasing over time.

15. Prior to the staff's 2002 examination, HIM was informed (by HIM's internal compliance officer) of the discrepancy between the turnover rate reported on responses to RFPs and HIM's actual turnover rate. At that time, HIM recalculated its turnover rates.

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[2] Turnover is a measure of portfolio activity calculated by dividing the lesser of purchases or sales of securities by the average value of the portfolio securities held during the period. See AICPA, Audits of Investment Companies 247 (May 1, 1994 ed.).

HIM's Books and Records

16. During the relevant period, HIM did not have adequate systems or procedures in place to retain and/or retain in an easily accessible location records relating to its business as an investment adviser, including all bills and statements. During the Boston District Office examination staff's 1997 and 1998 examinations, the staff informed HIM that it failed to maintain various records as required by the Adviser Act rules. In both 1997 and 1998, Hutchens represented to the examination staff that HIM would correct the deficiencies identified by the examination staff. Notwithstanding these representations, HIM continued its failure to maintain requisite books and records. For example, HIM failed to maintain invoices received for services provided by two different vendors during the period from January 1998 through December 2001 in connection with HIM's soft dollar program.

Violations

17. As a result of the conduct set forth above, Respondent HIM willfully:

(a) violated Section 206(4) of the Advisers Act and Rule 206(4)-3 thereunder, in that it engaged in an act, practice or course of business which was fraudulent, deceptive or manipulative, paid a cash fee, directly or indirectly, to a solicitor that was not paid pursuant to a written agreement to which HIM was a party, and made no bona fide effort to ascertain whether the solicitor provided a separate written disclosure document to the clients containing the name of the solicitor, the name of the investment adviser, the nature of the relationship between the solicitor and the investment adviser, the terms of the compensation arrangement, and the amount, if any, for the cost of obtaining his account the client will be charged in addition to the advisory fee;

(b) violated Section 204A of the Advisers Act, in that it failed to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of its business, to prevent the misuse of material, nonpublic information by it or any person affiliated with it;

(c) violated Sections 206(1) and 206(2) of the Advisers Act, in that it employed devices, schemes, or artifices to defraud any client or prospective client, engaged in transactions, practices or courses of business that operated as a fraud or deceit upon any client or prospective client, engaged in an act, practice or course of business which was fraudulent, deceptive or manipulative;

(d) violated Sections 204 and 207 of the Advisers Act and Rule 204-3 thereunder, in that it made an untrue statement of a material fact in reports filed with the Commission and omitted to state in such reports a material fact which was required to be stated therein and failed to furnish each advisory client and prospective advisory client with a written disclosure statement containing at least the information required by Part II of Form ADV;

(e) violated Section 204 of the Advisers Act and Rules 204-2(a)(5), and 204-2(e) thereunder, in that it failed to make and keep for prescribed periods: (1) in an easily accessible place all bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such ; and (2) all written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to its business as an investment adviser.

18. As a result of the conduct set forth above, Respondent Hutchens willfully:

(a) violated Section 207 of the Advisers Act in that he made an untrue statement of a material fact in reports filed with the Commission under Section 204 of the Advisers Act and omitted to state in such reports a material fact which was required to be stated therein;

(b) aided and abetted and caused HIM's violations of Sections 204, 204A, 206(1), 206(2) and 206(4) of the Advisers Act and Rules 204-3 and 206(4)-3, thereunder as set forth in Paragraph 17 above.

Undertakings

19. Respondent Hutchens has undertaken to provide to the Commission, within 10 days after the end of the three-month suspension period described in Section IV.D. below, an affidavit that he has complied fully with the sanctions described therein.

20. Respondent HIM has undertaken to do the following:

A. Compliance Consultant

1. Has retained, or within 30 days of the date of entry of the Order will retain, the services of a Compliance Consultant not unacceptable to the staff of the Commission (the "Independent Consultant"). The Independent Consultant will be retained to perform certain procedures and review certain practices of HIM. Among other services, the Independent Consultant shall perform a mock SEC inspection; review all policies, procedures, advisory agreements, and compliance documents; and review personal securities transactions. The Independent Consultant's compensation and expenses shall be borne exclusively by HIM.

2. Require that the Independent Consultant:

a. Comprehensively review HIM's policies and procedures relating to its engagement of solicitors, its disclosure of the engagement of solicitors, securities trading by HIM personnel, prevention of the misuse of non-public information, advertising and compliance with books and records requirements. Respondent will cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to HIM's files, books, records and personnel as requested for the review.

b. In a report to HIM, recommend policies and procedures that are reasonably designed to ensure future compliance by HIM with the federal securities laws, including, but not limited to, Sections 204, 204A, 206(1), 206(2), 206(4) and 207 of the Advisers Act and Rules 204-2(a)(5), 204-2(e), 204-3, and 206(4)-3 thereunder. The report shall include a description of the review performed, the conclusions reached, the Independent Consultant's recommendations for changes in or improvements to HIM's policies and procedures, and a procedure for implementing the recommended changes in or improvements to HIM's policies and procedures.

c. Deliver said report to the Commission's staff within ninety (90) days of the issuance of the Order.

d. Enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with HIM, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Boston District Office, enter into any employment, consultant, attorney-client, auditing or other professional relationship with HIM, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

3. Adopt all recommendations by the Independent Consultant in the report within six (6) months after its issuance; provided, however, that within thirty (30) days of the Independent Consultant's report, HIM may in writing advise the Commission staff and the Independent Consultant of any recommendations that it considers to be unduly burdensome or impractical. HIM may propose in writing an alternative procedure designed to achieve the same objective to the Independent Consultant and the Commission's staff. The Consultant shall reasonably evaluate HIM's alternative procedure and HIM shall abide by the Independent

Consultant's determination with regard thereto and adopt such recommendations.

4. Within six (6) months after the issuance of the Independent Consultant's report, submit to the Commission's staff an affidavit attesting to its implementation of the recommendations contained in the Report, setting forth the details of such implementation.

5. Not terminate the Independent Consultant without the prior approval of the Commission staff and shall not have any attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or any other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports or other documents to the Commission staff.

B. Notice to Clients Regarding Order

Within 30 days following the entry of this Order, maintain on its website for a period of six months a link to this Order in a manner not unacceptable to the staff, and notify each existing investment advisory client of (a) the entry of this Order, and (b) the fact that this Order is available through HIM's website. Such notification shall be sent in the form of a letter not unacceptable to the staff of the Commission. HIM shall notify the staff of the Commission by mail directed to Kevin M. Kelcourse, Senior Counsel, Securities and Exchange Commission, Boston District Office, 33 Arch Street, 23rd Floor, Boston, MA 02110 when this undertaking is completed.

C. Certification

No later than one (1) year after the date of entry of this Order, HIM shall certify to the Commission in writing that it has fully adopted and complied in all material respects with the requirements set forth in this section.

D. Recordkeeping

HIM shall preserve for a period of not less than six years, the first two years in an easily accessible place, any record of HIM's compliance with the undertakings set forth herein.

21. For good cause shown, the Commission's staff may extend any of the procedural dates set forth above.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions specified in Hutchens' and HIM's respective Offers of Settlement.

Accordingly, **it is hereby ORDERED**:

A. Pursuant to Section 203(k) of the Advisers Act, that Respondent HIM cease and desist from committing or causing any violations and any future violations of Sections 204, 204A, 206(1), 206(2), 206(4) and 207 of the Advisers Act and Rules 204-2(a)(5), 204-2(e), 204-3, and 206(4)-3 thereunder.

B. Pursuant to Section 203(k) of the Advisers Act, that Respondent Hutchens cease and desist from committing or causing any violations and any future violations of Sections 204, 204A, 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rules 204-3 and 206(4)-3 thereunder.

C. Pursuant to Section 203(e) of the Advisers Act, that Respondent HIM be, and hereby is, censured.

D. Pursuant to Section 203(f) of the Advisers Act, Respondent Hutchens is hereby suspended from association with any investment adviser for a period of three months beginning from the date of entry of this Order.

E. Pursuant to Section 203(i) of the Advisers Act, that Respondent HIM shall pay a civil monetary penalty in the amount of $40,000 to the United States Treasury in three equal installments as follows: $13,333.33 within 120 days of the entry of this Order, an additional $13,333.33 within 240 days of the entry of this Order, and the final $13,333.34 within 365 days of entry of this Order. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the United States Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Hutchens Investment Management, Inc. as the Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to David P. Bergers, Associate District Administrator, Securities and Exchange Commission, Boston District Office, 33 Arch Street, 23rd Floor, Boston, MA 02110.

F. Pursuant to Section 203(i) of the Advisers Act, that Respondent Hutchens shall pay a civil monetary penalty in the amount of $25,000 to the United States Treasury in installments as follows: $8,333.33 within 120 days of the entry of this Order, an additional $8,333.33 within 240 days of the entry of this Order, and the final $8,333.34 within 365 days of entry of this Order. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the United States Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Hutchens as the Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to David P. Bergers, Associate District Administrator, Securities and Exchange Commission, Boston District Office, 33 Arch Street, 23rd Floor, Boston, MA 02110.

G. Respondents shall comply with the undertakings enumerated in Section III above.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53779 / May 10, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12292

In the Matter of	**: ORDER INSTITUTING PROCEEDINGS, : MAKING FINDINGS, AND REVOKING : REGISTRATION OF SECURITIES : PURSUANT TO SECTION 12(j) OF : THE SECURITIES EXCHANGE : ACT OF 1934 :**
SUPREMA SPECIALTIES, INC.,	
Respondent.	

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Suprema Specialties, Inc. ("Suprema" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, Respondent consents to the entry of this Order Instituting Proceedings, Making Findings, and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

A. Suprema, a New York corporation, manufactured and distributed cheese until it ceased operations in early 2002. The common stock of Suprema has been registered with the Commission pursuant to Section 12(g) of the Exchange Act since on or about July 6, 1991. Stock purchase rights with respect to the common stock have been

Document 12 of 67

registered with the Commission pursuant to Section 12(g) of the Exchange Act since on or about May 25, 1996.

B. Suprema has failed to comply with Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder, while its common stock and common stock purchase rights were registered with the Commission in that it has not filed an Annual Report on Form 10-K since October 1, 2001 or periodic or quarterly reports on Form 10-Q for any fiscal period subsequent to its fiscal quarter ending September 30, 2001.

C. On February 24, 2002, Suprema filed a voluntary bankruptcy petition for a Chapter 11 reorganization in the U.S. Bankruptcy Court for the Southern District of New York. On March 20, 2002, Suprema's bankruptcy proceeding was converted to a Chapter 7 liquidation, and Kenneth P. Silverman, Esq. was appointed the Chapter 7 Trustee of Suprema's estate.

IV.

Section 12(j) of the Exchange Act provides as follows:

The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

In view of the foregoing, the Commission deems it appropriate for the protection of investors to impose the sanction specified in Respondent's Offer.

ACCORDINGLY, IT IS HEREBY ORDERED that, pursuant to Section 12(j) of the Exchange Act, registration of each class of Respondent's securities registered pursuant to Section 12 of the Exchange Act be, and hereby is, revoked.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53779 / May 10, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12292

In the Matter of **SUPREMA SPECIALTIES, INC.,** **Respondent.**	**: ORDER INSTITUTING PROCEEDINGS,** **: MAKING FINDINGS, AND REVOKING** **: REGISTRATION OF SECURITIES** **: PURSUANT TO SECTION 12(j) OF** **: THE SECURITIES EXCHANGE** **: ACT OF 1934** **:**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Suprema Specialties, Inc. ("Suprema" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, Respondent consents to the entry of this Order Instituting Proceedings, Making Findings, and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

A. Suprema, a New York corporation, manufactured and distributed cheese until it ceased operations in early 2002. The common stock of Suprema has been registered with the Commission pursuant to Section 12(g) of the Exchange Act since on or about July 6, 1991. Stock purchase rights with respect to the common stock have been

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registered with the Commission pursuant to Section 12(g) of the Exchange Act since on or about May 25, 1996.

B. Suprema has failed to comply with Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder, while its common stock and common stock purchase rights were registered with the Commission in that it has not filed an Annual Report on Form 10-K since October 1, 2001 or periodic or quarterly reports on Form 10-Q for any fiscal period subsequent to its fiscal quarter ending September 30, 2001.

C. On February 24, 2002, Suprema filed a voluntary bankruptcy petition for a Chapter 11 reorganization in the U.S. Bankruptcy Court for the Southern District of New York. On March 20, 2002, Suprema's bankruptcy proceeding was converted to a Chapter 7 liquidation, and Kenneth P. Silverman, Esq. was appointed the Chapter 7 Trustee of Suprema's estate.

IV.

Section 12(j) of the Exchange Act provides as follows:

> The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

In view of the foregoing, the Commission deems it appropriate for the protection of investors to impose the sanction specified in Respondent's Offer.

ACCORDINGLY, IT IS HEREBY ORDERED that, pursuant to Section 12(j) of the Exchange Act, registration of each class of Respondent's securities registered pursuant to Section 12 of the Exchange Act be, and hereby is, revoked.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 53796 / May 12, 2006

Admin. Proc. File No. 3-12094

In the Matter of the Application of

MAY CAPITAL GROUP, LLC

and

MELVIN ROKEACH

c/o Michael Beckman, Esq.
Beckman, Lieberman & Barandes, LLP
116 John Street, Suite 1313
New York, New York 10038

For Review of Action Taken by

NASD

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DENIAL OF MEMBERSHIP CONTINUANCE APPLICATION

Registered securities association denied member's application to permit employment of individual subject to a statutory disqualification. Held, review proceeding is remanded.

APPEARANCES:

Michael Beckman, of Beckman, Lieberman & Barandes, LLP, and Marc S. Gottlieb, of the Law Offices of Marc S. Gottlieb, for May Capital Group, LLC and Melvin Rokeach.

Marc Menchel, Alan Lawhead, and Deborah F. McIlroy, for NASD.

Appeal filed: October 28, 2005
Last brief received: January 27, 2006

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I.

May Capital Group, LLC ("May Capital"), an NASD member firm, and Melvin Rokeach, an individual subject to a statutory disqualification (collectively, "Applicants"), appeal from the denial of a membership continuance application seeking permission for Rokeach to associate with May Capital as an investment company products/variable contracts representative. 1/ To the extent we make findings, we base them on an independent review of the record.

II.

A. Rokeach's statutory disqualification stems from his willful failure to disclose a felony conviction on a "Form U-4 Uniform Application for Securities Industry Registration or Transfer" and willful misrepresentation of that conviction as a misdemeanor on an amendment to the Form U-4. 2/ In October 1999, Rokeach failed to disclose on a Form U-4 filed on his behalf by Park Avenue Securities, LLC ("Park Avenue") 3/ that, in 1987, he pled guilty to one count of filing a false tax return in violation of 26 U.S.C. § 7206(1), a felony. 4/ In May 2000, Rokeach included information about the conviction on an amendment to that Form U-4, but misrepresented that his conviction involved a misdemeanor.

Rokeach failed to disclose his felony conviction on applications for insurance registration as well as on the Form U-4 and amended Form U-4. Between September 1999 and August 2000, Rokeach failed to disclose his felony conviction on applications for insurance registration with

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1/ Section 15A(g)(2) of the Securities Exchange Act of 1934 gives NASD the authority to bar a person who is subject to a "statutory disqualification" from becoming associated with any of its members. 15 U.S.C. § 78*o*-3(g)(2). Under NASD By-Laws Article III, Section 3(b), a person "subject to a disqualification" cannot become or remain associated with an NASD member unless the disqualified person's member firm applies for relief from the disqualification under Article III, Section 3(d) of the By-Laws.

2/ A person is subject to a disqualification with respect to association with a member if, among other things, such person "has willfully made . . in any application . . . to become associated with a member of a self-regulatory organization" "any statement which was at the time, and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application . . . any material fact which is required to be stated therein." See Exchange Act Section 3(a)(39)(F), 15 U.S.C. § 78c(a)(39)(F), and NASD By-Laws Article III, Section 4(f).

3/ Rokeach's registration with Park Avenue was his first entry into the securities industry.

4/ Rokeach reported taxable personal income of $15,061 on his 1981 federal income tax return. The correct amount was $48,879.

the states of New York, Connecticut, and Florida, and with the Guardian Life Insurance Company ("Guardian"). 5/

In December 2001, after "certain regulatory disclosures came to [its] attention, subsequent to his hire," Park Avenue placed Rokeach under heightened supervisory conditions. A subsequent examination of Rokeach's securities business by Park Avenue revealed that Rokeach violated certain firm policies regarding review of correspondence and seminars. 6/ Park Avenue discharged Rokeach on January 30, 2003, based on these activities, and filed a Form U-5 "Uniform Termination Notice for Securities Industry Registration" reporting that termination on February 4, 2003.

Rokeach filed a Form U-4 application for registration with May Capital on February 12, 2003. He disclosed his felony conviction on this application. Rokeach also disclosed the investigations of him by the states of Florida and New York for failing to disclose his felony conviction on their applications for insurance registration.

On November 24, 2003, NASD accepted Rokeach's submission of a Letter of Acceptance, Waiver, and Consent ("AWC") containing the findings that 1) Rokeach willfully failed to disclose his felony conviction on the Form U-4 filed on his behalf by Park Avenue and 2) Rokeach misrepresented on an amendment to that Form U-4 that his conviction involved a misdemeanor when he "knew or should have known" that the conviction involved a felony. 7/ The AWC specified explicitly that "Rokeach understands . . . he is therefore subject to a statutory disqualification with respect to association with a member." Rokeach consented to a six-month suspension from associating with any NASD member firm in any capacity. 8/ NASD imposed the suspension from January 5, 2004 to July 4, 2004.

B. On July 30, 2004, after Rokeach signed the AWC and served his suspension, May Capital filed a membership continuance application with NASD seeking to permit Rokeach to continue associating with it despite Rokeach's statutory disqualification. 9/ May Capital is engaged in

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5/ On February 26, 2002, Florida placed Rokeach on probation for one year and imposed a $1,500 fine, and New York imposed a $500 fine on July 30, 2002.

6/ Rokeach "sen[t] correspondence that did not go through compliance."

7/ The AWC did not discuss Rokeach's failure to disclose his conviction on any of the applications for insurance registration or the sanctions imposed by Florida and New York.

8/ Rokeach also consented to a fine in the amount of $7,500.

9/ May Capital has no formal disciplinary history. In 2003, following a routine examination, NASD issued a Letter of Caution to May Capital for certain failures having

(continued...)

retail sales of mutual funds and acts as a broker or dealer selling "variable life insurance or annuities" and "tax shelters or limited partnerships in primary distributions." May Capital employs one registered principal and two registered representatives and seeks to employ Rokeach as an investment company products/variable contracts representative. 10/

May Capital proposed that Rokeach work out of its office in New York City and that his work be supervised by Lawrence May, May Capital's president. 11/ Rokeach's office would be next door to May's office, May would receive and open all of Rokeach's mail, and May would review and approve all correspondence, mail, faxes, and e-mail sent out by Rokeach to his clients. 12/ The application stated further that Rokeach would not have any supervisory duties and would be compensated only through commissions.

On April 5, 2005, NASD's Department of Member Regulation ("Member Regulation") recommended denying the application. 13/ Member Regulation found that Rokeach's failures to disclose his felony conviction on the Form U-4, on the amendment to the Form U-4, and on the applications for insurance registration evinced "a troubling trail of serious dishonest

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9/ (...continued)
to do with continuing education requirements, and for failing to file a Form U-5 within thirty days of an individual's termination. The record indicates that the firm corrected these deficiencies promptly.

10/ Initially, NASD believed May Capital sought to employ Rokeach as a general securities representative, but May Capital subsequently clarified that "[a]lthough Mr. Rokeach has a series 7 license, [May Capital was] not approved for general securities business and therefore we are not seeking to employ him as a general securities representative."

11/ Lawrence May has no disciplinary history. He testified that Rokeach would be "the only individual that I would be supervising." May testified further that he knew "heightened supervisory requirements" applied to Rokeach, that he would "have a consulting firm that will advise me what has to be done so we're not in any violation," and that he understood supervising Rokeach constituted "an additional burden" that he did not take lightly because he probably had "more to lose than I do to gain."

12/ May Capital's written supervisory procedures for disqualified persons also state that May will review and approve, and keep a written record evidencing such review and approval of, the disqualified individual's correspondence, transactions, and new accounts, that May will meet with the disqualified individual on a quarterly basis and keep a log of these meetings, and that all customer complaints pertaining to the disqualified individual will be immediately reviewed, investigated, and documented.

13/ NASD Procedural Rule 9523(a) directs Member Regulation to review such an application in light of the member firm's proposed plan of supervision for the disqualified person.

misconduct." Member Regulation also noted that Rokeach's conviction involved financial fraud, that Rokeach's termination from Park Avenue evidenced Rokeach's inability to act responsibly, and that Rokeach's disqualifying event, the AWC, occurred recently. Member Regulation recognized that May had no disciplinary history and the firm had no formal disciplinary history, 14/ but found these factors outweighed by "the risk to investors presented by Rokeach's recent disqualifying event and history of dishonest actions." Member Regulation concluded that permitting Rokeach's employment in the securities industry would not be in the public interest and would create an unreasonable risk of harm to the market or investors.

On April 19, 2005, a Hearing Panel of NASD's Statutory Disqualification Committee conducted a hearing on the membership continuance application. 15/ At the hearing, Rokeach testified initially that he failed to disclose his felony conviction "three times," in documents filed with "Florida, New York, and NASD," but later admitted, after questioning by Member Regulation, that he also did not disclose the conviction on the Connecticut and Guardian applications. 16/ Rokeach acknowledged repeatedly that he acted inappropriately by making all these omissions. He explained that on the amended Form U-4 he stated that he pled guilty to a misdemeanor because he "saw nothing that stated that it was a felony." 17/ Rokeach testified further that, although "the original applications, in fact, were not correct," he "disclosed to every one of these agencies" after his original error that "in fact [he] was convicted of a felony." 18/

On September 29, 2005, NASD's National Adjudicatory Council ("NAC") issued a decision denying the membership continuance application. 19/ The NAC, as an initial matter,

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14/ See supra note 9.

15/ NASD Rule 9524 provides that the National Adjudicatory Council or Review Subcommittee shall, upon the request of the disqualified member, sponsoring firm, or applicant, appoint a Hearing Panel to conduct a hearing and recommend a decision.

16/ Rokeach noted that he disclosed the felony conviction on a New Jersey application.

17/ Rokeach added that none of the documents he looked at "specifically say or state felony" but that "it's not an excuse" and that he "was wrong" and "should know that it's a felony."

18/ Rokeach also acknowledged that the AWC stated that he was subject to a disqualification and that he signed the AWC knowingly. He thought, based on conversations with his then-counsel, that he would be allowed back into the industry after he served his suspension as long as he didn't have any "intervening actions." The record reveals that Rokeach has not been subject to any disciplinary actions since he signed the AWC.

19/ NASD Rule 9524(b)(1) provides that the NAC should grant or deny the request for relief. Rule 9524(a)(10) provides that the Hearing Panel should submit a written

(continued...)

rejected Rokeach's argument that the Commission's decision in Paul Edward Van Dusen 20/ governed its analysis. According to the NAC, Van Dusen held that, where "an individual is applying to re-enter the securities industry after previously having been subject to a permanent injunction and a bar by the Commission, with a right to reapply, . . . NASD should not again consider the individual's underlying misconduct when it evaluates a statutory disqualification application." The NAC found this standard inapplicable to this proceeding because "[h]ere, NASD's Department of Enforcement -- not the Commission -- was the entity that took action on the misrepresentations contained in Rokeach's Form U4 and amended Form U4." The NAC concluded, therefore, "that the restrictive analysis of Van Dusen does not apply in this matter and that we must consider all of the factors concerning Rokeach's statutory disqualification, including the events that led to the November 2003 AWC."

The NAC found, after "examin[ing] all the evidence presented in this matter," that "May Capital has not demonstrated that Rokeach is willing and able to operate responsibly in the securities industry at this time." According to the NAC, Rokeach had a "propensity for misrepresenting his past" and a "continuing inability to acknowledge his history of misrepresenting facts about his background to regulators." The NAC highlighted the misconduct underlying the AWC, the "misrepresentations in numerous applications for insurance registration" "at the same time Rokeach was filing false Form U4 information with securities regulators," and Rokeach's initial failure at the hearing to acknowledge his omissions in the Connecticut and Guardian insurance applications. Additionally, the NAC considered that Park Avenue's termination of Rokeach for failure to comply with heightened supervisory conditions indicated that he "may not be able to comply with heightened supervisory conditions placed on him if he were to be permitted to associate with May Capital." 21/ The NAC thus concluded that "it is not in the public interest, and would create an unreasonable risk of harm to the market or investors, for Rokeach to become associated with May Capital." This appeal followed.

19/ (...continued)
recommendation to the Statutory Disqualification Committee and that the committee should consider the recommendation and itself present a written recommendation to the NAC. The record contains neither recommendation, but the NAC, in its denial of the membership continuance application, stated that both the Hearing Panel and Statutory Disqualification Committee provided the requisite recommendations.

20/ 47 S.E.C. 668 (1981).

21/ The NAC also noted that the conviction "was financially related and involved deceitful misconduct" and that the AWC "occurred very recently."

III.

Our review is governed by the standards set forth in Section 19(f) of the Securities Exchange Act of 1934. 22/ We must dismiss Applicants' appeal if we find that the specific grounds on which NASD based its action exist in fact, that the action is in accordance with NASD rules, that NASD applied those rules in a manner consistent with the purposes of the Exchange Act, and that NASD's action does not impose an undue burden on competition. 23/

A. NASD based its denial of the application on Rokeach's failure to disclose his felony conviction to securities and insurance regulators, his failure to acknowledge all these omissions before the Hearing Panel, and his termination from Park Avenue Securities. Applicants do not dispute Rokeach's multiple failures to disclose his conviction or to acknowledge these omissions before the Hearing Panel, and the record confirms this misconduct.

Applicants object that NASD "erroneously concluded that Rokeach's termination from Park Avenue Securities was based solely upon his failure to comply with Park Avenue's policies and procedures" whereas the termination "was based, in part, upon the very violations that led to Rokeach's disqualification." Rokeach's Form U-5 establishes that, although the false U-4 filings triggered Park Avenue's special supervision of Rokeach, Park Avenue terminated Rokeach based on his correspondence and seminar review violations. 24/ Moreover, Applicants do not explain where NASD concludes that the termination was based solely on these latter violations or why NASD could not consider these violations if the termination was also based on the misconduct underlying the AWC. Applicants do not dispute that Rokeach committed the correspondence

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22/ 15 U.S.C. § 78s(f).

23/ Id.; see also Harry M. Richardson, Securities Exchange Act Rel. No. 51236 (Feb. 22, 2005), 2005 SEC LEXIS 414, at *5. Applicants do not claim, and the record does not support a finding, that NASD's action imposes an undue burden on competition.

24/ The Form U-5 states: "Mr. Rokeach was placed on special supervision after certain regulatory disclosures came to our attention, subsequent to his hire by [Park Avenue]. During a recent examination of his securities business, it was determined that he had violated certain firm policies in regard to correspondence review and seminar review. The decision to terminate was based on these violations."

and seminar review violations. 25/ Accordingly, the grounds on which NASD based its action exist in fact. 26/

B. Applicants do not dispute that NASD followed its rules in reviewing the application. Member Regulation considered the application in accordance with NASD Rule 9523(a), the NAC appointed a Hearing Panel to conduct a hearing and recommend a decision in accordance with Rule 9524, and the Hearing Panel submitted its written recommendation to the Statutory Disqualification Committee which considered the panel's recommendation and presented its own recommendation to the NAC in accordance with Rule 9524(a)(10). Accordingly, NASD conducted its review of the application in accordance with its rules.

C. One of the purposes of the Exchange Act that Section 19(f) requires us to consider is fairness. 27/ Thus, we have previously analyzed whether NASD applied its rules in a manner consistent with the purposes of the Exchange Act in denying a membership continuance application by "determin[ing] whether or not [NASD's] application of its rules was 'unfair.'" 28/ Applicants argue that NASD's action is inconsistent with the purposes of the Exchange Act because NASD improperly refused to apply Van Dusen to this case and NASD should have approved the membership continuance application under the principles articulated in Van Dusen. NASD responds that it need not apply those standards here because NASD, rather than the Commission, imposed the suspension for the underlying misconduct.

Although NASD notes accurately that Van Dusen is not controlling because NASD, rather than the Commission, imposed Rokeach's suspension, 29/ Van Dusen's rationale supports

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25/ Applicants acknowledge in their brief that "Rokeach's conduct may have involved technical violations of the firm's policies and procedures."

26/ Applicants contend further that NASD inferred improperly from Rokeach's Form U-5 that his "violations of [Park Avenue's] policies and procedures were far more egregious than what these violations actually entailed." According to Applicants, "the true facts do not reveal anything remotely as nefarious" as NASD "make[s] it seem in [its] findings." NASD did not depict the violations as "nefarious." It also drew no inferences from the record. It noted simply that "Park Avenue terminated Rokeach for failing to follow 'certain firm policies in regard to correspondence review and seminar review.'"

27/ Stepehen R. Flaks, 46 S.E.C. 891, 895 n.8 (1977) ("Fairness is thus one of those 'purposes of this title' that Section 19(f) admonishes us to keep in mind.").

28/ Van Dusen, 47 S.E.C. at 670; Arthur H. Ross, 50 S.E.C. 1082, 1085 & n.11 (1992).

29/ Van Dusen involved a statutorily disqualified individual subject to a bar with a right to reapply imposed by the Commission. 47 S.E.C. at 671. Subsequently, the Commission (continued...)

applying its holding here. In Van Dusen, we reasoned that where the Commission previously imposed a bar with a right to reapply, it was unfair, in the absence of new information, to deny a membership continuance application, once the right to reapply commenced, on the sole basis of the underlying misconduct. 30/ Subsequent decisions explained that, because "an analysis of public interest requirements based solely on the underlying misconduct has already been performed," "an application to associate after the time determined to be in the public interest has expired requires a different analysis." 31/ Here, NASD itself determined that the underlying misconduct warranted a six-month suspension. 32/ We believe that it is no less unfair for NASD to deny a membership continuance application on the sole basis of that misconduct where it, rather than the Commission, previously imposed the suspension or bar with a right to reapply. NASD's evaluation of a membership continuance application made after the expiration of that suspension cannot rely solely on that same underlying misconduct.

An additional consideration influencing our application of the Van Dusen standards to cases where the Commission imposes a suspension or bar with a right to reapply for misconduct supports the application of Van Dusen here. As we have noted,

> If persons contemplating settlements with the Commission know that SROs, through denial of reentry applications, may, in effect, routinely extend those persons' bar from the securities industry beyond the period after which the settlement would allow them to reapply, based solely on the misconduct leading to the settlement, the incentive to settle

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29/ (...continued)
held that Van Dusen applied to the membership continuance applications of any statutorily disqualified person whose disqualifying conduct resulted in administrative sanctions imposed by the Commission. Reuben D. Peters, Exchange Act Rel. No. 49819 (June 7, 2004), 82 SEC Docket 3959, 3968; see also Reuben D. Peters, Order Denying Motion for Reconsideration, Exchange Act Rel. No. 51237 (Feb. 22, 2005), 84 SEC Docket 3497, 3499-3500 (noting that, whereas Van Dusen and Ross involved conditional bars imposed by the Commission, Peters extended the analysis to applications for reentry after the period of a Commission-imposed suspension).

30/ See Van Dusen, 47 S.E.C. at 670-71.

31/ See, e.g., Richardson, 2005 SEC LEXIS 414, at *14.

32/ In Van Dusen, we stated that, "[w]hether taken by this Commission or the NASD, the purpose of all [disciplinary actions under the Exchange Act] is remedial, not penal. They are not designed to punish, but to protect the public interest against further risk of harm." 47 S.E.C. at 671 (citing Commonwealth Secs. Corp., 44 S.E.C. 100, 101-02 (1969) (stating that sanctions should "afford investors protection without visiting upon the wrongdoers adverse consequences not required in achieving the statutory objectives")).

> would diminish markedly. . . . Settlement terms should be administered in accordance with the fair expectations of the settling parties. 33/

While NASD's enforcement program, including its efforts to settle appropriate cases, is within its administrative purview, we believe the considerations addressed in Richardson are relevant to NASD's use of settled proceedings in the context of reentry applications. 34/

NASD highlights our past statement in Richardson that "different considerations may apply" "[w]here an initial public interest determination was made by an entity other than the Commission." 35/ This statement, however, referred to our belief that NASD might not be bound by the initial public interest determination of another self-regulatory organization, as opposed to that of the Commission. 36/ Where NASD itself determines that misconduct warrants a suspension or bar with a right to reapply, it would be inconsistent with the purposes of the Exchange Act, for the reasons outlined above, for NASD to thereafter deny a membership continuance application solely on the basis of the same misconduct. Accordingly, we hold that the principles articulated in Van Dusen also apply to the membership continuance applications of statutorily disqualified individuals whose statutory disqualifications result from enforcement action undertaken by the self-regulatory organization evaluating the application.

NASD stated explicitly that it did not conduct its evaluation of the membership continuance application in accordance with Van Dusen. We are unable, therefore, to determine

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33/ Richardson, 2005 SEC LEXIS 414, at *18 & n.32. NASD stresses repeatedly that Rokeach consented to findings that he acted willfully and was subject to a statutory disqualification as a result. These findings, however, only require Rokeach to apply for relief from the disqualification. See supra notes 1 & 2. They do not, in and of themselves, serve as a basis for the denial of such an application.

34/ NASD argues that "[t]he AWC evidences the agreement between Enforcement and Rokeach that he would be subject to the full process that NASD ordinarily applies to statutorily disqualified individuals." This process, however, is subject to Commission oversight. See Richardson, 2005 SEC LEXIS 414, at *15 n.26 (noting that self-regulatory organizations "exercise authority subject to [Commission] oversight" and "have no authority to regulate independently of the [Commission's] control") (quoting S. Rep. No. 94-75, at 23). "To the extent that NASD by-laws might allow consideration of [applicant's] underlying misconduct beyond that permitted under Commission precedent, Commission precedent controls." Richardson, 2005 SEC LEXIS 414, at *15 n.26.

35/ Richardson, 2005 SEC LEXIS 414, at *8 n.14.

36/ See Ross, 50 S.E.C. at 1085 n.13 (stating that "the [New York Stock Exchange's] settlement of its disciplinary action should not bind the NASD in discharging its function of determining whether [applicant] is fit to re-enter the supervisory sphere").

whether its denial of the application is consistent with the purposes of the Exchange Act. We believe it is thus appropriate to remand the matter to NASD for its reconsideration. 37/

IV.

In remanding to provide NASD an opportunity to apply Van Dusen, we note that NASD mischaracterizes the holdings of Van Dusen and its progeny by stating that such holdings preclude NASD from "again consider[ing] the individual's underlying misconduct when it evaluates a statutory disqualification application." 38/ This statement unduly circumscribes the manner in which NASD may consider the underlying misconduct consistent with Van Dusen. Our cases "do not preclude consideration of the misconduct." 39/ As we said in Richardson, "Van Dusen and Ross instruct that an SRO ordinarily may not deny reentry based solely on the underlying misconduct that led to the statutory disqualification and the conditional bar; something more is needed." 40/

"[A]lthough the circumstances resulting in the statutorily disqualifying event should not be the primary focus of a determination regarding a re-entry application, they are relevant to such a determination." 41/ For example, "if the cited conduct underlying the bar order were similar to other misconduct brought to the NASD's attention, then the former conduct may be considered along with the latter as forming a significant pattern." 42/ We have also noted previously that misconduct underlying a statutory disqualification may be considered "in evaluating how well the employer firm's proposed scheme of supervision [is] designed to prevent the type of conduct that

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37/ Cf. Richardson, 2005 SEC LEXIS 414, at *19-20 ("We hold that Van Dusen and Ross remain the appropriate standards by which NASD should evaluate Richardson's application. NASD did not conduct its evaluation of Richardson's application consistently with those precedents . . . . Therefore we are unable to determine whether the denial of Richardson's application is consistent with the purposes of the Exchange Act, and accordingly we remand for further consideration not inconsistent with this opinion.").

38/ NASD mischaracterized these holdings previously. See id., 2005 SEC LEXIS 414, at *7 (rejecting NASD's argument that Van Dusen set forth a "rigid 'exclusionary rule'").

39/ Richardson, 2005 SEC LEXIS 414, at *8.

40/ Id.

41/ Peters, 82 SEC Docket at 3967.

42/ Ross, 50 S.E.C. at 1085 n.10; see also Richardson, 2005 SEC LEXIS 414, at *8 (citing Ross, 50 S.E.C. at 1085 n.10); Peters, 82 SEC Docket 3967 (same); Morton Kantrowitz, Exchange Act Rel. No. 51238 (Feb. 22, 2005), 84 SEC Docket 3501, 3506 (same).

had resulted in the [disqualification]." 43/ Therefore, "misconduct underlying a statutory disqualification may play a role in the consideration of" a membership continuance application and may "be considered in an appropriate context and given appropriate weight." 44/

In the present case, although NASD stated that it was not applying Van Dusen, it considered the misconduct underlying the statutory disqualification in the context of other misconduct brought to its attention. NASD found that Rokeach's failure to disclose the felony conviction on the Form U-4 and amended Form U-4, in conjunction with his failures to disclose the conviction on applications for insurance registration and to acknowledge these omissions before the Hearing Panel, indicated that Rokeach had a "propensity for misrepresenting his past" and a "continuing inability to acknowledge his history of misrepresenting facts about his background to regulators." However, we have held that NASD should generally confine its analysis to new information when evaluating a membership continuance application. 45/ We are unable to determine from the record what information on which NASD relied in denying Applicants' membership continuance application NASD knew (and presumably considered) at the time it accepted the AWC. Rokeach's failures to disclose his felony conviction on the four applications for insurance registration all occurred before NASD accepted the AWC, but the record is unclear regarding whether NASD knew about these failures at that time. 46/ We cannot determine whether enough new information was brought to NASD's attention to allow it to

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43/ See, e.g., Richardson, 2005 SEC LEXIS 414, at *8 (citing Ross, 50 S.E.C. at 1085 n.10).

44/ Richardson, 2005 SEC LEXIS 414, at *9.

45/ See, e.g., Ross, 50 S.E.C. at 1084-85 (stating that, "in cases of this type, the NASD [should] generally confine its analysis to new information"); Van Dusen, 47 S.E.C. at 671 (concluding that, "in the absence of new information reflecting adversely on Van Dusen's ability to function in his proposed employment in a manner consonant with the public interest, it is inconsistent with the remedial purposes of the Exchange Act and unfair to exclude him any longer from the position he seeks"); see also Richardson, 2005 SEC LEXIS 414, at *9 ("Requiring that NASD generally consider new information leaves ample room for NASD to consider a wide range of appropriate factors.").

46/ Rokeach's failure to acknowledge before the hearing panel all his previous omissions constituted new information because this misconduct occurred subsequent to the AWC.

consider the conduct underlying the AWC as forming a significant pattern with Rokeach's other misconduct. 47/

Accordingly, we remand the application to NASD for further consideration in accordance with this opinion. In remanding, we express no view as to the outcome.

An appropriate order will issue. 48/

By the Commission (Chairman COX and Commissioners GLASSMAN, ATKINS, CAMPOS and NAZARETH).

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

47/ Park Avenue's termination of Rokeach was not new information because the AWC mentions Rokeach's discharge from Park Avenue. NASD did not address whether considering Park Avenue's termination of Rokeach was consistent with Van Dusen. Cf. Peters, 82 SEC Docket at 3969 (noting that NASD considered applicant's unrelated misconduct which occurred prior to the disqualification but did not engage in the analysis required by Van Dusen and Ross of the relevance of that misconduct). For example, NASD did not address specifically enough whether Park Avenue's supervisory experience with Rokeach had any relevance to the supervisory procedures proposed by May Capital. See Van Dusen, 47 S.E.C. at 671.

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

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 53796 / May 12, 2006

Admin. Proc. File No. 3-12094

In the Matter of the Application of

MAY CAPITAL GROUP, LLC

and

MELVIN ROKEACH

c/o Michael Beckman, Esq.
Beckman, Lieberman & Barandes, LLP
116 John Street, Suite 1313
New York, New York 10038

For Review of Action Taken by

NASD

ORDER REMANDING PROCEEDINGS TO REGISTERED SECURITIES ASSOCIATION

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

ORDERED that the review proceeding of the application by May Capital Group, LLC to employ Melvin Rokeach as an investment company products/variable contracts representative is hereby remanded to NASD for further consideration.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53802 / May 15, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12295

In the Matter of **QUINTUS CORPORATION,** **Respondent.**	**ORDER INSTITUTING PROCEEDINGS, MAKING FINDINGS, AND REVOKING REGISTRATION OF SECURITIES PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act"), against Quintus Corporation ("Quintus" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, Respondent consents to the entry of this Order Instituting Proceedings, Making Findings, and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

A. Quintus, a Delaware corporation, was formerly headquartered in Dublin, California and made customer relationship management software. The common stock of Quintus has been registered under Section 12(g) of the Exchange Act since November 15, 1999. Quintus securities

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traded on Nasdaq until November 15, 2000, when Nasdaq halted their trading. On February 16, 2001, Nasdaq delisted Quintus securities. Under the symbol QNTSQ, Quintus securities are currently quoted on the "Pink Sheets" disseminated by Pink Sheets LLC.

B. On February 22, 2001, Quintus filed a petition in the United States Bankruptcy Court for the District of Delaware for relief under Chapter 11 of Title 11, United States Code (11 U.S.C. §§ 1100, et seq.). Quintus is currently in Chapter 11 proceedings before the Bankruptcy Court.

C. Quintus has failed to comply with Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder, while its common stock was registered with the Commission in that it has not filed an Annual Report on Form 10-K since March 31, 2000, or periodic or quarterly reports on Form 10-Q for any fiscal period subsequent to its fiscal quarter ended June 30, 2000.

IV.

Section 12(j) of the Exchange Act provides as follows:

The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

In view of the foregoing, the Commission finds that it is necessary and appropriate for the protection of investors to impose the sanction specified in Respondent's Offer.

Accordingly, it is hereby ORDERED, pursuant to Section 12(j) of the Exchange Act, that registration of each class of Respondent's securities registered pursuant to Section 12 of the Exchange Act be, and hereby is, revoked.

By the Commission,

Nancy M. Morris
Secretary

J Lynn Taylor

By: J. Lynn Taylor
Assistant Secretary

Commissioner Nazareth
Not Participating

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-27318; 812-13291]

Morgan Stanley and Co. Incorporated, et al.; Notice of Application and Temporary Order

May 15, 2006

Agency: Securities and Exchange Commission ("Commission").

Action: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

Summary of Application: Applicants have received a temporary order exempting them and any other company of which Morgan Stanley & Co. Incorporated ("MS&Co.") is or in the future becomes an affiliated person ("Covered Persons") from section 9(a) of the Act with respect to an injunction entered against MS&Co. on May 12, 2006 by the U.S. District Court for the District of Columbia (the "Injunction"), until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order with respect to the Injunction.

Applicants: MS&Co., Morgan Stanley AIP GP LP, Morgan Stanley Asset & Investment Trust Management Co., Limited, Morgan Stanley Investment Advisors Inc., Morgan Stanley Investment Management Company, Morgan Stanley Investment Management Inc., Morgan Stanley Investment Management Limited, Van Kampen Advisors Inc., and Van Kampen Asset Management (together, the "Advisers"); Morgan Stanley Distribution, Inc., Morgan Stanley Distributors Inc., and Van Kampen Funds Inc. (together, the "Underwriters"); Morgan Stanley Capital Partners III, Inc., Morgan Stanley Global Emerging Markets, Inc., Morgan Stanley Private Equity Asia, Inc., Morgan Stanley Venture Capital III, Inc., MSDW Capital Partners IV, Inc., MSDW OIP

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Investors, Inc., MSDW Real Estate Special Situations II Manager, L.L.C., MSDW Venture Partners IV, Inc., MSREF II, Inc., MSREF III, Inc., MSREF IV, L.L.C., MSREF V, L.L.C. and MSVP 2002, Inc. (together, "ESC Managers" and, with the Advisers and Underwriters, the "Applicants").

Filing Dates: The application was filed on May 10, 2006. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 9, 2006, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

Addresses: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; Applicants, c/o Barry Fink, Esq., Morgan Stanley, 1221 Avenue of the Americas, 22nd Floor, New York, NY 10020.

For Further Information Contact: John Yoder, Senior Counsel, at (202) 551-6878, or Mary Kay Frech, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

Supplementary Information: The following is a summary of the application. The complete application may be obtained for a fee at the Public Reference Desk, U.S.

Securities and Exchange Commission, 100 F Street, NE, Washington DC 20549-0102, (telephone (202) 551-5850).

Applicants' Representations:

1. Each Applicant is a direct or indirect subsidiary of Morgan Stanley, a Delaware corporation. Morgan Stanley is a publicly held global financial services company that, through its subsidiaries and affiliates, provides investment, financing, advisory, insurance, banking and related products and services. MS&Co., a Delaware corporation, is a global financial services firm and is registered as a broker-dealer under the Securities Exchange Act of 1934 (the "Exchange Act") and as an investment adviser under the Investment Advisers Act of 1940. MS&Co. serves as principal underwriter for, and the other Applicants serve as investment adviser, subadviser, depositor or principal underwriter for, numerous registered investment companies ("Funds"). The ESC Managers serve as the general partner or investment adviser to certain employees' securities companies operating pursuant to Commission orders (included in the term "Funds").[1]

2. On May 12, 2006, the U.S. District Court for the District of Columbia entered the Injunction against MS&Co. in a matter brought by the Commission.[2] The Commission alleged in the complaint ("Complaint") that MS&Co. violated section 17(b) of the Exchange Act and rule 17a-4(j) thereunder of the Exchange Act by failing to produce e-mails to the Commission staff pursuant to Commission subpoenas and requests

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[1] Morgan Stanley Capital Investors, L.P., Investment Company Act Release Nos. 24340 (Mar. 17, 2000) (notice) and 24389 (Apr. 12, 2000) (order); Morgan Stanley Venture Investors, L.P., Investment Company Act Release Nos. 20206 (Apr. 8, 1994) (notice) and 20276 (May 4, 1994) (order).

[2] U.S. Securities and Exchange Commission v. Morgan Stanley & Co. Incorporated, Final Judgment Against Morgan Stanley & Co. Incorporated, 06:CV00882 (RCL) (D.D.C., filed May 12, 2006).

in the Commission's investigation into MS&Co.'s practices in allocating shares of stock in initial public offerings and an investigation into conflicts of interest between the firm's research and investment banking practices. Without admitting or denying any of the allegations in the Complaint, except as to jurisdiction, MS&Co. consented to the entry of the Injunction as well as the payment of a civil penalty of $15 million.[3]

Applicants' Legal Analysis:

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that MS&Co. is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the applicants, are unduly or

[3] The civil penalty would be reduced by any amounts up to $5,000,000 paid by MS&Co. pursuant to its agreements with NASD and the New York Stock Exchange to pay a total of $5,000,000 in penalties in related proceedings.

disproportionately severe or that the applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that none of the persons who had any involvement in the conduct underlying the Injunction are current or former officers, directors or employees of the Covered Persons engaged in the provision of investment advisory, underwriting or depositor services to the Funds. Applicants further state that the alleged conduct underlying the Injunction did not involve any Funds.

5. Applicants state that the inability to continue providing advisory services to the Funds and the inability to continue serving as principal underwriter or depositor to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also state that they will distribute as soon as is reasonably practical written materials, including an offer to meet in person to discuss the materials, to the boards of directors or trustees of the Funds (the "Boards"), including the directors or trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Funds and their independent legal counsel, as defined in rule 0-1(a)(6) under the Act,

if any, regarding the Injunction, any impact on the Funds, and this application.[4] Applicants will provide the Boards with all information concerning the Injunction and this application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources over more than thirty years to establish an expertise in advising and underwriting Funds. Applicants recently applied for and received an exemption pursuant to section 9(c) of the Act for conduct relating to certain practices in allocating shares of stock in initial public offerings.[5] Applicants also applied for an exemption for conduct relating to certain research analysts' conflicts of interest.[6] In addition, Dean Witter Reynolds Inc., the predecessor of Morgan Stanley DW Inc., previously sought and received an exemption under section 9(c) of the Act.[7]

Applicants' Condition:

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to,

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[4] With respect to Funds that are unit investment trusts ("UITs"), Applicants will provide written notification to the trustee for each of the UITs concerning the Injunction, any impact on the UITs, and the application, and will provide any other related information that may be requested by the trustee.

[5] Morgan Stanley AIP GP LP, Investment Company Act Release Nos. 26749 (Feb. 4, 2005) (notice and temporary order) and 26779 (Mar. 2, 2005) (permanent order).

[6] Morgan Stanley Investment Advisers Inc., Investment Company Act Release Nos. 26236 (Oct. 31, 2003) (notice and temporary order) and 26824 (Mar. 29, 2005) (permanent order).

[7] Dean Witter Reynolds Inc., Investment Company Act Release Nos. 17887 (Nov. 29, 1990) (notice and temporary order) and 18119 (Apr. 29, 1991) (permanent order).

any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order:

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

IT IS HEREBY ORDERED, pursuant to section 9(c) of the Act, that Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective as of the date of the Injunction, solely with respect to the Injunction, subject to the condition in the application, until the date the Commission takes final action on an application for a permanent order.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

Commissioner Atkins
Not Participating

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53803 / May 15, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2428 / May 15, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12296

In the Matter of **BARRY F. DUGGAN, CGA (Canada),** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Barry F. Duggan, CGA (Canada) ("Respondent" or "Duggan") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.[1]

[1] Rule 102(e)(3)(i) provides, in relevant part, that:

> The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

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II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.3. below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Duggan, age 61, is and has been a certified general accountant ("CGA") in Canada. He served as CEO and a director of Exotics.com, Inc., a Delaware corporation ("Exotics-Delaware") and the sole operating subsidiary of Exotics.com, Inc., a Nevada corporation ("Exotics-Nevada"), from September 2001 until his resignation in August 2002.

2. Exotics-Nevada was, at all relevant times, a Nevada corporation with its principal place of business in Vancouver, British Columbia, Canada. Through its Exotics-Delaware subsidiary, Exotics-Nevada was engaged in the business of owning, operating and licensing adult Web sites. At all relevant times, Exotics-Nevada's common stock was registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act"). From December 2000 to May 2002, its stock was quoted on the OTC Bulletin Board.

3. On April 25, 2005, the Commission filed a complaint against Duggan in SEC v. Exotics.com, Inc., et al. (Civil Action No. CV-S-05-0531-PMP-(GWF)). On April 20, 2006, the court entered an order permanently enjoining Duggan, by consent, from future violations of Sections 10(b) and 13(b)(5) of the Exchange Act and Rule 10b-5 thereunder, and aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder. Duggan was also ordered to pay a $25,000 civil money penalty and was barred from serving as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act and was barred from participating in any offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock.

4. The Commission's complaint alleged that Duggan participated in an accounting fraud and stock manipulation scheme involving Exotics-Nevada stock that occurred during 1999 through 2002. According to the complaint, the fraudulent scheme resulted in Exotics-Nevada filing with the Commission an annual report on Form 10-KSB for the fiscal year ended December 31, 2001 ("2001 Form 10-KSB"), and a quarterly report on Form 10-QSB for the third quarter of

fiscal year 2001 ("2001 Third Quarter Form 10-QSB") that contained materially false and misleading statements. The complaint alleged that Duggan knowingly and substantially assisted Exotics-Nevada in filing the false and misleading reports with the Commission and that, while serving as the CEO and a director of Exotics-Nevada's sole operating subsidiary, he approved the reporting of $3.6 million of goodwill in the company's financial statements contained in its 2001 Third Quarter Form 10-QSB. The transaction resulted in an overstatement of Exotics-Nevada's assets by approximately 627%. The complaint also alleged that Duggan knowingly failed to implement a system of internal accounting controls and was responsible for Exotics-Nevada having inadequate books and records, which led to the company filing false and misleading Commission reports. In addition, the complaint alleged that, in December 2001, Duggan reviewed and approved drafts of fax and e-mail spam messages that Exotics-Nevada arranged to have disseminated to potential investors and which contained misleading financial information regarding Exotics-Nevada.

IV.

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

Accordingly, it is hereby ORDERED, effective immediately, that:

Duggan is suspended from appearing or practicing before the Commission as an accountant.

By the Commission.

Nancy M. Morris
Secretary

J. Lynn Taylor

By: J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53821 / May 17, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2431 / May 17, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-11714

In the Matter of Kenneth B. Janeski, CPA	ORDER GRANTING APPLICATION FOR REINSTATEMENT TO APPEAR AND PRACTICE BEFORE THE COMMISSION AS AN ACCOUNTANT

On October 20, 2004, Kenneth B. Janeski ("Janeski") was denied the privilege of appearing or practicing as an accountant before the Commission as a result of settled public administrative proceedings instituted by the Commission against him pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice.[1] This order is issued in response to Janeski's application for reinstatement to appear and practice before the Commission as an accountant.

Janeski was found to have engaged in improper professional conduct in connection with performing the reviews and audits of the financial statements filed by Gemstar-TV Guide International, Inc. ("Gemstar") from the quarter ended September 30, 1999 through the fiscal year ended March 31, 2002. During this time, Janeski was employed as the SEC reviewing partner for KPMG, LLP's audits and reviews of the financial statements of Gemstar. As the SEC reviewing partner, Janeski failed to exercise professional care and skepticism, failed to obtain sufficient competent evidential matter and over-relied on Gemstar's management representations with respect to the audits and reviews of Gemstar's financial statements. In addition, Janeski failed to take appropriate action to correct disclosures that did not comply with GAAP and were inconsistent with Gemstar's financial statements. Finally, Janeski failed to render accurate audit reports.

[1] *See* Accounting and Auditing Enforcement Release No. 2125 dated October 20, 2004. Janeski was permitted, pursuant to the order, to apply for reinstatement after one year upon making certain showings.

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Janeski has met all of the conditions set forth in his suspension order and, in his capacity as an independent accountant, has stated that he will comply with all requirements of the Commission and the Public Company Accounting Oversight Board, including, but not limited to all requirements relating to registration, inspections, concurring partner reviews and quality control standards. In his capacity as a preparer or reviewer, or as a person responsible for the preparation or review, of financial statements of a public company to be filed with the Commission, Janeski attests that he will undertake to have his work reviewed by the independent audit committee of any company for which he works, or in some other manner acceptable to the Commission, while practicing before the Commission in this capacity.

Janeski is currently subject to probation under the California Board of Accountancy that is scheduled to end in March, 2008. Failure to abide by the terms of his probation could result in the revocation of Janeski's CPA license pending notice and an opportunity to be heard by the California Board of Accountancy. Janeski has attested that he will notify the Commission if he is found to have violated the terms of the probation. He has also attested that he understands that the revocation of his CPA license could result in the revocation of the reinstatement of his privilege to appear or practice before the Commission as an accountant.

Rule 102(e)(5) of the Commission's Rules of Practice governs applications for reinstatement, and provides that the Commission may reinstate the privilege to appear and practice before the Commission "for good cause shown."[2] This "good cause" determination is necessarily highly fact specific.

On the basis of information supplied, representations made, and undertakings agreed to by Janeski, it appears that he has complied with the terms of the October 20, 2004 order denying him the privilege of appearing or practicing before the Commission as an accountant, that no information has come to the attention of the Commission relating to his character, integrity, professional conduct or qualifications to practice before the Commission that would be a basis for adverse action against him pursuant to Rule 102(e) of the Commission's Rules of Practice, and that Janeski, by undertaking to have his work reviewed by the independent audit committee of any company for which he works, or in some other manner acceptable to the Commission, in his practice before the Commission as a preparer or reviewer of financial statements required to be filed with the Commission, and that Janeski, by undertaking to comply with all requirements of the Commission and the Public Company Accounting Oversight Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards, in his practice before the Commission as an independent accountant has shown good cause for reinstatement. Therefore, it is accordingly,

[2] Rule 102(e)(5)(i) provides:

"An application for reinstatement of a person permanently suspended or disqualified under paragraph (e)(1) or (e)(3) of this section may be made at any time, and the applicant may, in the Commission's discretion, be afforded a hearing; however, the suspension or disqualification shall continue unless and until the applicant has been reinstated by the Commission for good cause shown." 17 C.F.R. § 201.102(e)(5)(i).

ORDERED pursuant to Rule 102(e)(5)(i) of the Commission's Rules of Practice that Kenneth B. Janeski, CPA is hereby reinstated to appear and practice before the Commission as an accountant.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53820 / May 17, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2430 / May 17, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-11714

In the Matter of John M. Wong, CPA	ORDER GRANTING APPLICATION FOR REINSTATEMENT TO APPEAR AND PRACTICE BEFORE THE COMMISSION AS AN ACCOUNTANT RESPONSIBLE FOR THE PREPARATION OR REVIEW OF FINANCIAL STATEMENTS REQUIRED TO BE FILED WITH THE COMMISSION

On October 20, 2004, John M. Wong ("Wong") was denied the privilege of appearing or practicing as an accountant before the Commission as a result of settled public administrative proceedings instituted by the Commission against Wong pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice.[1] This order is issued in response to Wong's application for reinstatement to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission.

Wong was alleged to have engaged in improper professional conduct in connection with performing the reviews and audits of the financial statements filed by Gemstar-TV Guide International, Inc. ("Gemstar") from the quarter ended September 30, 1999 through the fiscal year ended March 31, 2000. During this time, Wong was employed as the engagement partner for KPMG LLP's audits and reviews of the financial statements of Gemstar. As the engagement partner, Wong allegedly failed to exercise professional care and skepticism, failed to obtain sufficient competent evidential matter and over-relied on Gemstar's management representations with respect to the audit and review of Gemstar's financial statements. In addition, Wong allegedly failed to take appropriate action to correct disclosures that did not comply with GAAP and were inconsistent with Gemstar's financial statements. Finally, Wong allegedly failed to render accurate audit reports.

[1] *See* Accounting and Auditing Enforcement Release No. 2125 dated October 20, 2004. Wong was permitted, pursuant to the order, to apply for reinstatement after one year upon making certain showings.

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Commissioner Nazareth
Not Participating

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8683 / May, 17, 2006

In the Matter of MORGAN STANLEY & CO., INCORPORATED Respondent.	:	ORDER UNDER RULE 602(e) OF THE SECURITIES ACT OF 1933 GRANTING A WAIVER OF THE DISQUALIFICATION PROVISIONS OF RULES 602(b)(4) AND 602(c)(2)

I.

Morgan Stanley & Co, Incorporated ("Morgan Stanley") has submitted a letter on behalf of itself and its affiliates, dated February 17, 2006, requesting a waiver of the disqualification from the exemption from registration under Regulation E arising from Morgan Stanley's settlement of an injunctive proceeding in federal court.

On May 10, 2006, the Commission filed a civil injunctive complaint against Morgan Stanley in the United States District Court for the District of Columbia alleging that Morgan Stanley violated Section 17(b) under the Securities Exchange Act of 1934 ("Exchange Act") and Exchange Act Rule 17a-4(j).

Morgan Stanley filed a "Consent of Defendant Morgan Stanley & Co. Incorporated" in which it agreed, without admitting or denying the allegations of the Commission's complaint, to the entry of a Final Judgment against it. Among other things, the Final Judgment permanently enjoins Morgan Stanley from violating Section 17(b) and Rule 17a-4(j) under the Exchange Act and orders Morgan Stanley to pay a $15 million civil penalty.

II

Rule 602(b)(4) makes the Regulation E exemption unavailable to an issuer if, among other things, such issuer or any of its affiliates is subject to any "order, judgment,

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or decree of any court of competent jurisdiction, entered within five years prior to the filing of such [Regulation E] notification, temporarily or permanently restraining or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of securities." Rule 602(c)(2) also makes the exemption unavailable to an issuer if, among other things, any investment advisor to or underwriter of securities to be issued is "temporarily or permanently restrained or enjoined by any court from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer or investment adviser." Rule 602(e) provides, however, that the disqualification "shall not apply . . . if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied.

III.

Based on the representations set forth in Morgan Stanley's February 17, 2006 request, the Commission has determined that, pursuant to Rule 602(e), a showing of good cause has been made and that it is not necessary under the circumstances that the exemption be denied.

Accordingly, **IT IS ORDERED**, pursuant to Rule 602(e) under the Securities Act of 1933 ("Securities Act"), that a waiver of the disqualification provision of Rule 602(b)(4) and 602(c)(2) under the Securities Act resulting from the entry of the Final Judgment is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

In his capacity as a preparer or reviewer, or as a person responsible for the preparation or review, of financial statements of a public company to be filed with the Commission, Wong attests that he will undertake to have his work reviewed by the independent audit committee of any company for which he works, or in some other manner acceptable to the Commission, while practicing before the Commission in this capacity. Wong is not, at this time, seeking to appear or practice before the Commission as an independent accountant. If he should wish to resume appearing and practicing before the Commission as an independent accountant, he will be required to submit an application to the Commission showing that he has complied and will comply with the terms of the original suspension order in this regard. Therefore, Wong's suspension from practice before the Commission as an independent accountant continues in effect until the Commission determines that a sufficient showing has been made in this regard in accordance with the terms of the original suspension order.

Wong is currently subject to probation under the California Board of Accountancy that is scheduled to end in March 2008. Failure to abide by the terms of the probation could result in the revocation of Wong's CPA license pending notice and an opportunity to be heard by the California Board of Accountancy. Wong has attested that he will notify the Commission if he is found to have violated the terms of the probation. He has also attested that he understands that the revocation of his CPA license could result in the revocation of the reinstatement of his privilege to appear or practice before the Commission as a preparer or reviewer, or as a person responsible for the preparation or review, of financial statements required to be filed with the Commission.

Rule 102(e)(5) of the Commission's Rules of Practice governs applications for reinstatement, and provides that the Commission may reinstate the privilege to appear and practice before the Commission "for good cause shown."[2] This "good cause" determination is necessarily highly fact specific.

On the basis of information supplied, representations made, and undertakings agreed to by Wong, it appears that he has complied with the terms of the October 20, 2004 order denying him the privilege of appearing or practicing before the Commission as an accountant, that no information has come to the attention of the Commission relating to his character, integrity, professional conduct or qualifications to practice before the Commission that would be a basis for adverse action against him pursuant to Rule 102(e) of the Commission's Rules of Practice, and that Wong, by undertaking to have his work reviewed by the independent audit committee of any company for which he works, or in some other manner acceptable to the Commission, in his practice before the Commission as a preparer or reviewer of financial statements required to be filed with the Commission, has shown good cause for reinstatement. Therefore, it is accordingly,

[2] Rule 102(e)(5)(i) provides:

"An application for reinstatement of a person permanently suspended or disqualified under paragraph (e)(1) or (e)(3) of this section may be made at any time, and the applicant may, in the Commission's discretion, be afforded a hearing; however, the suspension or disqualification shall continue unless and until the applicant has been reinstated by the Commission for good cause shown." 17 C.F.R. § 201.102(e)(5)(i).

ORDERED pursuant to Rule 102(e)(5)(i) of the Commission's Rules of Practice that John M. Wong, CPA is hereby reinstated to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 242

[Release No. 34-53829; File No. S7-10-04]

Regulation NMS

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance dates.

SUMMARY: The Commission is extending the compliance dates for Rule 610 and Rule 611 of Regulation NMS under the Securities Exchange Act of 1934 ("Exchange Act"). Rule 610 requires fair and non-discriminatory access to quotations, establishes a limit on access fees, and requires each national securities exchange and national securities association to adopt, maintain, and enforce written rules that prohibit their members from engaging in a pattern or practice of displaying quotations that lock or cross protected quotations. Rule 611 requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution of trades at prices inferior to protected quotations displayed by other trading centers, subject to an applicable exception. The Commission is extending the compliance dates to give automated trading centers additional time to finalize development of their new or modified trading systems, and to give the securities industry sufficient time to establish the necessary access to such trading systems.

DATES: The effective date for Rule 610 and Rule 611 remains August 29, 2005. The initial compliance date for Rule 610 and Rule 611 has been extended from June 29, 2006 to a series of five dates, beginning on October 16, 2006, for different functional stages of compliance that are set forth in section II.A of this release. The effective date for this release is [insert date of publication in Federal Register].

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FOR FURTHER INFORMATION CONTACT: Raymond Lombardo, Special Counsel, at (202) 551-5615, or David Liu, Attorney, at (202) 551-5645, Division of Market Regulation, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-6628.

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 29, 2005, the Commission published its release adopting Regulation NMS ("NMS Release").[1] The adopted regulatory requirements include: (1) new Rule 610 of Regulation NMS, which addresses access to markets and locking or crossing quotations; (2) new Rule 611 of Regulation NMS, which provides intermarket protection against trade-throughs (i.e., trades at inferior prices) for certain displayed quotations that are automated and accessible; and (3) an amendment to the joint industry plans for disseminating market information to the public that modifies the formulas for allocating plan revenues to the self-regulatory organization ("SRO") participants in the plans ("Allocation Amendment").

The effective date for all of the initiatives in the NMS Release was August 29, 2005. The compliance dates for Rule 610, Rule 611, and the Allocation Amendment have not yet arrived. Phase 1 of compliance with Rule 610 and Rule 611 for 250 NMS stocks was set for June 29, 2006, and Phase 2 for all NMS stocks was set for August 31, 2006. The compliance date for the Allocation Amendment is September 1, 2006. For the reasons discussed below, the Commission has determined that the SROs and securities industry participants need additional time to implement these new NMS regulatory requirements. It therefore has decided to extend the compliance dates for Rule 610 and Rule 611 as set forth in this release. In addition, the

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[1] Securities Exchange Act Release No. 51808 (Jun. 9, 2005), 70 FR 37496 (Jun. 29, 2005).

Commission has today, by separate order, exempted the SRO participants in the joint industry plans from compliance with the Allocation Amendment until April 1, 2007.[2]

II. Extension of Compliance Dates

One of the primary Exchange Act objectives for the national market system ("NMS") is to promote the efficient execution of securities transactions by capitalizing on advances in communications and processing technologies.[3] Two of the core elements of Rule 610 and Rule 611 are the display of automated quotations, as defined in Rule 600(b)(3), and the operation of automated trading centers, as defined in Rule 600(b)(4). Automated trading centers displaying automated quotations must, among other things, immediately respond to incoming orders seeking to access the quotations and immediately update the quotations. Under Rule 611, only automated quotations displayed by automated trading centers will qualify as "protected quotations" under Rule 600(b)(58) and thereby receive intermarket protection against trade-throughs. In addition, Rule 610(d) requires SROs to adopt rules requiring their members reasonably to avoid displaying quotations that lock or cross protected quotations. Finally, the Allocation Amendment allocates market data revenues to SROs based partially on the extent to which they display quotations that equal the national best bid or offer in an NMS stock, but only if the quotations are automated.

Given the new regulatory framework created by Regulation NMS and the desire of investors and other market participants for more automated and efficient trading services, many SROs have announced major revisions of their trading systems. For example, the New York

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2 Securities Exchange Act Release No. 53828 (May 18, 2006) (order exempting SROs from compliance with the Allocation Amendment until April 1, 2007). See section II.B below.

3 See, e.g., Exchange Act Section 11A(a)(1)(B), 11A(a)(1)(C)(i), and 11A(a)(1)(D); see also NMS Release, 70 FR at 37497.

Stock Exchange LLC ("NYSE") is implementing its Hybrid Market, which is designed to integrate aspects of an auction market with automated trading.[4] The American Stock Exchange LLC ("Amex") has proposed to adopt a new trading platform that would offer both an electronic marketplace and floor-based trading.[5] The Boston Stock Exchange, Inc. ("BSE") plans to launch a new electronic trading system.[6] The Chicago Stock Exchange ("CHX") has proposed to no longer operate a physical trading floor and instead to adopt a new fully-automated matching system.[7] The Nasdaq Stock Market LLC ("Nasdaq") has proposed to integrate three different matching systems into a single, integrated matching system.[8] Finally, to qualify quotations displayed in the Alternative Display Facility ("ADF") as protected quotations,[9] the NASD must modify the ADF to designate a single participant for the ADF best bid and a single participant for the ADF best offer, because the ADF does not provide a single point of connectivity to ADF quotations. ADF participants, in turn, must meet the new automated trading center requirements discussed above to qualify their quotations for trade-through protection, as well as the new access standards of Rule 610(b)(1).

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4 See Securities Exchange Act Release No. 53539 (Mar. 22, 2006), 71 FR 16353 (Mar. 31, 2006) (approval of NYSE rules establishing the Hybrid Market). Information concerning NYSE's Hybrid Market also is available at http://www.nyse.com.

5 Information concerning Amex's proposed Auction and Electronic Market Integration (AEMI) platform, including a proposed rule change to establish the AEMI platform (SR-Amex-2005-104), is available at http://www.amex.com.

6 Information concerning BSE's planned electronic equities trading market is available at http://www.bostonstock.com.

7 Information concerning CHX's proposed rule change to establish the new trading market (SR-CHX-2006-05) is available at http://www.chx.com.

8 Information concerning Nasdaq's proposed rule change to establish an integrated matching system (SR-NASDAQ-2006-001) is available at http://www.nasdaq.com.

9 See NMS Release, 70 FR at 37534 (ADF best bid or offer must be accessible by routing to a single ADF participant).

Commission has today, by separate order, exempted the SRO participants in the joint industry plans from compliance with the Allocation Amendment until April 1, 2007.[2]

II. Extension of Compliance Dates

One of the primary Exchange Act objectives for the national market system ("NMS") is to promote the efficient execution of securities transactions by capitalizing on advances in communications and processing technologies.[3] Two of the core elements of Rule 610 and Rule 611 are the display of automated quotations, as defined in Rule 600(b)(3), and the operation of automated trading centers, as defined in Rule 600(b)(4). Automated trading centers displaying automated quotations must, among other things, immediately respond to incoming orders seeking to access the quotations and immediately update the quotations. Under Rule 611, only automated quotations displayed by automated trading centers will qualify as "protected quotations" under Rule 600(b)(58) and thereby receive intermarket protection against trade-throughs. In addition, Rule 610(d) requires SROs to adopt rules requiring their members reasonably to avoid displaying quotations that lock or cross protected quotations. Finally, the Allocation Amendment allocates market data revenues to SROs based partially on the extent to which they display quotations that equal the national best bid or offer in an NMS stock, but only if the quotations are automated.

Given the new regulatory framework created by Regulation NMS and the desire of investors and other market participants for more automated and efficient trading services, many SROs have announced major revisions of their trading systems. For example, the New York

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2 Securities Exchange Act Release No. 53828 (May 18, 2006) (order exempting SROs from compliance with the Allocation Amendment until April 1, 2007). See section II.B below.

3 See, e.g., Exchange Act Section 11A(a)(1)(B), 11A(a)(1)(C)(i), and 11A(a)(1)(D); see also NMS Release, 70 FR at 37497.

The SROs currently are in varying stages of development of their new or modified trading systems. The ongoing nature of these changes to SRO trading systems has seriously complicated the efforts of securities industry participants to comply with the new NMS regulatory requirements. The SROs intend that their new or modified SRO systems would be automated trading centers and therefore sources of protected quotations. In addition, the current participants in ADF, as well as potentially new participants, have indicated their intent to be sources of protected quotations when they represent the ADF best bid or offer. To comply with Regulation NMS, industry participants must have clarity concerning all sources of protected quotations. For example, any industry participants that wish to rely on the exceptions in Rule 611(b)(5) and (6) for intermarket sweep orders ("ISOs") must have access to all sources of protected quotations to assure that they can meet the ISO requirements of Rule 600(b)(30).[10]

Industry participants therefore must develop policies, procedures, and systems that will enable them to route orders to access the protected quotations displayed by all of the new or modified SRO trading systems and ADF participants. To establish the connectivity and interfaces necessary to perform this function, industry participants must receive final technical specifications for all automated trading centers well in advance of the initial compliance date for trade-through protection. In addition, given the novel features of many of the new SRO trading systems, industry participants have indicated that they need a period in time in which to gain practical experience trading on the new systems, also in advance of the initial compliance date for trade-through protection. Finally, all of these changes must be implemented while trading continues in the most active equity markets in the world. Each day, the U.S. equity markets handle trading volume in NMS stocks of more than 3.9 billion shares and 120 billion dollars.

[10] See NMS Release, 70 FR at 37523.

The implementation of Regulation NMS must be managed appropriately so that it does not risk any disruption to the functioning of our equity markets.

The Commission fully supports the SROs' plans to develop more fully automated trading systems. These SRO systems would represent a major upgrade in the NMS that could benefit investors and all market participants by providing platforms for more efficient trading. The Commission also understands the need for industry participants to have sufficient time to establish the necessary access to these new SRO trading systems as they become operational. It therefore has decided to extend substantially the original compliance dates for Rule 610 and Rule 611. To provide the SROs and industry participants with greater certainty concerning the phase-in of NMS implementation, the Commission is adopting a series of revised compliance dates that incorporate the major functional steps required to achieve full implementation of Regulation NMS. The revised dates provide additional time for SROs to develop and install their new trading systems, but also impose firm deadlines for these functional steps to be completed. This systematic approach to implementation should give all industry participants an enhanced opportunity to complete their compliance preparations in the least disruptive and most cost-effective manner possible.

A. Rule 610 and Rule 611 Compliance Dates

The extended compliance dates for Rule 610 and Rule 611 are as follows:

October 16, 2006 ("Specifications Date"): Final date for publication on Internet Web sites of applicable SROs (i.e., the exchange for SRO trading facilities and the NASD for ADF participants) of final technical specifications for interaction with Regulation NMS-compliant trading systems of all automated trading centers (both SRO trading facilities and ADF participants) that intend to qualify their quotations for trade-through protection under Rule 611 during the Pilots Stocks Phase and All Stocks Phase (as defined below).

February 5, 2007 ("Trading Phase Date"): Final date for full operation of Regulation NMS-compliant trading systems of all automated trading centers (both SRO trading facilities and ADF participants) that intend to qualify their quotations for trade-through protection under Rule 611 during the Pilots Stocks Phase and All Stocks Phase (as defined below). The period from February 5, 2007 till May 21, 2007 is the "Trading Phase."

May 21, 2007 ("Pilot Stocks Phase Date"): Start of full industry compliance with Rule 610 and Rule 611 for 250 NMS stocks (100 NYSE stocks, 100 Nasdaq stocks, and 50 Amex stocks). The period from May 21, 2007 till July 9, 2007 is the "Pilot Stocks Phase."

July 9, 2007 ("All Stocks Phase Date"): Start of full industry compliance with Rule 610 and Rule 611 for all remaining NMS stocks. The period from July 9, 2007 till October 8, 2007 is the "All Stocks Phase."

October 8, 2007 ("Completion Date"): Completion of phased-in compliance with Rule 610 and Rule 611.

Each of these compliance dates represents an essential functional step on the way to full implementation of Rules 610 and 611. It is particularly important that all automated trading centers meet the October 16 Specifications Date and the February 5 Trading Phase Date. These new dates give automated trading centers more than seven additional months beyond the original June 29, 2006 Phase 1 compliance date to bring their new Regulation NMS-compliant trading systems into full operation. The seven-month extension is in addition to the one-year period originally provided when Regulation NMS was published. Accordingly, the extended dates are designed to provide all automated trading centers intending to display protected quotations during the Pilot Stocks Phase and the All Stocks Phase with sufficient time to meet the new intermediate compliance dates for posting final technical specifications and commencing full operation of the specified trading systems.

The Commission believes that industry participants need certainty concerning the protected quotations for which they will be required to afford trade-through protection under Rule 611 during the Pilot Stocks Phase and All Stocks Phase. Moreover, to prevent potentially serious disruption to implementation efforts, the industry needs this certainty well in advance of the Pilot Stocks Phase Date. Industry participants should not be placed in a position where they would be unexpectedly required to access the additional protected quotations of an automated trading center that had not posted its final technical specifications and commenced operation of its new trading system in a timely manner.

Accordingly, the Commission may consider, after the Specifications Date, whether to issue an exemptive order identifying those automated trading centers that met the Specifications Date and exempting all industry participants from trade-through and locking/crossing responsibilities with respect to the quotations of any trading center not identified as having met the Specifications Date. The Commission also may consider updating any previously-issued exemptive order to remove any trading center that failed to meet the Trading Phase Date by commencing full operation of its Regulation NMS-compliant trading system in accordance with its final technical specifications posted on the Specifications Date.

In addition to completing the functional steps that have been assigned specific compliance dates, the consolidated data streams need to be modified in several respects. As discussed in the NMS Release,[11] consolidated quotation and trade data in NMS stocks is

[11] 70 FR at 37558.

disseminated to the public through three Networks jointly operated by the SROs – Network A for stocks listed on the NYSE, Network C for stocks listed on Nasdaq, and Network B for stocks listed on the Amex and other national securities exchanges. To facilitate compliance with Rule 610 and Rule 611, the Network quotation feeds must identify automated and manual quotations, as well as any types of quotations (such as "non-firm" quotations) that do not qualify as protected quotations. In addition, the Network quotation feeds must identify a single participant in the NASD's ADF for its best bid and for its best offer.[12] Finally, the Network trade feeds need to be modified to identify trades that are executed pursuant to exceptions set forth in Rule 611(b).[13] The Commission understands that the Networks have made substantial progress toward modifying their data feeds to reflect Regulation NMS. Given this progress, the Commission expects that appropriately modified Network data feeds will be fully operational in advance of the Specifications Date. It will consider further action in the future if necessary to assure that the Networks meet this timeframe.

The extended compliance dates established in this release, as well as the potential consequences for automated trading centers of failing to meet such dates, are discussed in greater detail below.

1. Specifications Date

By no later than October 16, 2006, all trading centers (both SRO trading facilities and ADF participants) intending to qualify their quotations for trade-through protection during the Pilot Stocks Phase and All Stocks Phase must post final technical specifications on the Internet Web site of the applicable SRO (i.e., the exchange for SRO trading facilities and the NASD for

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12 See NMS Release, 70 FR at 37534 (ADF best bid or offer must be accessible by routing to a single ADF participant).

13 See NMS Release, 70 FR at 37535 n. 317 (need for transparency concerning Rule 611 exceptions).

ADF participants). The purpose of posting these specifications is to enable industry participants to plan their NMS compliance and modify their systems to interface with the systems of the automated trading centers. Given this purpose, the specifications must, at a minimum, address: (1) the identification of quotations as automated or manual to meet the requirements of Rule 600(b)(4); (2) an immediate-or-cancel functionality that meets the requirements of an automated quotation in Rule 600(b)(3); (3) an ISO functionality that allows industry participants to meet the requirements of Rule 600(b)(30); and (4) any other basic functionalities necessary to trade on the system. In addition, the specifications must be final with respect to these basic Regulation NMS functions and must remain so at least through the Completion Date. A significant alteration of the specifications prior to completion of the phase-in periods would defeat the purpose of giving the industry certainty concerning the quotations for which they will have trade-through and locking/crossing responsibilities.

The Commission recognizes that automated trading centers cannot produce final technical specifications until all relevant SRO proposed rule changes necessary for Regulation NMS-compliant trading systems have been filed, published for public comment, and approved by the Commission. Accordingly, it anticipates working closely with the SROs to address any issues raised by the filings and to take appropriate action by no later than October 1, 2006.

After the Specifications Date, the Commission intends to consider whether to issue an exemptive order pursuant to Rule 610(e) and Rule 611(d). Such an order could identify those trading centers that complied with the Specifications Date, and could exempt all industry participants from trade-through requirements under Rule 611 and locked/crossed requirements under Rule 610 for the quotations displayed by any trading center that is not identified in the exemptive order as having complied with the Specifications Date. This exemption could continue in effect at least through the Completion Date.[14]

2. Trading Phase Date

By no later than February 5, 2007, all trading centers (both SRO trading facilities and ADF participants) intending to qualify their quotations for trade-through protection must bring a Regulation NMS-compliant trading system into full operation for all NMS stocks intended to be traded during the phase-in period (i.e., through the Completion Date). The trading system must operate in accordance with the specifications that were posted by the Specifications Date. The Trading Phase is designed to provide industry participants with an opportunity to gain experience with the new or modified systems of all automated trading centers that will display protected quotations during the phase-in periods. For example, industry participants will be able to test the effectiveness of their policies and procedures under Rule 610 and Rule 611, prior to any liability attaching under the Rules.

After the Trading Phase Date, the Commission may consider whether to update any exemptive order issued after the Specifications Date to remove any trading centers that failed to meet the Trading Phase Date. Any updated order could continue in effect at least through the Completion Date.

3. Pilot Stocks Phase Date

May 21, 2007 is the initial, all-industry compliance date for Rule 610 and Rule 611 with respect to 250 pilot stocks – 100 for Network A, 100 for Network C, and 50 for Network B. The

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14 Any exemptive order would address trade-through and locked/crossed responsibilities, but would not preclude the quotations displayed by a trading center not identified in the order from meeting the definition of an "automated quotation" under Rule 600(b)(3). Industry participants would need to include such quotations in their best execution analyses, and would be able particularly to assess whether their ability to access such quotations made them reasonably available when considered in the context of the ongoing challenges of meeting the compliance dates for Rule 610 and Rule 611.

particular stocks will be chosen by the primary listing market, in consultation with Commission staff, to be reasonably representative of the range of each Network's securities. The primary purpose of the Pilot Stocks Phase is to allow all market participants to verify the functionality of their policies, procedures, and systems that are necessary to comply with the Rules.

The Pilot Stocks Phase is analogous to Phase 1 of the original implementation schedule set forth in the NMS Release.[15] May 21, 2007, therefore, provides the securities industry a nearly eleven-month extension of the original Phase 1 compliance date. In addition, the revised date gives all industry participants a seven-month period to complete their implementation efforts after the public posting of final technical specifications for automated trading centers. The revised date also provides securities firms a more than three-month period to gain experience in actual trading with the new or modified systems of automated trading centers. These extended time periods are designed to facilitate a non-disruptive and cost-effective initiation of trade-through protection and locked/crossed quotation restrictions under Rule 610 and Rule 611.

4. All Stocks Phase Date

July 9, 2007 is the all-industry compliance date for Rules 610 and 611 with respect to all remaining NMS stocks. This All Stocks Phase will last three months and is intended to provide a final period for industry participants to gain significant experience complying with the Rules.

5. Completion Date

On October 8, 2007, the phase-in of compliance with Rules 611 and 610 will be complete. As of this date, any exemptive order issued after the Specifications Date, or updated after the Trading Phase Date, could be modified so that industry participants would have trade-

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15 See NMS Release, 70 FR at 37576.

through and locked/crossed requirements for the quotations of an automated trading center that may have failed to meet the Specifications Date or the Trading Phase Date. The quotations of any such automated trading center must be commenced pursuant to an approved SRO proposed rule change or other established SRO procedure that provides sufficient notice to the industry, as well as all necessary information (such as final technical specifications), that will enable industry participants to meet their regulatory responsibilities.[16]

B. Allocation Amendment Exemption

The Allocation Amendment modifies the existing formulas for allocating revenues to the SRO participants in the market data plans.[17] One of the most significant changes is the introduction of "Quoting Shares" – the allocation of revenues based on the extent to which automated quotations displayed by SROs equal the national best bid or offer in NMS stocks. Under the old formulas, no revenues are allocated for quotations. Under the new formula, 50% of revenues will be allocated for Quoting Shares. Due to the extension until February 5, 2007 of the deadline for automated trading centers to commence full operation of NMS-compliant trading systems, the Commission believes that the SRO participants in the joint industry plans for disseminating market information should be exempted from complying with the Allocation Amendment until after the Trading Phase Date. Accordingly, the Commission, by separate order, has exempted the SRO participants in the plans from complying with the Allocation Amendment until April 1, 2007.[18] The exemption gives trading centers additional time to

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16 SRO trading facilities would be subject to the proposed rule change requirements of Section 19(b) of the Exchange Act. ADF participants would be subject to procedures adopted by the NASD, after approval by the Commission, to assure appropriate access to the ADF participants. See NMS Release, 70 FR at 37543.

17 See NMS Release, 70 FR at 37568.

18 See note 2 above.

implement systems that are capable of displaying automated quotations and thereby qualify for Quoting Shares.

III. Conclusion

For the reasons cited above, the Commission, for good cause, finds that notice and solicitation of comment regarding the extension of the compliance dates set forth herein are impractical, unnecessary, or contrary to the public interest.[19] All industry participants will receive substantial additional time to comply with Rule 610 and Rule 611 beyond the compliance dates originally set forth in the NMS Release. In addition, the Commission recognizes that industry participants urgently need notice of the extended compliance dates so that they do not expend unnecessary time and resources in meeting the original June 29, 2006 compliance date, such as by developing interfaces with trading systems that could change substantially prior to the extended compliance dates. Providing immediate effectiveness upon publication of this release will allow industry participants to adjust their implementation plans accordingly.[20]

By the Commission.

By: J. Lynn Taylor
Assistant Secretary

Nancy M. Morris
Secretary

Date: May 18, 2006

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19 See Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) ("APA") (an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are "impractical, unnecessary, or contrary to the public interest").

20 The compliance date extensions set forth in this release are effective upon publication in the Federal Register. Section 553(d)(1) of the APA allows effective dates that are less than 30 days after publication for a "substantive rule which grants or recognizes an exemption or relieves a restriction." 5 U.S.C. 553(d)(1).

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53830 / May 18, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2432 / May 18, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12298

In the Matter of **William D. Baker, CPA,** **Respondent.**	**ORDER INSTITUTING PUBLIC ADMINISTRATIVE PROCEEDINGS PURSUANT TO RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against William D. Baker ("Baker" or "Respondent") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.[1]

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to

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[1] Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

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the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Baker, age 59, is a certified public accountant who has been licensed to practice in the State of Indiana. He served as Senior Vice President of Finance and Operations and the Chief Financial Officer of Netopia, Inc. ("Netopia" or the "Company") from 2001 until 2005.

2. Netopia is a Delaware corporation headquartered in Emeryville, California that develops, markets and supports broadband and wireless products and services including both computer hardware and software. Netopia's common stock is registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act"). Netopia was delisted from NASDAQ on October 20, 2004 as a result of its failure to file a SEC Form 10-Q for the period ended June 30, 2004. Netopia stock is currently quoted on the pink sheets.

3. On March 29, 2006, the Commission filed a complaint against Baker in SEC v. Thomas A. Skoulis, et al. (Civil Action No. C 06-02239 JF). On May 2, 2006, the Court entered an order permanently enjoining Baker, by consent, from future violations of Section 17(a) of the Securities Act of 1933 and Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B) and 13(b)(5) of the Exchange Act and Rules 10b-5, 12b-20, 13a-11, 13a-13, 13a-14, 13b2-1 and 13b2-2 thereunder. Baker also was ordered to pay a $35,000 civil money penalty and prohibited from serving for five years as an officer or director of a public company.

4. The Commission's Complaint alleged, among other things, that Baker engaged in actions that resulted in Netopia filing materially false financial statements for the fiscal quarters ended June 30, 2002 and March 31, 2004 and filing a materially false Form 8-K on July 6, 2004. The Complaint alleged that, during the quarter ended June 30, 2002, Netopia recognized revenue on a transaction with a reseller where collectibility was not probable, in violation of Generally Accepted Accounting Principles ("GAAP"). According to the Complaint, Baker knew, or was reckless in not knowing, that the reseller did not have the financial ability to pay. The Complaint also alleged that Netopia improperly recognized revenue on a transaction in its fiscal year ended September 30, 2003 where the reseller had agreed to pay only after it was paid by its customer. Under GAAP, revenue cannot be recognized if the customer is not obligated to pay. The Complaint alleges that in April 2004 Mr. Baker became aware of the payment contingency and withheld that information from the Company's audit committee and its outside auditors. Additionally, the Complaint alleges that he did not otherwise take steps to correct Netopia's financial statements to reflect the contingency. The Complaint further alleges that Baker allowed the Company to issue a misleading press release (filed as an exhibit to a Form 8-K on July 6,

2004) that falsely described the lack of payment on the transaction at the close of its September 30, 2003 year end as a "bad debt" rather than as a contingent transaction that would require the reversal of revenue.

IV.

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

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Baker is suspended from appearing or practicing before the Commission as an accountant.

B. After five years from the date of this order, Baker may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Baker's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Baker, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Baker, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in Baker's or the firm's quality control system that would indicate that Baker will not receive appropriate supervision;

(c) Baker has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Baker acknowledges his responsibility, as long as Baker appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Baker to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Baker's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53830 / May 18, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2432 / May 18, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12298

In the Matter of **William D. Baker, CPA,** **Respondent.**	**ORDER INSTITUTING PUBLIC ADMINISTRATIVE PROCEEDINGS PURSUANT TO RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

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Document 23 of 67

the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Baker, age 59, is a certified public accountant who has been licensed to practice in the State of Indiana. He served as Senior Vice President of Finance and Operations and the Chief Financial Officer of Netopia, Inc. ("Netopia" or the "Company") from 2001 until 2005.

2. Netopia is a Delaware corporation headquartered in Emeryville, California that develops, markets and supports broadband and wireless products and services including both computer hardware and software. Netopia's common stock is registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act"). Netopia was delisted from NASDAQ on October 20, 2004 as a result of its failure to file a SEC Form 10-Q for the period ended June 30, 2004. Netopia stock is currently quoted on the pink sheets.

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2004) that falsely described the lack of payment on the transaction at the close of its September 30, 2003 year end as a "bad debt" rather than as a contingent transaction that would require the reversal of revenue.

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

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Baker is suspended from appearing or practicing before the Commission as an accountant.

B. After five years from the date of this order, Baker may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Baker's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Baker, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Baker, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in Baker's or the firm's quality control system that would indicate that Baker will not receive appropriate supervision;

(c) Baker has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Baker acknowledges his responsibility, as long as Baker appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Baker to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Baker's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53828)

May 18, 2006

Order Granting Exemption from Compliance with Amendment to Joint Industry Plans for Disseminating Market Information

I. Introduction

Pursuant to Rule 608(e) of Regulation NMS[1] under the Securities Exchange Act of 1934 ("Exchange Act"), the Securities and Exchange Commission ("Commission") may exempt from compliance with the provisions of Rule 608, either unconditionally or on specified terms and conditions, any self-regulatory organization ("SRO"), member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system. As discussed below, the Commission is exercising its authority under Rule 608(e) to exempt, until April 1, 2007, the SROs that are participants in the joint industry plans for disseminating market information from compliance with an amendment to such plans that modifies the formulas for allocating plan revenues to participants.

II. Background

On June 29, 2005, the Commission published in the Federal Register its release adopting Regulation NMS ("NMS Release").[2] The adopted regulatory requirements include: (1) new Rule 610 of Regulation NMS, which addresses access to markets and locking or crossing quotations; (2) new Rule 611 of Regulation NMS, which provides intermarket protection against

1 17 CFR 242.608(e).

2 Securities Exchange Act Release No. 51808 (Jun. 9, 2005), 70 FR 37496 (Jun. 29, 2005).

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trade-throughs (i.e., trades at inferior prices) for certain displayed quotations that are automated and accessible; and (3) an amendment to the joint industry plans for disseminating market information to the public that modifies the formula for allocating plan revenues ("Allocation Amendment").[3]

The effective date for all of the initiatives in the NMS Release was August 29, 2005. The compliance dates for Rule 610, Rule 611, and the Allocation Amendment have not yet arrived. Phase 1 of compliance with Rule 610 and Rule 611 for 250 NMS stocks was set for June 29, 2006, and Phase 2 for all NMS stocks was set for August 31, 2006. The compliance date for the Allocation Amendment is September 1, 2006. For the reasons discussed below, the Commission has determined that the SROs and securities industry participants need additional time to implement these new NMS regulatory requirements. It therefore has decided to exempt the SRO participants in the joint industry plans from compliance with the Allocation Amendment until April 1, 2007. In addition, the Commission has today, by separate release, extended the compliance dates for Rule 610 and Rule 611.[4]

III. Discussion

As discussed in the NMS Release,[5] consolidated quotation and trade data in NMS stocks is disseminated to the public through three Networks jointly operated by the SROs pursuant to joint industry plans – Network A for stocks listed on the NYSE, Network C for stocks listed on

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3 The three joint-industry plans are (1) the CTA Plan, which is operated by the Consolidated Tape Association and disseminates transaction information for exchange-listed securities other than Nasdaq-listed securities, (2) the CQ Plan, which disseminates consolidated quotation information for exchange-listed securities other than Nasdaq-listed securities, and (3) the Nasdaq UTP Plan, which disseminates consolidated transaction and quotation information for Nasdaq-listed securities. The CTA Plan and CQ Plan are available at www.nysedata.com. The Nasdaq UTP Plan is available at www.utpdata.com.

4 See Securities Exchange Act Release No. 53829 (May 18, 2006) (extending compliance dates for Rule 610 and Rule 611 of Regulation NMS from June 29, 2006 to a series of dates, beginning on October 16, 2006, for different functional stages of compliance) ("Extension Release").

5 70 FR at 37558.

Nasdaq, and Network B for stocks listed on the Amex and other national securities exchanges. The Allocation Amendment modifies the existing formulas for allocating revenues to the SRO participants in the plans.[6] One of the most significant changes is the introduction of "Quoting Shares" – the allocation of revenues based on the extent to which automated quotations displayed by SROs equal the national best bid or offer in NMS stocks. Under the old formulas, no revenues are allocated for quotations. Under the new formula, 50% of revenues will be allocated for Quoting Shares.

Pursuant to the Extension Release issued today, the deadline for automated trading centers to commence full operation of Regulation NMS-compliant trading systems has been extended to February 5, 2007, if such automated trading centers are to receive trade-through protection as discussed in the Extension Release.[7] Given this extension for automated trading centers, the Commission believes that the SRO participants in the joint industry plans should be exempted from complying with the Allocation Amendment until after that date. The exemption will give trading centers additional time to implement systems that are capable of displaying automated quotations. In this way, the plans will not begin allocating revenues pursuant to the Allocation Amendment until all trading centers have had an appropriate opportunity to qualify for Quoting Shares. In addition, April 1 is the beginning of a new calendar quarter, which should ease the transition from the old formulas to the new formula. The Commission therefore has determined that the exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system

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6 See NMS Release, 70 FR at 37568.

7 See Extension Release, note 4 above, section II.A.2.

IV. Conclusion

IT IS HEREBY ORDERED, pursuant to Rule 608(e) of Regulation NMS, that the SRO participants in the joint industry plans for disseminating market information are exempt from compliance with the Allocation Amendment until April 1, 2007.

By the Commission.

Nancy M. Morris
Secretary

J. Lynn Taylor

By: J. Lynn Taylor
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-27323; 812-12354]

ProShares Trust, et al.; Notice of Application

May 18, 2006

Agency: Securities and Exchange Commission ("Commission").

Action: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

Applicants: ProShares Trust ("Trust"), ProShare Advisors LLC ("ProShare Advisors"), and SEI Investments Distribution Company ("Distributor").

Summary of Application: Applicants request an order that would permit: (a) series of an open-end management investment company to issue shares of limited redeemability; (b) secondary market transactions in the shares of the series to occur at negotiated prices on the American Stock Exchange LLC ("Amex"), or another national securities exchange as defined in section 2(a)(26) of the Act, or on The NASDAQ Stock Market LLC (each, an "Exchange"); (c) dealers to sell shares of the series of the Trust to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933 (the "Securities Act"); and (d) affiliated persons of a series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of aggregations of the series' shares.

Filing Dates: The application was filed on December 5, 2000, and amended on January 7, 2005, June 22, 2005, July 6, 2005, and March 29, 2006.

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Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 12, 2006, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

Addresses: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. Applicants: ProShares Trust and ProShare Advisors, 7501 Wisconsin Avenue, Suite 1000, Bethesda, MD 20814; SEI Investments Distribution Company, One Freedom Valley Drive, Oaks, PA 19456.

For Further Information Contact: John Yoder, Senior Counsel, at (202) 551-6878, Julia Kim Gilmer, Branch Chief, at (202) 551-6871, or Michael W. Mundt, Senior Special Counsel, at (202) 551-6820 (Division of Investment Management, Office of Investment Company Regulation).

Supplementary Information: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE, Washington, DC 20549-0102 (tel. 202-551-5850).

Applicants' Representations:

1. The Trust is an open-end management investment company registered under the Act and organized as a Delaware statutory trust. The Trust intends to offer multiple series (each series, a "Fund") with different types of investment objectives as further described below.

ProShare Advisors is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). Each Fund will be advised by ProShare Advisors or an entity controlled by or under common control with ProShare Advisors (each, an "Adviser"). The Adviser may enter into subadvisory agreements with additional investment advisers to act as subadviser to the Trust and any of its series. Any subadviser to the Trust or a Fund will be registered under the Advisers Act. The Distributor is registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act") and will act as the distributor and principal underwriter for each Fund's shares ("ETS").

2. The Funds will seek daily investment results, before fees and expenses, that: (a) correspond to the return of various equity securities indices ("Conventional Funds"); (b) provide 125%, 150% or 200% of the return of equity securities indices ("Leveraged Funds"); or (c) move in the opposite direction of the performance of equity securities indices in multiples of 100%, 125%, 150% or 200% ("Inverse Funds"). Of the twelve initial Funds, four will be Leveraged Funds and eight will be Inverse Funds.[1]

[1] The Leveraged Funds will seek to return 200% of the return of the S&P 500 Index, the Nasdaq100 Index, the Dow Jones Industrial Average and the S&P MidCap400 Index. The Inverse Funds will seek to return the inverse, or 200% of the inverse, of the same indices. The Trust may offer additional Funds based on these indices and the following indices (collectively, the "Underlying Indices"): Russell 2000 Index, S&P Small Cap 600 Index, Nasdaq Composite Index, S&P 500 BARRA Value Index, S&P 500 BARRA Growth Index, S&P MidCap400 BARRA Value Index, S&P MidCap 400/BARRA Growth Index, S&P SmallCap 600/Barra Value Index, S&P SmallCap 600/BARRA Growth Index, Dow Jones U.S. Airlines Index, Dow Jones U.S. Banks Index, Dow Jones U.S. Basic Materials Sector Index, Dow Jones U.S. Biotechnology Index, Dow Jones U.S. Composite Internet Index, Dow Jones U.S. Consumer Services Index, Dow Jones U.S. Consumer Goods Index, Dow Jones U.S. Oil & Gas Index, Dow Jones U.S. Financials Index, Dow Jones U.S. Health Care Index, Dow Jones U.S. Industrials Index, Dow Jones U.S. Leisure Goods Index, Dow Jones U.S. Oil Equipment, Services & Distribution Index, Dow Jones U.S. Pharmaceuticals Index, Dow Jones U.S. Precious Metals Index, Dow Jones U.S. Real Estate Index, Dow Jones U.S. Semiconductors Index, Dow Jones U.S. Technology Index, Dow Jones U.S. Telecommunications Index, Dow Jones U.S. Utilities Index, Dow Jones U.S. Mobile Communications Index. No index provider is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, a promoter, the Adviser, any sub-adviser to any Fund, or the Distributor.

3. In addition to equity securities, the Funds may invest in short-term debt instruments that meet the definition of "Eligible Security" in rule 2a-7 under the Act ("Money Market Instruments"), and in futures contracts, options, equity caps, collars and floors, swap agreements, forward contracts, and reverse repurchase agreements (collectively, "Financial Instruments") in order to meet their investment objectives. A Conventional Fund will invest 95% or more of its total assets in the equity securities contained in the relevant Underlying Index and may invest up to 5% of its total assets in Financial Instruments and Money Market Instruments. Leveraged Funds will invest 85% or more of their total assets in equity securities contained in the relevant Underlying Index and up to 15% of their total assets in Financial Instruments and Money Market Instruments. The Inverse Funds will only invest in Financial Instruments and Money Market Instruments; they will not invest in equity securities.

4. The Adviser will seek to achieve the investment objectives of the Funds by using a mathematical model that takes into account a variety of specified criteria, the most important of which are: (a) the net assets in each Fund's portfolio at the end of each trading day; (b) the amount of required exposure to the Underlying Index; and (c) the positions in equity securities, Financial Instruments and Money Market Instruments at the beginning of each trading day. On each day that a Fund is open for business ("Business Day") the full portfolio holdings of each Fund will be disclosed on the Web site of the Trust and/or the relevant Exchange. The portfolio holdings information disclosed each Business Day will form the basis for that Fund's net asset value ("NAV") calculation as of 4:00 pm that day and will reflect portfolio trades made on the immediately preceding Business Day. Intra-day values of each Underlying Index will be disseminated every 15 seconds throughout the trading day.

5. Applicants expect that each Conventional Fund will have an annual tracking error of less than 5% (excluding the impact of expenses and interest, if any) to the performance of its Underlying Index. For the Leveraged Fund and Inverse Funds, applicants expect a daily tracking error of less than 5% (excluding the impact of expenses and interest, if any) to the specified multiple or inverse multiple, respectively, of the performance of the relevant Underlying Index.

6. Each Fund will issue ETS in aggregations of 25,000 to 50,000 ETS (each, a "Creation Unit"). Applicants expect the price of a Creation Unit to be a minimum of $1 million. Creation Units may be purchased only by or through the Distributor or a party that has entered into a participant agreement with the Distributor (an "Authorized Participant"). An Authorized Participant must be either (a) a broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation, a clearing agency that is registered with the Commission, or (b) a participant in the Depository Trust Company ("DTC") system.

7. Creation Units of Conventional and Leveraged Funds generally will be purchased and redeemed in exchange for an "in-kind" transfer of securities and cash ("In-Kind Payment"). Inverse Funds will generally be purchased and redeemed entirely for cash because of the limited transferability of Financial Instruments.[2] An investor making an In-Kind Payment will be required to transfer to the Trust a "Deposit Basket" consisting of: (a) a basket of equity securities consisting of some or all of the securities in the relevant Underlying Index or equivalent equity securities selected by the Adviser to correspond to the performance of the Underlying Index (the "Deposit List"); and (b) a cash amount equal to the differential, if any, between the market value of the equity securities in the Deposit Basket and the NAV per Creation Unit ("Balancing

[2] The Trust may also accept and deliver all-cash payments for the purchase and redemption of Creation Units of any Fund in certain limited circumstances.

Amount").[3] An investor purchasing a Creation Unit from a Fund will be charged a fee ("Transaction Fee") to prevent the dilution of the interests of the remaining shareholders resulting from the Fund incurring costs in connection with the purchase of the Creation Units.[4] The maximum Transaction Fee and any variations or waivers of the Transaction Fee will be disclosed in the prospectus for ETS ("Prospectus") and the method of determining the Transaction Fees will be disclosed in the Prospectus and/or statement of additional information ("SAI").

8. All orders to purchase Creation Units must be placed on a Business Day with the Distributor. The Distributor also will be responsible for delivering the Prospectus to those persons purchasing Creation Units and for maintaining records of the orders and acknowledgements of acceptance for orders.

9. Persons purchasing Creation Units from a Fund may hold the ETS or sell some or all of them in the secondary market. Shares of the Funds will be listed on an Exchange and trade in the secondary market in the same manner as other exchange-traded funds. It is expected that one or more Exchange members will act as a specialist or market maker and maintain a market

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[3] On each Business Day, prior to the opening of trading on the New York Stock Exchange, the Trust's index receipt agent will make available the list of the names and the required number of shares of each equity security included in the current Deposit Basket and the Balancing Amount for each Fund. Such Deposit Basket will apply to all purchases of Creation Units until a new Deposit Basket for a Fund is announced. The Amex will disseminate every 15 seconds during regular Amex trading hours, through the facilities of the Consolidated Tape Association, an amount representing on a per share basis the sum of the current value of the securities on the Deposit List, and the estimated amount of cash and Money Market Instruments held in the portfolio of a Conventional or Leveraged Fund. If such Funds hold Financial Instruments, the amount would also include, on a per share basis, the marked-to-market gains or losses of the Financial Instruments held by the Fund. For Inverse Funds, the Amex will disseminate an amount representing, on a per share basis, the estimated amount of cash and Money Market Instruments, and the marked-to-market gains or losses of the Fund's Financial Instruments.

[4] A purchaser permitted to substitute cash for certain securities on the Deposit List may be assessed a higher transaction Fee to cover the cost of purchasing such securities, including operational processing and brokerage costs, and part or all of the spread between the expected bid and offer side of the market relating to such securities.

on the listing Exchange for ETS.[5] The price of ETS traded on an Exchange will be based on a current bid/offer market. The initial trading price for each ETS of each Fund will fall in the range of $50 to $250. Transactions involving the sale of ETS in the secondary market will be subject to customary brokerage commissions and charges.

10. Applicants expect that purchasers of Creation Units will include institutional and retail investors, arbitrageurs, traders, financial advisors, portfolio managers and other market participants.[6] An Exchange specialist or market maker, in providing for a fair and orderly secondary market for ETS, also may purchase or redeem Creation Units for use in its market-making activities. Applicants expect that the market price of ETS will be disciplined by arbitrage opportunities created by the ability to purchase or redeem Creation Units at their NAV, which should ensure that the market price of ETS at or close to 4 p.m. stays close to the NAV on that Business Day.

11. ETS will not be individually redeemable. ETS will only be redeemable in Creation Units through the Distributor, which will act as the Trust's agent for redemption. To redeem, an investor must accumulate enough ETS to constitute a Creation Unit. An investor redeeming a Creation Unit of a Conventional or Leveraged Fund generally will receive an "in-kind" payment comprised of equity securities published by the Trust's index receipt agent (the "Redemption List") plus a Balancing Amount equal to the difference between the market value of the equity securities on the Redemption List and the NAV of the ETS being redeemed. Redemptions of Creation Units for Inverse Funds will occur entirely in cash. A redeeming

[5] The listing requirements established by The NASDAQ Stock Market LLC require that at least two market makers be registered in ETS in order for the ETS to maintain a listing. Registered market makers must make a continuous two-sided market in a listing or face regulatory sanctions.

[6] ETS will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding ETS. DTC or its participants will maintain records reflecting the beneficial owners of ETS.

investor will pay a Transaction Fee to offset the transactional expenses associated with redeeming Creation Units.

12. Applicants state that neither the Trust nor any Fund will be advertised, marketed or otherwise held out as a "mutual fund." The term "mutual fund" will not be used in the Prospectus except to compare and contrast the Trust or a Fund with conventional mutual funds. In all marketing materials where the features or methods of obtaining, buying, or selling Creation Units are described or where there is reference to redeemability, applicants will include a prominent statement to the effect that individual ETS are not redeemable except in Creation Units. The same approach will be followed in connection with reports and other communications to shareholders, as well as any other investor education materials issued or circulated in connection with ETS. The Trust will provide copies of its annual and semi-annual shareholder reports to DTC participants for distribution to beneficial holders of ETS.

Applicants' Legal Analysis:

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because ETS will not be individually redeemable, applicants request an order that would permit the Trust to register as an open-end management investment company and issue ETS of Funds that are redeemable in Creation Units only. Applicants state that investors may always redeem ETS in Creation Units from the Trust. Applicants further state that because the market price of ETS will be disciplined by arbitrage opportunities, investors should be able to sell ETS in the secondary market at or close to 4:00 p.m. on a Business Day at prices that do not vary substantially from the NAV on that Business Day.

Section 22(d) of the Act and Rule 22c-1 under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in ETS will take place at negotiated prices, not at a current offering price described in the Prospectus as required by section 22(d) of the Act, and not at a price based on NAV as required by rule 22c-1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing ETS. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been intended to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting ETS to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in ETS does not involve the Trust's assets and cannot result in dilution of an investment in ETS, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand, not as a result of unjust or discriminatory manipulation. Therefore, applicants assert that secondary market transactions in ETS will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces in the marketplace will ensure that the difference between the market price of ETS and their NAV remains narrow.

Section 24(d) of the Act

7. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end investment company. Applicants

request an exemption from section 24(d) to permit dealers selling ETS to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.[7]

8. Applicants state that secondary market investors will regard ETS in a manner similar to other securities, including closed-end fund shares that are listed, bought and sold on an Exchange. Applicants note that shares of closed-end fund investment companies are sold in the secondary market unaccompanied by a prospectus.

9. Applicants contend that ETS, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because ETS will be exchange-listed, prospective investors will have access to several types of market information about ETS. Applicants state that information regarding market price and volume will be continually available on a real-time basis throughout the day from the relevant Exchange, automated quotation systems, published or other public sources or on-line information services. Applicants expect that the previous day's closing price and volume information for ETS also will be published daily in the financial section of newspapers. In addition, the Trust expects to maintain a website that includes quantitative information updated on a daily basis, including, for each Fund, daily trading volume, the NAV and the reported closing price. The website will also include, for each Fund, a calculation of the

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[7] Applicants do not seek relief from the prospectus delivery requirement for non-secondary market transactions, such as transactions in which an investor purchases ETS in Creations Units from the issuer or an underwriter. Applicants state that persons purchasing Creation Units will be cautioned in the Prospectus that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. The Prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it takes Creation Units after placing an order with the Distributor, breaks them down into the constituent ETS, and sells ETS directly to its customers, or if it chooses to couple the purchase of a supply of new ETS with an active selling effort involving solicitation of secondary market demand for ETS. The Prospectus also will state that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with ETS that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

premium or discount of the reported closing price against NAV, and data in chart format displaying the frequency distribution of discounts and premiums of the reported closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

10. Investors also will receive a product description ("Product Description") describing the Trust, the Funds and the ETS. Applicants state that, while not intended as a substitute for a Prospectus, the Product Description will contain information about ETS that is tailored to meet the needs of investors purchasing ETS in the secondary market.

Sections 17(a)(1) and (2) of the Act

11. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns 25% or more of another person's voting securities. Applicants state that one or more holders of Creation Units could own more than 5% of a Fund, or in excess of 25% of that Fund, and could be deemed affiliated with the Trust or such Fund under section 2(a)(3)(A) or 2(a)(3)(C) of the Act. Also, an Exchange specialist or market maker for ETS of any Fund might accumulate, from time to time, more than 5% or in excess of 25% of that Fund's ETS. Applicants request an exemption from section 17(a) of the Act under sections 6(c) and 17(b) of the Act, to permit persons that are affiliated persons of the Funds solely by virtue of a 5% or 25% ownership

interest (or affiliated persons of such affiliated persons that are not otherwise affiliated with the Fund) to purchase and redeem Creation Units through "in-kind" transactions.

12. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting the affiliated persons of a Fund described above from purchasing or redeeming Creation Units through "in-kind" transactions. The deposit and redemption procedures for "in-kind" purchases and redemptions of Creations Units will be effected in exactly the same manner for all purchases and redemptions. The securities contained in the "in-kind" transactions will be valued in the same manner and according to the same standards as the securities held by the relevant Fund. Therefore, applicants state that "in-kind" purchases and redemptions will afford no opportunity for the affiliated persons described above to effect a transaction detrimental to the other holders of its ETS. Applicants also believe that "in-kind" purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Funds.

<u>Applicants' Conditions:</u>

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Applicants will not register a series of the Trust not identified herein, by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless applicants have requested and received with respect to such series, either (a) exemptive

relief from the Commission, or (b) a no-action letter from the Division of Investment Management of the Commission.

2. The Prospectus and the Product Description will clearly disclose that, for purposes of the Act, ETS are issued by the Funds and that the acquisition of ETS by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Fund beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into an agreement with the Fund regarding the terms of the investment.

3. As long as the Trust operates in reliance on the requested order, the ETS will be listed on an Exchange.

4. Neither the Trust nor any Fund will be advertised or marketed as an open-end fund or a mutual fund. The Prospectus will prominently disclose that ETS are not individually redeemable shares and will disclose that the owners of the ETS may acquire those ETS from the Trust and tender those ETS for redemption to the Trust in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that ETS are not individually redeemable and that owners of ETS may acquire those ETS from the Trust and tender those ETS for redemption to the Trust in Creation Units only.

5. Before a Fund may rely on the order, the Commission will have approved, pursuant to rule 19b-4 under the Exchange Act, an Exchange rule or an amendment thereto, requiring Exchange members and member organizations effecting transactions in ETS to deliver a Product Description to purchasers of ETS.

6. The Web site for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per ETS basis, for each Fund: (a) the prior Business Day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or the life of the Fund, if shorter). In addition, the Product Description for each Fund will state that the Trust's Web site has information about the premiums and discounts at which the ETS have traded.

7. The Prospectus and annual report for each Fund will also include: (a) the information listed in condition 6(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable), and (ii) in the case of the annual report, for the immediately preceding five years (or the life of the Fund, if shorter); and (b) the following data, calculated on a per ETS basis for one, five and ten year periods (or life of the Fund, if shorter), (i) the cumulative total return and the average annual total return based on NAV and closing price, and (ii) the cumulative total return of the relevant Underlying Index.

By the Commission.

J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53847 / May 22, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12300

In the Matter of CROWELL, WEEDON & CO. Respondent.	ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Crowell, Weedon & Co. ("Crowell" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

A. Respondent

1. Crowell, Weedon & Co., a California partnership, operates in Southern California and has been registered with the Commission as a broker-dealer (File No. 8-3710) since 1936. It has no prior disciplinary history.

B. Summary

2. This matter concerns Respondent's violations of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder, which require a broker-dealer to comply with the reporting, recordkeeping and record retention requirements in regulations implemented under the Bank Secrecy Act ("BSA"),[1] including the requirements in the customer identification program ("CIP") rule.[2] The BSA rules require a broker-dealer, among other things, to make and keep certain reports and records to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism. In particular, the CIP rule requires a broker-dealer to establish, document, and maintain its procedures for identifying customers and verifying their identities. The rule further requires that these procedures be incorporated into the broker-dealer's overall anti-money laundering ("AML") program that the broker-dealer is required to implement under applicable SRO rules, the BSA, and applicable Treasury regulations.[3]

3. From October 2003 to at least late April 2004, Respondent's written CIP failed to describe accurately the process Respondent used to verify customer identities. Instead, it used procedures that were materially different and weaker than those in the CIP. The written CIP stated that Respondent would use certain documentary (e.g., check government issued identification) and non-documentary (e.g., database search) methods to verify the identity of each customer. Respondent, however, simply relied on its registered representatives to indicate that they had personal knowledge of the customer's identity. By failing to accurately document its customer verification procedures, Respondent violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

C. Facts

4. As of October 1, 2003 (the effective date of the CIP rule), Respondent had documented an AML program that consisted of ten pages of procedures. The documented procedures included a section titled "Know Your Customer" and a separate section titled "Customer Identification and Verification." This latter section contained the procedures that made up Respondent's CIP.

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[1] Currency and Foreign Transactions Reporting Act of 1970 (commonly referred to as the Bank Secrecy Act), 12 U.S.C. § 1829b, 12 U.S.C. §§ 1951-1959, and 31 U.S.C. § 5311-5330.

[2] 31 CFR § 103.122.

[3] *See* NYSE Rule 445 and NASD Rule 3011. *See also* 31 U.S.C. 5318(h)(1) and 31 CFR § 103.120.

5. The procedures set forth in the "Know Your Customer" section required the registered representative opening an account for a customer to, among other things: (1) fully and accurately complete the new account application with regard to identifying pieces of information, including the customer's social security number or tax identification number, occupation, date of birth, citizenship information, and mother's maiden name; (2) enter information on to the new account application indicating how the customer was introduced to the registered representative; and (3) if the customer was not well known to the registered representative, obtain from the customer additional documentation such as a copy of a driver's license or passport.

6. The procedures set forth in the CIP specified that Respondent would verify the identity of each new customer using both documentary and non-documentary methods. The documentary methods set forth in the procedures specified that when appropriate documents were available, Respondent would verify a customer's identity by reviewing the following documents: (1) for an individual—an unexpired government-issued identification evidencing nationality, residence, and bearing a photograph or similar safeguard, such as a driver's license or passport; and (2) for a person other than an individual—documents showing the existence of the entity, such as articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument. The non-documentary methods set forth in the procedures specified that Respondent would verify a customer's identity by (1) contacting a customer; (2) independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; (3) checking references with other financial institutions; or (4) obtaining a financial statement.

7. The procedures set forth in the CIP further specified that Respondent would generally use "non-documentary methods in every instance as a formal precautionary safeguard" in addition to specific situations where such methods were expressly required. The specific situations identified were: (1) when the customer was unable to present an unexpired government-issued identification document with a photograph or other similar safeguard; (2) when Respondent was unfamiliar with the documents the customer presented for identification verification; (3) when the customer and the firm did not have face-to-face contact; and (4) when there were other circumstances that increased the risk that the firm would be unable to verify the true identity of the customer through documentary means.

8. The procedures set forth in the CIP specified that Respondent would document its verification, including all identifying information provided by the customer, the methods used and results of the verification, and the resolution of any discrepancy in the identifying information. They further specified that Respondent would keep records containing a description of any document that it relied on to verify a customer's identity, noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date. Similarly, the procedures specified that, with respect to non-documentary verification, Respondent would retain documents that describe the methods and results of any measures taken to verify a customer's identity, including downloading verification information from a third-party vendor.

9. Between October 1, 2003 and late April 2004, Respondent opened approximately 2,900 new accounts for customers. However, Respondent did not follow the verification and documentation procedures set forth in the CIP. Specifically, it did not review photo identifications from individuals when available, use the non-documentary methods set forth in the procedures, or document its verification in accordance with its written CIP. Rather, Respondent generally relied on its "Know Your Customer" policy and its registered representatives indicating that they had personnel knowledge of the customer. Typically, the registered representative stated on the new account form that the customer was known to him or her because the customer was a family member or social acquaintance, a referral from an existing customer, or a customer with an existing or previous account.

10. Prior to October 1, 2003, Respondent had contracted with a business partner to verify the identities of its customers by comparing their identifying information with a database. However, the vendor, due to technical problems, was unable to perform this function when the CIP rule went effective. Eventually, Respondent contracted with a different vendor that began verifying the identities of Respondent's customers through non-documentary means in April of 2004. Respondent also had this vendor verify the identities of the 2,900 customers who opened accounts between October 1, 2003 and April of 2004.

D. <u>Legal Discussion</u>

11. Section 17(a) of the Exchange Act and Rule 17a-8 thereunder require a broker-dealer to comply with certain reporting, recordkeeping and record retention requirements in the regulations implemented under the BSA. These regulations include the broker-dealer CIP rule (31 CFR § 103.122). The CIP rule, among other things, requires a broker-dealer to establish, document, and maintain procedures for verifying the identities of customers opening new accounts.[4] The rule further requires that the verification procedures use documentary or non-documentary methods or a combination of both.[5]

12. Respondent's written CIP specified that it would verify the identity of each of its customers using certain documentary and non-documentary procedures, including reviewing a government issued identification, where appropriate, and using a non-documentary method such as a database search. In fact, Respondent's actual program for verifying customer identities did not use the specified procedures contained in its written CIP. Rather, Respondent relied on its registered representatives to have personal knowledge of the customers opening new accounts, without documenting this process. Accordingly, Respondent did not accurately document its CIP as required pursuant to the CIP rule.

13. Respondent, by failing to accurately document its CIP, did not comply with the recordkeeping and record retention requirements under the CIP Rule and therefore violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

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[4] 31 CFR § 103.122(b)(1).
[5] *Id.*

IV.

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

Accordingly, it is hereby ORDERED that:

Respondent Crowell cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

By the Commission.

Nancy M. Morris
Secretary

By: J. Lynn Taylor
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

[Release No. PA-36; File No. S7-09-06]

Privacy Act of 1974: System of Records: Office of Inspector General Investigative Files (SEC-43)

AGENCY: Securities and Exchange Commission.

ACTION: Notice of an altered system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Securities and Exchange Commission proposes to alter a Privacy Act system of records: "Office of Inspector General Investigative Files (SEC-43)", originally published at 55 FR 1744, January 18, 1990. Revisions to this system were last published at 63 FR 11936, March 11, 1998.

DATES: The changes will become effective [Insert date 40 days after publication in the Federal Register] unless further notice is given. The Commission will publish a new notice if the effective date is delayed to review comments or if changes are made based on comments received. To be assured of consideration, comments should be received on or before [Insert date 30 days after publication in the Federal Register].

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/other.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-09-06 on the subject line.

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Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-09-06. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/other.shtml). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Barbara A. Stance, Chief Privacy Officer, U.S. Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-7, Alexandria, VA 22312-2413, (202) 551-7209.

SUPPLEMENTARY INFORMATION: The Commission proposes to alter a system of records, "Office of Inspector General Investigative Files (SEC-43)." As described in the original notice, the system contains investigatory material compiled for law enforcement purposes. This notice changes the system location address and the address of the system manager; clarifies the categories of individuals covered by the system; and expands the categories of records in the system to include incoming complaints and complaint logs, preliminary inquiry files and indexes, and declarations from witnesses. This notice also eliminates or consolidates some routine uses, and adds a routine use to disclose information to the Integrity Committee of the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency, another Federal Office of Inspector General, or other federal law enforcement office in connection with an investigation, inquiry or review conducted pursuant to Executive Order 12993, or at the request of the SEC Inspector General.

The Commission has submitted a report of the altered system of records to the Senate Committee on Homeland Security and Governmental Affairs, the House Committee on Government Reform, and the Office of Management and Budget, pursuant to 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, and Appendix I to OMB Circular A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," as amended on February 20, 1996 (61 FR 6435).

Accordingly, the Commission is altering the system of records to read as follows:

SEC-43

SYSTEM NAME:

Office of Inspector General Investigative Files.

SYSTEM LOCATION:

Office of Inspector General, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-2376.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records contains records on individuals who are or have been subjects of the Office of Inspector General's investigations or inquiries relating to programs and operations of the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming complaints and complaint logs; preliminary inquiry files and indexes; all correspondence relevant to the investigation; all internal staff memoranda; copies of all subpoenas issued during the investigation; affidavits, declarations and statements from witnesses; transcripts of testimony taken in the investigation and accompanying exhibits; documents and records or copies obtained during the investigation; working papers of the staff and other documents and records relating to the investigation; opening reports, investigative plans, progress reports, and closing reports; and investigative peer review files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended, Pub. L. 95-452, 5 U.S.C. App.

PURPOSE(S):

The purpose of this system of records is to enable the Commission's Office of Inspector General to carry out its mandate under the Inspector General Act Amendments of 1988. The system will consist of files and records compiled by the Commission's Office of Inspector General on Commission employees or other persons who have been part of an investigation for fraud and abuse with respect to the Commission's programs and operations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information in the system may be disclosed:

(1) Where there is an indication of a violation or a potential violation of law, whether civil, criminal or regulatory in nature, whether arising by general statute or particular

program statute, or by regulation, rule or order issued pursuant thereto, to the appropriate agency, whether federal, foreign, state, or local, or to a securities self-regulatory organization, charged with enforcing or implementing the statute, or rule, regulation or order.

(2) To federal, foreign, state, or local authorities in order to obtain information or records relevant to an Office of Inspector General investigation or inquiry.

(3) To federal, foreign, state, or local governmental authorities in response to their request in connection with the hiring or retention of an employee, disciplinary or other administrative action concerning an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

(4) To non-governmental parties where those parties may have information the Office of Inspector General seeks to obtain in connection with an investigation or inquiry.

(5) To independent auditors or other private firms or individuals with which the Office of Inspector General has contracted to carry out an independent audit, or to provide support for audits, reviews, investigations or other inquiries. These contractors will be required to maintain Privacy Act safeguards with respect to such records.

(6) To respond to subpoenas in any litigation or other proceeding.

(7) To the Department of Justice and/or the Office of General Counsel of the Commission when the defendant in litigation is: (a) any component of the Commission or any employee of the Commission or any employee of the Commission in his or her official capacity; (b) the United States where the Commission determines that the claim, if

successful, is likely to directly affect the operations of the Commission; or (c) any Commission employee in his or her individual capacity where the Department of Justice and/or the Office of General Counsel of the Commission agree to represent such employee.

(8) To a Congressional office in response to an inquiry from the Congressional office made at the request of an individual but only from the record of that individual.

(9) To inform complainants, victims, and witnesses of the results of an investigation or inquiry.

(10) To qualified individuals or organizations in connection with the performance of a peer review or other study of the Office of Inspector General's audit or investigative functions.

(11) To a federal agency responsible for considering debarment or suspension action if the record would be relevant to such action.

(12) To the Department of Justice for the purpose of obtaining its advice on Freedom of Information Act matters.

(13) To the Office of Management and Budget for the purpose of obtaining its advice on Privacy Act matters.

(14) To a public or professional licensing organization if the record indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed.

(15) To the Office of Government Ethics (OGE) to comply with agency reporting requirements established by OGE in 5 CFR part 2638, subpart F.

(16) To the news media and the public when there exists a legitimate public interest (e.g., to provide information on events in the criminal process, such as an indictment).

(17) To the Integrity Committee of the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency, another Federal Office of Inspector General, or other federal law enforcement office in connection with an investigation, inquiry or review conducted pursuant to Executive Order 12993, or at the request of the SEC Inspector General.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Office of Inspector General Investigative Files consists of paper records maintained in folders, binders and logbooks; various records in electronic form; and an automated data base. The folders, binders and logbooks are stored in the Office of Inspector General's file cabinets and offices. The automated data base and electronic records are maintained on a file server and backup tapes in encrypted form.

RETRIEVABILITY:

The records are retrieved by the name of the subject of the investigation or inquiry, or by a unique control number assigned to each investigation or inquiry.

SAFEGUARDS:

These records are available only to those persons whose official duties require such access. The records are kept in limited access areas during duty hours and in locked file rooms or locked offices at all other times.

RETENTION AND DISPOSAL:

The Investigative Files are kept in accordance with the Office of Inspector General's record retention schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Office of Inspector General, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-2736.

NOTIFICATION PROCEDURES:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the Privacy Act Officer, U.S. Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-7, Alexandria, VA 22312-2413.

RECORD ACCESS AND CONTESTING PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of this record may contact the Privacy Act Officer, U.S. Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-7, Alexandria, VA 22312-2413.

RECORD SOURCE CATEGORIES:

Information in these records is supplied by: Individuals including, where practicable, those to whom the information relates; witnesses, corporations and other entities; records of individuals and of the Commission; records of other entities; federal, foreign, state or local bodies and law enforcement agencies; documents and correspondence relating to litigation; transcripts of testimony; and miscellaneous other sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j)(2), this system of records, to the extent it pertains to the enforcement of criminal laws, is exempted from all provisions of the Privacy Act of 1974, 5 U.S.C. 552a, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i).

Pursuant to 5 U.S.C. 552a(k)(2), this system of records to the extent it consists of investigatory material compiled for law enforcement purposes, is exempted from the following provisions of the Privacy Act of 1974, 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2).

These exemptions are contained in 17 CFR 200.313.

By the Commission.

Nancy M. Morris

Nancy M. Morris
Secretary

Date: May 24, 2006

Commissioner Glassman
Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2517 / May 26, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12302

In the Matter of BRUCE LIEBERMAN, Respondent.	ORDER INSTITUTING PUBLIC ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Bruce Lieberman ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. From 1997 to January 2005, Lieberman was associated with Deephaven Capital Management, LLC ("Deephaven"), an unregistered investment adviser. Lieberman, 50 years old, is a resident of Edina, Minnesota.

2. On May 15, 2006, a final judgment was entered by consent against Lieberman, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder, in the civil action entitled *Securities and Exchange Commission v. Deephaven Capital Management, LLC and Bruce Lieberman*, Civil Action Number 1:06-cv-00805, in the United States District Court for the District of Columbia.

3. The Commission's complaint alleged that from August 2001 to March 2004, Deephaven and Lieberman, who was a portfolio manager and the director of Deephaven's private placement trading, executed short sales for the Deephaven Small Cap Growth Fund (the "Small Cap Fund") in advance of the public announcements of 19 private investment in public equity ("PIPE") offerings while in possession of material nonpublic information, in breach of a duty of trust and confidence each owed to the placement agents for the PIPE securities and to the PIPE issuers. Among other things, the Complaint further alleged that, for two of the PIPE offerings, in an effort to conceal Deephaven's violation of express warranties in purchase agreements prohibiting short selling, Lieberman transferred short positions previously established in the Small Cap Fund to another fund he managed.

IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 203(f) of the Advisers Act, that Respondent Lieberman be, and hereby is barred from association with any investment adviser with the right to reapply for association after three years to the Commission;

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

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53882 / May 30, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2434 / May 30, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12304

In the Matter of Tribune Company, Respondent.	ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS AND IMPOSING A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Tribune Company ("Tribune" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

1. From at least January 2002 to March 2004, two Tribune newspapers, *Newsday* and *Hoy*, falsely inflated their paid circulation figures. As a consequence, Tribune reported inflated average paid circulation figures and erroneous circulation trends for these newspapers to the Commission and the investing public in its Forms 10-K for the years ended December 29, 2002, and December 28, 2003. The company also reported erroneous circulation trends based on the inflated paid circulation figures for these newspapers in its Forms 10-Q for the first quarter ended March 31, 2002, through the first quarter ended March 28, 2004. Moreover, in the same Forms 10-K and 10-Q, Tribune misstated its accounts receivable and accounts payable, as well as its circulation revenues and expenses as they related to *Newsday* and *Hoy*. This occurred because, at the time, Tribune did not have sufficient internal controls in place at these two newspapers. In 2004, Tribune revised downward the average paid circulation figures previously reported by *Newsday* and *Hoy* and disclosed that it had recorded a pretax charge of $90 million in anticipation of settling advertisers' claims related to the inflated paid circulation figures reported by *Newsday* and *Hoy*.

Respondent

2. Tribune is a Delaware holding company with its principal executive office located in Chicago, Illinois. Tribune operates a publishing and broadcasting and entertainment business. Among other things, the company publishes fourteen daily newspapers in, among other places, New York, Chicago, Los Angeles, Fort Lauderdale and Orlando. Tribune's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on the New York Stock Exchange.

"Paid Circulation"

3. Advertisers consider several factors in selecting the newspapers in which they run advertisements. One significant consideration is the size of a publication's audience. Advertisers want to run their advertisements in newspapers with potentially the largest audiences so that their advertisements will be viewed by as many customers as possible. The customary means by which newspaper publishers convey the size of their potential audiences to advertisers is by publicly disseminating the number of newspapers that they sell at or above a specified minimum price on weekdays and Sundays. Consequently, newspaper publishers and advertisers consider these "paid circulation" figures when negotiating advertising rates, and advertisers are more likely to pay publications that report higher paid circulation figures more money for their advertising space.

4. In 1914, in recognition of the importance of paid circulation figures to advertisers, the publishing industry established its first circulation auditing organization to verify publishers'

circulation claims (the "Circulation Bureau"). The Circulation Bureau is a voluntary, not-for-profit organization whose members include both advertisers and publishers. The purpose of the Circulation Bureau is to ensure the integrity and accuracy of the circulation figures reported by its member publishers through, among other means, standardized circulation reporting and circulation audits. Member publishers agree to compile and report their paid circulation figures in accordance with reporting rules adopted by the Circulation Bureau and to submit to circulation audits conducted by the Circulation Bureau's audit staff. Between January 2002 and March 2004, all of Tribune's principal newspapers were members of the Circulation Bureau and their paid circulation figures were audited annually by the Circulation Bureau. Further, during that period, the Circulation Bureau's reporting rules, among other things, defined "paid circulation" generally to include newspapers that were sold for an amount equal to or greater than a specified minimum price.

5. Paid circulation is an important measure used to evaluate the business performance of publishing companies, which typically draw about 75% of their revenues from advertisers. Publishing industry analysts have observed in their reports and in conference calls that paid circulation is a metric used by publishers and advertisers to set advertising rates, and that there is a relationship between paid circulation and advertising revenues.

Newsday and *Hoy*

6. In June 2000, Tribune merged with the Times Mirror Company. In connection with the merger, Tribune acquired *Newsday* and *Hoy* and six other daily newspapers. *Newsday*, which has been published since 1940 and is Tribune's third largest newspaper in terms of paid circulation, is distributed primarily on Long Island, New York and in parts of New York City. *Hoy*, a Spanish-language newspaper, has been published and distributed in New York City since 1998. In late 2003, Tribune embarked on a plan to distribute *Hoy* nationally by introducing the newspaper in Chicago. In early 2004, Tribune began distributing *Hoy* in Los Angeles.

7. From June 2000 to March 2004, *Newsday* operated as a subsidiary of Tribune, and *Hoy* operated as a division of *Newsday*. The newspapers had separate publishers, but shared many of the same personnel responsible for circulation. The publishers and most of the Directors and Vice Presidents of Circulation and other senior circulation personnel at *Newsday* and *Hoy* remained the same from the time that Tribune acquired the newspapers in June 2000 until June 2004. In February 2004, Tribune initiated an internal investigation into alleged circulation improprieties at *Newsday* and *Hoy*. As a consequence of the investigation, between June and September 2004, Tribune identified various schemes being used at *Newsday* and *Hoy* to inflate the newspapers' paid circulation figures and forced the publishers at *Newsday* and *Hoy* to retire and terminated all of the circulation personnel at *Newsday* and *Hoy*, including the Directors and Vice Presidents of Circulation, associated with falsely inflating the newspapers' paid circulation figures.

8. Between January 2002 and March 2004, Tribune generated approximately 73% of its operating revenues from its publishing business. *Newsday*, which included *Hoy's* operations, accounted for approximately 15% of Tribune's total publishing revenues. In 2002 and 2003, *Newsday's* operating revenues (including *Hoy*) were $609 million and $622 million,

respectively. At least three quarters of *Newsday's* operating revenues (including *Hoy*) were attributable to advertising sales.

***Newsday* and *Hoy's* Inflated Paid Circulation Figures**

9. From at least January 2002 to March 2004, the publishers of *Newsday* and *Hoy* set ambitious circulation goals for their circulation management staff. In order to meet the goals set by the publishers, the Directors and Vice Presidents of Circulation and other circulation personnel (collectively the "Circulation Personnel") at *Newsday* and *Hoy* engaged in several schemes to generate fictitious sales and thereby inflate the newspapers' paid circulation figures. Although the schemes varied, they by and large fell into three categories. The first category involved circular and wash agreements with single copy dealers and home delivery agents that made it falsely appear as if the dealers and agents had purchased newspapers from *Newsday* and *Hoy* that they, in fact, did not buy. The second category involved newspapers that *Newsday* and *Hoy* claimed as paid circulation, but actually distributed for free or at prices that were less than the minimum price required to qualify the sales as paid circulation. The third category involved the practice of shifting returns.

10. During the relevant period, the Circulation Personnel at *Newsday* and *Hoy* entered into various sales arrangements with single copy dealers and home delivery agents for the sole purpose of generating fictitious sales in order to boost the newspapers' paid circulation figures. The arrangements varied from dealer-to-dealer and agent-to-agent, but generally operated in the same manner. Under these arrangements, the dealers and agents paid *Newsday* and *Hoy* for newspapers that were distributed to customers for free or, in some cases, were not distributed at all. *Newsday* and *Hoy*, in return, paid the dealers and agents incentive payments and fees for cartage and other purported services in amounts equal to or in excess of the cost of the newspapers. Although *Newsday* and *Hoy* did not earn monies from the sale of the newspapers under these arrangements, the structure of the agreements and payments made it falsely appear as if *Newsday* and *Hoy* had been paid for the newspapers and thus were recorded as paid circulation.

11. The Circulation Personnel at *Newsday* and *Hoy* also inflated the newspapers' paid circulation figures by claiming as paid circulation newspapers that were distributed for free or at prices that were less than the minimum price required to qualify the sales as paid circulation. These included newspapers that were distributed for up to ninety days to customers who did not order the newspapers and whose delivery was automatically suspended for nonpayment. It also included newspapers that were distributed to schools and colleges which were falsely represented as having been paid for by third-parties. Furthermore, it included newspapers distributed on days other than Sundays to customers who had paid only for the Sunday editions of *Newsday* and *Hoy*.

12. In addition to generating the fictitious sales described above, the Circulation Personnel at *Newsday* and *Hoy* engaged in the practice of "shifting returns" in order to inflate the publications' paid circulation figures. Each day, *Newsday* and *Hoy* calculated their single copy

sales by subtracting the number of newspapers that their single copy dealers returned to them unsold at the end of the day from the daily "draw." The draw was the number of newspapers that *Newsday* and *Hoy* distributed in the morning to its dealers for sale. In order to boost sales figures on weekdays and Sundays, which were of principal interest to advertisers, *Newsday* and *Hoy* did not always recognize all of the newspapers that were returned to them unsold on weekdays and Sundays. Instead, they would "shift" the returns to less important days by recording the dealers' returns on weekdays and Sundays against their draws on Saturdays, holidays and other special days that were excluded from the circulation analysis.

Tribune's Inaccurate Books and Records and Periodic Reports

13. By fabricating sales and shifting returns, the Circulation Personnel at *Newsday* and *Hoy* were able to inflate the average paid circulation figures that they reported to Tribune, and which Tribune in turn reported to the public, for *Newsday* and *Hoy* for the six-months ended September 30, 2002, and for the six-months ended September 30, 2003, as follows:

	Reported Average Paid Circulation as of September 2002	Actual Average Paid Circulation as of September 2002	% of Over-Statement 2002	Reported Average Paid Circulation as of September 2003	Actual Average Paid Circulation as of September 2003	% of Over-Statement 2003
Newsday Daily	579,000	509,000	14%	580,000	455,000	27%
Newsday Sunday	677,000	595,000	14%	678,000	569,000	19%
Hoy Daily	78,000	52,000	50%	94,000	52,000	81%
Hoy Sunday	30,000	24,000	25%	35,000	27,000	30%

14. In order to fabricate the sales and shift the returns that allowed them to inflate *Newsday* and *Hoy's* paid circulation figures as noted above, the Circulation Personnel at *Newsday* and *Hoy* entered into sham agreements and prepared or caused to be prepared false draw, return and billing records. The Circulation Personnel at *Newsday* and *Hoy* were successful in doing this because they had control over all aspects of the publications' circulation processes, including, but not limited to, executing and reviewing dealer and agent agreements, establishing draws and recording returns, fixing rates and fees, determining the amounts to be paid to vendors and collecting amounts owed by vendors. Between January 2002 and March 2004, both *Newsday* and *Hoy* were members of the Circulation Bureau and their paid circulation figures were audited annually by the Circulation Bureau. Tribune, however, did not evaluate the Circulation Bureau's audit procedures or separately verify its audit findings. In addition, Tribune lacked sufficient internal controls to detect the types of schemes that the Circulation Personnel at *Newsday* and *Hoy* employed to inflate the publications' paid circulation figures. *Newsday* and *Hoy's* inflated paid circulation figures therefore went undetected by Tribune during the relevant period.

15. As a result of the inflated circulation figures at *Newsday*, Tribune disseminated paid circulation numbers to the public in press releases, earnings conferences and other public statements that showed that *Newsday* was experiencing small, but steady growth in its paid circulation and that it was successfully competing against several other daily newspapers in its market. Tribune also disseminated paid circulation figures to the public that showed that *Hoy's* paid circulation was growing substantially and at a rapid rate. Relying on the paid circulation

figures reported to it by *Hoy*, Tribune stated in earnings conferences, press releases and other public statements that *Hoy* was the largest Spanish-language newspaper in New York and that it had surpassed the circulation of a well-known, competing daily Spanish-language newspaper.

16. As a result of its failure to detect the schemes being used to inflate *Newsday* and *Hoy's* paid circulation figures, Tribune reported inflated average paid circulation figures and circulation trends for these newspapers to the Commission and to the public in its Forms 10-K for the years ended December 29, 2002, and December 28, 2003. The company also reported erroneous circulation trends based on the inflated paid circulation figures for these newspapers in its Forms 10-Q for the first quarter ended March 31, 2002, through the first quarter ended March 28, 2004. In addition, in the same Forms 10-K and 10-Q, Tribune misstated its accounts payable and accounts receivable, as well as its circulation revenues and expenses as they related to *Newsday* and *Hoy*.

<u>Tribune's $90 Million Pretax Charge</u>

17. As part of its internal investigation, Tribune conducted circulation audits of all of its daily newspapers. The internal circulation audits revealed that *Newsday* and *Hoy* inflated their paid circulation figures as described above. As a result, in 2004, Tribune recorded pretax charges totaling $90 million to settle anticipated claims by advertisers. Tribune recorded $35 million in charges in the second quarter of 2004 and $55 million in the third quarter of 2004. The charges reduced Tribune's income before taxes for those quarters by 18% and 21%, respectively. The internal circulation audits that Tribune conducted of its other daily newspapers did not uncover any material misstatements in their previously reported paid circulation figures.

<u>Tribune's Violations of the Exchange Act</u>

18. Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13, thereunder, require issuers that have securities registered pursuant to Section 12 of the Exchange Act to file annual and quarterly reports on Forms 10-K and 10-Q, respectively. Rule 12b-20 requires that the reports be complete and accurate.

19. Section 13(b)(2)(A) of the Exchange Act requires reporting companies under Section 12 of the Exchange Act to make and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the issuer's assets.

20. Section 13(b)(2)(B) of the Exchange Act requires reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary (i) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (ii) to maintain accountability for assets.

21. As a result of the conduct described above, Tribune violated Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13, thereunder.

Remedial Efforts and Cooperation by Tribune

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Tribune and the cooperation that Tribune afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Tribune's offer.

Accordingly, it is hereby ORDERED:

A. Pursuant to Section 21C of the Exchange Act, that Tribune cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13, thereunder.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53881 / May 30, 2006

INVESTMENT ADVISERS ACT OF 1940
Release No. 2518 / May 30, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12303

In the Matter of **Geek Securities, Inc. and Geek Advisors, Inc.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(e) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(e) of the Investment Advisers Act of 1940 ("Advisers Act") against Geek Securities, Inc. ("Geek Securities") and Geek Advisors, Inc. ("Geek Advisors") (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have jointly submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, and the findings contained in Section III.2 and III.3 below, which are admitted, Respondents consent to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(e) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Geek Securities is a broker-dealer registered with the Commission, and Geek Advisors is an investment adviser registered with the Commission.

2. On February 9, 2006, a final judgment was entered by consent against Respondents, permanently enjoining them from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and from aiding and abetting violations of Section 15(c)(1) of the Exchange Act, in the civil action entitled Securities and Exchange Commission v. Geek Securities, Inc., et al., Civil Action Number 04-80525-Civ-PAINE/JOHNSON in the United States District Court for the Southern District of Florida.

3. The Commission's complaint alleged that, between September 2001 and November 2003, Geek Securities and Geek Advisors engaged in pervasive market timing and late trading on behalf of at least nine institutional clients in over one hundred mutual funds. According to the Commission's complaint, Geek Securities and Geek Advisors facilitated trades of third party mutual funds on behalf of clients, the majority of which were institutional investors, and several of which were hedge funds. According to the complaint, despite warnings from mutual fund companies, Respondents used various deceptive activities to evade detection of ongoing market timing when a fund tried to restrict timing activities. The complaint also alleged that Geek Securities accepted final trade instructions after the 4:00 p.m. EST closing of the market, knowing the trades received the same-day net asset value pricing.

IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b) of the Exchange Act, Respondent Geek Securities' registration with the Commission be, and hereby is, revoked; and

Pursuant to Section 203(e) of the Advisers Act, Respondent Geek Advisors' registration with the Commission be, and hereby is, revoked.

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

Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53886 / May 30, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12308

In the Matter of OTTO KOZAK, Respondent.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

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

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Kozak, 35 years old, resides in Atlantic Beach, New York. From approximately February 1999 until approximately September 2001, Kozak was associated with Donald & Co. Securities, Inc. ("Donald & Co."), a broker-dealer registered with the Commission until November 2002. While at Donald & Co., Kozak was a registered representative and held Series 7 and 24 licenses.

2. Through his conduct, Kozak participated in the offering of the common stock of eLEC Communications Corporation, which during the relevant time was a penny stock.

3. On August 25, 2005, Kozak pled guilty to charges of, among other things, conspiracy to commit securities fraud in violation of Title 18 United States Code, Section 371, and securities fraud in violation of Title 15 United States Code, Section 78j(b) before the United States District Court for the Eastern District of New York, in United States v. Otto Kozak, 04-CR-00455 (ADS).

4. The counts of the criminal indictment to which Kozak pled guilty alleged, among other things, that while at Donald & Co., from in or around January 2000 through in or around December 2001, Kozak willfully and knowingly defrauded investors by means of materially false and misleading statements and omissions, and that he used the United States mails to make materially false and misleading statements and omissions.

IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act, that Respondent Kozak be, and hereby is, barred from association with any broker or dealer.

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

Pursuant to Section 15(b)(6) of the Exchange Act, that Respondent be, and hereby is, barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

By the Commission.

Nancy M. Morris
Secretary

J. Lynn Taylor

By: J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
May 30, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12309

In the Matter of **ROBERT KOZAK** **JOHN FLANAGAN,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b)(6) OF THE SECURITIES EXCHANGE ACT OF 1934** **AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 ("Exchange Act") against Robert Kozak ("Kozak") and John Flanagan ("Flanagan") (collectively the "Respondents").

II.

The Division of Enforcement alleges that:

A. RESPONDENTS

1. From approximately February 1999 until approximately September 2001, Kozak was a registered representative associated with Donald & Co. Securities, Inc. ("Donald & Co."), a broker-dealer registered with the Commission until November 2002. R. Kozak holds Series 7 and 63 licenses.

2. From approximately October 2000 until approximately August 2002, Flanagan was a registered representative associated with Donald & Co. Flanagan holds Series 7 and 63 licenses.

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B. ENTRY OF THE RESPONDENTS' CRIMINAL CONVICTIONS

3. On August 26, 2005, Kozak pled guilty to charges of, among other things, conspiracy to commit securities fraud in violation of Title 18 United States Code, Section 371, and securities fraud in violation of Title 15 United States Code, Section 78j(b) before the United States District Court for the Eastern District of New York, in United States v. Robert Kozak, 04-CR-00455 (ADS). Kozak is awaiting sentencing.

4. On September 1, 2005, Flanagan pled guilty to charges of, among other things, conspiracy to commit securities fraud in violation of Title 18 United States Code, Section 371, and securities fraud in violation of Title 15 United States Code, Section 78j(b) before the United States District Court for the Eastern District of New York, in United States v. John Flanagan, 04-CR-00455 (ADS). Flanagan is awaiting sentencing.

5. The counts of the criminal indictment to which the Respondents pled guilty alleged, among other things, that while at Donald & Co., the Respondents willfully and knowingly defrauded investors by means of materially false and misleading statements and omissions, and that they used the United States mails to make materially false and misleading statements and omissions.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against the Respondents pursuant to Section 15(b)(6) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.200.

IT IS FURTHER ORDERED that the Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If the Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon the Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Nancy M. Morris
Secretary

By: J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53884 / May 30, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12306

In the Matter of CARL CUNZIO, Respondent.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

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

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Cunzio, 43 years old, resides in Sayville, New York. From approximately October 2000 until approximately August 2002, Cunzio was associated with Donald & Co. Securities, Inc. ("Donald & Co."), a broker-dealer registered with the Commission until November 2002. While at Donald & Co., Cunzio was a registered representative and held Series 7, 24, and 63 licenses.

2. Through his conduct, Cunzio participated in the offering of the common stock of The Classica Group, Inc., which during the relevant time was a penny stock.

3. On September 1, 2005, Cunzio pled guilty to charges of, among other things, conspiracy to commit securities fraud in violation of Title 18 United States Code, Section 371, and securities fraud in violation of Title 15 United States Code, Section 78j(b) before the United States District Court for the Eastern District of New York, in United States v. Carl Cunzio, 04-CR-00455 (ADS).

4. The counts of the criminal indictment to which Cunzio pled guilty alleged, among other things, that while at Donald & Co., from in or around October 2000 through in or around July 2002, Cunzio willfully and knowingly defrauded investors by means of materially false and misleading statements and omissions, and that he used the United States mails to make materially false and misleading statements and omissions.

IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act, that Respondent Cunzio be, and hereby is, barred from association with any broker or dealer.

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

Pursuant to Section 15(b)(6) of the Exchange Act, that Respondent be, and hereby is, barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

By the Commission.

Nancy M. Morris
Secretary

J. Lynn Taylor

By: J. Lynn Taylor
Assistant Secretary

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53885 / May 30, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12307

In the Matter of **JEFFREY "YEFIM" BASSIN,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Jeffrey "Yefim" Bassin ("Bassin" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Bassin, 53 years old, resides in Fairlawn, New Jersey. From approximately September 1998 until approximately August 2002, Bassin was associated with Donald & Co. Securities, Inc. ("Donald & Co."), a broker-dealer registered with the Commission until November 2002. While at Donald & Co., Bassin was a registered representative and held Series 7, 24, and 63 licenses.

2. Through his conduct, Bassin participated in the offering of the common stock of eLEC Communications Corporation, which during the relevant time was a penny stock.

3. On August 22, 2005, Bassin pled guilty to charges of, among other things, conspiracy to commit securities fraud in violation of Title 18 United States Code, Section 371, and securities fraud in violation of Title 15 United States Code, Section 78j(b) before the United States District Court for the Eastern District of New York, in United States v. Jeffrey Bassin, 04-CR-00455 (ADS).

4. The counts of the criminal indictment to which Bassin pled guilty alleged, among other things, that while at Donald & Co., from in or around January 2000 through in or around July 2002, Bassin willfully and knowingly defrauded investors by means of materially false and misleading statements and omissions, and that he used the United States mails to make materially false and misleading statements and omissions.

IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act, that Respondent Bassin be, and hereby is, barred from association with any broker or dealer.

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

Pursuant to Section 15(b)(6) of the Exchange Act, that Respondent be, and hereby is, barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

By the Commission.

Nancy M. Morris
Secretary

J. Lynn Taylor

By: J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53883 / May 30, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12305

In the Matter of PATRICK MCFADDEN, Respondent.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

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

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. McFadden, 34 years old, resides in Brooklyn, New York. From approximately February 2002 until approximately June 2002, McFadden was associated with Donald & Co. Securities, Inc. ("Donald & Co."), a broker-dealer registered with the Commission until November 2002. While at Donald & Co., McFadden was a registered representative and held Series 7 and 63 licenses.

2. Through his conduct, McFadden participated in the offering of the common stock of The Classica Group, Inc., which during the relevant time was a penny stock.

3. On September 1, 2005, McFadden pled guilty to securities fraud in violation of Title 15 United States Code, Section 78j(b) before the United States District Court for the Eastern District of New York, in United States v. Patrick McFadden, 04-CR-00455 (ADS).

4. The count of the criminal indictment to which McFadden pled guilty alleged, among other things, that while at Donald & Co., from in or around January 2002 through in or around May 2002, McFadden willfully and knowingly defrauded investors by means of materially false and misleading statements and omissions, and that he used the United States mails to make materially false and misleading statements and omissions.

IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act, that Respondent McFadden be, and hereby is, barred from association with any broker or dealer.

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

Pursuant to Section 15(b)(6) of the Exchange Act, that Respondent be, and hereby is, barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

By the Commission.

Nancy M. Morris
Secretary

J. Lynn Taylor

By: J. Lynn Taylor
Assistant Secretary

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53906 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12313

In the Matter of **ROBERT W. OAKES, JR.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

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

II.

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

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III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

A. RESPONDENT

Oakes, 45, resides in Rumson, New Jersey and is currently a registered representative associated with a registered broker-dealer. Oakes has been associated with various registered broker-dealers from 1986 to the present. Oakes was associated with Phillip Louis Trading, Inc. ("Phillip Louis"), a broker-dealer formerly registered with the Commission, from October 1998 through September 2002 and was Phillip Louis' head trader and supervisor from May through August 2002. In his capacity as supervisor, Oakes was responsible for supervising registered representatives at Phillip Louis. At all relevant times, approximately 90-95% of Phillip Louis' business involved proprietary trading.

B. OTHER RELEVANT INDIVIDUAL

1. Joseph R. Huard, Jr. ("Huard") was a registered representative associated with various broker-dealers from 1988 through December 2002. Huard was associated as a registered representative with a Pennsylvania registered broker-dealer, from October 1988 until it closed in January 2002. Huard was also associated as a registered representative with Phillip Louis from October 1996 through December 2002. After the Pennsylvania broker-dealer closed in January 2002 Huard moved his customers to Phillip Louis. One of the customers Huard brought to Phillip Louis was a group of hedge funds ("hedge funds"). The hedge funds primarily invested in penny stocks, some of which were thinly-traded. Huard, 47 years old, is a resident of Thornton, Pennsylvania.

2. Huard was charged with conspiracy to commit and committing mail, wire and securities fraud in two separate indictments unsealed in August 2002 arising from an undercover sting operation conducted by the United States Attorney's Office. United States v. Joseph R. Huard, Jr. et al. Case No. 02-20473-CR-Graham (S.D. Fla.) and United States v. Joseph R. Huard, Jr., et al. Case No. 02-020626-CR-Ungaro-Benages (S.D. Fla.). On December 18, 2002, Huard pled guilty to one count in each indictment of conspiracy to commit wire fraud, mail fraud and securities fraud, and conspiracy to commit wire fraud and securities fraud, respectively and was sentenced to five years probation including eight months home-detention, 300 hours of community service and assessed a $10,000 fine.

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

C. BACKGROUND

From approximately January through November 2002, Huard, while associated with Phillip Louis, participated in a manipulative trading scheme including, among other things, marking the close at month-end in numerous small cap securities comprising a substantial portion of the hedge funds' portfolios. During this period, Huard received and executed over 165 buy trades on the last day of the month in various penny stocks in the hedge funds' portfolios. Many of these trades occurred within the last thirty minutes of the close of trading and marked the month-end closing price for those securities in the hedge funds' portfolios. Huard executed these trades with the intent of affecting the price of the security and thereby inflating the value of the hedge funds' portfolios.

D. OAKES' FAILURE TO SUPERVISE

1. Oakes directly supervised Huard from May 2002 through August 2002. Oakes failed reasonably to supervise Huard with a view to preventing Huard's manipulative trading practices during this period. Oakes failed to heed the "red flags" presented by Huard's end of the day trading activity. Oakes also failed to follow Phillip Louis' written supervisory procedures that likely would have uncovered Huard's marking the close activity.

2. For example, on May 31, 2002, Huard executed 31 buy transactions for the hedge funds' account. In 19 separate transactions, Huard purchased 149,000 shares of a penny stock. The shares were purchased at various prices between $.22 and $.33 per share. Huard's last purchase of 25,000 shares of penny stock at $.33 was executed at 3:59 p.m. These trades manipulated the stock price higher, which closed month-end at $.35 per share.

3. Further, on June 28, 2002, the last trading day of the month, Huard executed 26 trades (all purchases) on behalf of the hedge funds' account. Huard purchased 111,000 shares of a penny stock in two separate transactions. The first purchase was for 91,000 shares at $.80. The second purchase of 20,000 shares was executed at 4:00 p.m. at $.85 and marked the close in that penny stock for the end of the month. Huard also marked the close in another penny stock with the purchase of 1,500 shares executed at 3:55 p.m.

4. Again, on July 31, 2002, Huard executed 28 trades (all purchases) on behalf of the hedge funds' portfolio. The earlier trades served to gradually raise the stock prices while the final trades, executed within the last minutes of trading, marked the closing price in two penny stocks. For example, Huard purchased 57,000 shares of a penny stock for Lancer in ten separate transactions between 3:12 p.m. and 3:54 p.m., incrementally increasing the price. Specifically, Huard purchased 5,000 shares for $3.50 at 3:12 p.m.; 9,700 shares for $3.60 at 3:31 p.m.; 3,000 shares for $3.80 at 3:33 p.m. and 9,800 shares for $4.50 at 3:54 p.m. to mark the close.

5. As Huard's supervisor, Oakes reviewed the daily order tickets to verify, among other things, that each order was properly time-stamped as required by Phillip Louis' written

supervisory procedures. Phillip Louis' written supervisory procedures also contained anti-manipulation guidelines and policies which proscribed the manipulative practice of marking the close by engaging in a trade on an "uptick" or a "downtick" at or near the close of trading. Respondent did not evaluate whether Huard's trading activity involved marking the close despite the red flags presented by the order tickets relating to Huard's trading on behalf of the hedge funds which showed most trades occurring within the last thirty minutes of the close of trading. As Huard's immediate and direct supervisor, Oakes was responsible for conducting further investigation into whether Huard was facilitating a violation of the securities laws. Oakes did not discharge his supervisory duties because he failed to investigate the red flags presented by Huard's trading activity.

6. Oakes further failed to follow Phillip Louis' written supervisory procedures by failing to conduct weekly and monthly customer account reviews as required by Phillip Louis' written supervisory procedures. Oakes' failure to do weekly and monthly customer account reviews prevented him from conducting any meaningful review of Huard's trading activities in the hedge funds' account. If such a review had been undertaken, it is likely Oakes would have noticed the large number of month-end and close of trading purchases in the hedge funds' account and uncovered Huard's marking the close activity.

E. VIOLATIONS

As a result of the conduct described above, Oakes failed reasonably to supervise Huard with a view to detecting and preventing Huard's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

F. UNDERTAKINGS

Oakes shall provide to the Commission, within 10 days after the end of the six month suspension period described below in Section IV., an affidavit that he has complied fully with this sanction.

IV.

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

Accordingly, pursuant to Section 15(b)(6) of the Exchange Act, it is hereby ORDERED that:

A. Oakes be, and hereby is, suspended from acting in a supervisory capacity with any broker or dealer for a period of six (6) months, effective beginning the second Monday following the issuance of this Order.

B. IT IS FURTHER ORDERED that Respondent shall, within one year of the entry of this order, pay a civil money penalty in the amount of $25,000 to the United States Treasury in three (3) quarterly installments of $3,333 per quarter and one final balloon payment of $15,001 one year from the entry of the Order. The first quarterly payment of $3,333 is due within ten (10) days from entry of the Order. Such payments shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Oakes as a Respondent in these proceedings and sets forth the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Glenn S. Gordon, Securities and Exchange Commission, Southeast Regional Office, 801 Brickell Ave., Suite 1800, Miami, Florida 33131. Oakes agrees that if the full amount of any payment described above is not made within ten (10) days following the date the payment is required by this Order, the entire amount of civil penalties, $25,000, minus payments made, if any, is due and payable immediately without further application.

C. Respondent shall comply with his undertaking as enumerated in Section III. F. above.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12312

In the Matter of

JOHN F. HELBOCK and
JOHN P. FIGLIOLINI, JR.,

Respondents.

ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against John F. Helbock ("Helbock") and John P. Figliolini, Jr. ("Figliolini"), (collectively referred to as "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Figliolini has been a registered representative associated with various broker-dealers from 1982 through 2004. From December 1996 through October 2003, Figliolini was the chairman, president, beneficial owner and a registered representative of Phillip Louis Trading, Inc. ("Phillip Louis"), a broker-dealer formerly registered with the Commission. From September 2002 through July 2003, Figliolini was Phillip Louis' head trader and supervisor of registered representatives. Figliolini was responsible for all supervisory matters at Phillip Louis during this period. At all relevant times, approximately 90%-95% of Phillip Louis' business involved proprietary trading. Figliolini, 43 years old, is a resident of Wainscott, New York.

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2. Helbock has been a registered representative associated with various broker-dealers from 1988 through the present. Helbock was associated with Phillip Louis from October 1999 through May 2002. From January 2002 through April 2002, Helbock was the head trader and supervisor at Phillip Louis and was responsible for supervising Joseph R. Huard, Jr. ("Huard"). Helbock, 41 years old, is a resident of Holmdel, New Jersey.

B. OTHER RELEVANT INDIVIDUAL

1. Huard was a registered representative associated with various broker-dealers from 1988 through December 2002. Huard was associated as a registered representative with a Pennsylvania registered broker-dealer, from October 1988 until it closed in January 2002. Huard was also associated as a registered representative with Phillip Louis from October 1996 through December 2002. After the Pennsylvania broker-dealer closed in January 2002 Huard moved his customers to Phillip Louis. One of the customers Huard brought to Phillip Louis was a group of hedge funds ("hedge funds"). The hedge funds primarily invested in penny stocks, some of which were thinly-traded. Prior to joining Phillip Louis, Huard had a regulatory disciplinary history including sanctions by the National Association of Securities Dealers and from state regulators in Alabama and New Hampshire. Huard, 48 years old, is a resident of Lake Worth, Florida.

2. Huard was charged with conspiracy to commit and committing mail, wire and securities fraud in two separate indictments unsealed in August 2002 arising from an undercover sting operation conducted by the United States Attorney's Office. United States v. Joseph R. Huard, Jr. et al. Case No. 02-20473-CR-Graham (S.D. Fla.) and United States v. Joseph R. Huard, Jr., et al. Case No. 02-020626-CR-Ungaro-Benages (S.D. Fla.). On December 18, 2002, Huard pled guilty to one count in each indictment of conspiracy to commit wire fraud, mail fraud and securities fraud, and conspiracy to commit wire fraud and securities fraud, respectively and was sentenced to five years probation including eight months home-detention, 300 hours of community service and assessed a $10,000 fine.

C. BACKGROUND

1. From approximately January through November 2002, Huard, while associated with Phillip Louis, engaged in a manipulative trading scheme including, among other things, marking the close at month-end in numerous small cap securities comprising a substantial portion of the hedge funds' portfolios. During this period, Huard received and executed over 165 buy trades on the last day of the month in various penny stocks in the hedge funds' portfolios. Many of these trades occurred within the last thirty minutes of the close of trading and marked the month-end closing price for those securities in the hedge funds' portfolios. Huard executed these trades with the intent of affecting the price of the securities and thereby inflating the value of the hedge fund's portfolio.

2. Huard was directly supervised by Helbock from January 2002 through April 2002 and then by Figliolini from September 2002 through December 2002. Each of the Respondents,

while charged with the responsibility for supervising Huard, failed reasonably to supervise Huard, with a view to preventing his violations of the federal securities laws.

D. HELBOCK'S FAILURE TO SUPERVISE

1. While under Helbock's supervision Huard engaged in a stock manipulation scheme including, among other things, marking the close in numerous penny stocks held by the hedge funds at month-end to inflate artificially their net asset values. For example, on January 31, 2002, Huard executed 24 buy transactions in six stocks held by the hedge funds. Most of the purchases were executed in the afternoon and many served to gradually increase the stock prices throughout the day. Three of the purchases were executed right at the close of trading and marked the closing price in three stocks held by the hedge fund.

2. Further, on February 28, 2002, Huard executed 40 trades (39 purchases and one market maker agency cross trade) on behalf of the hedge funds. All but one of the trades were executed in the afternoon and many served to gradually increase the stock prices throughout the day. At the end of the day Huard marked the closing price in five penny stocks held by the hedge funds. Huard continued his manipulative trading practices by marking the close in the hedge funds' securities at month-end throughout Helbock's tenure as Huard's direct supervisor.

3. During the period Helbock supervised Huard he noticed that Huard placed many stock trades for the hedge funds on the last day of the month towards the market's close. Huard's hedge funds related trading activity was unusual for Phillip Louis since approximately 90%-95% of its business was proprietary trading. Helbock spoke to Huard and Figliolini about this pattern of trading and they each told Helbock that there was nothing improper about the hedge funds' trading activity. Helbock took Huard's and Figliolini's statements at face value and did not undertake any further inquiry. As Huard's supervisor, Helbock was responsible for conducting further investigation into whether Huard was facilitating a violation of the securities laws. Helbock did not discharge his supervisory duties and failed to investigate the "red flags" presented by Huard's suspicious trading activity.

4. Helbock also failed to follow Phillip Louis' written supervisory procedures regarding trade execution and order ticket review. As Huard's supervisor, Helbock was required to review all the daily order tickets by the next business day to verify, among other things, that each order was properly time-stamped as required by Phillip Louis' written supervisory procedures. Phillip Louis' written supervisory procedures also contained anti-manipulation guidelines and policies which proscribed the manipulative practice of marking the close by engaging in a trade on an "uptick" or a "downtick" at or near the close of trading.. Helbock did not review all order tickets on a daily basis. In addition, Helbock did not evaluate whether Huard's trading activity involved marking the close despite the red flags presented by Huard's pattern of trading, which Helbock noticed, and the corresponding order tickets which showed trades occurring towards the end of the close of trading. Had Helbock undertaken such a review and further investigation, it is likely Helbock would have uncovered Huard's stock manipulation scheme.

5. Helbock further failed to follow Phillip Louis' written supervisory procedures by failing to conduct weekly and monthly customer account reviews as required. Helbock's failure to do weekly and monthly customer account reviews prevented him from conducting any meaningful review of Huard's trading activities in the hedge funds' account. If he had undertaken such a review, it is likely Helbock would have uncovered Huard's marking the close activity.

6. Helbock failed reasonably to supervise Huard with a view to detecting and preventing Huard's manipulative trading practices during the period that he was Huard's direct supervisor by failing to adequately investigate the red flags presented by Huard's trading activity in early 2002 and by failing to follow Phillip Louis' written supervisory procedures.

E. <u>FIGLIOLINI'S FAILURE TO SUPERVISE</u>

1. When Huard left the closed Pennsylvania broker-dealer in January 2002 and moved to Phillip Louis, Figliolini, as Phillip Louis' president, reviewed Huard's Form U-4 and his corresponding disciplinary history.

2. Shortly after Huard began his manipulation scheme in various hedge funds' securities at Phillip Louis, Figliolini was alerted to Huard's end of the day trading activity by Helbock. Despite Helbock's concerns and being aware of Huard's prior disciplinary history, Figliolini failed to investigate the ongoing manipulation of the securities in the hedge funds. Had Figliolini made further inquiry into Huard's end of the month trading activity he likely would have uncovered the stock manipulation scheme.

3. When Figliolini became Huard's direct supervisor in September 2002, Phillip Louis had gone through a down-sizing that left it with just a few registered representatives in its New Jersey office.

4. On July 22 and October 28, 2002, Figliolini received correspondence from separate state securities regulators questioning Huard's disciplinary history and qualifications for registration in those states. In fact, one state securities regulator warned that based on Huard's disclosure records "we believe a heightened level of supervision is warranted."

5. While under Figliolini's supervision, Huard continued to engage in the stock manipulation scheme. For example, on September 30, 2002, Huard executed 14 trades (all purchases after 3:00 p.m.) on behalf of the hedge funds for the purchase of penny stocks. These trades substantially increased the month-end close price in three stocks held by the hedge funds which increased the value of the hedge funds' portfolios. Huard also marked the close in the hedge funds' securities at month-end in October and November 2002.

6. As Huard's direct supervisor, Figliolini only reviewed a sample of the daily order tickets to verify, among other things, that each order was properly time-stamped which was contrary to Phillip Louis' written supervisory procedures which required that all order tickets be reviewed. Phillip Louis' written supervisory procedures also contained anti-manipulation guidelines and policies that proscribed the manipulative practice of marking the close by engaging

in a trade on an "uptick" or a "downtick" at or near the close of trading. Figliolini did not evaluate whether Huard's trading activity involved marking the close despite the red flags presented by Huard's order tickets which showed trades occurring late in the day at month-end.

7. Figliolini further failed to follow Phillip Louis' written supervisory procedures by failing to conduct weekly and monthly customer account reviews as required. Figliolini's failure to do weekly and monthly customer account reviews prevented him from conducting any meaningful review of Huard's trading activities in the hedge funds' related account. If he had undertaken such a review, it is likely Figliolini would have noticed the large number of month-end buy trades at or near market close in the hedge funds' account and uncovered Huard's stock manipulation scheme.

8. Figliolini failed reasonably to supervise Huard with a view to detecting and preventing Huard's manipulative trading practices during the period that he was Huard's direct supervisor because he ignored the numerous red flags and failed to follow Phillip Louis' written supervisory procedures.

F. VIOLATIONS

As a result of the conduct described above, Helbock and Figliolini each failed reasonably to supervise Huard with a view to detecting and preventing Huard's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II. are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 15(b) of the Exchange Act including, but not limited to disgorgement and civil penalties pursuant to Section 21B of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III. hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53904 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12311

In the Matter of JOSEPH R. HUARD, JR. and BRUCE D. COWEN, Respondents.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Joseph R. Huard, Jr. ("Huard") and Bruce D. Cowen ("Cowen") (collectively the "Respondents").

II.

In anticipation of the institution of these proceedings, the Respondents have each submitted an Offer of Settlement ("Huard's Offer" or "Cowen's Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, and the findings contained in Section III. A. 3. with respect to Huard, which are admitted by Huard, and the findings contained in Section III. B. 3. with respect to Cowen, which are admitted by Cowen, the Respondents each consent to the entry of this Order

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Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

A. Huard

On the basis of this Order and Huard's Offer, the Commission finds that:

1. From October 1988 through December 2002, Huard was a registered representative associated with broker-dealers registered with the Commission. Huard is 47 years old and resides in Lake Worth, Florida.

2. From in or about June 2001 to in or about June 2002, Huard participated in an offering of Lighthouse Fast Ferry, Inc. ("LHFF") stock and Medinah Minerals, Inc. ("MDMN") stock, which are penny stocks.

3. On December 18, 2002, Huard pled guilty before the United States District Court for the Southern District of Florida to one count of conspiracy to commit wire, mail, and securities fraud, in violation of Title 18 USC §§ 1343 and 1346, 1341 and 1346, Title 15 USC §§ 78j(b) and 78ff(a), and Title 17 CFR § 240.10b-5, all in violation of Title 18 USC § 371 in United States v. Joseph R. Huard, Jr., Case No. 02-20473-CR-GRAHAM and pled guilty to one count of conspiracy to commit wire and securities fraud in violation of Title 18 USC §§ 1343 and 1346, Title 15 USC §§ 78j(b) and 78ff(a), and Title 17 CFR § 240.10b-5, all in violation of Title 18 USC § 371 in United States v. Joseph R. Huard, Jr., Case No. 02-20626-CR-UNGARO-BENAGES.

4. The one count of the two criminal indictments to which Huard pled guilty alleged conspiracy. The indictment alleged Huard participated in a fraudulent scheme to pay undisclosed kickbacks to the purported fund manager of a fictitious foreign mutual fund to cause the fund to purchase LHFF and MDMN stock in connection with an undercover operation by the Federal Bureau of Investigation.

B. Cowen

On the basis of this Order and Cowen's Offer, the Commission finds that:

1. From at least June 2001 through at least August 2002, Cowen was the managing director of a hedge fund located in New York and also controlled Capital Research, Ltd., a privately held Delaware corporation. Cowen is 52 years old and resides in Laguna Niguel, California.

2. From in or about June 2001 to in or about September 2001, Cowen participated in an offering of Lighthouse Fast Ferry, Inc. ("LHFF") stock, which is a penny stock.

3. On August 21, 2003, Cowen pled guilty before the United States District Court for the Southern District of Florida to one count of conspiracy to commit securities fraud, mail fraud and wire fraud in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a); Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, Sections 1341, 1343 and 1346, all in violation of Title 18, United States Code, Section 371, in United States v. Bruce D. Cowen, Case No. 02-20473-CR-ALTONAGA.

4. The count of the superseding criminal indictment to which Cowen pled guilty alleged, inter alia, that Cowen participated in a fraudulent scheme to pay undisclosed kickbacks to the purported fund manager of a fictitious foreign mutual fund to cause the fund to purchase large amounts of overpriced LHFF stock in connection with an undercover operation by the Federal Bureau of Investigation.

Undertakings

1. In connection with this anticipated public administrative proceeding and any related judicial or administrative proceedings or investigation commenced by the Commission or to which the Commission is a party, Respondents (i) agree to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoint each of Respondents' attorneys as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waive the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Respondents' travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consent to personal jurisdiction over Respondents in any United States District Court for purposes of enforcing any such subpoena.

2. In determining whether to accept Respondents' Offers, the Commission has considered these undertakings.

IV.

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

Accordingly, it is hereby ORDERED:

A. Pursuant to Section 15(b)(6)(A) of the Exchange Act, that Huard be, and hereby is barred from association with any broker or dealer;

B. Pursuant to Section 15(b)(6) of the Exchange Act, that Huard be, and hereby is barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for the purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock; and

C. Pursuant to Section 15(b)(6) of the Exchange Act, that Cowen be, and hereby is barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

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

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins Campos & Nazareth Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8684 / May 31, 2006

SECURITIES EXCHANGE ACT OF 1934
Release No. 53888 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of

BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Bear, Stearns & Co. Inc.; Citigroup Global Markets, Inc.; Goldman, Sachs & Co.; J.P. Morgan Securities, Inc.; Lehman Brothers Inc.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; Morgan Stanley & Co. Incorporated and Morgan Stanley DW Inc.; RBC Dain Rauscher Inc.; Banc of America Securities LLC; A.G. Edwards & Sons, Inc.; Morgan Keegan & Company, Inc.; Piper Jaffray & Co.; SunTrust Capital Markets Inc.; and Wachovia Capital Markets, LLC ("Respondents").

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II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement ("Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds that:[1]

A. RESPONDENTS

Respondent **Bear, Stearns & Co. Inc.**, headquartered in New York, New York, is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act.

Respondent **Citigroup Global Markets, Inc.**, headquartered in New York, New York, is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act.

Respondent **Goldman, Sachs & Co.**, headquartered in New York, New York, is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act.

Respondent **J.P. Morgan Securities, Inc.**, headquartered in New York, New York, is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act.

Respondent **Lehman Brothers Inc.**, headquartered in New York, New York, is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act.

Respondent **Merrill Lynch, Pierce, Fenner & Smith Incorporated**, headquartered in New York, New York, is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act.

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[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondents **Morgan Stanley & Co. Incorporated and Morgan Stanley DW Inc. ("Morgan Stanley")**, headquartered in New York, New York, are both broker-dealers registered with the Commission pursuant to Section 15(b) of the Exchange Act.

Respondent **RBC Dain Rauscher Inc.**, headquartered in Minneapolis, Minnesota, is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act.

Respondent **Banc of America Securities LLC**, headquartered in Charlotte, North Carolina, is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act.

Respondent **A.G. Edwards & Sons Inc.**, headquartered in St. Louis, Missouri, is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act.

Respondent **Morgan Keegan & Company, Inc.**, headquartered in Memphis, Tennessee, is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act.

Respondent **Piper Jaffray & Co.**, headquartered in Minneapolis, Minnesota, is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act.

Respondent **SunTrust Capital Markets Inc.**, headquartered in Atlanta, Georgia, is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act.

Respondent **Wachovia Capital Markets LLC,** headquartered in Charlotte, North Carolina, is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act.

B. SUMMARY

As part of their broker-dealer businesses, Respondents underwrite, and manage auctions for, auction rate securities.[2] From at least January 1, 2003 through June 30, 2004, in connection with certain auctions, each Respondent engaged in one or more of the practices described in Section III.C.2 below, each of which violates Section 17(a)(2) of the Securities Act. Accordingly, each Respondent violated that provision.

C. FACTS

1. <u>The Auction Rate Securities Market</u>

Auction rate securities are municipal bonds, corporate bonds, and preferred stocks with interest rates or dividend yields that are periodically re-set through auctions, typically every 7, 14, 28, or 35 days. Auction rate bonds are usually issued with maturities of 30 years, but the maturities can range from 5 years to perpetuity. Respondents often market auction rate securities

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[2] One entity of Morgan Stanley, Morgan Stanley DW Inc., has not underwritten auction rate securities since January 1, 2003.

to issuers as an alternative variable rate financing vehicle, and to investors as an alternative to money market funds. Auction rate securities were first developed in 1984, and the auction rate securities market has grown to well over $200 billion. Mostly institutional investors participate in the auction rate securities markets, although recently smaller investors also have begun participating in the market. Typically, the minimum investment is $25,000.

a. Auction Mechanics. Auction rate securities are auctioned at par so the return on the investment to the investor and the cost of financing to the issuer between auction dates is determined by the interest rate or dividend yield set through the auctions.[3] According to the disclosure documents (the prospectus or official statement) for each security, the interest rate or dividend yield is set through an auction (commonly referred to as a "Dutch" auction) in which bids with successively higher rates are accepted until all of the securities in the auction are sold. Investors can only submit the following types of orders: 1) a "hold" order, which is the default order for current investors (i.e., the order that is entered for a current holder if the holder takes no action), where a current investor will keep the securities at the rate at which the auction clears; 2) a "hold-at-rate" bid, where a current investor will only keep the securities if the clearing rate is at or above the specified rate; 3) a "sell" order, where a current investor will sell the securities regardless of the clearing rate; or 4) a "buy" bid, where a prospective investor, or a current investor who wants more securities, will buy securities if the clearing rate is at or above the specified rate. Disclosure documents often state that an investor's order is an irrevocable offer.

The final rate at which all of the securities are sold is the "clearing rate" that applies to all of the securities in the auction until the next auction. Bids with the lowest rate and then successively higher rates are accepted until all of the sell orders are filled. The clearing rate is the lowest rate bid sufficient to cover all of the securities for sale in the auction.[4] If there are not enough bids to cover the securities for sale, then the auction fails, the issuer pays an above-market rate set by a pre-determined formula described in the disclosure documents, and all of the current holders continue to hold the securities, with minor exceptions. If all of the current holders of the security elect to hold their positions without bidding a particular rate, then the clearing rate is the all-hold rate, a below-market rate set by a formula described in the disclosure documents.

b. Broker-Dealers' Role in Auctions. The issuer of each security selects one or more broker-dealers to underwrite the offering and/or manage the auction process. Investors can only submit orders through the selected broker-dealers. The issuer pays an annualized fee to each broker-dealer engaged to manage an auction (typically 25 basis points for

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[3] Between auctions, investors might be able to buy or sell auction rate securities in the secondary market at prices greater than, equal to, or less than par.

[4] For example, suppose $100,000 of securities were for sale and the auction received four buy bids. Bid A was for $50,000 at 1.10%, Bid B was for $50,000 at 1.15%, Bid C was for $50,000 at 1.15%, and Bid D was for $25,000 at 1.20%. Under these circumstances, the "clearing rate" would be 1.15%, meaning all of the securities in the auction would pay interest at a rate of 1.15% until the next auction. Bid A would be allocated $50,000, Bids B and C would receive pro-rata allocations ($25,000 each), and Bid D would receive no allocation.

the par value of the securities that it manages). The issuer also selects an auction agent to collect the orders and determine the clearing rate for the auction.

Investors must submit orders for an auction to the broker-dealer by a specified time. Many broker-dealers have an internal deadline by which investors must submit their orders to the broker-dealer. This internal deadline allows the broker-dealer sufficient time to process and submit the orders to the auction agent. Other broker-dealers allow investors to submit orders up until the submission deadline, i.e., the deadline for broker-dealers to submit orders to the auction agent. The broker-dealers must submit the orders to the auction agent before the submission deadline, and usually must identify each separate order.

c. Auction Agents' Role in Auctions. After receiving the orders from the broker-dealers, the auction agent calculates the clearing rate that will apply until the next auction. In practice, however, if there is only one broker-dealer, the broker-dealer can discern the clearing rate before submitting the orders to the auction agent.

The auction agent allocates the securities to the broker-dealers based on the orders they submitted. The auction procedures generally state that orders are filled in the following order: hold orders, hold-at-rate and buy bids with a rate below the clearing rate, hold-at-rate orders with a rate at the clearing rate, and buy bids with a rate at the clearing rate. When there are more bids for securities at the clearing rate than securities remaining for sale, the securities are allocated on a pro rata basis first to the hold-at-rate bidders and then to the buy bidders. Generally, the auction procedures require broker-dealers to follow the same hierarchy in allocating the securities to their customers.

d. Disclosures Regarding Broker-Dealer Bidding. During the relevant period, the disclosure documents for different securities varied as to what, if anything, they disclosed about broker-dealers bidding in auctions that they were managing. Some disclosure documents did not disclose anything about bidding by broker-dealers. Other disclosure documents disclosed that broker-dealers may bid in auctions with language similar to the following: "[a] broker-dealer may submit orders in Auctions for its own accounts." Still other disclosure documents disclosed that broker-dealers may bid in auctions and may have an information advantage with language similar to the following: "[a] Broker-Dealer may submit orders in Auctions for its own accounts. Any Broker-Dealer submitting an order for its own account in any Auction might have an advantage over other bidders in that it would have knowledge of other orders placed through it for that Auction (but it would not have knowledge of orders submitted by other Broker-Dealers, if any)."

2. Respondents' Conduct

Each Respondent engaged in one or more of the following violative practices in connection with certain auctions:

a. Completion of Open or Market Bids. Some investors placed open bids and/or market bids in auctions. When an investor placed an open bid, it allowed the

Respondent to designate some or all of the bid's parameters, such as the specific security, rate, or quantity. When an investor placed a market bid, it indicated that it would buy at whatever rate was set during an auction. After viewing other orders in the auction, certain Respondents supplied the bid parameters missing from open bids and/or the rate for market bids. In certain instances, these practices advantaged the investors submitting open bids or market bids by displacing other investors' bids and/or affected the clearing rate.[5]

b. <u>Intervention in Auctions.</u> Certain Respondents intervened in auctions by bidding for their proprietary accounts or asking customers to make or change orders without adequate disclosures.[6] In certain instances, the interventions affected the clearing rate. Certain Respondents intervened in one or more of the following three ways:

b.1 *<u>Bids To Prevent Failed Auctions.</u>* Without adequate disclosure, certain Respondents bid to prevent auctions from failing. Failed auctions occur when there are more securities for sale than there are bids for securities and result in an above-market rate described in the disclosure documents. These Respondents submitted bids to ensure that all of the securities would be purchased to avoid failed auctions and thereby, in certain instances, affected the clearing rate;

b.2 *<u>Bids To Set a "Market" Rate.</u>* Without adequate disclosure, certain Respondents submitted bids or asked investors to change their bids so that auctions cleared at rates that these Respondents considered to be appropriate "market" rates. In certain instances, this practice affected the clearing rate and/or the Respondents' or investors' bids displaced other investors' bids; and

b.3 *<u>Bids To Prevent All-Hold Auctions.</u>* Without adequate disclosure, certain Respondents submitted bids or asked investors to submit bids to prevent the all-hold rate, which is the below-market rate set when all current holders want to hold their positions so that there are no securities for sale in the auction. Sometimes certain Respondents did not have any or sufficient inventory to be eligible to submit the hold-at-rate bids they submitted, or changed an investor's bid without obtaining permission. In certain instances, this practice affected the clearing rate;

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[5] The clearing rate determines the interest rate or yield the issuer must pay to investors until the next auction. In those instances when these practices or any of the practices described in this Order lowered the clearing rate, investors received a lower rate of return on their investments. Conversely, in those instances when the practices raised the clearing rate, issuers had to pay a higher interest rate or yield. To the extent that certain practices affected the clearing rate, investors may not have been aware of the liquidity and credit risks associated with certain securities.

[6] This Order does not prohibit broker-dealers from bidding for their proprietary accounts when properly disclosed.

c. Prioritization of Bids. Before submitting bids to the auction agent, certain Respondents changed or "prioritized" their customers' bids to increase the likelihood that the bids would be filled. As a result of this prioritization and a similar practice known as "cross-trading," certain bids were moved up in the disclosed hierarchy by which different types of bids would be filled.[7] In certain instances, these practices resulted in certain investors' bids displacing other investors' bids when the auction was oversubscribed, affected the clearing rate, and did not conform to disclosed procedures;

d. Submission or Revision of Bids After Deadlines. Most auctions had an internal deadline that broker-dealers set for investors to submit bids to the broker-dealers and a formal submission deadline set by the offering documents for broker-dealers to submit bids to the auction agent. Certain Respondents at times allowed certain investors to submit or revise bids after these deadlines. In addition, certain Respondents themselves submitted or revised bids after these deadlines. In certain instances, these practices, except when solely done to correct clerical errors, advantaged investors or Respondents who bid after a deadline by displacing other investors' bids, affected the clearing rate, and did not conform to disclosed procedures;

e. Allocation of Securities. Certain Respondents exercised discretion in allocating securities to investors who bid at the clearing rate instead of allocating the securities pro rata as stated in the disclosure documents. In certain instances, this practice displaced other investors' bids and did not conform to disclosed procedures;

f. Partial Orders. When an auction is oversubscribed, investors may receive a partial, pro rata allocation of securities rather than receiving the full amount of the securities for which they bid. When this occurred, certain Respondents did not require certain investors to follow through with the purchase of the securities even though the bids were supposed to be irrevocable. Knowing that they would not have to follow through in purchasing partial orders, some investors bid to try to obtain the securities at rates higher than they would have bid if they had known that they risked having to buy partial orders. In certain instances, this practice affected the clearing rate and did not conform to disclosed procedures;

g. Express or Tacit Understandings To Provide Higher Returns. Based upon an express or tacit understanding reached prior to or during an auction, certain Respondents provided higher returns than the auction clearing rate to certain investors. For example, pursuant to an express or tacit understanding reached prior to or during an auction: (1) certain Respondents

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[7] One example of prioritization occurred when certain Respondents received a sell order from one customer and a buy order from another customer in the same auction. Rather than submitting each order to the auction agent as required by the disclosure documents, certain Respondents instead netted those orders before submitting them to the auction agent. Cross-trading occurred when certain Respondents actually transferred securities from a customer that wanted to sell to a customer that wanted to buy, rather than submitting the bids in the auction. Pursuant to both practices, these customers that wanted to buy securities were considered to be existing holders so that their orders had a higher priority in the auction than other new customers' bids for securities.

provided a higher return by having the investor submit its bid at a lower rate than the investor actually wanted to receive, allowing the auction to clear at the lower rate, buying the securities from the investor after the auction, and then selling the securities back to the investor at below par value; (2) certain Respondents simply displaced an investor's bid and then compensated the investor by selling securities to the investor at below par value in the secondary market; and (3) certain Respondents provided a higher return by delaying the settlement date for certain investors. In certain instances, these practices affected the clearing rate and did not conform to disclosed procedures; and

h. Price Talk. Certain Respondents provided different "price talk"[8] to certain investors. In certain instances, some investors received information that gave them an advantage in determining what rate to bid, thereby displacing other investors' bids and/or affecting the clearing rate.

D. LEGAL SECTION

Section 17(a)(2) of the Securities Act prohibits material misstatements and omissions in any offer or sale of securities. Negligent conduct can violate Section 17(a)(2). See, e.g., SEC v. Hughes Capital Corp., 124 F.3d 449, 453 (3d Cir. 1997). Each Respondent violated Section 17(a)(2) by engaging in one or more of the practices described in Section III.C.2 above. As a result, Respondents willfully[9] violated Section 17(a)(2) of the Securities Act.

E. STRUCTURE OF THE SETTLEMENT

In determining the structure of the settlement and the size of the penalties in this matter, the Commission considered the amount of investor harm and the Respondents' conduct in the investigation to be factors that mitigated the serious and widespread nature of the violative conduct. In particular, the Respondents voluntarily disclosed the practices they engaged in to the Commission staff, upon the staff's request for information, which allowed the Commission to conserve resources. The Commission aims to promote similar voluntary disclosures in industry-wide investigations in the future and to encourage firms to provide comprehensive information to the staff in such investigations. The Commission believes that, after taking into account the factors described above, as well as the importance of deterring future violations of the securities laws, this settlement is appropriate.

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[8] Price talk is a broker-dealer's estimate of the likely range within which an auction will clear. Often this range is 5-10 basis points. Some broker-dealers update the price talk as auctions progress.

[9] "Willfully" as used in this Order means intentionally committing the act which constitutes the violation, see Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000); Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965). There is no requirement that the actor also be aware that he is violating one of the Rules or Acts.

For purposes of this settlement, Respondents are divided into two tiers for civil money penalty purposes based on their respective market share and conduct during the relevant period. Tier One consists of the following firms, each of which had a relatively large share of the auction rate securities market and engaged in more types of violative practices than the firms in Tier Two: Bear Stearns, Citigroup Global Markets, Goldman Sachs, J.P. Morgan Securities, Lehman Brothers, Merrill Lynch, Morgan Stanley, RBC Dain Rauscher, and Banc of America Securities. While all Respondents cooperated with the Commission, Banc of America Securities will be assessed a lesser civil monetary penalty because of the quality of its self-monitoring capabilities in the auction rate securities area that it demonstrated to the Commission staff. Tier Two consists of the following firms, each of which had a relatively small share of the auction rate securities market and engaged in fewer types of violative practices than the firms in Tier One: A.G. Edwards, Morgan Keegan, Piper Jaffray, SunTrust Capital Markets, and Wachovia Capital Markets.

F. RESPONDENTS' REMEDIAL ACTS AND COOPERATION

In determining to accept the Offers, the Commission considered the remedial acts promptly undertaken by the Respondents and the cooperation afforded the Commission staff.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondents Bear Stearns, Citigroup Global Markets, Goldman Sachs, J.P. Morgan Securities, Lehman Brothers, Merrill Lynch, Morgan Stanley, and RBC Dain Rauscher each:

1. Be, and hereby is, censured;

2. Shall cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; and

3. Shall, within 10 days of the entry of this Order, pay a civil money penalty of $1,500,000 to the United States Treasury;

B. Respondent Banc of America Securities:

1. Be, and hereby is, censured;

2. Shall cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; and

3. Shall, within 10 days of the entry of this Order, pay a civil money penalty of $750,000 to the United States Treasury;

C. Respondents A.G. Edwards, Morgan Keegan, Piper Jaffray, SunTrust Capital Markets, and Wachovia Capital Markets each:

1. Be, and hereby is, censured;

2. Shall cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; and

3. Shall, within 10 days of the entry of this Order, pay a civil money penalty of $125,000 to the United States Treasury;

D. Payments of such civil money penalties shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies the Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Kenneth R. Lench, Division of Enforcement, Securities and Exchange Commission, 100 F Street N.E., Washington, D.C. 20549-8549.

E. Not later than 6 months after the entry of this Order, each Respondent shall provide all of its customers who hold auction rate securities ("Holders") and the issuers of such securities ("Issuers") with a written description of the Respondent's material auction practices and procedures. In addition, commencing not later than 6 months after the entry of this Order, each Respondent shall, at or before the completion of the applicable transaction, provide all customers who are first-time purchasers, and all broker-dealers who are purchasers, of auction rate securities from the Respondent ("Purchasers") with a written description of the Respondent's material auction practices and procedures. A Respondent may fulfill the foregoing requirements to provide such written description to Holders and Purchasers by sending a written notification (e.g., via e-mail, subject to applicable legal requirements) or, with respect to Purchasers, by including a written notification with the trade confirmation, that a written description of the Respondent's material auction practices and procedures is available on a specified web page of the Respondent's website accessible to such Holders and Purchasers. Such written notification must be set forth prominently in such a manner as to call it to the attention of the reader and also state that a written description of the Respondent's material auction practices and procedures will be sent to the Holder or Purchaser upon request. In addition, not later than 6 months after the entry of this Order, each Respondent shall send a written description of the Respondent's material auction practices and procedures accompanied by a list of all auction rate securities for which the Respondent serves as broker-dealer (including related CUSIP numbers) to each Nationally Recognized Municipal Securities Information Repository ("NRMSIR") and appropriate State Information Depository ("SID"), if any. Respondents may use the facilities of DisclosureUSA for such purpose with respect to auction rate securities that are municipal securities.

Furthermore, commencing not later than 3 months after the entry of this Order, each Respondent shall at all times make a description of its then-current material auction practices and procedures available to (1) all customers and broker-dealers who are participating through such Respondent in an auction of auction rate securities on the portion of its website that is accessible to such customers and broker-dealers and is related to such auction and (2) the general public on another portion of its website accessible to the general public.

As used in this Section, "auction rate securities" means, with respect to a Respondent, auction rate securities sold in auctions managed by such Respondent.

F. Not later than 6 months after the date of this Order, unless otherwise extended by the staff of the Commission for good cause shown, each Respondent's chief executive officer or general counsel shall certify in writing to the staff of the Commission that Respondent has implemented procedures that are reasonably designed to prevent and detect failures by Respondent to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that the Respondent is in compliance with Section IV.E. of this Order.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins Campos & Nazareth Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8707 / May 31, 2006

SECURITIES EXCHANGE ACT OF 1934
Release No. 53898 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of

BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,

Respondents.

ORDER UNDER SECTION 27(A)(b) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b) OF THE SECURITIES EXCHANGE ACT OF 1934, GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF SECTION 27A(b)(1)(A)(ii) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b)(1)(A)(ii) OF THE SECURITIES EXCHANGE ACT OF 1934 AS TO A.G. EDWARDS & SONS, INC. AND ITS AFFILIATES

A.G. Edwards, Inc. has submitted a letter on behalf of itself and its affiliates, dated April 3, 2006, for a waiver of the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act of 1933 ("Securities Act") and Section 21E(b)(1)(A)(ii) of the Securities Exchange Act of 1934 ("Exchange Act") arising from A.G. Edwards & Son, Inc.'s settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the Offer of Settlement by A.G. Edwards & Sons, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that A.G. Edwards & Sons willfully violated Section 17(a)(2) of the Securities Act.

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The Order censures A.G. Edwards & Sons and requires A.G. Edwards & Sons (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $125,000 to the United States Treasury; (3) to make certain disclosures regarding its material auction practices and procedures ; and (4) not later than 6 months after the date of this order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that A.G. Edwards & Sons has implemented procedures that are reasonably designed to prevent and detect failures by A.G. Edwards & Sons to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that A.G. Edwards & Sons is in compliance with Section IV.E. of the Order.

The safe harbor provisions of Section 27A(c) of the Securities Act and Section 21E(c) of the Exchange Act are not available for any forward looking statement that is "made with respect to the business or operations of an issuer, if the issuer . . . during the 3-year period preceding the date on which the statement was first made . . . has been made the subject of an . . . administrative decree or order arising out of a governmental action that (I) prohibits future violations of the antifraud provisions of the federal securities laws; (II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws; or (III) determines that the issuer violated the antifraud provisions of the securities laws[.]" Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act. The disqualifications may be waived "to the extent otherwise specifically provided by rule, regulation, or order of the Commission." Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act.

Based on the representations set forth in A.G. Edwards' letter, the Commission has determined that, under the circumstances, the request for a waiver of the disqualifications resulting from the entry of the Order is appropriate and should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Section 27A(b) of the Securities Act and Section 27E(b) of the Exchange Act, that a waiver from the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act as to A.G. Edwards and its affiliates resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins Campos & Nazareth Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8706 / May 31, 2006

SECURITIES EXCHANGE ACT OF 1934
Release No. 53897 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of

BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,

Respondents.

ORDER UNDER SECTION 27(A)(b) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b) OF THE SECURITIES EXCHANGE ACT OF 1934, GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF SECTION 27A(b)(1)(A)(ii) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b)(1)(A)(ii) OF THE SECURITIES EXCHANGE ACT OF 1934 AS TO BANC OF AMERICA SECURITIES LLC AND ITS AFFILIATES

Banc of America Securities LLC has submitted a letter on behalf of itself and its affiliates, including Bank of America Corporation, dated April 5, 2006, for a waiver of the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act of 1933 ("Securities Act") and Section 21E(b)(1)(A)(ii) of the Securities Exchange Act of 1934 ("Exchange Act") arising from its settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the Offer of Settlement by Banc of America Securities, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that Banc of America Securities willfully violated Section 17(a)(2) of the Securities Act.

Document 41 of 67

The Order censures Banc of America Securities and requires Banc of America Securities (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $750,000 to the United States Treasury; (3) to make certain disclosures regarding its material auction practices and procedures ; and (4) not later than 6 months after the date of this order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that Banc of America Securities has implemented procedures that are reasonably designed to prevent and detect failures by Banc of America Securities to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that Banc of America Securities is in compliance with Section IV.E. of the Order.

The safe harbor provisions of Section 27A(c) of the Securities Act and Section 21E(c) of the Exchange Act are not available for any forward looking statement that is "made with respect to the business or operations of an issuer, if the issuer . . . during the 3-year period preceding the date on which the statement was first made . . . has been made the subject of an . . . administrative decree or order arising out of a governmental action that (I) prohibits future violations of the antifraud provisions of the federal securities laws; (II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws; or (III) determines that the issuer violated the antifraud provisions of the securities laws[.]" Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act. The disqualifications may be waived "to the extent otherwise specifically provided by rule, regulation, or order of the Commission." Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act.

Based on the representations set forth in Banc of America Securities' letter, the Commission has determined that, under the circumstances, the request for a waiver of the disqualifications resulting from the entry of the Order is appropriate and should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Section 27A(b) of the Securities Act and Section 27E(b) of the Exchange Act, that a waiver from the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act as to Banc of America Securities and its affiliates, including Bank of America Corporation, resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins Campos & Nazareth Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8705 / May 31, 2006

SECURITIES EXCHANGE ACT OF 1934
Release No. 53896 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of

BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,

Respondents.

ORDER UNDER SECTION 27(A)(b) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b) OF THE SECURITIES EXCHANGE ACT OF 1934, GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF SECTION 27A(b)(1)(A)(ii) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b)(1)(A)(ii) OF THE SECURITIES EXCHANGE ACT OF 1934 AS TO RBC DAIN RAUSCHER INC. AND ITS AFFILIATES

RBC Dain Rauscher Inc. has submitted a letter on behalf of itself and its affiliates, dated January 31, 2006, for a waiver of the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act of 1933 ("Securities Act") and Section 21E(b)(1)(A)(ii) of the Securities Exchange Act of 1934 ("Exchange Act") arising from its settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the Offer of Settlement by RBC Dain Rauscher, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that RBC Dain Rauscher willfully violated Section 17(a)(2) of the Securities Act.

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The Order censures RBC Dain Rauscher and requires RBC Dain Rauscher (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $1,500,000 to the United States Treasury; (3) to make certain disclosures regarding its material auction practices and procedures ; and (4) not later than 6 months after the date of this order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that RBC Dain Rauscher has implemented procedures that are reasonably designed to prevent and detect failures by RBC Dain Rauscher to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that RBC Dain Rauscher is in compliance with Section IV.E. of the Order.

The safe harbor provisions of Section 27A(c) of the Securities Act and Section 21E(c) of the Exchange Act are not available for any forward looking statement that is "made with respect to the business or operations of an issuer, if the issuer . . . during the 3-year period preceding the date on which the statement was first made . . . has been made the subject of an . . . administrative decree or order arising out of a governmental action that (I) prohibits future violations of the antifraud provisions of the federal securities laws; (II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws; or (III) determines that the issuer violated the antifraud provisions of the securities laws[.]" Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act. The disqualifications may be waived "to the extent otherwise specifically provided by rule, regulation, or order of the Commission." Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act.

Based on the representations set forth in RBC Dain Rauscher's letter, the Commission has determined that, under the circumstances, the request for a waiver of the disqualifications resulting from the entry of the Order is appropriate and should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Section 27A(b) of the Securities Act and Section 27E(b) of the Exchange Act, that a waiver from the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act as to RBC Dain Rauscher and its affiliates resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins
Campos & Nazareth
Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8690 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of

BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,

Respondents.

ORDER UNDER RULE 602(e) OF THE SECURITIES ACT OF 1933, GRANTING A WAIVER OF THE DISQUALIFICATION PROVISION OF RULE 602(c)(3) AS TO MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

Merrill Lynch, Pierce, Fenner & Smith Incorporated has submitted a letter, dated February 28, 2006, for a waiver of the disqualification from the exemption under Regulation E arising from its settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the offer of settlement by Merrill Lynch, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that Merrill Lynch willfully violated Sections 17(a)(2) of the Securities Act of 1933 (the "Securities Act") by engaging in one or more violative practices in connection with certain auctions for auction rate securities.

The Order censures Merrill Lynch and requires Merrill Lynch (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $1,500,000 to the United States Treasury; (3) to make certain disclosures regarding its

Document 43 of 67

material auction practices and procedures; and (4) not later than 6 months after the date of this Order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that Merrill Lynch has implemented procedures that are reasonably designed to prevent and detect failures by Merrill Lynch to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that Merrill Lynch is in compliance with Section IV.E. of the Order.

The Regulation E exemption is not available for the securities of a small business investment company or business development company issuer if any of its principal security holders or any investment adviser or underwriter of the securities to be offered is subject to a Commission order pursuant to Section 15(b) of the Exchange Act. *See* Rule 602(c)(3) under the Securities Act. The Commission may waive the disqualification upon a showing of good cause. *See* Rule 602(e).

Based on the representations set forth in the request made by Merrill Lynch, the Commission has determined that a showing of good cause has been made pursuant to Rule 602(e) and that the request for a waiver of the disqualification should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Rule 602(e) under the Securities Act, that a waiver from the application of the disqualification provision of Rule 602(c)(3) under the Securities Act resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins : Campos & Nazareth Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8691 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of

BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,

Respondents.

ORDER UNDER RULE 602(e) OF THE SECURITIES ACT OF 1933, GRANTING A WAIVER OF THE DISQUALIFICATION PROVISION OF RULE 602(c)(3) AS TO MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.

Morgan Stanley & Co. Incorporated and Morgan Stanley DW Inc. submitted a letter, dated April 7, 2006, for a waiver of the disqualification from the exemption under Regulation E arising from their settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the offers of settlement by Morgan Stanley & Co. Incorporated and Morgan Stanley DW Inc., the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that Morgan Stanley & Co. Incorporated and Morgan Stanley DW Inc. (collectively "Morgan Stanley") willfully violated Sections 17(a)(2) of the Securities Act of 1933 (the "Securities Act").

The Order censures Morgan Stanley and requires Morgan Stanley (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the

Document 44 of 67

amount of $1,500,000 to the United States Treasury; (3) to make certain disclosures regarding its material auction practices and procedures; and (4) not later than 6 months after the date of this Order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that Morgan Stanley has implemented procedures that are reasonably designed to prevent and detect failures by Morgan Stanley to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that Morgan Stanley is in compliance with Section IV.E. of the Order.

The Regulation E exemption is not available for the securities of a small business investment company or business development company issuer if an investment adviser or underwriter of the securities to be offered is subject to a Commission order pursuant to Section 15(b) of the Exchange Act. *See* Rule 602(c)(3) under the Securities Act. The Commission may waive the disqualification upon a showing of good cause. *See* Rule 602(e).

Based on the representations set forth in the requests made by Morgan Stanley & Co. Incorporated and Morgan Stanley DW Inc., the Commission has determined that a showing of good cause has been made pursuant to Rule 602(e) and that the request for a waiver of the disqualification should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Rule 602(e) under the Securities Act, that a waiver from the application of the disqualification provision of Rule 602(c)(3) under the Securities Act resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins Campos + Nazareth Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8697 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of

BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,

Respondents.

ORDER UNDER RULE 602(e) OF THE SECURITIES ACT OF 1933, GRANTING A WAIVER OF THE DISQUALIFICATION PROVISION OF RULE 602(c)(3) AS TO WACHOVIA CAPITAL MARKETS, LLC

Wachovia Capital Markets, LLC has submitted a letter, dated March 3, 2006, for a waiver of the disqualification from the exemption under Regulation E arising from its settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the offer of settlement by Wachovia Capital Markets, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that Wachovia Capital Markets willfully violated Sections 17(a)(2) of the Securities Act of 1933 (the "Securities Act") by engaging in one or more violative practices in connection with certain auctions for auction rate securities.

The Order censures Wachovia Capital Markets and requires Wachovia Capital Markets (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $125,000 to the United States Treasury; (3) to make certain

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disclosures regarding its material auction practices and procedures; and (4) not later than 6 months after the date of this Order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that Wachovia Capital Markets has implemented procedures that are reasonably designed to prevent and detect failures by Wachovia Capital Markets to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that Wachovia Capital Markets is in compliance with Section IV.E. of the Order.

The Regulation E exemption is not available for the securities of a small business investment company or business development company issuer if an investment adviser or underwriter of the securities to be offered is subject to a Commission order pursuant to Section 15(b) of the Exchange Act. *See* Rule 602(c)(3) under the Securities Act. The Commission may waive the disqualification upon a showing of good cause. *See* Rule 602(e).

Based on the representations set forth in the request made by Wachovia Capital Markets, the Commission has determined that a showing of good cause has been made pursuant to Rule 602(e) and that the request for a waiver of the disqualification should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Rule 602(e) under the Securities Act, that a waiver from the application of the disqualification provision of Rule 602(c)(3) under the Securities Act resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins
Campos + Nazareth
Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8696 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of

BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,

Respondents.

ORDER UNDER RULE 602(e) OF THE SECURITIES ACT OF 1933, GRANTING A WAIVER OF THE DISQUALIFICATION PROVISION OF RULE 602(c)(3) AS TO PIPER JAFFRAY & CO.

Piper Jaffray & Co. has submitted a letter, dated March 2, 2006, for a waiver of the disqualification from the exemption under Regulation E arising from its settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the offer of settlement by Piper Jaffray, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that Piper Jaffray willfully violated Sections 17(a)(2) of the Securities Act of 1933 (the "Securities Act") by engaging in one or more violative practices in connection with certain auctions for auction rate securities.

The Order censures Piper Jaffray and requires Piper Jaffray (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $125,000 to the United States Treasury; (3) to make certain disclosures regarding its

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material auction practices and procedures; and (4) not later than 6 months after the date of this Order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that Piper Jaffray has implemented procedures that are reasonably designed to prevent and detect failures by Piper Jaffray to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that Piper Jaffray is in compliance with Section IV.E. of the Order.

The Regulation E exemption is not available for the securities of a small business investment company or business development company issuer if an investment adviser or underwriter of the securities to be offered is subject to a Commission order pursuant to Section 15(b) of the Exchange Act. *See* Rule 602(c)(3) under the Securities Act. The Commission may waive the disqualification upon a showing of good cause. *See* Rule 602(e).

Based on the representations set forth in the request made by Piper Jaffray, the Commission has determined that a showing of good cause has been made pursuant to Rule 602(e) and that the request for a waiver of the disqualification should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Rule 602(e) under the Securities Act, that a waiver from the application of the disqualification provision of Rule 602(c)(3) under the Securities Act resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins
Campos & Nazareth
Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8695 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of **BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,** **Respondents.**	**ORDER UNDER RULE 602(e) OF THE SECURITIES ACT OF 1933, GRANTING A WAIVER OF THE DISQUALIFICATION PROVISION OF RULE 602(c)(3) AS TO MORGAN KEEGAN & COMPANY, INC.**

Morgan Keegan & Company, Inc. has submitted a letter, dated March 2, 2006, for a waiver of the disqualification from the exemption under Regulation E arising from its settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the offer of settlement by Morgan Keegan, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that Morgan Keegan willfully violated Sections 17(a)(2) of the Securities Act of 1933 (the "Securities Act") by engaging in one or more violative practices in connection with certain auctions for auction rate securities.

The Order censures Morgan Keegan and requires Morgan Keegan (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $125,000 to the United States Treasury; (3) to make certain disclosures regarding its

Document 47 of 67

material auction practices and procedures; and (4) not later than 6 months after the date of this Order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that Morgan Keegan has implemented procedures that are reasonably designed to prevent and detect failures by Morgan Keegan to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that Morgan Keegan is in compliance with Section IV.E. of the Order.

The Regulation E exemption is not available for the securities of a small business investment company or business development company issuer if an investment adviser or underwriter of the securities to be offered is subject to a Commission order pursuant to Section 15(b) of the Exchange Act. *See* Rule 602(c)(3) under the Securities Act. The Commission may waive the disqualification upon a showing of good cause. *See* Rule 602(e).

Based on the representations set forth in the request made by Morgan Keegan, the Commission has determined that a showing of good cause has been made pursuant to Rule 602(e) and that the request for a waiver of the disqualification should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Rule 602(e) under the Securities Act, that a waiver from the application of the disqualification provision of Rule 602(c)(3) under the Securities Act resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins Campos & Nazareth Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8694 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of

BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,

Respondents.

ORDER UNDER RULE 602(e) OF THE SECURITIES ACT OF 1933, GRANTING A WAIVER OF THE DISQUALIFICATION PROVISION OF RULE 602(c)(3) AS TO A.G. EDWARDS & SONS, INC.

A.G. Edwards & Sons, Inc. has submitted a letter, dated April 3, 2006, for a waiver of the disqualification from the exemption under Regulation E arising from its settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the offer of settlement by A.G. Edwards, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that A.G. Edwards willfully violated Sections 17(a)(2) of the Securities Act of 1933 (the "Securities Act") by engaging in one or more violative practices in connection with certain auctions for auction rate securities.

The Order censures A.G. Edwards and requires A.G. Edwards (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $125,000 to the United States Treasury; (3) to make certain disclosures regarding its

Document 48 of 67

material auction practices and procedures; and (4) not later than 6 months after the date of this Order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that A.G. Edwards has implemented procedures that are reasonably designed to prevent and detect failures by A.G. Edwards to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that A.G. Edwards is in compliance with Section IV.E. of the Order.

The Regulation E exemption is not available for the securities of a small business investment company or business development company issuer if an investment adviser or underwriter of the securities to be offered is subject to a Commission order pursuant to Section 15(b) of the Exchange Act. *See* Rule 602(c)(3) under the Securities Act. The Commission may waive the disqualification upon a showing of good cause. *See* Rule 602(e).

Based on the representations set forth in the request made by A.G. Edwards, the Commission has determined that a showing of good cause has been made pursuant to Rule 602(e) and that the request for a waiver of the disqualification should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Rule 602(e) under the Securities Act, that a waiver from the application of the disqualification provision of Rule 602(c)(3) under the Securities Act resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins
Campos & Nazareth
Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8693 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC, Respondents.	ORDER UNDER RULE 602(e) OF THE SECURITIES ACT OF 1933, GRANTING A WAIVER OF THE DISQUALIFICATION PROVISION OF RULE 602(c)(3) AS TO BANC OF AMERICA SECURITIES LLC

Banc of America Securities LLC has submitted a letter, dated April 5, 2006, for a waiver of the disqualification from the exemption under Regulation E arising from its settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the offer of settlement by Banc of America Securities, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that Banc of America Securities willfully violated Sections 17(a)(2) of the Securities Act of 1933 (the "Securities Act") by engaging in one or more violative practices in connection with certain auctions for auction rate securities.

The Order censures Banc of America Securities and requires Banc of America Securities (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $750,000 to the United States Treasury; (3) to make certain

Document 49 of 67

disclosures regarding its material auction practices and procedures; and (4) not later than 6 months after the date of this Order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that Banc of America Securities has implemented procedures that are reasonably designed to prevent and detect failures by Banc of America Securities to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that Banc of America Securities is in compliance with Section IV.E. of the Order.

The Regulation E exemption is not available for the securities of a small business investment company or business development company issuer if an investment adviser or underwriter of the securities to be offered is subject to a Commission order pursuant to Section 15(b) of the Exchange Act. *See* Rule 602(c)(3) under the Securities Act. The Commission may waive the disqualification upon a showing of good cause. *See* Rule 602(e).

Based on the representations set forth in the request made by Banc of America Securities, the Commission has determined that a showing of good cause has been made pursuant to Rule 602(e) and that the request for a waiver of the disqualification should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Rule 602(e) under the Securities Act, that a waiver from the application of the disqualification provision of Rule 602(c)(3) under the Securities Act resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins Campos & Nazareth Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8692 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of

BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,

Respondents.

ORDER UNDER RULE 602(e) OF THE SECURITIES ACT OF 1933, GRANTING A WAIVER OF THE DISQUALIFICATION PROVISION OF RULE 602(c)(3) AS TO RBC DAIN RAUSCHER

RBC Dain Rauscher has submitted a letter, dated March 2, 2006, for a waiver of the disqualification from the exemption under Regulation E arising from its settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the offer of settlement by RBC Dain Rauscher, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that RBC Dain Rauscher willfully violated Sections 17(a)(2) of the Securities Act of 1933 (the "Securities Act") by engaging in one or more violative practices in connection with certain auctions for auction rate securities.

The Order censures RBC Dain Rauscher and requires RBC Dain Rauscher (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $1,500,000 to the United States Treasury; (3) to make certain

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disclosures regarding its material auction practices and procedures; and (4) not later than 6 months after the date of this Order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that RBC Dain Rauscher has implemented procedures that are reasonably designed to prevent and detect failures by RBC Dain Rauscher to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that RBC Dain Rauscher is in compliance with Section IV.E. of the Order.

The Regulation E exemption is not available for the securities of a small business investment company or business development company issuer if an investment adviser or underwriter of the securities to be offered is subject to a Commission order pursuant to Section 15(b) of the Exchange Act. *See* Rule 602(c)(3) under the Securities Act. The Commission may waive the disqualification upon a showing of good cause. *See* Rule 602(e).

Based on the representations set forth in the request made by RBC Dain Rauscher, the Commission has determined that a showing of good cause has been made pursuant to Rule 602(e) and that the request for a waiver of the disqualification should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Rule 602(e) under the Securities Act, that a waiver from the application of the disqualification provision of Rule 602(c)(3) under the Securities Act resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Atkins
Campos & Nazareth
Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8688 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of **BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,** **Respondents.**	**ORDER UNDER RULE 602(e) OF THE SECURITIES ACT OF 1933, GRANTING A WAIVER OF THE DISQUALIFICATION PROVISION OF RULE 602(c)(3) AS TO J.P. MORGAN SECURITIES, INC.**

J.P. Morgan Securities, Inc. has submitted a letter, dated April 3, 2006, for a waiver of the disqualification from the exemption under Regulation E arising from its settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the offer of settlement by J.P. Morgan Securities, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that J.P. Morgan Securities willfully violated Sections 17(a)(2) of the Securities Act of 1933 (the "Securities Act") by engaging in one or more violative practices in connection with certain auctions for auction rate securities.

The Order censures J.P. Morgan Securities and requires J.P. Morgan Securities (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $1,500,000 to the United States Treasury; (3) to make certain

Document 51 of 67

disclosures regarding its material auction practices and procedures; and (4) not later than 6 months after the date of this Order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that J.P. Morgan Securities has implemented procedures that are reasonably designed to prevent and detect failures by J.P. Morgan Securities to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that J.P. Morgan Securities is in compliance with Section IV.E. of the Order.

The Regulation E exemption is not available for the securities of a small business investment company or business development company issuer if an investment adviser or underwriter of the securities to be offered is subject to a Commission order pursuant to Section 15(b) of the Exchange Act. *See* Rule 602(c)(3) under the Securities Act. The Commission may waive the disqualification upon a showing of good cause. *See* Rule 602(e).

Based on the representations set forth in the request made by J.P. Morgan Securities, the Commission has determined that a showing of good cause has been made pursuant to Rule 602(e) and that the request for a waiver of the disqualification should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Rule 602(e) under the Securities Act, that a waiver from the application of the disqualification provision of Rule 602(c)(3) under the Securities Act resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins Campos & Nazareth Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8687 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of **BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,** **Respondents.**	**ORDER UNDER RULE 602(e) OF THE SECURITIES ACT OF 1933, GRANTING A WAIVER OF THE DISQUALIFICATION PROVISION OF RULE 602(c)(3) AS TO GOLDMAN, SACHS & CO.**

Goldman, Sachs & Co. has submitted a letter, dated March 14, 2006, for a waiver of the disqualification from the exemption under Regulation E arising from its settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the offer of settlement by Goldman Sachs, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that Goldman Sachs willfully violated Sections 17(a)(2) of the Securities Act of 1933 (the "Securities Act") by engaging in one or more violative practices in connection with certain auctions for auction rate securities.

The Order censures Goldman Sachs and requires Goldman Sachs (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $1,500,000 to the United States Treasury; (3) to make certain disclosures regarding its

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material auction practices and procedures; and (4) not later than 6 months after the date of this Order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that Goldman Sachs has implemented procedures that are reasonably designed to prevent and detect failures by Goldman Sachs to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that Goldman Sachs is in compliance with Section IV.E. of the Order.

The Regulation E exemption is not available for the securities of a small business investment company or business development company issuer if any of its principal security holders, any investment adviser or underwriter of the securities to be offered, or any partner of such investment adviser or underwriter is subject to a Commission order pursuant to Section 15(b) of the Exchange Act. *See* Rule 602(c)(3) under the Securities Act. The Commission may waive the disqualification upon a showing of good cause. *See* Rule 602(e).

Based on the representations set forth in the request made by Goldman Sachs, the Commission has determined that a showing of good cause has been made pursuant to Rule 602(e) and that the request for a waiver of the disqualification should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Rule 602(e) under the Securities Act, that a waiver from the application of the disqualification provision of Rule 602(c)(3) under the Securities Act resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins Campos & Nazareth Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8686 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of

BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,

Respondents.

ORDER UNDER RULE 602(e) OF THE SECURITIES ACT OF 1933, GRANTING A WAIVER OF THE DISQUALIFICATION PROVISION OF RULE 602(c)(3) AS TO CITIGROUP GLOBAL MARKETS, INC.

Citigroup Global Markets, Inc. has submitted a letter, dated March 9, 2006, for a waiver of the disqualification from the exemption under Regulation E arising from its settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the offer of settlement by Citigroup Global Markets, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that Citigroup Global Markets willfully violated Sections 17(a)(2) of the Securities Act of 1933 (the "Securities Act") by engaging in one or more violative practices in connection with certain auctions for auction rate securities.

The Order censures Citigroup Global Markets and requires Citigroup Global Markets (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $1,500,000 to the United States Treasury; (3) to make certain

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disclosures regarding its material auction practices and procedures; and (4) not later than 6 months after the date of this Order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that Citigroup Global Markets has implemented procedures that are reasonably designed to prevent and detect failures by Citigroup Global Markets to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that Citigroup Global Markets is in compliance with Section IV.E. of the Order.

The Regulation E exemption is not available for the securities of a small business investment company or business development company issuer if an investment adviser or underwriter of the securities to be offered is subject to a Commission order pursuant to Section 15(b) of the Exchange Act. *See* Rule 602(c)(3) under the Securities Act. The Commission may waive the disqualification upon a showing of good cause. *See* Rule 602(e).

Based on the representations set forth in the request made by Citigroup Global Markets, the Commission has determined that a showing of good cause has been made pursuant to Rule 602(e) and that the request for a waiver of the disqualification should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Rule 602(e) under the Securities Act, that a waiver from the application of the disqualification provision of Rule 602(c)(3) under the Securities Act resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins Campos & Nazareth Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8711 / May 31, 2006

SECURITIES EXCHANGE ACT OF 1934
Release No. 53902 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of

BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,

Respondents.

ORDER UNDER SECTION 27(A)(b) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b) OF THE SECURITIES EXCHANGE ACT OF 1934, GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF SECTION 27A(b)(1)(A)(ii) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b)(1)(A)(ii) OF THE SECURITIES EXCHANGE ACT OF 1934 AS TO SUNTRUST CAPITAL MARKETS INC. AND SUNTRUST BANKS, INC.

SunTrust Capital Markets Inc. and its parent, SunTrust Banks, Inc., have submitted a letter, dated March 30, 2006, for a waiver of the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act of 1933 ("Securities Act") and Section 21E(b)(1)(A)(ii) of the Securities Exchange Act of 1934 ("Exchange Act") arising from Sun Trust Capital Markets' settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the Offer of Settlement by SunTrust Capital Markets, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that SunTrust Capital Markets willfully violated Section 17(a)(2) of the Securities Act.

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The Order censures SunTrust Capital Markets and requires SunTrust Capital Markets (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $125,000 to the United States Treasury; (3) to make certain disclosures regarding its material auction practices and procedures ; and (4) not later than 6 months after the date of this order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that SunTrust Capital Markets has implemented procedures that are reasonably designed to prevent and detect failures by SunTrust Capital Markets to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that SunTrust Capital Markets is in compliance with Section IV.E. of the Order.

The safe harbor provisions of Section 27A(c) of the Securities Act and Section 21E(c) of the Exchange Act are not available for any forward looking statement that is "made with respect to the business or operations of an issuer, if the issuer . . . during the 3-year period preceding the date on which the statement was first made . . . has been made the subject of an . . . administrative decree or order arising out of a governmental action that (I) prohibits future violations of the antifraud provisions of the federal securities laws; (II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws; or (III) determines that the issuer violated the antifraud provisions of the securities laws[.]" Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act. The disqualifications may be waived "to the extent otherwise specifically provided by rule, regulation, or order of the Commission." Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act.

Based on the representations set forth in SunTrust Capital Markets and SunTrust Banks' letter, the Commission has determined that, under the circumstances, the request for a waiver of the disqualifications resulting from the entry of the Order is appropriate and should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Section 27A(b) of the Securities Act and Section 27E(b) of the Exchange Act, that a waiver from the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act as to SunTrust Capital Markets and SunTrust Bank resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins Campos & Nazareth Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8685 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of **BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,** **Respondents.**	**ORDER UNDER RULE 602(e) OF THE SECURITIES ACT OF 1933, GRANTING A WAIVER OF THE DISQUALIFICATION PROVISION OF RULE 602(c)(3) AS TO BEAR, STEARNS & CO. INC.**

Bear, Stearns & Co. Inc. has submitted a letter, dated March 7, 2006, for a waiver of the disqualification from the exemption under Regulation E arising from its settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the offer of settlement by Bear Stearns, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that Bear Stearns willfully violated Sections 17(a)(2) of the Securities Act of 1933 (the "Securities Act") by engaging in one or more violative practices in connection with certain auctions for auction rate securities.

The Order censures Bear Stearns and requires Bear Stearns (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $1,500,000 to the United States Treasury; (3) to make certain disclosures regarding its material auction practices and procedures; and (4) not later than 6 months after the date of this

Document 55 of 67

Order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that has implemented procedures that are reasonably designed to prevent and detect failures by Bear Stearns to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that Bear Stearns is in compliance with Section IV.E. of the Order.

The Regulation E exemption is not available for the securities of a small business investment company or business development company issuer if an investment adviser or underwriter of the securities to be offered is subject to a Commission order pursuant to Section 15(b) of the Exchange Act. *See* Rule 602(c)(3) under the Securities Act. The Commission may waive the disqualification upon a showing of good cause. *See* Rule 602(e).

Based on the representations set forth in the request made by Bear Stearns, the Commission has determined that a showing of good cause has been made pursuant to Rule 602(e) and that the request for a waiver of the disqualification should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Rule 602(e) under the Securities Act, that a waiver from the application of the disqualification provision of Rule 602(c)(3) under the Securities Act resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins Campos + Nazareth Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8704 / May 31, 2006

SECURITIES EXCHANGE ACT OF 1934
Release No. 53895 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of

BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,

Respondents.

ORDER UNDER SECTION 27(A)(b) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b) OF THE SECURITIES EXCHANGE ACT OF 1934, GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF SECTION 27A(b)(1)(A)(ii) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b)(1)(A)(ii) OF THE SECURITIES EXCHANGE ACT OF 1934 AS TO MORGAN STANLEY AND ITS SUBSIDIARIES AND COLLECTIVE AFFILIATES

Morgan Stanley and its subsidiaries and collective affiliates submitted a letter, dated April 5, 2006, for a waiver of the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act of 1933 ("Securities Act") and Section 21E(b)(1)(A)(ii) of the Securities Exchange Act of 1934 ("Exchange Act") arising from Morgan Stanley & Co. Incorporated and Morgan Stanley DW Inc.'s (the "Morgan Stanley Broker-Dealers") settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the Offer of Settlement by the Morgan-Stanley Broker-Dealers, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the

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Order, the Commission found that the Morgan-Stanley Broker-Dealers willfully violated Section 17(a)(2) of the Securities Act.

The Order censures the Morgan-Stanley Broker-Dealers and requires the Morgan-Stanley Broker-Dealers (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $1,500,000 to the United States Treasury; (3) to make certain disclosures regarding its material auction practices and procedures ; and (4) not later than 6 months after the date of this order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that the Morgan-Stanley Broker-Dealers have implemented procedures that are reasonably designed to prevent and detect failures by the Morgan-Stanley Broker-Dealers to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that the Morgan-Stanley Broker-Dealers are in compliance with Section IV.E. of the Order.

The safe harbor provisions of Section 27A(c) of the Securities Act and Section 21E(c) of the Exchange Act are not available for any forward looking statement that is "made with respect to the business or operations of an issuer, if the issuer . . . during the 3-year period preceding the date on which the statement was first made . . . has been made the subject of an . . . administrative decree or order arising out of a governmental action that (I) prohibits future violations of the antifraud provisions of the federal securities laws; (II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws; or (III) determines that the issuer violated the antifraud provisions of the securities laws[.]" Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act. The disqualifications may be waived "to the extent otherwise specifically provided by rule, regulation, or order of the Commission." Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act.

Based on the representations set forth in Morgan Stanley's letter, the Commission has determined that, under the circumstances, the request for a waiver of the disqualifications resulting from the entry of the Order is appropriate and should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Section 27A(b) of the Securities Act and Section 27E(b) of the Exchange Act, that a waiver from the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act as to Morgan Stanley and its subsidiaries and collective affiliates resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins
Campos Nazareth
Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8703 / May 31, 2006

SECURITIES EXCHANGE ACT OF 1934
Release No. 53894 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of **BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,** **Respondents.**	**ORDER UNDER SECTION 27(A)(b) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b) OF THE SECURITIES EXCHANGE ACT OF 1934, GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF SECTION 27A(b)(1)(A)(ii) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b)(1)(A)(ii) OF THE SECURITIES EXCHANGE ACT OF 1934 AS TO MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED AND MERRILL LYNCH, PIERCE, FENNER & SMITH & CO., INCORPORATED**

Merrill Lynch, Pierce, Fenner & Smith & Co., Incorporated ("ML & Co.") and its affiliate, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S"), have submitted a letter, dated February 28, 2006, for a waiver of the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act of 1933 ("Securities Act") and Section 21E(b)(1)(A)(ii) of the Securities Exchange Act of 1934 ("Exchange Act") arising from ML & Co.'s settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the Offer of Settlement by ML & Co., the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that ML & Co. willfully violated Section 17(a)(2) of the Securities Act.

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The Order censures ML & Co. and requires ML & Co. (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $1,500,000 to the United States Treasury; (3) to make certain disclosures regarding its material auction practices and procedures ; and (4) not later than 6 months after the date of this order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that ML & Co. has implemented procedures that are reasonably designed to prevent and detect failures by ML & Co. to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that ML & Co. is in compliance with Section IV.E. of the Order.

The safe harbor provisions of Section 27A(c) of the Securities Act and Section 21E(c) of the Exchange Act are not available for any forward looking statement that is "made with respect to the business or operations of an issuer, if the issuer . . . during the 3-year period preceding the date on which the statement was first made . . . has been made the subject of an . . . administrative decree or order arising out of a governmental action that (I) prohibits future violations of the antifraud provisions of the federal securities laws; (II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws; or (III) determines that the issuer violated the antifraud provisions of the securities laws[.]" Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act. The disqualifications may be waived "to the extent otherwise specifically provided by rule, regulation, or order of the Commission." Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act.

Based on the representations set forth in ML & Co. and MLPF&S' letter, the Commission has determined that, under the circumstances, the request for a waiver of the disqualifications resulting from the entry of the Order is appropriate and should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Section 27A(b) of the Securities Act and Section 27E(b) of the Exchange Act, that a waiver from the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act as to ML & Co. and MLPF&S resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins
Campos & Nazareth
Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8702 / May 31, 2006

SECURITIES EXCHANGE ACT OF 1934
Release No. 53893 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of

BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,

Respondents.

ORDER UNDER SECTION 27(A)(b) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b) OF THE SECURITIES EXCHANGE ACT OF 1934, GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF SECTION 27A(b)(1)(A)(ii) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b)(1)(A)(ii) OF THE SECURITIES EXCHANGE ACT OF 1934 AS TO LEHMAN BROTHERS INC., LEHMAN BROTHERS HOLDINGS INC., AND THEIR AFFILIATES

Lehman Brothers Holdings Inc. ("LBHI") and Lehman Brothers Inc. ("LBI") have submitted a letter on behalf of the entities and their affiliates, dated April 4, 2006, for a waiver of the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act of 1933 ("Securities Act") and Section 21E(b)(1)(A)(ii) of the Securities Exchange Act of 1934 ("Exchange Act") arising from LBI's settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the Offer of Settlement by LBI, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that LBI willfully violated Section 17(a)(2) of the Securities Act.

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The Order censures LBI and requires LBI (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $1,500,000 to the United States Treasury; (3) to make certain disclosures regarding its material auction practices and procedures ; and (4) not later than 6 months after the date of this order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that LBI has implemented procedures that are reasonably designed to prevent and detect failures by LBI to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that LBI is in compliance with Section IV.E. of the Order.

The safe harbor provisions of Section 27A(c) of the Securities Act and Section 21E(c) of the Exchange Act are not available for any forward looking statement that is "made with respect to the business or operations of an issuer, if the issuer . . . during the 3-year period preceding the date on which the statement was first made . . . has been made the subject of an . . . administrative decree or order arising out of a governmental action that (I) prohibits future violations of the antifraud provisions of the federal securities laws; (II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws; or (III) determines that the issuer violated the antifraud provisions of the securities laws[.]" Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act. The disqualifications may be waived "to the extent otherwise specifically provided by rule, regulation, or order of the Commission." Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act.

Based on the representations set forth in LBHI and LBI's letter, the Commission has determined that, under the circumstances, the request for a waiver of the disqualifications resulting from the entry of the Order is appropriate and should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Section 27A(b) of the Securities Act and Section 27E(b) of the Exchange Act, that a waiver from the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act as to LBHI, LBI, and their affiliates resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins Campos & Nazareth Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8701 / May 31, 2006

SECURITIES EXCHANGE ACT OF 1934
Release No. 53892 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of

BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,

Respondents.

ORDER UNDER SECTION 27(A)(b) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b) OF THE SECURITIES EXCHANGE ACT OF 1934, GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF SECTION 27A(b)(1)(A)(ii) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b)(1)(A)(ii) OF THE SECURITIES EXCHANGE ACT OF 1934 AS TO J.P. MORGAN SECURITIES, INC. AND ITS AFFILIATES

J.P. Morgan Securities, Inc. has submitted a letter on behalf of itself and its affiliates, dated April 3, 2006, for a waiver of the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act of 1933 ("Securities Act") and Section 21E(b)(1)(A)(ii) of the Securities Exchange Act of 1934 ("Exchange Act") arising from its settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the Offer of Settlement by J.P. Morgan Securities, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that J.P. Morgan Securities willfully violated Section 17(a)(2) of the Securities Act.

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The Order censures J.P. Morgan Securities and requires J.P. Morgan Securities (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $1,500,000 to the United States Treasury; (3) to make certain disclosures regarding its material auction practices and procedures ; and (4) not later than 6 months after the date of this order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that J.P. Morgan Securities has implemented procedures that are reasonably designed to prevent and detect failures by J.P. Morgan Securities to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that J.P. Morgan Securities is in compliance with Section IV.E. of the Order.

The safe harbor provisions of Section 27A(c) of the Securities Act and Section 21E(c) of the Exchange Act are not available for any forward looking statement that is "made with respect to the business or operations of an issuer, if the issuer . . . during the 3-year period preceding the date on which the statement was first made . . . has been made the subject of an . . . administrative decree or order arising out of a governmental action that (I) prohibits future violations of the antifraud provisions of the federal securities laws; (II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws; or (III) determines that the issuer violated the antifraud provisions of the securities laws[.]" Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act. The disqualifications may be waived "to the extent otherwise specifically provided by rule, regulation, or order of the Commission." Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act.

Based on the representations set forth in J.P. Morgan Securities' letter, the Commission has determined that, under the circumstances, the request for a waiver of the disqualifications resulting from the entry of the Order is appropriate and should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Section 27A(b) of the Securities Act and Section 27E(b) of the Exchange Act, that a waiver from the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act as to J.P. Morgan Securities and its affiliates resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins Campos & Nazareth Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8700 / May 31, 2006

SECURITIES EXCHANGE ACT OF 1934
Release No. 53891 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of

BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,

Respondents.

ORDER UNDER SECTION 27(A)(b) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b) OF THE SECURITIES EXCHANGE ACT OF 1934, GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF SECTION 27A(b)(1)(A)(ii) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b)(1)(A)(ii) OF THE SECURITIES EXCHANGE ACT OF 1934 AS TO GOLDMAN, SACHS & CO. AND ITS AFFILIATES

Goldman, Sachs & Co. has submitted a letter on behalf of itself, its affiliates, and other offering participants, dated January 10, 2006, for a waiver of the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act of 1933 ("Securities Act") and Section 21E(b)(1)(A)(ii) of the Securities Exchange Act of 1934 ("Exchange Act") arising from its settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the Offer of Settlement by Goldman Sachs, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that Goldman Sachs willfully violated Section 17(a)(2) of the Securities Act.

Document 60 of 67

The Order censures Goldman Sachs and requires Goldman Sachs (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $1,500,000 to the United States Treasury; (3) to make certain disclosures regarding its material auction practices and procedures ; and (4) not later than 6 months after the date of this order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that Goldman Sachs has implemented procedures that are reasonably designed to prevent and detect failures by Goldman Sachs to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that Goldman Sachs is in compliance with Section IV.E. of the Order.

The safe harbor provisions of Section 27A(c) of the Securities Act and Section 21E(c) of the Exchange Act are not available for any forward looking statement that is "made with respect to the business or operations of an issuer, if the issuer . . . during the 3-year period preceding the date on which the statement was first made . . . has been made the subject of an . . . administrative decree or order arising out of a governmental action that (I) prohibits future violations of the antifraud provisions of the federal securities laws; (II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws; or (III) determines that the issuer violated the antifraud provisions of the securities laws[.]" Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act. The disqualifications may be waived "to the extent otherwise specifically provided by rule, regulation, or order of the Commission." Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act.

Based on the representations set forth Goldman Sachs' letter, the Commission has determined that, under the circumstances, the request for a waiver of the disqualifications resulting from the entry of the Order is appropriate and should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Section 27A(b) of the Securities Act and Section 27E(b) of the Exchange Act, that a waiver from the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act as to Goldman Sachs, its affiliates, and other offering participants resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins Campos & Nazareth Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8699 / May 31, 2006

SECURITIES EXCHANGE ACT OF 1934
Release No. 53890 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of

BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,

Respondents.

ORDER UNDER SECTION 27(A)(b) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b) OF THE SECURITIES EXCHANGE ACT OF 1934, GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF SECTION 27A(b)(1)(A)(ii) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b)(1)(A)(ii) OF THE SECURITIES EXCHANGE ACT OF 1934 AS TO CITIGROUP GLOBAL MARKETS, INC. AND ITS AFFILIATES

Citigroup Global Markets, Inc. has submitted a letter on behalf of itself and its affiliates, dated January 26, 2006, for a waiver of the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act of 1933 ("Securities Act") and Section 21E(b)(1)(A)(ii) of the Securities Exchange Act of 1934 ("Exchange Act") arising from its settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the Offer of Settlement by Citigroup Global Markets, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that Citigroup Global Markets willfully violated Section 17(a)(2) of the Securities Act.

Document 61 of 67

The Order censures Citigroup Global Markets and requires Citigroup Global Markets (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $1,500,000 to the United States Treasury; (3) to make certain disclosures regarding its material auction practices and procedures ; and (4) not later than 6 months after the date of this order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that Citigroup Global Markets has implemented procedures that are reasonably designed to prevent and detect failures by Citigroup Global Markets to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that Citigroup Global Markets is in compliance with Section IV.E. of the Order.

The safe harbor provisions of Section 27A(c) of the Securities Act and Section 21E(c) of the Exchange Act are not available for any forward looking statement that is "made with respect to the business or operations of an issuer, if the issuer . . . during the 3-year period preceding the date on which the statement was first made . . . has been made the subject of an . . . administrative decree or order arising out of a governmental action that (I) prohibits future violations of the antifraud provisions of the federal securities laws; (II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws; or (III) determines that the issuer violated the antifraud provisions of the securities laws[.]" Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act. The disqualifications may be waived "to the extent otherwise specifically provided by rule, regulation, or order of the Commission." Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act.

Based on the representations set forth in Citigroup Global Markets' letter, the Commission has determined that, under the circumstances, the request for a waiver of the disqualifications resulting from the entry of the Order is appropriate and should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Section 27A(b) of the Securities Act and Section 27E(b) of the Exchange Act, that a waiver from the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act as to Citigroup Global Markets and its affiliates resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins Campos & Nazareth Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8698 / May 31, 2006

SECURITIES EXCHANGE ACT OF 1934
Release No. 53889 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of

BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,

Respondents.

ORDER UNDER SECTION 27(A)(b) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b) OF THE SECURITIES EXCHANGE ACT OF 1934, GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF SECTION 27A(b)(1)(A)(ii) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b)(1)(A)(ii) OF THE SECURITIES EXCHANGE ACT OF 1934 AS TO BEAR, STEARNS & CO. INC. AND ITS AFFILIATES

Bear, Stearns & Co., Inc. has submitted a letter on behalf of itself and its affiliates, dated March 7, 2006, for a waiver of the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act of 1933 ("Securities Act") and Section 21E(b)(1)(A)(ii) of the Securities Exchange Act of 1934 ("Exchange Act") arising from its settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the Offer of Settlement by Bear Stearns, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b)(4) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that Bear Stearns willfully violated Section 17(a)(2) of the Securities Act.

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The Order censures Bear Stearns and requires Bear Stearns (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $1,500,000 to the United States Treasury; (3) to make certain disclosures regarding its material auction practices and procedures ; and (4) not later than 6 months after the date of this order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that Bear Stearns has implemented procedures that are reasonably designed to prevent and detect failures by Bear Stearns to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that the Respondent is in compliance with Section IV.E. of the Order.

The safe harbor provisions of Section 27A(c) of the Securities Act and Section 21E(c) of the Exchange Act are not available for any forward looking statement that is "made with respect to the business or operations of an issuer, if the issuer . . . during the 3-year period preceding the date on which the statement was first made . . . has been made the subject of an . . . administrative decree or order arising out of a governmental action that (I) prohibits future violations of the antifraud provisions of the federal securities laws; (II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws; or (III) determines that the issuer violated the antifraud provisions of the securities laws[.]" Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act. The disqualifications may be waived "to the extent otherwise specifically provided by rule, regulation, or order of the Commission." Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act.

Based on the representations set forth in Bear Stearns' letter, the Commission has determined that, under the circumstances, the request for a waiver of the disqualifications resulting from the entry of the Order is appropriate and should be granted.

Accordingly, IT IS ORDERED, pursuant to Section 27A(b) of the Securities Act and Section 27E(b) of the Exchange Act, that a waiver from the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act as to Bear Stearns and its affiliates resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins Campos & Nazareth Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8708 / May 31, 2006

SECURITIES EXCHANGE ACT OF 1934
Release No. 53899 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of

BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,

Respondents.

ORDER UNDER SECTION 27(A)(b) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b) OF THE SECURITIES EXCHANGE ACT OF 1934, GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF SECTION 27A(b)(1)(A)(ii) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b)(1)(A)(ii) OF THE SECURITIES EXCHANGE ACT OF 1934 AS TO MORGAN KEEGAN & COMPANY, INC. AND ITS AFFILIATES

Morgan Keegan & Company, Inc. has submitted a letter on behalf of itself and its affiliates, dated April 4, 2006, for a waiver of the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act of 1933 ("Securities Act") and Section 21E(b)(1)(A)(ii) of the Securities Exchange Act of 1934 ("Exchange Act") arising from its settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the Offer of Settlement by Morgan Keegan, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that Morgan Keegan willfully violated Section 17(a)(2) of the Securities Act.

Document 63 of 67

The Order censures Morgan Keegan and requires Morgan Keegan (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $125,000 to the United States Treasury; (3) to make certain disclosures regarding its material auction practices and procedures ; and (4) not later than 6 months after the date of this order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that Morgan Keegan has implemented procedures that are reasonably designed to prevent and detect failures by Morgan Keegan to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that Morgan Keegan is in compliance with Section IV.E. of the Order.

The safe harbor provisions of Section 27A(c) of the Securities Act and Section 21E(c) of the Exchange Act are not available for any forward looking statement that is "made with respect to the business or operations of an issuer, if the issuer . . . during the 3-year period preceding the date on which the statement was first made . . . has been made the subject of an . . . administrative decree or order arising out of a governmental action that (I) prohibits future violations of the antifraud provisions of the federal securities laws; (II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws; or (III) determines that the issuer violated the antifraud provisions of the securities laws[.]" Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act. The disqualifications may be waived "to the extent otherwise specifically provided by rule, regulation, or order of the Commission." Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act.

Based on the representations set forth in Morgan Keegan's letter, the Commission has determined that, under the circumstances, the request for a waiver of the disqualifications resulting from the entry of the Order is appropriate and should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Section 27A(b) of the Securities Act and Section 27E(b) of the Exchange Act, that a waiver from the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act as to Morgan Keegan and its affiliates resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins
Campos & Nazareth
Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8709 / May 31, 2006

SECURITIES EXCHANGE ACT OF 1934
Release No. 53900 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of

BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,

Respondents.

ORDER UNDER SECTION 27(A)(b) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b) OF THE SECURITIES EXCHANGE ACT OF 1934, GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF SECTION 27A(b)(1)(A)(ii) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b)(1)(A)(ii) OF THE SECURITIES EXCHANGE ACT OF 1934 AS TO PIPER JAFFRAY & CO. AND ITS AFFILIATES

Piper Jaffray & Co. has submitted a letter on behalf of itself and its affiliates, dated February 14, 2006, for a waiver of the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act of 1933 ("Securities Act") and Section 21E(b)(1)(A)(ii) of the Securities Exchange Act of 1934 ("Exchange Act") arising from its settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the Offer of Settlement by Piper Jaffray, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that Piper Jaffray willfully violated Section 17(a)(2) of the Securities Act.

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The Order censures Piper Jaffray and requires Piper Jaffray (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $125,000 to the United States Treasury; (3) to make certain disclosures regarding its material auction practices and procedures ; and (4) not later than 6 months after the date of this order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that Piper Jaffray has implemented procedures that are reasonably designed to prevent and detect failures by Piper Jaffray to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that Piper Jaffray is in compliance with Section IV.E. of the Order.

The safe harbor provisions of Section 27A(c) of the Securities Act and Section 21E(c) of the Exchange Act are not available for any forward looking statement that is "made with respect to the business or operations of an issuer, if the issuer . . . during the 3-year period preceding the date on which the statement was first made . . . has been made the subject of an . . . administrative decree or order arising out of a governmental action that (I) prohibits future violations of the antifraud provisions of the federal securities laws; (II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws; or (III) determines that the issuer violated the antifraud provisions of the securities laws[.]" Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act. The disqualifications may be waived "to the extent otherwise specifically provided by rule, regulation, or order of the Commission." Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act.

Based on the representations set forth in Piper Jaffray's letter, the Commission has determined that, under the circumstances, the request for a waiver of the disqualifications resulting from the entry of the Order is appropriate and should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Section 27A(b) of the Securities Act and Section 27E(b) of the Exchange Act, that a waiver from the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act as to Piper Jaffray and its affiliates resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins Campos & Nazareth Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8710 / May 31, 2006

SECURITIES EXCHANGE ACT OF 1934
Release No. 53901 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of

BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,

Respondents.

ORDER UNDER SECTION 27(A)(b) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b) OF THE SECURITIES EXCHANGE ACT OF 1934, GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF SECTION 27A(b)(1)(A)(ii) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b)(1)(A)(ii) OF THE SECURITIES EXCHANGE ACT OF 1934 AS TO WACHOVIA CAPITAL MARKETS, LLC AND ITS AFFILIATES

Wachovia Capital Markets, LLC and its affiliates submitted a letter, dated March 3, 2006, for a waiver of the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act of 1933 ("Securities Act") and Section 21E(b)(1)(A)(ii) of the Securities Exchange Act of 1934 ("Exchange Act") arising from Wachovia Capital Markets' settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the Offer of Settlement by Wachovia Capital Markets, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that Wachovia Capital Markets willfully violated Section 17(a)(2) of the Securities Act.

Document 65 of 67

The Order censures Wachovia Capital Markets and requires Wachovia Capital Markets (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $125,000 to the United States Treasury; (3) to make certain disclosures regarding its material auction practices and procedures ; and (4) not later than 6 months after the date of this order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that Wachovia Capital Markets has implemented procedures that are reasonably designed to prevent and detect failures by Wachovia Capital Markets to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that Wachovia Capital Markets is in compliance with Section IV.E. of the Order.

The safe harbor provisions of Section 27A(c) of the Securities Act and Section 21E(c) of the Exchange Act are not available for any forward looking statement that is "made with respect to the business or operations of an issuer, if the issuer . . . during the 3-year period preceding the date on which the statement was first made . . . has been made the subject of an . . . administrative decree or order arising out of a governmental action that (I) prohibits future violations of the antifraud provisions of the federal securities laws; (II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws; or (III) determines that the issuer violated the antifraud provisions of the securities laws[.]" Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act. The disqualifications may be waived "to the extent otherwise specifically provided by rule, regulation, or order of the Commission." Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act.

Based on the representations set forth in Wachovia Capital Markets' letter, the Commission has determined that, under the circumstances, the request for a waiver of the disqualifications resulting from the entry of the Order is appropriate and should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Section 27A(b) of the Securities Act and Section 27E(b) of the Exchange Act, that a waiver from the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act as to Wachovia Capital Markets and its affiliates resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Atkins Campos & Nazareth Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8689 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of **BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,** **Respondents.**	**ORDER UNDER RULE 602(e) OF THE SECURITIES ACT OF 1933, GRANTING A WAIVER OF THE DISQUALIFICATION PROVISION OF RULE 602(c)(3) AS TO LEHMAN BROTHERS INC.**

Lehman Brothers Inc. has submitted a letter, dated April 4, 2006, for a waiver of the disqualification from the exemption under Regulation E arising from its settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the offer of settlement by Lehman Brothers, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the "Order"). Under the Order, the Commission found that Lehman Brothers willfully violated Sections 17(a)(2) of the Securities Act of 1933 (the "Securities Act").

The Order censures Lehman Brothers and requires Lehman Brothers (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $1,500,000 to the United States Treasury; (3) to make certain disclosures regarding its material auction practices and procedures; and (4) not later than 6 months after the

Document 66 of 67

date of this Order, unless otherwise extended by the staff of the Commission for good cause shown, have its chief executive officer or general counsel certify in writing to the staff of the Commission that Lehman Brothers has implemented procedures that are reasonably designed to prevent and detect failures by Lehman Brothers to conduct the auction process in accordance with the auction procedures disclosed in the disclosure documents and any supplemental disclosures and that Lehman Brothers is in compliance with Section IV.E. of the Order.

The Regulation E exemption is not available for the securities of a small business investment company or business development company issuer if an investment adviser or underwriter of the securities to be offered is subject to a Commission order pursuant to Section 15(b) of the Exchange Act. *See* Rule 602(c)(3) under the Securities Act. The Commission may waive the disqualification upon a showing of good cause. *See* Rule 602(e).

Based on the representations set forth in the request made by Lehman Brothers, the Commission has determined that a showing of good cause has been made pursuant to Rule 602(e) and that the request for a waiver of the disqualification should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Rule 602(e) under the Securities Act, that a waiver from the application of the disqualification provision of Rule 602(c)(3) under the Securities Act resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 53907 / May 31, 2006

Admin. Proc. File No. 3-11894

In the Matter of
GATEWAY INTERNATIONAL HOLDINGS, INC.
and
LAWRENCE A. CONSALVI

OPINION OF THE COMMISSION

SECTION 12(j) PROCEEDING
CEASE-AND-DESIST PROCEEDING

Grounds for Remedial Action

Failure to comply with filing requirements

Causing violations of filing requirements

Company admitted being in noncompliance with filing requirements of Section 13(a) of the Securities Exchange Act of 1934 and Exchange Act Rules 13a-1 and 13a-13 by failing to file a total of seven annual and quarterly reports. It filed only two of the required notices of its inability to make timely filings. Reports filed after institution of proceedings did not cure ongoing deficiencies. Held, it is necessary and appropriate for protection of investors to revoke registration of company's common stock and to order company's president and chief executive officer to cease and desist from causing any violations or future violations of Exchange Act Section 13(a) and Exchange Act Rules 13a-1 and 13a-13.

APPEARANCES:

C. William Kircher, Jr., for Gateway International Holdings, Inc. and Lawrence A. Consalvi.

Robert M. Fusfeld and Julie K. Lutz, for the Division of Enforcement.

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Appeal filed: September 7, 2005
Last brief received: November 14, 2005
Oral Argument: May 22, 2006

I.

Gateway International Holdings, Inc., and its president and chief executive officer, Lawrence A. Consalvi, appeal from an administrative law judge's decision. The law judge found that Gateway violated Section 13(a) of the Securities Exchange Act of 1934 and Rules 13a-1 and 13a-13 thereunder 1/ by failing to file a total of seven annual and quarterly reports due between May 2003 and December 2004. 2/ The law judge also found that Consalvi caused Gateway's violations. The law judge revoked the registration of Gateway's common stock and ordered Consalvi to cease and desist from committing or causing any violations or future violations of Exchange Act Section 13(a) and Rules 13a-1 and 13a-13. We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal.

II.

Gateway is a Southern California-based holding company that operates through eight wholly owned subsidiaries. 3/ Gateway and its subsidiaries are principally engaged in acquiring, refurbishing, and selling pre-owned machine tools to customers in the aerospace and defense industries. Gateway's common stock is registered with the Commission under Exchange Act

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1/ Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 require issuers of securities registered with the Commission under Exchange Act Section 12 to file annual and quarterly reports. See 15 U.S.C. § 78m(a); 17 C.F.R. §§ 240.13a-1, 240.13a-13.

2/ Gateway's fiscal year ends on September 30. The order instituting proceedings ("OIP") alleged that Gateway failed to file annual reports for the fiscal years ended September 30, 2003, and September 30, 2004, and quarterly reports for the quarters ended March 31, 2003, June 30, 2003, December 31, 2003, March 31, 2004, and June 30, 2004.

3/ A wholly owned subsidiary is "a subsidiary substantially all of whose outstanding voting shares are owned by its parent and/or the parent's other wholly owned subsidiaries." 17 C.F.R. § 210.1-02(aa). Gateway's eight wholly owned subsidiaries are: Elite Machine; Eran Engineering, Inc.; All American CNC Sales, Inc.; A-Line Capital Corporation; Gledhill/Lyons, Inc., d/b/a Accurate Technology; Spacecraft Machine Products, Inc.; ESK, Inc.; and Nu-Tech Industrial Sales, Inc.

Section 12(g), 4/ and quoted in the "Pink Sheets" under the symbol "GWYI." 5/ Consalvi has been Gateway's president and chief executive officer since January 2002. He also has a significant ownership interest in the company. 6/ Consalvi admitted at the hearing that he has been responsible for ensuring that Gateway complies with its reporting requirements.

A. Gateway Ceases Filing Periodic Reports

Gateway ceased filing periodic reports after it filed its quarterly report for its first quarter ended on December 31, 2002. Consalvi testified that he knew Gateway ceased reporting after it made this filing. He explained that two subsidiaries acquired in late 2002, Bechler Cams, Inc., ("BCI") and Nelson Engineering, Inc., ("Nelson"), denied Gateway access to their books and records, beginning in January 2003. Consalvi understood that access to BCI's and Nelson's books and records was necessary in order for the auditors to prepare the company's consolidated financial statements. 7/ Consalvi testified that he was advised by counsel that, due to Gateway's inability to obtain access to BCI's and Nelson's books and records, "an audit of [the] company could not be completed, which was a prerequisite to the filing of [its] annual reports." As a result, Consalvi determined to cease reporting.

In March 2003, BCI sued Gateway in state court, alleging fraud. In June 2003, Gateway ended its auditing relationship with Squar, Milner, Reehl & Williamson, the public accounting firm that audited its Form 10-KSB for fiscal year 2002 8/ and reviewed its first quarterly report

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4/ 15 U.S.C. § 78*l*(g).

5/ The "Pink Sheets" is a quotation service for over-the-counter securities operated by Pink Sheets LLC.

6/ The record shows that Consalvi holds six million of the more than forty million issued and outstanding shares of Gateway stock.

7/ Consolidation of a company's financial statements with those of its wholly owned subsidiaries is usually required by generally accepted accounting principles. See Consolidated Financial Statements, Accounting Research Bulletin No. 51 (Accounting Principles Bd. 1959); Consolidation of All Majority-Owned Subsidiaries, Statement of Financial Accounting Standards No. 94 (Financial Accounting Standards Bd. 1987). Under Regulation S-X, "there is a presumption that consolidated statements are more meaningful than separate statements and that they are usually necessary for a fair presentation when one entity directly or indirectly has a controlling financial interest in another entity." 17 C.F.R. § 210.3A-02.

8/ Forms 10-KSB and 10-QSB are the designated annual and quarterly reports, respectively, for small business issuers. 17 C.F.R. §§ 249.308b, 249.310b. For these purposes, a small

(continued...)

for fiscal year 2003. 9/ According to the Squar Milner engagement partner, the firm "stopped work" for Gateway because it could not obtain financial information from BCI and Nelson for subsequent filings, and because Gateway owed the firm between $50,000 to $100,000.

In October 2003, the Commission's Central Regional Office notified Gateway that it intended to recommend the initiation of enforcement proceedings in connection with the company's failure to file periodic reports. Despite the threat of enforcement action, Consalvi took no action to address the company's delinquent reporting status or ensure that it stay current with its ongoing reporting obligations.

In November 2003, Gateway entered into a written agreement rescinding the BCI acquisition, and thereby settling BCI's case against it. Six months earlier, Gateway had agreed to rescind its acquisition of Nelson. The rescission agreement with BCI contained a provision obligating BCI to provide financial information to Gateway if "required" by the Commission for the purpose of preparing fiscal year 2003 reports. The rescission agreement with Nelson did not contain a similar provision. At the hearing in this proceeding, the Division of Enforcement stipulated that, prior to both rescissions, Gateway through Consalvi "made extensive good faith efforts . . . to obtain the necessary and appropriate documents" from BCI and Nelson in order for the auditors to prepare the company's delinquent reports. After the rescissions, however, Consalvi never sought to obtain those documents from either BCI or Nelson.

In November 2003, Gateway considered taking steps to terminate the registration of its stock and thereby terminate its reporting obligations. 10/ Consalvi testified that Gateway had

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8/ (...continued)
business issuer is an issuer, such as Gateway, that meets certain criteria. See, e.g., 17 C.F.R. § 228.10(a)(1) (defining a "small business issuer" as a company that: (i) has revenues of less than $25 million; (ii) is a United States or Canadian issuer; (iii) is not an investment company; and (iv) if a majority owned subsidiary, the parent company is also a small business issuer). A small business issuer is entitled to use abbreviated forms for reporting.

9/ Also in June 2003, Gateway's common stock was removed from quotation on the Over-the-Counter Bulletin Board based on the failure to file periodic reports.

10/ Consalvi testified that Gateway's counsel had recommended that the company "go[] private." A company may terminate its registration status under Exchange Act Section 12(g) by filing with the Commission a Form 15. The company must certify on the Form 15 that the number of stockholders of record is less than three hundred, or less than five hundred when its total assets have not exceeded $10 million on the last day of each of its most recent three fiscal years. See 17 C.F.R §§ 240.12g-4(a), 249.323. Upon the filing of a certification on Form 15, a company's duty to file any reports required under
(continued...)

spent in excess of $250,000 in litigation with BCI, and was "worn out . . . financially and emotionally" from the experience. He asserted that Gateway needed a "quiet period" to "concentrate on [its] businesses." Gateway, however, failed to follow the requirements to become non-reporting.

In July or August 2004, Gateway retained a financial consultant who urged that the company "get [its] filings current" in order to enhance its ability to obtain financing. Several months later, in December 2004, Gateway, which had been without auditors since June 2003, hired Kabani & Company as its auditors. 11/ Kabani began the audits needed to file Gateway's delinquent reports in February 2005. This enforcement proceeding was instituted in April 2005.

B. Gateway's June 2005 Filing

On June 16, 2005, after the institution of this proceeding, Gateway filed a Form 10-KSB ("June 2005 Filing") purporting to "cover [its] reporting requirements for [its] combined fiscal years ended September 30, 2003, and September 30, 2004, and each fiscal quarter ended within that period." The financial statements included in the June 2005 Filing reported total assets of $329,327 and liabilities of $2,251,047 for fiscal year 2003, and total assets of $3,809,024 and liabilities of $5,296,697 for fiscal year 2004. Kabani qualified the financial statements with a "scope limitation," 12/ which stated that income from operations and loss on the disposal of BCI

10/ (...continued)
Exchange Act Section 13(a) is suspended immediately, and its registration under Exchange Act Section 12(g) is terminated ninety days thereafter. See 17 C.F.R § 240.12g-4. It appears that, at all relevant times, Gateway, which has approximately seventy-four stockholders of record, was eligible to file a Form 15.

11/ Between October 2003 and March 2005, while it was out of compliance with the periodic filing requirements, Gateway acquired seven of its eight wholly owned subsidiaries, primarily in exchange for its common stock. Gateway issued in excess of sixteen million shares of stock in connection with those acquisitions.

12/ The Division of Corporation Finance's staff accountant who reviewed the June 2005 Filing testified at the hearing that "[a] scope limitation is a restriction on the scope of the audit that results [in] the auditor obtaining [in]sufficient evidential matter or lack of audit records." See R. Estes, Dictionary of Accounting (2d ed. 1988) (defining a scope limitation as a restriction imposed on an auditor's examination that prevents the auditor from formulating an opinion regarding the fair presentation of a material account in the financial statements audited).

and Nelson were not audited. 13/ Noting that, as of September 30, 2004, Gateway had an accumulated deficit of $1,536,803 and a working capital deficit of $662,038, Kabani opined that there was "substantial doubt about the [c]ompany's ability to continue as a going concern." 14/

The June 2005 Filing erroneously reported that the Commission had initiated the current proceeding to "revoke" the registration of Gateway's common stock "for a period not exceeding 12 months," citing Exchange Act Section 12(j). 15/ Consalvi stated that he believed a twelve-month revocation was the maximum sanction sought against Gateway. 16/ The June 2005 Filing also reported that Gateway had "dismissed" Squar Milner as its auditors, while Consalvi testified that the termination of Gateway's relationship with Squar Milner was the result of a "mutual understanding." 17/

13/ Kabani's audit report stated, in pertinent part: "We [Kabani & Company] were unable to audit the income from operations and loss on disposal of subsidiaries for the period from October 1, 2002 to December 31, 2002 of $161,456 and ($161,456) respectively, which are included in net income for the year ended September 30, 2003 as described in Note 13 to the financial statements; nor were we able to verify the income from operations and the loss on disposal of subsidiaries through other audit procedures."

14/ The "going concern" qualification described steps Gateway had taken to provide the necessary capital to continue operations. It stated that, on March 17, 2005, Gateway had filed a Form D, Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption, for the sale of unregistered shares of its common stock. As of July 20, 2005, the offering remained open, and Gateway claimed it had raised $775,000.

15/ Exchange Act Section 12(j) authorizes the Commission, among other things, "to suspend for a period not exceeding twelve months, or to revoke the registration of a security," if it finds, after notice and an opportunity for a hearing, that an issuer has failed to comply with any provision of the Exchange Act or the rules thereunder. 15 U.S.C. § 78*l*(j). We take official notice, pursuant to Rule of Practice 323, that Gateway corrected this erroneous statement in its Form 10-QSB filed for its quarter ended June 30, 2005. See 17 C.F.R. § 201.323 (stating that official notice may be taken of any matter in the Commission's public official records).

16/ Consalvi certified to the Commission that, "[b]ased on [his] knowledge," the June 2005 Filing was true and accurate. While Consalvi affirmed at the hearing that he had read, approved, and signed the June 2005 Filing, he nevertheless claimed that he was "not completely" familiar with it.

17/ As indicated, Squar Milner's engagement partner claimed that the firm "stopped work[ing]" for Gateway in part because of the company's failure to pay its fees.

C. Gateway is Informed of Material Deficiencies in the June 2005 Filing

Based on a "preliminary screening," the Division of Corporation Finance identified several deficiencies to be resolved before it could review the June 2005 Filing. The staff communicated those deficiencies to Gateway in a comment letter dated June 23, 2005. Among the deficiencies identified in the comment letter was Kabani's audit report. Under Regulation S-X, an issuer must file financial statements that have been independently audited. 18/ The staff considers an audit report with a scope limitation to be inconsistent with Regulation S-X because the auditor has been unable to perform all the procedures required by professional standards to support the expression of an audit opinion. 19/ Because Kabani's audit report was qualified by a scope limitation, it did not conform to the requirements of Regulations S-X. 20/

On July 8, 2005, Gateway made a written request to the Division of Corporation Finance that it be permitted to amend its financial statements for fiscal years 2003 and 2004 to include an "unqualified" audit report containing a statement that no audit of BCI and Nelson was conducted, but that due to the "immateriality" of the information, the audit report was being delivered "without qualification." Gateway represented that this "immateriality" conclusion

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18/ See Rule 2-02(b) of Regulation S-X, 17 C.F.R.§ 210.2-02(b) (requiring that auditor's report to annual financial statements state "whether the audit was made in accordance with generally accepted auditing standards . . . [and] the opinion of the accountant as to the consistency of the application of the accounting principles, or as to any changes in such principles which have a material effect on the financial statements"). Rule 2-02(b) applies to small business issuers. 17 C.F.R. § 228.310 (Note 2).

19/ See Staff Accounting Bulletin No. 103, Update of Codification of Staff Accounting Bulletins, Release No. SAB-103 (May 16, 2003), 80 SEC Docket 796, 805 (stating that "[t]he staff [of the Division of Corporation Finance] does not accept as consistent with the requirements of Rule 2-02(b) of Regulation S-X financial statements on which the auditors' opinions are qualified because of a limitation on the scope of the audit, since in these situations the auditor was unable to perform all the procedures required by professional standards to support the expression of an opinion").

20/ A second deficiency concerned Gateway's failure to file separate Form 10-QSB and 10-KSB reports for the relevant period. Gateway filed those separate reports between July 2005 and October 2005. A third deficiency concerned a Form 8-K, filed by Gateway in August 2003, in which the company omitted pre-acquisition audited financial statements for one of its subsidiaries. At the hearing, Gateway's counsel represented that Gateway "intends to address" the deficiency in the Form 8-K, but has "given priority to" resolving the audit scope limitation issue pertaining to BCI and Nelson. Certain other deficiencies identified in the comment letter were addressed by Gateway in an amended filing in June 2005.

reflected Kabani's position. 21/ At the July 20, 2005, hearing, Gateway's counsel indicated its proposal to account for the rescissions of the BCI and Nelson acquisitions "probably [was] not going to be resolved right away." We take official notice that, subsequent to the hearing, the Division of Corporation Finance stated its view as to the date on which Gateway could deem the "deconsolidation" of BCI and Nelson to have occurred, but the Division of Corporation Finance continued to take the position that "given the scope limitations in the audit report for the fiscal year ended September 30, 2003, any filings that include the financial statements and audit report for fiscal year ended September 30, 2003 would be deficient." 22/

We also take official notice that Gateway was several months late in filing its annual report for fiscal year 2005, which was due on December 29, 2005, and its quarterly report for the first quarter of 2006, which was due on February 14, 2006. At oral argument, Gateway's counsel stated that the company had not filed its quarterly report for the second quarter of 2006, which was due on May 15, 2006.

III.

Exchange Act Section 13(a) requires issuers of securities registered under Exchange Act Section 12 to file periodic and other reports with the Commission containing such information as the Commission's rules prescribe. Pursuant to Section 13(a), the Commission has promulgated Rules 13a-1 and 13a-13, which require issuers to file annual and quarterly reports. Implicit in those provisions is the requirement that the reports accurately reflect the issuer's financial condition and operating results. 23/ The financial statements included in the reports must be prepared in conformity with generally accepted accounting principles and audited by an

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21/ We take official notice that, on October 21, 2005, Gateway filed a Form 8-K reporting that it had dismissed Kabani as its auditor. The form stated, in part: "Our management disagrees with Kabani & Company, Inc. with respect to the limitation of its audit scope. It is the opinion of our Management that the income from operations that is offset by the loss on disposal is immaterial as it has no effect on our income, net worth or earnings per share."

22/ See Letter to Consalvi from Carol A. Stacey, Chief Accountant, Division of Corporation Finance, which was dated January 12, 2006, and attached to Gateway's Form 8-K filed on January 13, 2006. At oral argument, Gateway's counsel stated that Gateway cannot remove the scope limitation.

23/ See, e.g, Ponce v. SEC, 345 F.3d 722, 735 (9th Cir. 2003); SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1165 (D.C. Cir. 1978); SEC v. Kalvex Inc., 425 F. Supp. 310, 316 (S.D.N.Y. 1975); Great Sweet Grass Oils Ltd., 37 S.E.C. 683, 684 n.1 (1957), aff'd, 256 F.2d 893 (D.C. Cir. 1958).

independent accountant in accordance with generally accepted auditing standards. 24/ It is undisputed that Gateway failed to file when due two annual and five quarterly reports for fiscal years 2003 and 2004, and that, as a result, it violated Exchange Act Section 13(a) and Rules 13a-1 and 13a-13.

A. Gateway

Under Exchange Act Section 12(j), the Commission is authorized, "as it deems necessary or appropriate for the protection of investors," to revoke the registration of a security or suspend the registration of a security for a period not exceeding twelve months if it finds, after notice and an opportunity for hearing, that the issuer of the security has failed to comply with any provision of the Exchange Act or the rules thereunder. 25/ This case presents the first litigated appeal in which we must decide what sanctions are appropriate under Exchange Act Section 12(j) when an issuer has violated Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder by failing to make required filings. 26/ Our determination, in such proceedings, of what sanctions

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24/ Ponce, 345 F.3d at 735; see also United States v. Arthur Young & Co., 465 U.S. 805, 810 (1984) (observing that "[c]orporate financial statements are one of the primary sources of information available to guide the decisions of the investing public").

25/ 15 U.S.C. § 78*l*(j).

26/ 15 U.S.C. § 78m(j). While we have instituted several such proceedings in the past, these matters have either been settled, defaulted, or resolved before law judges without appeal to us. See, e.g., Suprema Specialties, Inc., Exchange Act Rel. No. 53779 (May 10, 2006), __ SEC Docket ____ (settled case); Gary Player Direct, Inc., Exchange Act Rel. No. 53648 (Apr. 14, 2006), __ SEC Docket _____ (default); St. George Metals, Inc., Initial Decision Rel. No. 298 (Sept. 29, 2005), __ SEC Docket ____ (ALJ decision), finality order, Exchange Act Rel. No. 52695 (Oct. 28, 2005), __ SEC Docket ____.

Prior to the adoption of Exchange Act Section 12(j) in 1975, our authority to terminate the registration of an issuer was pursuant to Exchange Act Section 19(a)(2). The language of that provision, while similar to Section 12(j), reflected the regulatory scheme in which any traded security had to be registered on an exchange, and the Commission's remedy was to withdraw the exchange registration rather than revoke the registration with the Commission. In cases decided under Section 19(a)(2), we considered the importance of the reporting requirements; the particular facts of the issuer's violations; the issuer's subsequent conduct and current financial condition; other facts indicating the likelihood of future compliance with reporting obligations; and the need to protect potential investors, as well as existing investors, including preserving the integrity of the public markets. See, e.g., Ambrosia Minerals, Inc. 39 S.E.C. 734, 740 (1960); Verdi Dev. Co., 38 S.E.C. 553, 558-59 (1958). Despite the difference in the regulatory context,

(continued...)

will ensure that investors will be adequately protected therefore turns on the effect on the investing public, including both current and prospective investors, of the issuer's violations, on the one hand, and the Section 12(j) sanctions, on the other hand. In making this determination, we will consider, among other things, the seriousness of the issuer's violations, the isolated or recurrent nature of the violations, the degree of culpability involved, the extent of the issuer's efforts to remedy its past violations and ensure future compliance, and the credibility of its assurances, if any, against further violations. 27/

Gateway's conduct with respect to its reporting obligations was serious, egregious, recurrent, and evidenced a high degree of culpability. Gateway, through Consalvi, knew of its reporting obligations, yet failed to file a total of seven annual and quarterly reports due between May 2003 and December 2004. 28/ Gateway also knew of the requirement that it notify the Commission of its inability to file a periodic report, yet filed only two such notices. 29/ While Gateway considered taking steps to terminate the registration of its common stock and thereby terminate its reporting obligations, it did not do so. Instead, and despite being warned of possible enforcement proceedings, Gateway chose to ignore its filing requirements until the summer of 2004, when it hired a financial consultant who, seeing potential in Gateway as a

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26/ (...continued)
the factors applied under Section 19(a)(2) provide guidance for, and are consistent with, the analysis discussed in the text.

27/ Cf. Steadman v. SEC, 603 F.2d 1126, 1139-1140 (5th Cir. 1979) (citation omitted), aff'd on other grounds, 450 U.S. 91 (1981). The standard articulated in the text, while informed by the court's discussion in Steadman, reflect the more particular considerations relevant in a proceeding where termination of an issuer's registration is a possible sanction for failures to make required filings.

28/ We find that Gateway acted with a knowing disregard for its regulatory responsibilities. While this influences our determination of the appropriate sanction, we note that a finding of scienter is not necessary to establish an issuer's liability under Exchange Act Section 13(a) and Rules 13a-1 and 13a-13. See Ponce, 345 F.3d at 737 n.10; SEC v. McNulty, 137 F.3d 732, 740-41 (2d Cir. 1998); SEC v. Wills, 472 F. Supp. 1250, 1268 (D.D.C. 1978).

29/ Under Exchange Act Rule 12b-25, issuers are required to notify the Commission of their inability to file a periodic report, along with supporting reasons, by filing a Form 12b-25 "no later than one business day after the due date" for such report. 17 C.F.R. § 240.12b-25(a); see 17 C.F.R. § 249.322 (Form 12b-25). Filing a Form 12b-25 in accordance with the rule provides an automatic extension of fifteen calendar days for filing a Form 10-K or Form 10-KSB and five calendar days for filing a Form 10-Q or Form 10-QSB. 17 C.F.R. § 240.12b- 25(b). The OIP did not charge Gateway or Consalvi with violating Rule 12b-25.

public company with securities registered with the Commission, recommended that Gateway remedy its delinquent filing status. Gateway did not hire new auditors to replace Squar Milner, which resigned in June 2003, until December 2004 (eighteen months later). It did not file annual reports for fiscal years 2003 or 2004 until June 2005. Gateway, while disregarding its filing requirements, pursued an aggressive growth strategy, acquiring seven of its eight wholly owned subsidiaries, primarily in exchange for its common stock. Instead of current, audited information, investors in Gateway were forced to rely on outdated information from 2002.

Gateway has not offered credible assurances against future violations. Gateway's first efforts at becoming compliant were in December 2004 when it hired Kabani to prepare its delinquent reports. While Gateway represents that it now has completed filing all its overdue reports for the period alleged in the OIP, it has not addressed the deficiency in the June 2005 Filing concerning the improper scope limitation, which remains outstanding.

Gateway has made insufficient efforts to ensure future compliance with the periodic reporting requirements. We take official notice that Gateway failed timely to file two of its three quarterly reports for fiscal year 2005, failed timely to file its annual report for fiscal year 2005, and failed timely to file its first quarterly report for fiscal year 2006. In addition, Gateway has not filed its second quarterly report for fiscal year 2006, which was due on May 15, 2006. 30/ It thus appears that Gateway's failure to meet its reporting obligations is not an isolated instance but a pattern of conduct beginning in early 2003 and continuing through the present time.

Gateway has not accepted responsibility for its failure to meet its reporting obligations. Gateway seeks to blame its reporting violations on BCI and Nelson, claiming that, beginning in January 2003, those subsidiaries prevented it from obtaining necessary financial information to perform the requisite audits for its annual reports. As previously stated, there is no evidence that Gateway made any efforts to obtain needed financial information from either BCI or Nelson after at least November 2003. Such failure is particularly troubling given Gateway's rescission agreement with BCI, which expressly states that BCI would provide financial information to Gateway if "required" by the Commission. 31/

30/ Although we are not finding violations based on those failures, we may consider them, and other matters that fall outside the OIP, in assessing appropriate sanctions. See, e.g., Robert Bruce Lohmann, Exchange Act Rel. No. 48092 (June 26, 2003), 80 SEC Docket 1790, 1798 n.20. At oral argument, Gateway's counsel conceded that Gateway had not filed its second quarterly report for fiscal year 2006, and therefore was not then in compliance with the Exchange Act's periodic filing requirements.

31/ Gateway claims that the BCI rescission agreement provision is "not meaningful" because it does not explicitly authorize Gateway to audit BCI's financial information. We do not accept this view in light of its total failure to seek BCI's or Nelson's cooperation after the acquisitions were rescinded.

We conclude that revocation of the registration of Gateway's securities will further the protection of investors including both current and prospective investors. Failure to file periodic reports violates a central provision of the Exchange Act. The purpose of the periodic filing requirements is to supply investors with current and accurate financial information about an issuer so that they may make sound decisions. Those requirements are "the primary tool[s] which Congress has fashioned for the protection of investors from negligent, careless, and deliberate misrepresentations in the sale of stock and securities." 32/ Proceedings initiated under Exchange Act Section 12(j) are an important remedy to address the problem of publicly traded companies that are delinquent in the filing of their Exchange Act reports, and thereby deprive investors of accurate, complete, and timely information upon which to make informed investment decisions. 33/

Gateway has shown that it fails to appreciate the seriousness of its reporting obligations. Its noncompliance with the periodic filing requirements for nearly a two-year period deprived investors of current and accurate information regarding its operations and financial condition. We conclude that a necessary and appropriate sanction for the protection of investors is revocation of the registration of Gateway's common stock. 34/

32/ SEC v. Beisinger Indus. Corp., 552 F.2d 15, 18 (1st Cir. 1977).

33/ See e-Smart Tech., Inc., Exchange Act Rel. No. 50514 (Oct. 12, 2004), 83 SEC Docket 3586, 3590-91 n.14.

34/ Gateway argues that a sanction other than revocation, such as a cease and desist order, would have been more appropriate to address the violations alleged in the OIP. See e-Smart, 83 SEC Docket at 3592 n.17 (observing that, in addition to Exchange Act Section 12(j) proceedings, the Commission may bring cease and desist proceedings under Exchange Act Section 21C, or issue an order under Exchange Act Section 15(c)(4) requiring an issuer to comply with the reporting requirements). The OIP, while seeking a cease and desist order against Consalvi under Exchange Act Section 21C, sought only the remedy of revocation or suspension against Gateway, as authorized by Exchange Act Section 12(j). Hence, a cease and desist order is not available in this proceeding with respect to Gateway. Nor do we agree with Gateway's counsel's suggestion during oral argument that, as an alternative to revocation, we suspend the registration of its stock for several months. Gateway failed to file any quarterly or annual reports for nearly two years, and only began efforts to return to compliance after proceedings were instituted. Throughout these proceedings, both before the law judge and during this appeal, Gateway has insisted that it intends to return to full compliance, yet its efforts repeatedly fall short. Under the circumstances, we believe that a suspension would be insufficient to protect investors.

We do not believe that our remand order in e-Smart Technologies, Inc. 35/ detracts from this analysis. There, a law judge had revoked the registration of e-Smart's stock for failure to make timely annual and quarterly filings. In ordering revocation, the law judge rejected as overly optimistic e-Smart's claim that it intended to bring itself into full compliance with the filing requirements and submit audited financial statements by a certain date. Shortly after the law judge issued her decision, e-Smart filed audited annual reports, as it represented that it would. We were concerned that a premise underlying the law judge's initial decision -- that e-Smart could not submit audited reports as represented -- "no longer appeared valid." 36/ We decided to remand the proceeding to enable the law judge to re-evaluate her decision in light of e-Smart's subsequent filings. We cautioned, however, that our decision was "dependent on the particular facts and circumstances involved, and should not be construed as suggesting that a determination to revoke an issuer's registration will be reconsidered simply because the issuer has returned to reporting compliance and begun to submit long overdue filings." 37/

Moreover, unlike Gateway, there is no indication that e-Smart's annual reports contained an audit report qualified by a scope limitation, in non-compliance with the requirements of Regulation S-X. 38/ E-Smart also had made extensive efforts to stay current with its reporting obligations, thus reducing the likelihood of future violations.

Gateway raises additional arguments against revocation, none of which has merit. It argues that imposing revocation will be inconsistent with the purpose of Exchange Act Section 13(a) because the reports currently available to investors are "more than sufficient" to enable them to make informed decisions about the company. Exchange Act Section 13(a) is intended to provide investors with not merely "sufficient" information, but information that is complete, timely, and accurate, which Gateway has not done. 39/ Gateway stated in its petition for review that the "proper accounting treatment" of the unaudited financial results of its "non-cooperating subsidiaries," BCI and Nelson, is a "material" issue. It also has stated that the resolution of this

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35/ Exchange Act Rel. No. 50514 (Oct. 12, 2004), 83 SEC Docket 3586.

36/ Id. at 3587.

37/ Id. at 3593 n.18.

38/ Gateway concedes that this is an "arguably material" difference between e-Smart's situation and its own.

39/ See, e.g., SC&T Int'l, Inc., 54 S.E.C. 320, 326 (1999) ("Requiring public companies to file appropriate reports ensures the maintenance of fair and honest markets in securities. Such reports provide a valuable function by disseminating information to the investing public.") (footnote omitted).

issue might impact the accuracy of information already included in the reports currently available to investors and require a revision of those reports. 40/

Gateway argues that imposing revocation will harm its non-affiliated shareholders, who have a significant equity holding in the company. 41/ The extent of any harm that may result to existing shareholders cannot be the determining factor in our analysis. Exchange Act Section 12(j) authorizes revocation as a means of protecting investors. In evaluating what is necessary or appropriate to protect investors, "regard must be had not only for existing stockholders of the issuer, but also for potential investors." 42/ We have stated, in the context of NASD listing decisions, that "we must emphasize the interests of future investors, who should be able to rely on the effective operation of listing standards, rather than the interests of existing shareholders." 43/ Similar policy considerations are applicable here. We observe, moreover, that existing shareholders may be harmed by an issuer's failure to have its financial statements audited. For example, in the absence of an audit, an existing shareholder could be forced to determine whether to sell his stock based on financial statements that give an inaccurate view of the issuer's financial situation.

Gateway argues that, unlike other respondents in proceedings initiated under Section 12(j), it is not a shell company but a substantial and profitable business. 44/ The evidence, including the going concern qualifications noted in Gateway's financial statements, raises

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40/ We take official notice of Gateway's Form 8-K, filed on January 25, 2006, suggesting that its annual report for fiscal year 2005 also might be impacted.

41/ Gateway's officers and directors own about 71% of the more than forty million issued and outstanding shares of Gateway stock. Non-affiliated shareholders thus own about 29%, or 11.7 million, of the outstanding shares. During fiscal year 2003, Gateway stock traded between $.04 and $.17 per share. During fiscal year 2004, it traded between $.05 and $.75 per share. The value of the non-affiliated shareholders' stock would have been $467,564 at $.04 per share and $9,000,000 at $.75 per share.

42/ Great Grass Oils Ltd., 37 S.E.C. at 698 (analyzing former Exchange Act Section 19(a)(2), which, as indicated above, was changed to current Exchange Act Section 12(j)); see also Verdi Dev. Co., 38 S.E.C. at 557 (same).

43/ See Outsource Int'l, Inc., Exchange Act Rel. No. 44944 (Oct. 17, 2001), 76 SEC Docket 162, 170 & n.22.

44/ Gateway points to the financial statements included in its Form 10-QSB for the quarter ended June 30, 2005. Those unaudited financial statements reflect a net income of $2,062,417 on net sales of $14,385,014 for the first nine months of 2005.

questions regarding that claim. 45/ In any event, for nearly two years, Gateway ceased filing periodic reports, depriving investors and shareholders of any information regarding the company. Furthermore, the problem remains that existing and potential investors still cannot evaluate the company's profitability for themselves because, as a result of its conduct in this case, investors do not have access to accurate, complete, and timely reports that comply with the requirements of the Exchange Act and the rules and regulations promulgated thereunder.

B. Consalvi

Exchange Act Section 21C authorizes the Commission to impose a cease-and-desist order against any person who "is, was, or would be a cause of [a] violation" of the Exchange Act, or any rule or regulation thereunder, due to an act or omission the person "knew or should have known would contribute to such a violation." In determining the appropriateness of such an order, we look to the risk of future violations and other factors, including the seriousness of the violation, the isolated or recurrent nature of the violation, whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, the respondent's state of mind, the sincerity of assurances against future violations, the respondent's recognition of the wrongfulness of the conduct, the respondent's opportunity to commit future violations, and the remedial function to be served by a cease-and-desist order in the context of other sanctions sought in the proceeding. 46/ We impose a cease-and-desist order only when we have determined that there is some risk of future violation. 47/

Causing liability under Exchange Act Section 21C requires findings that: (1) a primary violation occurred; (2) an act or omission by the respondent was a cause of the violation; and (3) the respondent knew, or should have known, that his conduct would contribute to the primary

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45/ Our observation in e-Smart about the utility of revocation under Section 12(j) against "shell companies" should not be construed as indicating that such sanction is not appropriate when the issuer is not a shell company. See e-Smart, 83 SEC Docket at 3590-91 n.14 ("[M]any publicly traded companies that fail to file on a timely basis are 'shell companies" and, as such, attractive vehicles for fraudulent stock manipulation schemes. Revocation under Section 12(j) can make such issuers less appealing to persons who would put them to fraudulent use.").

46/ KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1192 (2001), recons. denied, Exchange Act Rel. No. 44050 (Mar. 8, 2001), 74 SEC Docket 1351, pet. for review denied, 289 F.3d 109 (D.C. Cir. 2002).

47/ 54 S.E.C. at 1185. The risk of future violations required to support a cease-and-desist order is significantly less than that required for an injunction. Id. at 1191.

violation. 48/ Gateway committed primary violations of Exchange Act Section 13(a) and Rules 13a-1 and 13a-13. Consalvi, in his capacity as Gateway's president and chief executive officer, was a cause of Gateway's violations. Consalvi acknowledged he was responsible for ensuring that the company timely filed its required reports, yet failed to do so over an almost two-year period. We do not believe that Gateway's serious and recurrent reporting violations were beyond Consalvi's control. 49/ Indeed, we find that Consalvi made a conscious decision to disregard the reporting obligations Gateway had assumed in registering its stock so that he could "concentrate on [its] businesses." As indicated, Consalvi could have sought to obtain needed financial information from BCI pursuant to a specific provision in the November 2003 BCI rescission agreement, yet failed or refused to exercise Gateway's rights under that agreement. The Nelson rescission agreement did not have a similar provision, but Consalvi made no efforts to obtain Nelson's financial information after that acquisition was rescinded. Consalvi also could have sought to have Gateway file with the Commission a Form 15 to terminate Gateway's reporting obligations, yet he did not do so. We further find that Consalvi's eventual decision to attempt to return Gateway to reporting compliance was not motivated by a sense of wrongdoing,but by a belief that doing so would enhance the value of the company and his stake in it. As the law judge observed, Consalvi "took steps to bring Gateway's reports up to date, only on [its financial consultant's] advice, because of the possible revocation of its valuable registration status with the Commission."

Gateway's reporting violations are recent and have harmed existing and future investors, who have been deprived of current, accurate information regarding its operations and financial condition since 2003. Consalvi has made no assurances against future reporting violations, nor

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48/ See Robert M. Fuller, Exchange Act Rel. No. 48406 (Aug. 25, 2003), 80 SEC Docket 3539, 3545, pet. for review denied, 95 Fed. Appx. 361 (D.C. Cir. 2004). Negligence is sufficient to establish liability for causing a primary violation that does not require scienter. KPMG Peat Marwick LLP, 54 S.E.C. at 1175 & n.100.

49/ To the extent that Consalvi seeks to excuse Gateway's violations by arguing that he received poor legal advice, his argument fails. He did not offer any evidence to establish a claim of good faith reliance on advice of counsel, apart from his own vague and self-interested testimony. See Markowski v. SEC, 34 F.3d 99, 104-05 (2d Cir. 1994) (stating that a respondent must show that he made complete disclosure to counsel of the intended action; requested counsel's advice as to the legality of the intended action; received counsel's advice that the action was legal; and relied in good faith on that advice); SEC v. Goldfield Deep Mines Co., 758 F.2d 459, 467 (9th Cir. 1985) (same); see also Howard v. SEC, 376 F.3d 1136, 1147-48 (D.C. Cir. 2004) (noting if a respondent can show that he reasonably relied on advice of counsel, then his reliance may be evidence that he acted in good faith). Moreover, while Consalvi claims that company lawyers recommended that Gateway consider terminating the registration of its stock and "go[] private," neither his testimony nor any other evidence indicates that counsel recommended that such action could be achieved by ignoring the company's reporting obligations.

has he recognized the wrongful nature of his conduct. The law judge found that, despite the lack of a disciplinary record, Consalvi's "past actions and his testimony and demeanor at the hearing" raised significant concerns about the risk that he would commit future violations, 50/ given his positions as president, chief executive officer, and major shareholder of Gateway. The evidence supports those findings. Consalvi has shown a lack of appreciation of the reporting requirements and the importance to investors of having current, accurate information about an issuer. In these circumstances, a cease-and-desist order against Consalvi is warranted. 51/

An appropriate order will issue. 52/

By the Commission (Chairman COX and Commissioners GLASSMAN, ATKINS, CAMPOS and NAZARETH).

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

50/ A fact-finder's credibility determinations are entitled to considerable weight and deference. See, e.g., Alderman v. SEC, 104 F.3d 285, 288 n.4 (9th Cir. 1997).

51/ At oral argument, Gateway's counsel, in seeking to persuade the Commission not to revoke Gateway's registration, conceded the appropriateness of a cease-and-desist order against Consalvi. We note that, because Consalvi cannot directly violate Exchange Act Section 13(a) and Exchange Act Rules 13a-1 and 13a-13, see William R. Carter, 47 S.E.C. 471, 501 (1981) (stating that "respondents, as individuals, could not on the instant facts be found to have directly violated Section 13(a) or Rules 13a-11 and 12b-20 because they are not an 'issuer,' as that term is defined in Section 3(a)(8) of the Exchange Act, the only direct object of those provisions"), our order directs him to cease and desist from causing, but not committing, any violations or future violations of those provisions.

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

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 53907 / May 31, 2006

Admin. Proc. File No. 3-11894

In the Matter of

GATEWAY INTERNATIONAL HOLDINGS, INC.

and

LAWRENCE A. CONSALVI

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that the registration of all classes of the registered securities of Gateway International Holdings, Inc., be, and it hereby is, revoked pursuant to Section 12(j) of the Securities Exchange Act of 1934; and it is further

ORDERED that Lawrence A. Consalvi cease and desist from causing any violations or future violations of Section 13(a) of the Securities Exchange Act of 1934 and Rules 13a-1 and 13a-13 thereunder.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary