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July 2006

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 July 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.

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

49 Documents

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

April 7, 2006

IN THE MATTER OF KSW INDUSTRIES, INC. File No. 500-1	ORDER OF SUSPENSION OF TRADING

It appears to the Securities and Exchange Commission ("Commission") that there is a lack of current and accurate information concerning the securities of KSW Industries, Inc. ("KSW Industries") because of questions regarding the accuracy of assertions by KSW Industries in statements made to investors concerning, among other things: (1) the identity of KSW Industries' current chief executive officer and president; and (2) its business activities, including a joint venture it purportedly entered into in or about November 2005, a letter of intent it issued in or about February 2006, and negotiations it entered into in or about March 2006 to license the company's purported EM-100 process.

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 above-listed company is suspended for the period from 9:30 a.m. EDT, April 7, 2006 through 11:59 p.m. EDT, on April 21, 2006.

By the Commission.

Nancy M. Morris
Secretary

By: J. Lynn Taylor
Assistant Secretary

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Commissioner Atkins
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
April 19, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12266

In the Matter of **SHARON E. VAUGHN and DIRECTORS FINANCIAL GROUP, LTD.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTIONS 203(e) AND 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940**

I.

The Securities and Exchange Commission (the "Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Directors Financial Group, Ltd. ("DFG") pursuant to Section 203(e) of the Investment Advisers Act of 1940 (the "Advisers Act"), and against Sharon E. Vaughn pursuant to Section 15(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Section 203(f) of the Advisers Act (Vaughn and DFG referred to collectively as the "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

1. DFG is an investment adviser registered with the Commission since December 1998. DFG is an Illinois corporation organized in 1992, with its principal place of business in Lake Forest, Illinois. Vaughn is the sole owner of DFG which she operates out of her home. DFG also is the managing member of, and investment adviser to a private hedge fund, Directors Performance Fund, LLC (the "Fund").

2. Vaughn, age 63, resides in Lake Forest, Illinois. Vaughn is the President and sole owner of DFG which she runs out of an office in her home. As President of DFG, Vaughn provides investment advice and portfolio management services to high net worth individuals and manages the investments of the Fund. Vaughn also has been a registered representative with a broker-dealer, Milestone Financial Services, Inc., since May 5, 1999.

3. On March 2, 2006, the Commission filed a Complaint in the United States District Court for the Northern District of Illinois against Vaughn and DFG captioned Securities

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and Exchange Commission v. Sharon E. Vaughn and Directors Financial Group, Ltd., No. 06-C-1135.

4. The Commission's Complaint alleged, among other things, that, in the course of investing $25 million of the Fund's assets in a fraudulent "Prime Bank" scheme, DFG and Vaughn (a) made material misrepresentations to the Fund's investors regarding the Fund's trading strategy, permitted investments, and risk of loss, (b) did not properly investigate the Trading Program investment before committing the Fund's assets, (c) failed to disclose material facts to investors regarding their investments, including the nature and structure of the Fund's investment in the fraudulent scheme, and (d) produced inaccurate records to, and withheld other records from, the Commission's exam staff during the Commission's examination of DFG. Based on those allegations, the Complaint asserted that Vaughn and DFG violated Section 17(a) of the Securities Act of 1933 (the "Securities Act"), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act. It also asserted that DFG, aided and abetted by Vaughn, violated Section 204 of the Advisers Act and Rule 204-2 thereunder.

5. On March 2, 2006, the Court entered an order that, among other things, permanently enjoined Vaughn and DFG from violating Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act. The Court's March 2 order also enjoined DFG from violating, and Vaughn from aiding and abetting any violation of, Section 204 of the Advisers Act and Rule 204-2 thereunder. In a written consent, Vaughn and DFG agreed to the entry of the order of permanent injunction.

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 DFG pursuant to Section 203(e) of the Advisers Act and against Vaughn pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers 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 each 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 a Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, that Respondent may be deemed in default and the proceedings may be determined against that Respondent 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 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

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. 53801 / May 15, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12294

In the Matter of **DONNA YEAGER and ROBERT YEAGER,** **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 Donna Yeager ("D.Yeager") and Robert Yeager ("R.Yeager") (collectively "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, and the findings contained in Section 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, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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

1. D.Yeager is the president of American Enterprises, Inc. ("American Enterprises"), a broker-dealer not registered with the Commission. D.Yeager, 42 years old, is a resident of Hahnville, Louisiana.

2. R.Yeager is the sole shareholder and a director of American Enterprises, a broker-dealer not registered with the Commission. R.Yeager, 63 years old, is a resident of Hahnville, Louisiana.

3. On April 20, 2006, a final judgment was entered by consent against D.Yeager and R.Yeager, permanently enjoining them from future violations of Sections 5 and 17(a) of the Securities Act of 1933 ("Securities Act"), Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. American Enterprises, Inc., et al., Civil Action Number 06-20975-CIV-Huck/Simonton, in the United States District Court for the Southern District of Florida.

4. The Commission's complaint alleged that, since at least 1998, and in connection with the offer and sale of unregistered securities in the form of investments in various entertainment ventures, D.Yeager and R.Yeager misrepresented, among other things, the amount, risk and source of investor returns, the existence and amount of sales commissions, and otherwise engaged in a variety of conduct which operated as a fraud and deceit on investors.

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:

Pursuant to Section 15(b)(6) of the Exchange Act, that Respondents D.Yeager and R.Yeager be, and hereby are barred from association with any broker or dealer.

Any reapplication for association by the Respondents 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 Respondents, 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

By: J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

May 19, 2006

In the Matter of

China Energy Savings Technology, 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 China Energy Savings Technology, Inc. ("China Energy"), a Nevada corporation headquartered in Hong Kong.

The Commission is concerned that certain China Energy affiliates and shareholders may have unjustifiably relied upon Rule 144 of the Securities Act of 1933 ("Securities Act") in conducting an unlawful distribution of securities that failed to comply with the resale restrictions of Rule 144 of the Securities Act. The Commission is also concerned that China Energy may have unlawfully relied upon Form S-8 of the Securities Act to issue unrestricted securities.

Questions also have arisen regarding the accuracy and completeness of information contained in China Energy's public filings with the Commission concerning, among other things, statements regarding the company's shareholder base.

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 above-listed company is suspended for the period from 12:01 a.m. EDT, May 19, 2006, through 11:59 p.m. EDT, on June 2, 2006.

By the Commission.

Nancy M. Morris
Secretary

By: J. Lynn Taylor
Assistant Secretary

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

June 26, 2006

IN THE MATTER OF Rudy 45 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 Rudy 45 ("RDYF") because the company has failed to make required periodic corporate filings and/or has made inadequate or incomplete periodic corporate filings since December 2004, because of questions raised regarding the accuracy and adequacy of publicly disseminated information concerning, among other things, an acquisition announced by Rudy 45, and because of possible manipulative conduct occurring in the market for the company's stock.

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 above-listed company is suspended for the period from 9:30 a.m. EDT, on June 26, 2006 through 11:59 p.m. EDT, on July 10, 2006.

By the Commission.

Nancy M. Morris
Secretary

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Commissioner Campos
Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 54093 / July 3, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12354

In the Matter of

IRVING J. STITSKY,

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 Irving J. Stitsky ("Stitsky" 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.C. and III.E. 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

A. Respondent, 61 years old, is a resident of Bayside, New York.

B. Respondent participated in offerings of Detour Magazine, Inc., Tri-Com Technology Group, Inc., Wineco Productions, Inc. and Fidelity Capital Group Holdings, Inc. stocks, which were penny stocks.

C. On June 11, 2005, a final judgment was entered by consent against Stitsky, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Rule 102 of Regulation M, in the civil action entitled Securities and Exchange Commission v. Vincent Napolitano, et al., Civil Action Number 9:99-CV-04807, in the United States District Court for the Eastern District of New York. Stitsky was also ordered to disgorge $441,583.48 together with prejudgment interest in the amount $172,953.43 and to pay a civil penalty of $110,000.

D. The Commission's complaint alleged that, beginning in 1997, Stitsky profited from the sale of large blocks of microcap stock in a pump and dump scheme. Stitsky received large blocks of microcap stock from issuers as compensation for promoting those stocks in an Internet based newsletter. Stitstky sold the stocks he promoted while recommending newsletter subscribers purchase the stock. Through this conduct, the complaint alleged, Stitsky violated the antifraud provisions of the Securities Act and the Exchange Act.

E. On February 26, 2002, Stitsky pled guilty to one count of conspiracy to commit securities fraud in violation of Title 18 United States Code, Section 371 before the United States District Court for the Eastern District of New York, in United States v. Irving J. Stitsky , Crim. Information No. CR 99-755. A judgment in the criminal case was entered against Stitsky. He was sentenced to a prison term of 33 months followed by three years of supervised release.

F. The count of the criminal information to which Stitsky pled guilty alleged, inter alia, that Stitsky conspired to defraud investors and obtained money and property by means of materially false and misleading statements in connection with the purchase or sale of securities. The facts underlying Respondent's criminal conviction are the same as those alleged in the Commission's complaint.

IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act, 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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

July 5, 2006

IN THE MATTER OF	:	
	:	
ADZONE RESEARCH, INC.	:	ORDER OF SUSPENSION OF TRADING
	:	
File No. 500-1	:	
	:	

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of AdZone Research, Inc. ("AdZone"), a Delaware corporation headquartered in Calverton, New York. Questions have arisen regarding the accuracy of assertions by AdZone, and by others, in press releases and internet postings to investors concerning, among other things: (1) the company's contracts with two non-profit organizations, (2) the nature and extent of the orders that the company has received for the sale of licenses of its software products, and (3) the company's recent contributions to its employee Incentive Stock Plan.

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 above-listed company is suspended for the period from 9:30 a.m. EDT, July 5, 2006, through 11:59 p.m. EDT, on July 18, 2006.

By the Commission.

Nancy M. Morris
Secretary

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

Administrative Proceeding
File No. 3-12355

In the Matter of **VERITAS FINANCIAL ADVISORS, LLC, VERITAS ADVISORS, INC., PATRICK J. COX and RITA A. WHITE,** **Respondents.**	**ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 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 instituted against: Veritas Financial Advisors, LLC, pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"); Veritas Advisors, Inc., pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(e) and 203(k) of the Advisers Act; Patrick J. Cox, pursuant to Section 21C of the Exchange Act and Sections 203(f) and 203(k) of the Advisers Act; and Rita A. White, pursuant to Section 21C of the Exchange Act and Section 203(f) of the Advisers Act.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. **Veritas Financial Advisors, LLC** ("Veritas Financial"), a Massachusetts limited liability company, is located in Boston, Massachusetts. Veritas Financial was formed on or about January 30, 2004, and it has been registered with the Commission as an investment adviser pursuant to Section 203(a) of the Advisers Act since on or about March 4, 2004.

2. **Veritas Advisors, Inc.** ("Veritas Advisors"), a Massachusetts corporation, is located in Boston, Massachusetts. Veritas Advisors was formed on or about November 2, 1993, and was registered with the Commission as an investment adviser pursuant to Section 203(a) of the Advisers Act from at least August 31, 1998 through July 31, 2001, when the Commission canceled its registration because Veritas Advisors ceased making requisite filings with the Commission. Thereafter and through at least April 2005, Veritas Advisors continued to be an investment adviser within the meaning of Section 202(a)(11) of the Advisers Act.

3. **Patrick J. Cox** ("Cox"), age 50, resides in Wellesley, Massachusetts. Cox has been the sole owner and principal of both Veritas entities since their formation, and at all relevant times he was a person associated with an investment adviser pursuant to Section 202(a)(17) of the Advisers Act. He is a licensed Certified Public Accountant in the State of Ohio, although his license is inactive.

4. **Rita A. White** ("White"), age 37, resides in Boston, Massachusetts. Between at least January 1999 and March 2005, White was an employee of Veritas Advisors who performed bookkeeping and other administrative tasks. At all relevant times, White was a person associated with an investment adviser pursuant to Section 202(a)(17) of the Advisers Act.

B. FACTS

Summary

5. This matter involves fraudulent schemes through which Veritas Advisors, Cox and White collectively misappropriated at least $2,500,000 from a female client, currently age 57 and residing in Brookline, Massachusetts, who sought Veritas Advisors' services as she was going through a divorce and looking for someone she could trust to manage her financial affairs (the "Client"). From at least March 1998 through March 2005, Cox made unauthorized transfers of at least $1,200,000 from at least three of the Client's bank or investment accounts to himself or to Veritas Advisors. From at least January 1999 through March 2005, White misappropriated at least $1,300,000 from at least one of the Client's bank accounts for her own use.

6. Both Veritas entities, which were controlled solely by Cox at all relevant times, also fraudulently failed to disclose their precarious financial condition to clients, and they did not maintain certain required books and records for investment advisers. Veritas Advisors also did not maintain proper custody of client funds.

7. As a result of the foregoing conduct, Veritas Financial, Veritas Advisors, Cox and White variously willfully violated or willfully aided and abetted and caused violations of the antifraud and other provisions of the Exchange Act and Advisers Act.

The Veritas Entities and Their Investment Advisory Services

8. From its formation on or about November 2, 1993 until it ceased operating in or about April 2005, Veritas Advisors continuously provided a range of financial and investment advisory services to clients, which included tracking client investments, advising clients on the tax consequences of investments, selecting, interacting with and evaluating investment managers, paying bills for clients, tax return preparation and tax and estate planning. In the course of providing these services, Cox, as Veritas Advisors' principal, had varying amounts of discretion over client bank and brokerage accounts, including, in some cases, authority to transfer funds from client accounts and purchase or sell securities in client accounts.

9. During the foregoing period, Cox informed Veritas Advisors clients about several investment opportunities in which the clients ultimately invested, including a venture operated by Cox's brother to market instructional golf videotapes, and two hedge funds managed by a college acquaintance of Cox. Some clients discussed potential investments with Cox, as Veritas Advisors' principal, while other clients sought investment advice from Cox.

10. During the foregoing period, clients compensated Veritas Advisors by paying a flat fee for all of its services.

11. In October 1998, the Securities Division of the Secretary of the Commonwealth of Massachusetts ("Securities Division") entered a consent order against Veritas Advisors and Cox, which found that, from 1994 through 1998, Veritas Advisors and Cox had provided investment advisory services while not being registered as investment advisers. The Securities Division censured them, required them to register with the Securities Division and the Commission, and ordered Veritas Advisors to pay back registration fees and administrative costs.

12. On or about August 31, 1998, Veritas Advisors registered with the Commission as an investment adviser (SEC File Number 801-55833).

13. After 1999, Veritas Advisors ceased making the filings with the Commission which were necessary to maintain its registration as an investment adviser. The Commission canceled Veritas Advisors' investment adviser registration on or about July 31, 2001. Thereafter and through at least April 2005, Veritas Advisors continued to provide the same investment advisory services to clients as described above, and Cox, as Veritas Advisors' principal, had equal or greater discretion over client bank and brokerage accounts.

14. On or about January 30, 2004, Cox formed Veritas Financial as an investment advisory business. Veritas Financial registered with the Commission as an investment adviser on or about March 4, 2004 (CRD Number 130614; SEC File No. 801-62868). It has not withdrawn its registration to date, although it has not made requisite filings with the Commission since at least March 31, 2005.

15. Between at least January 30, 2004 and March 31, 2005, the Veritas entities had some common clients and personnel and provided similar services, and, by their own terms, the code of ethics and compliance manual that Veritas Financial adopted in or about October 2004 also applied to Veritas Advisors employees.

16. On or about March 31, 2005, all employees of Veritas Advisors and Veritas Financial, excluding Cox, resigned.

Misappropriation of Client Funds by Veritas Advisors and Cox

17. Between at least March 1998 and March 2005, there were more than fifty unauthorized transfers of cash, totaling at least $1,200,000, from at least three of the Client's bank or investment accounts to Veritas Advisors and Cox. These transfers are listed in Exhibit A.

18. The majority of the unauthorized transfers to Veritas Advisors and Cox occurred through checks drawn on the Client's personal checking account ("checking account"), and deposited into either the Veritas Advisors operating account or Cox's personal checking account. Most of the checks were "signed" with a stamp copy of the Client's signature ("signature stamp"). The Client had arranged for Veritas Advisors to pay her household expenses from her checking account, and Veritas Advisors kept the signature stamp at its offices for that purpose. In some cases, Cox, who was a signatory on the Client's checking account, signed the checks.

19. A few of the unauthorized transfers to Veritas Advisors and Cox were made by wire, as reflected in Exhibit A. The wire transfers originated from one of three of the Client's accounts – her checking account, an investment account and, in one instance, a charitable remainder trust account. These transfers occurred pursuant to written requests from Veritas Advisors that were signed by Cox.

20. The Client's investment account ("bond account") consisted of bonds that had to be sold in order to generate cash. During the relevant period, there were at least monthly transfers of cash from the Client's bond account (following the sale of bonds) to her checking account. These transfers all were made by wire at the direction of Veritas Advisors, and Cox signed the wire transfer requests. Cox knew of these transfers and also knew that bonds in the bond account had to be sold in order to generate the cash that was transferred to the checking account and, in some cases, directly to Veritas Advisors and Cox.

21. At all relevant times, Cox continuously withdrew funds from the Veritas Advisors operating account by making checks payable to himself and depositing them into his personal checking account. Therefore, Cox personally benefitted from at least some of the cash transfers from the Client's accounts to Veritas Advisors.

22. The Client did not authorize the transfers to Veritas Advisors and Cox that appear on Exhibit A. Although Cox had limited authority to transfer funds from the Client's accounts (e.g., for the payment of her household expenses), he could not use that authority to transfer funds for his personal benefit or that of Veritas Advisors.

23. During most, if not all, of the foregoing period, the Veritas entities and Cox were experiencing significant financial problems that were reasonably likely to impair their ability to provide services to clients and that should have been disclosed to clients pursuant to Rule 206(4)-4 of the Advisers Act but were not disclosed. For example, Veritas Advisors' rent for the office space it leased was often in arrears. There also were numerous cash shortfalls in the Veritas Advisors operating account. Veritas Advisors did not have sufficient funds to pay the salaries of its employees for March 2005. Veritas Financial similarly was thinly capitalized and relied on Veritas Advisors to pay all of its expenses, including filing fees for its registration with the Commission as an investment adviser. Veritas Advisors and Cox misappropriated funds from the Client to alleviate these and other financial problems.

Misappropriation of Client Funds by White

24. Between at least January 1999 and March 2005, White misappropriated at least $1,300,000 from the Client.

25. During the foregoing period, White used an average of at least five checks per month from the Client's checking account for the payment of her own personal expenses. White used many of the checks for the payment of her credit card balances. In turn, White routinely used these credit cards to purchase jewelry, designer clothing and handbags, home improvement items and other non-essential items. White made other of the Client's checks payable directly to herself and deposited these checks into White's personal checking account.

26. All of the above checks, whether to White or her credit card companies, were "signed" with the Client's signature stamp. At all relevant times, White handled bill payment for Veritas Advisors clients who used that service, including the Client, and White had access to the Client's checks and signature stamp. The Client did not authorize White's use of the signature stamp or checks from the Client's account for White's benefit or for the payment of White's expenses.

27. White concealed her unauthorized use of the Client's checks by making entries in an electronic register for the Client's checking account, which White maintained, appear as though these checks were being used to pay the Client's legitimate expenses. For example, many ledger entries erroneously reflect that certain payments, which actually were made to White's credit card companies, were made to one of the Client's credit card companies. Other ledger entries corresponding to checks made payable to White or her credit card companies incorrectly describe the payments as being donations to charitable organizations. Moreover, in or about March and/or April 2005, after the Enforcement Division's investigation began and she became

aware of the investigation, White altered additional entries in the electronic register in a further attempt to conceal her unlawful activities.

28. As noted above, during the relevant period, there were at least monthly transfers of cash from the Client's bond account (following the sale of bonds) to the Client's checking account. White knew about these transfers and also knew that bonds in the bond account had to be sold in order to generate the cash that was transferred to the checking account, where it was misappropriated by White. White faxed wire transfer requests from Veritas Advisors to the bank, and the bank then notified White once the transfers occurred. White also recorded the transfers from the bond account to the checking account in the transaction register for the Client's checking account.

Books and Records and Other Violations

29. Between at least March 1998 and April 2005, the Veritas entities, which were controlled by Cox, did not maintain certain required books and records for investment advisers, including a general ledger and financial statements, pursuant to Rules 204-2(a)(2) and (6) of the Advisers Act.

30. Between at least March 1998 and April 2005, Veritas Advisors, which was controlled by Cox, did not comply with the custody requirements of Rule 206(4)-2 of the Advisers Act. For many clients, Cox, as Veritas Advisors' principal, had discretion over client accounts, including limited authority to transfer funds from client accounts and sell bonds in client accounts. Veritas Advisors also received copies of clients' brokerage and bank account statements. However, Veritas Advisors did not send account statements to clients as often as required by the custody rule, if at all. Veritas Advisors also kept physical stock certificates at its offices, instead of with a qualified custodian, as required by the rule.

31. Between at least July 31, 2001, when it ceased being registered with the Commission as an investment adviser, and April 2005, Veritas Advisors, which was controlled by Cox, was in the business of providing investment advice for compensation without being registered with the Commission as required by Section 203(a) of the Advisers Act and rules thereunder. During the foregoing period, Veritas Advisors had at least fifteen clients and at least $25,000,000 in assets under management, and no statutory exemptions from the registration requirement or prohibitions on registration applied.

C. VIOLATIONS

Exchange Act Violations

32. As a result of the conduct described above, Respondents Veritas Advisors, Cox and White willfully violated 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. By

misappropriating funds from the Client's accounts, Veritas Advisors, Cox and White all engaged in fraud in violation of these provisions.

33. As a result of the conduct described above, Respondent Cox willfully aided and abetted and caused Veritas Advisors' violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by effectuating unauthorized transfers of cash from the Client's accounts to Veritas Advisors and/or himself.

Advisers Act Violations–Antifraud Provisions

34. As a result of the conduct described above, Respondents Veritas Advisors and Cox willfully violated Sections 206(1) and 206(2) of the Advisers Act. Section 206(1) of the Advisers Act prohibits an investment adviser from, directly or indirectly, employing any device, scheme or artifice to defraud any client or prospective client. Section 206(2) of the Advisers Act prohibits any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client. Veritas Advisors was an investment adviser at all relevant times and owed a fiduciary duty to its clients, including the Client. By making unauthorized transfers of cash from the Client's accounts, Veritas Advisors, acting through Cox, breached its fiduciary duty and willfully violated Sections 206(1) and 206(2). Veritas Advisors is liable for Cox's misappropriation of funds from the Client's accounts because Cox's knowledge, intent and conduct can be imputed to Veritas Advisors. Cox is directly liable for primary violations of Sections 206(1) and 206(2) for his misappropriation of funds from the Client.

35. As a result of the conduct described above, Respondent Cox willfully aided and abetted and caused Veritas Advisors' violations of Sections 206(1) and 206(2) of the Advisers Act by effectuating unauthorized transfers of cash from the Client's accounts to Veritas Advisors.

36. As a result of the conduct described above, Respondents Veritas Financial and Veritas Advisors, acting through Cox, willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-4 thereunder. Section 206(4) of the Advisers Act prohibits investment advisers from engaging in acts, practices or courses of business which are fraudulent, deceptive or manipulative, as defined by rules and regulations thereunder. Rule 206(4)-4 requires investment advisers registered or required to be registered with the Commission to disclose to clients all material facts with respect to financial conditions that are reasonably likely to impair the adviser's ability to meet contractual commitments to clients if the adviser has discretionary authority or custody over client funds or securities. The Veritas entities met these criteria and had financial difficulties, known to Cox, which should have been disclosed to clients but were not disclosed.

37. As a result of the conduct described above, Respondent Veritas Advisors, acting through Cox, willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder. Rule 206(4)-2 imposes requirements upon investment advisers registered or required to be registered with the Commission concerning custody of client funds or securities. Veritas

Advisors did not send required quarterly account statements to at least some clients, and it maintained physical custody of client stock certificates, which instead should have been placed with a qualified custodian.

38. As a result of the conduct described above, Respondent Cox willfully aided and abetted and caused the Veritas entities' various violations of Section 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-4 thereunder.

Other Advisers Act Violations

39. As a result of the conduct described above, Respondent Veritas Advisors, acting through Cox, willfully violated Section 203(a) of the Advisers Act, which prohibits investment advisers from making use of the mails or any means or instrumentality of interstate commerce in connection with their business as investment advisers unless they are registered with the Commission. Veritas Advisors ceased being registered as an investment adviser after July 31, 2001, but thereafter and until at least April 2005, it continued to be an investment adviser and to make use of the mails and the means or instrumentalities of interstate commerce in connection with its business as an investment adviser. No statutory exemptions to the registration requirement of Section 203(a), or prohibitions on registration, applied during the relevant period.

40. As a result of the conduct described above, Respondents Veritas Financial and Veritas Advisors, acting through Cox, willfully violated Section 204 of the Advisers Act and Rule 204-2 thereunder. Rule 204-2 requires investment advisers registered or required to be registered with the Commission to maintain and preserve certain books and records, including a general ledger pursuant to Rule 204-2(a)(2) and financial statements pursuant to Rule 204-2(a)(6), which the Veritas entities lacked.

41. As a result of the conduct described above, Respondent Cox willfully aided and abetted and caused the Veritas entities' various violations of Section 203(a) of the Advisers Act and Section 204 of the Advisers Act and Rule 204-2 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 and cease-and-desist proceedings be instituted to determine:

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

B. Whether, pursuant to Section 21C(a) of the Exchange Act, Respondents Veritas Advisors, Cox and White should be ordered to cease and desist from committing or causing violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5

thereunder, and whether they should be ordered to pay disgorgement plus prejudgment interest, pursuant to Section 21C(e) of the Exchange Act;

C. Whether, pursuant to Section 203(k)(1) of the Advisers Act, Respondents Veritas Advisors and Cox should be ordered to cease and desist from committing or causing violations and any future violations of Sections 203(a), 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-2 thereunder;

D. Whether, pursuant to Section 203(k)(1) of the Advisers Act, Respondents Veritas Financial, Veritas Advisors and Cox should be ordered to cease and desist from committing or causing violations and any future violations of Section 204 of the Advisers Act and Rule 204-2 thereunder and Section 206(4) of the Advisers Act and Rule 206(4)-4 thereunder;

E. What, if any, remedial action is necessary and appropriate in the public interest against Respondent Veritas Advisors, pursuant to Sections 203(e) and 203(k) of the Advisers Act, including, but not limited to, disgorgement plus prejudgment interest pursuant to Sections 203(j) and 203(k)(5) of the Advisers Act;

F. What, if any, remedial action is necessary and appropriate in the public interest against Respondents Cox and White, pursuant to Section 203(f) of the Advisers Act, including, but not limited to, disgorgement plus prejudgment interest pursuant to Section 203(j) of the Advisers Act;

G. What, if any, remedial action is necessary and appropriate in the public interest against Respondents Veritas Financial and Veritas Advisors, pursuant to Sections 203(e) of the Advisers Act, including, but not limited to, a civil penalty pursuant to Section 203(i) of the Advisers Act;

H. What, if any, remedial action is necessary and appropriate in the public interest against Respondents Cox and White, pursuant to Sections 203(f) of the Advisers Act, including, but not limited to, a civil penalty pursuant to Section 203(i) of the Advisers Act;

I. What, if any, remedial action is necessary and appropriate in the public interest against Respondents Veritas Financial and Veritas Advisors, pursuant to Section 203(e) of the Advisers Act, including, but not limited to, an order censuring them, placing limitations on their activities, functions or operations, suspending them or revoking their registration as investment advisers; and

J. What, if any, remedial action is necessary and appropriate in the public interest against Respondents Cox and White, pursuant to Section 203(f) of the Advisers Act, including, but not limited to, an order censuring them, placing limitations on their activities or suspending or barring them from being associated with an investment adviser.

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 300 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

Exhibit A

Unauthorized Transfers from the Client's Accounts to Veritas Advisors and Cox

Date	Transfer Method	Source (Account Type)	Recipient	Amount
03/06/98	Check	Checking account	Cox	$ 50,000
11/30/98	Check	Checking account	Cox	$ 50,000
12/03/99	Wire	Checking account	Cox	$ 50,000
06/22/00	Wire	Checking account	Cox	$ 40,000
07/23/01	Check	Checking account	Cox	$ 60,000
09/18/01	Check	Checking account	Veritas Advisors	$ 15,000
11/14/01	Wire	Charitable remainder trust account	Veritas Advisors	$ 25,000
01/10/02	Check	Checking account	Veritas Advisors	$ 30,000
05/22/02	Check	Checking account	Veritas Advisors	$ 35,000
06/24/02	Check	Checking account	Veritas Advisors	$ 8,000
07/18/02	Check	Checking account	Veritas Advisors	$ 35,000
07/18/02	Check	Checking account	Cox	$ 15,000
07/24/02	Check	Checking account	Veritas Advisors	$ 10,000
10/21/02	Wire	Bond account	Veritas Advisors	$ 50,000
12/30/02	Check	Checking account	Veritas Advisors	$ 35,000
01/29/03	Check	Checking account	Veritas Advisors	$ 25,000
02/20/03	Check	Checking account	Veritas Advisors	$ 25,000
02/26/03	Check	Checking account	Veritas Advisors	$ 7,000
03/05/03	Wire	Bond account	Veritas Advisors	$ 25,000
03/12/03	Wire	Bond account	Veritas Advisors	$ 20,000
03/20/03	Check	Checking account	Veritas Advisors	$ 5,000
05/20/03	Check	Checking account	Veritas Advisors	$ 25,000
06/04/03	Check	Checking account	Veritas Advisors	$ 1,000
06/05/03	Wire	Bond account	Veritas Advisors	$ 49,000
06/24/03	Wire	Bond account	Veritas Advisors	$ 25,000
08/27/03	Check	Checking account	Veritas Advisors	$ 20,000
09/08/03	Wire	Bond account	Veritas Advisors	$ 25,000
09/10/03	Check	Checking account	Veritas Advisors	$ 10,000

Date	Transfer Method	Source (Account Type)	Recipient	Amount
09/24/03	Check	Checking account	Veritas Advisors	$ 17,500
11/17/03	Check	Checking account	Veritas Advisors	$ 10,000
11/21/03	Check	Checking account	Veritas Advisors	$ 25,000
12/01/03	Check	Checking account	Veritas Advisors	$ 25,000
01/27/04	Check	Checking account	Veritas Advisors	$ 25,000
02/04/04	Check	Checking account	Veritas Advisors	$ 20,000
03/03/04	Check	Checking account	Veritas Advisors	$ 20,000
03/16/04	Check	Checking account	Veritas Advisors	$ 20,000
04/21/04	Check	Checking account	Veritas Advisors	$ 3,000
04/27/04	Check	Checking account	Veritas Advisors	$ 25,000
05/05/04	Check	Checking account	Veritas Advisors	$ 20,000
05/07/04	Check	Checking account	Veritas Advisors	$ 12,717
06/07/04	Check	Checking account	Veritas Advisors	$ 20,000
06/09/04	Check	Checking account	Veritas Advisors	$ 15,000
06/15/04	Check	Checking account	Veritas Advisors	$ 10,000
06/17/04	Check	Checking account	Veritas Advisors	$ 10,000
07/27/04	Check	Checking account	Cox	$ 10,000
07/29/04	Check	Checking account	Cox	$ 30,000
08/13/04	Check	Checking account	Cox	$ 11,000
09/24/04	Check	Checking account	Veritas Advisors	$ 15,000
09/24/04	Check	Checking account	Cox	$ 4,000
10/25/04	Check	Checking account	Cox	$ 35,000
11/10/04	Check	Checking account	Cox	$ 25,000
12/22/04	Check	Checking account	Cox	$ 15,000
01/14/05	Wire	Bond account	Veritas Advisors	$ 25,000
Total				**$1,218,217**

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 54099 / July 5, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2457 / July 5, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12356

In the Matter of **Craig M. Waggy** **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 Craig M. Waggy ("Waggy").

II.

In anticipation of the institution of these proceedings, Waggy has submitted an Offer of Settlement ("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, Waggy 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 Waggy's Offer, the Commission finds that[1]:

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

A. SUMMARY

From September 1997 to May 2002, Waggy was the Chief Financial Officer of TV Guide, Inc., which became a subsidiary of Gemstar-TV Guide International, Inc. ("Gemstar") in July 2000. Prior to the merger, Waggy was responsible for TV Guide's books and records; after the merger, Waggy, in consultation with Gemstar's Chief Financial Officer, was responsible for TV Guide's books and records, which were consolidated into Gemstar's financial records.

From the quarter ended June 30, 2000, through the quarter ended March 31, 2002, Waggy caused TV Guide to recognize and record certain revenue and expenses that were subsequently determined not to be in accordance with Generally Accepted Accounting Principles ("GAAP"). Waggy reasonably should have known, based on information he had received or could have reasonably determined, that the expense or revenue was improperly recorded at TV Guide and that revenue would be improperly recognized, recorded, and reported by Gemstar. As a result, Waggy was a cause of Gemstar's violations of the reporting and record-keeping provisions of the federal securities laws.

B. RESPONDENT

Craig M. Waggy is a resident of Tulsa, Oklahoma. Beginning in September 1997, Waggy was the CFO of TV Guide, which became a Gemstar subsidiary in July 2000. In May 2002, Waggy resigned from TV Guide.

C. RELATED PARTIES

Gemstar-TV Guide International, Inc. ("Gemstar") is a Delaware corporation with its principal place of business in Hollywood, California. Gemstar's common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and listed on the NASDAQ Stock Market.

TV Guide, Inc. ("TV Guide") was a public company until Gemstar acquired it in July 2000.

D. FACTS

1. Background

Gemstar was the product of a July 2000 merger between Gemstar, a company that licensed an interactive program guide ("IPG") for televisions and sold advertising on the IPG, and TV Guide, a company that published TV Guide magazine and owned various other media properties. IPG is a product that allows TV viewers to navigate through, sort, obtain information on, and select television programs. Gemstar reported revenue for IPG advertising as Interactive Platform Sector ("IP Sector") revenue. From 1999 through the quarter ended September 30, 2002, Gemstar materially overstated its financial results by recording revenue not in accordance with GAAP. Some of the improperly recorded revenue is discussed below.

a. TV Guide Awards Show Advertising

In the quarter ended June 30, 2000, which was the quarter immediately preceding Gemstar's acquisition of TV Guide, Gemstar and TV Guide recognized and reported $1.3 million IP Sector revenue and expense, respectively, for IPG advertising relating to the 2000 TV Guide Awards Show. Gemstar issued an invoice to TV Guide for the advertising, which was approved for payment by TV Guide's President and COO. However, the Awards Show had aired in the quarter ended March 31, 2000, and there was no evidence that Gemstar ever ran IPG advertising for the TV Guide Awards Show in the quarter ended June 30, 2000. Because Gemstar and TV Guide recorded the $1.3 million in the pre-merger quarter, the revenue, but not the expense, carried forward to Gemstar's financial statements in its Form 10-K for the nine-months ended December 31, 2000. This revenue was material to Gemstar's separately reported IP Sector financial results.

Gemstar improperly recognized the $1.3 million in advertising revenue for the 2000 Awards Show because the revenue was neither realized or realizable nor earned. See SFAC No. 5, ¶83-84; ARB No. 43, Chapter 1A, ¶1; APB Opinion No. 10, ¶12; SAB No. 101. TV Guide should not have recorded the $1.3 million expense for the Awards Show IPG advertising because no economic benefit had been used up in delivering or producing goods, rendering services or other activities. See FASB Statement of Financial Accounting Concepts No. 5, "Recognition and Measurement in Financial Statements of Business Enterprises" ¶ 85. (expenses are generally recognized when an entity's economic benefits are used up in delivering or producing goods or rendering services). Gemstar reversed the recognition of this IP Sector revenue in March 2003.

b. Roush Corp.

In June 2000, TV Guide entered into an agreement with Roush Corp. ("Roush"), a private company that operated a NASCAR racing team, under which TV Guide agreed to provide Roush advertising on TV Guide media in exchange for Roush's agreement to provide TV Guide advertising and promotional services. In the quarter ended December 31, 2000, Gemstar ran IPG advertising for Roush, and TV Guide, in consultation with Gemstar's CFO, recognized, recorded, and, through Gemstar, reported $1.4 million in IP Sector revenue from Roush. This revenue was material to Gemstar's separately reported IP Sector financial results.

Gemstar improperly recognized the $1.4 million in IP Sector revenue from its non-monetary transaction with Roush, because the fair value of the IPG advertising was inaccurately determined. See EITF 99-17, Accounting for Advertising Barter Transactions (to determine the fair value of a barter transaction, a period not to exceed six months prior to the date of the barter transaction should be used to determine whether a historical practice exists of receiving cash for similar advertising). Gemstar reversed the recognition of this IP Sector revenue in March 2003.

c. Fantasy Sports

In June 2001, Gemstar entered into an agreement with Fantasy Sports Properties, Inc. ("Fantasy Sports"), a private company that created and operated Internet-based fantasy sports games. Under the agreement, Gemstar acquired Fantasy Sports' intellectual property for approximately $20.75 million, of which $750,000 was to be paid in cash and $20 million was to be

paid in the form of advertising run by Gemstar at Gemstar's discretion in 2001. For the year 2001, Gemstar ran IPG advertising for Fantasy Sports and recorded and reported a total of $20 million in IP Sector revenue from Fantasy Sports. No cash payment from Fantasy Sports to Gemstar for the $20 million in purported advertising was ever made. TV Guide, in consultation with Gemstar's CFO and outside auditors, recorded and, through Gemstar, reported the $20 million in 2001. The $20 million in recorded and reported revenue from Fantasy Sports for 2001 was material to Gemstar's separately reported IP Sector financial results.

Gemstar's recognition of revenue from the Fantasy Sports transaction throughout 2001 did not conform with GAAP. First, the advertising revenue was never earned because it resulted from a transaction that lacked economic substance and was merely a pretext to permit Gemstar to record IP Sector revenue. Second, Gemstar lacked any reasonable basis to determine the fair value of the IPG advertising because Gemstar did not have stand-alone IPG advertising transactions with unrelated parties from which the company received cash in amounts comparable to those recognized in connection with the Fantasy Sports transaction. See APB Opinion No. 29 (revenue from non-monetary transactions must be based on fair value of assets involved). In November 2002, Gemstar reversed the recognition of the $20 million in IP Sector revenue from Fantasy Sports.

d. Motorola and Tribune

In October 2000, Gemstar entered into an agreement with Motorola, Inc. ("Motorola"), under which Motorola agreed to pay Gemstar $188 million in cash and to allow Gemstar to characterize $17.5 million of that as advertising to be run over a 48 month period. Under the agreement, Gemstar retained final discretion as to timing and placement of the advertising. In April 2001, Gemstar and The Tribune Company ("Tribune") entered into a transaction which included, among others, two agreements: (1) a Stock Purchase Agreement in which Tribune paid $106 million in cash to Gemstar for the stock of one of TV Guide's businesses; and (2) an Advertising Agreement in which Tribune committed to purchase $100 million of advertising from Gemstar over a six-year period, regardless of whether Tribune used the advertising. The documentation for the transaction was split at the direction of Gemstar into these two component parts. Gemstar controlled the timing and placement of the advertising that it ran for Tribune. In 2001 and the quarter ended March 31, 2002, Gemstar ran IPG advertising for Motorola and Tribune and recognized and reported a total of $34.5 million in IP Sector revenue. Of the $34.5 million, TV Guide, in consultation with Gemstar's CFO, recognized, recorded, and, through Gemstar, reported $17.9 million. This revenue was material to Gemstar's separately reported IP Sector results.

Gemstar improperly recognized the $34.5 million in IP Sector advertising revenue from its transactions with Motorola and Tribune, because the fair value of the IPG advertising provided by Gemstar was not realizable, verifiable, or objectively determinable. See American Institute of Certified Public Accountants, Statement of Position 97-2, "Software Revenue Recognition," paragraph 10 ("[i]f an arrangement includes multiple elements, the fee should be allocated to the various elements based on vendor-specific objective evidence of fair value, regardless of any separate prices stated within the contract for each element"); SAB 101, Frequently Asked Questions and Answers, Question 4 (revenue from multi-element transaction

should be allocated to various elements based on fair value that is reliable, verifiable, and objectively determinable; prices listed in multi-element arrangement may not be representative of fair value because prices of different components of transaction can be altered in negotiations and still result in same aggregate consideration). In March 2003, Gemstar reversed the recognition of the $34.5 million as IP Sector revenue and allocated it to other sectors.

2. Waggy's Conduct

From September 1997 to May 2002, Waggy was the CFO of TV Guide, which became a Gemstar subsidiary in July 2000. After July 2000 TV Guide's books and records were consolidated into Gemstar's financial statements and reported in Gemstar's periodic reports. Waggy was responsible for TV Guide's books and records, including causing TV Guide to record the Awards Show expense and the Roush, Fantasy Sports, Motorola, and Tribune revenue.

While performing his duties as TV Guide's CFO, including consulting with Gemstar's CFO and outside auditors, Waggy learned certain information regarding the Awards Show, Roush, Fantasy Sports, Motorola, and Tribune transactions and Gemstar's IPG advertising. In causing TV Guide to record the expense and revenue discussed above, Waggy was negligent in not knowing, based on information that he had received and/or could have reasonably determined, that the expense or revenue was improperly recognized and recorded at TV Guide and that revenue would be improperly recognized, recorded, and reported by Gemstar.

E. LEGAL DISCUSSION

1. Causing Gemstar's Violations of the Reporting Provisions of Section 13(a) of the Exchange Act, and Rules 12b-20, 13a-1, and 13a-13 Thereunder

Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act, such as Gemstar, to file with the Commission certain annual and quarterly reports. Implicit in these provisions is the requirement that the reports accurately reflect the issuer's financial condition and operating results. See SEC v. IMC Int'l, Inc., 384 F. Supp. 889, 893 (N.D. Tex.), aff'd mem., 505 F.2d 733 (5th Cir. 1974). Rule 12b-20 under the Exchange Act further requires the inclusion of any additional material information that is necessary to make required statements, in light of the circumstances under which they were made, not misleading. No showing of scienter is required to establish a violation of Section 13(a) of the Exchange Act. See SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978). Moreover, Regulation S-X requires that financial statements filed with the Commission pursuant to Section 13(a) of the Exchange Act be prepared in accordance with GAAP. See Peritus Software Services, Inc., Exchange Act Rel. No. 42673 (Apr. 13, 2001) (settled proceeding). Otherwise, such financial statements shall be presumed inaccurate.

Gemstar committed primary reporting violations by filing with the Commission periodic reports for 2000, 2001, and the first quarter of 2002 that improperly reported Awards Show, Roush, Fantasy Sports, Motorola, and Tribune IP Sector revenue. Waggy was a cause of those reporting violations, because he caused TV Guide to record IP Sector revenue from, or expenses for, the Awards Show, Roush, Fantasy Sports, Motorola, and Tribune, and he was negligent in

not knowing, based on information he had received and/or could have determined through additional inquiry, that the revenue or expense was improperly recognized and recorded at TV Guide and would be improperly reported by Gemstar.[2]

2. Causing Gemstar's Violations of the Record-Keeping Provisions of Section 13(b)(2)(A) of the Exchange Act and Committing Violations of Rule 13b2-1 Thereunder

Section 13(b)(2)(A) of the Exchange Act requires reporting companies 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 . . . of the issuer." No showing of scienter is required to establish a violation of Section 13(b)(2)(A). SEC v. World-Wide Coin Invs., Ltd., 567 F. Supp. 724, 751 (N.D. Ga. 1983). Rule 13b2-1 under the Exchange Act also prohibits any person from directly or indirectly falsifying any book, record, or account described in Section 13(b)(2)(A).

Gemstar committed primary violations of the record-keeping provisions of Section 13(b)(2)(A) of the Exchange Act by improperly recording Awards Show, Roush, Fantasy Sports, Motorola, and Tribune IP Sector revenue. Waggy was a cause of those record-keeping violations and violated Rule 13b2-1 under the Exchange Act, because he caused TV Guide to record IP Sector revenue from, or expenses for, the Awards Show, Roush, Fantasy Sports, Motorola, and Tribune, and he was negligent in not knowing, based on information he had received and/or could have determined through additional inquiry, that the revenue or expense was improperly recognized and recorded at TV Guide and Gemstar.

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[2] Under Section 21C(a) of the Exchange Act, the standard for establishing that a person was a culpable cause of another person's violation is that the person engaged in an act or omission that he "knew or should have known would contribute" to the primary violation. This standard requires negligence for causing the type of non-scienter violations at issue in this case. KPMG Peat Marwick, Exchange Act Rel. No. 43862 (June 19, 2001), *aff'd*, KPMG v. SEC, 289 F. 3d 109 (D.C. Cir. 2002).

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Waggy's Offer.[3]

Accordingly, it is hereby ORDERED that Waggy cease and desist 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 and committing or causing any violations and any future violations of Rule 13b2-1 thereunder.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

[3] Waggy has agreed to pay a $25,000 civil penalty in a civil action in the Central District of California entitled SEC v. Yuen, et al., Case No. CV 03-4376 MRP (PLAx).

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 54095 / July 5, 2006

Admin. Proc. File No. 3-11832

In the Matter of

EAGLETECH COMMUNICATIONS, INC.
c/o Rodney E. Young, President and CEO
7241 NW 6th Street
Plantation, Florida 33317

OPINION OF THE COMMISSION

SECTION 12(j) PROCEEDING

Grounds for Remedial Action

Failure to comply with periodic filing requirements

Issuer admitted failing to file periodic reports for three years and stated that it would be unable to cure delinquencies or meet current filing obligations. Held, it is necessary and appropriate for protection of investors to revoke the registration of issuer's securities.

APPEARANCES:

Rodney E. Young, for Eagletech Communications, Inc.

Anthony T. Byrne, for the Division of Enforcement.

Appeal filed: July 6, 2005
Last brief filed: September 20, 2005
Oral argument held: February 13, 2006

I.

Eagletech Communications, Inc. ("Eagletech") appeals from an administrative law judge's decision finding that Eagletech had violated Section 13(a) of the Securities Exchange Act of 1934 and Rules 13a-1 and 13a-13 thereunder by failing to file its quarterly reports for any period

after December 31, 2001 and its annual reports for any period after March 31, 2001. 1/ On that basis, the law judge revoked the registration of Eagletech's securities. We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal. 2/

II.

Eagletech is a Nevada corporation with its principal place of business in Plantation, Florida. Eagletech was organized to manufacture and distribute a telecommunications device developed for, and marketed to, small businesses. Eagletech's common stock is registered with the Commission pursuant to Exchange Act Section 12(g). 3/ Eagletech admits that it has not filed any quarterly reports with the Commission for any period after December 31, 2001, and that it has not filed any annual reports with the Commission for any period after March 31, 2001, as alleged in the Order Instituting Proceedings. 4/ At the prehearing conference, Eagletech represented that its ability to cure its delinquencies and make current filings depended on the outcome of pending litigation.

Eagletech asserts that it has been the victim of two separate manipulations by third parties. In the first of these, Eagletech alleges that a group used Eagletech's stock as a vehicle for a "pump-and-dump" scheme. 5/ Eagletech also alleges that a second group subjected Eagletech's

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1/ Exchange Act Section 13(a) requires issuers of securities registered pursuant to Exchange Act Section 12 to file periodic reports with the Commission in accordance with the rules established by the Commission. 15 U.S.C. § 78m(a). Rule 13a-1, 17 C.F.R. § 240.13a-1, requires issuers to file annual reports with the Commission, and Rule 13a-13, 17 C.F.R. § 240.13a-13, requires issuers to file quarterly reports with the Commission. The law judge decided the case on the Division of Enforcement's motion for summary disposition pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250.

2/ Rule of Practice 451(d), 17 C.F.R. § 201.451(d), permits a member of the Commission who was not present at oral argument to participate in the decision of a proceeding if that member has reviewed the oral argument transcript prior to such participation. Chairman Cox conducted the required review.

3/ 15 U.S.C. § 78*l*(g).

4/ The last submission Eagletech filed was a June 28, 2002 notice to the Commission that it could not timely file its annual report for the fiscal year ended March 31, 2002.

5/ On February 15, 2005, the day the Commission instituted these proceedings, the Commission filed a civil injunctive action in the United States District Court for the District of New Jersey against seventeen individuals alleging that those defendants

(continued...)

stock to "naked" short selling between January 2000 and August 2002. 6/ Eagletech blames these alleged schemes for the financial decline of the company. While we make no findings as to the cause, Eagletech was experiencing extreme financial difficulties at the time it ceased making the filings at issue here. In its last quarterly report, filed on February 19, 2002, for its fiscal quarter ending December 31, 2001, Eagletech reported net losses exceeding $16 million and a net working-capital deficiency exceeding $2 million. Eagletech also reported that it was delinquent in its accounts payable, interest payments on its convertible notes, and employee salaries. Eagletech also stated that there were substantial doubts about its ability to continue as a going concern. By June 28, 2002, Eagletech's situation had deteriorated to the point that it filed a notice with the Commission stating its inability to file timely its annual report because it could not prepare its financial statements. Eagletech's former outside auditor has since resigned. At one time, Eagletech maintained an office in Fort Lauderdale, Florida, but it now operates from the president's home in Plantation, Florida.

Eagletech represents that it has taken steps to redress the injuries it has suffered as a result of the alleged criminal schemes. Eagletech has sued forty individuals allegedly involved in the separate schemes identified by Eagletech. 7/ Eagletech represented at the prehearing conference that any monetary recovery in its civil litigation would be used to fund an effort to cure its filing delinquencies and file current reports. As of the date of the prehearing conference, a trial date had not been set for Eagletech's civil case against the alleged manipulators, although Eagletech expected that the trial would be scheduled for some time in 2006.

III.

Eagletech admits that it has failed to file the annual or quarterly reports required under Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder for any period after December 31, 2001. Eagletech's representation regarding its current inability to cure its filing

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5/ (...continued)
fraudulently sold Eagletech stock between August 1999 and December 2001 as part of a pump-and-dump manipulation. See SEC v. Labella, No. 05-CIV-852 (WGB) (D.N.J.). In January 2005, the United States Attorney for the District of New Jersey indicted four individuals for criminal securities manipulation in connection with the same pump-and-dump scheme targeting Eagletech stock. See United States v. Labella, No. 05-CR-87 (D.N.J.).

6/ "Naked" short selling is a technique in which speculators sell shares they do not own and never deliver, causing failed transactions and, typically, downward pressure on the stock's price. See Short Sales, 68 Fed. Reg. 62,972, 62,975 (Nov. 6, 2003) (Notice of Proposed Rulemaking for Regulation SHO).

7/ Eagletech asserts that neither the Commission nor any other law enforcement agency has taken any action against the alleged naked short sellers.

delinquencies or make current filings suggests that the delinquencies are likely to continue for the indefinite future.

Eagletech asserts as an affirmative defense that it has been the victim of criminal activity by third parties that has made Eagletech financially unable to comply with its filing obligations. Even if the facts are as Eagletech represents them to be, however, the alleged criminal activity does not alter the fact of Eagletech's failure to file its quarterly and annual reports or its present inability to cure these deficiencies, the only matters relevant to this proceeding.

Eagletech devotes much of its brief to a description of the short-selling scheme and Eagletech's efforts to bring it to the Commission's attention. In this connection, Eagletech criticizes the Commission's alleged lack of understanding of the impact of naked short selling on the markets. In particular, Eagletech identifies perceived inadequacies in the Commission's recently adopted Regulation SHO, a measure addressing abuses in short selling. 8/ Eagletech then argues on this basis that Eagletech shareholders are, or will be, victims of two takings of property by the Commission without due process and without just compensation in violation of the Takings Clause of the Fifth Amendment. 9/ Eagletech alleges that the first taking occurred when the Commission adopted Regulation SHO. Eagletech alleges that Regulation SHO deprived Eagletech shareholders of property in violation of the Fifth Amendment "when it 'grandfathered' all pre-Regulation SHO delivery failures." Eagletech then alleges that an illegal taking will occur when the Commission's deregistration of Eagletech's stock "leaves behind a pool of shareholders who hold shares which exceed the number of shares issued by the company." Eagletech argues that

> Grandfathering and De-registration, both acts of "Discretion of the Law" by the Commission, has and will reward the criminal perpetrators by the inverse taking of the value of the shares from legitimate shareholders who paid for those shares with hard earned cash and transfers or will transfer 100% of the value to a group of manipulators who have broken the law by selling counterfeit shares of the company that they will never be required to deliver. 10/

8/ See 17 C.F.R. §§ 242.200-203. The Commission adopted Regulation SHO on July 28, 2004, with a compliance date of January 3, 2005.

9/ The Fifth Amendment provides that, in pertinent part, "[n]o person shall . . . be deprived of . . . property, without due process of law; nor shall private property be taken for public use without just compensation." U.S. Const. amend. V.

10/ The record does not reflect whether Eagletech refers to an actual counterfeiting of share certificates or a situation in which naked short sales reflect sales volume that exceeds the number of publicly available shares.

This deregistration proceeding is not the appropriate forum in which to argue a claim that adoption of Regulation SHO somehow resulted in an unconstitutional taking. Regulation SHO was promulgated and adopted pursuant to the requirements of the Administrative Procedure Act, 11/ and all interested and affected persons were afforded ample process in that rulemaking by which to assert their rights. Affected parties have received all the process that is due under the provisions of the Administrative Procedure Act.

With respect to any revocation of the registration of Eagletech's securities that may result from this proceeding, the process that is due to Eagletech is specified in the Exchange Act and includes the instant review proceeding as a component. Moreover, the deregistration of Eagletech's securities, should it occur, would not be a taking, much less an uncompensated taking. The revocation of the registration of Eagletech's securities would lessen, but not eliminate, the shareholders' ability to transfer their Eagletech securities, which, in turn, may further diminish the value of the securities. The diminution of property values caused by government action is not a regulatory taking. 12/ We find that the revocation of the registration of Eagletech's securities would not constitute an unconstitutional uncompensated taking.

We conclude that Eagletech has violated Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

IV.

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 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 rules thereunder. 13/ In determining an appropriate sanction under 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 we are guided by our recent decision in Gateway International Holdings, Inc. 14/ There we held that

> [o]ur determination, in such proceedings, of what sanctions will ensure that investors will be adequately protected therefore turns on the effect on the

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11/ 5 U.S.C. § 500 et seq.

12/ Penn Central Transp. Co. v. New York City, 438 U.S. 104, 131 (1978) (stating that courts "uniformly reject the proposition that diminution in property value" is a regulatory taking).

13/ 15 U.S.C. § 78m(j).

14/ Exchange Act Rel. No. 53907 (May 31, 2006), __ SEC Docket ____.

> 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. 15/

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." 16/ 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. 17/ Here, Eagletech's failure to comply with its reporting obligations under Section 13 has deprived the investing public of such information with respect to Eagletech's operations and financial condition for a period of more than three years. These are serious and recurring violations.

Eagletech has stated that its violations will continue unless and until it receives a monetary recovery in its civil litigation against the alleged manipulators, a recovery the amount, timing, and likelihood of which are at best speculative. While Eagletech's asserted financial inability to comply with its reporting obligations suggests not only that there is no basis for concluding that Eagletech's failure to file is the product of a desire to flout the law, but that such failure may be, in fact, unavoidable, Eagletech nonetheless is unable to remedy its past violations or ensure future compliance.

In weighing the harm to the current and prospective shareholders from the sanction we impose, we note that in any deregistration current shareholders could be harmed by a diminution in the liquidity and value of their stock by virtue of the deregistration. Here, however, the liquidity and value of Eagletech stock are already greatly diminished by the financial straits in which the corporation finds itself, and deregistration is unlikely to have a significant additional incremental effect. On the other hand, both existing and prospective shareholders are harmed by the continuing lack of current, reliable, and audited financial information, a harm for which, as

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15/ Gateway, __ SEC Docket at ____ (footnote omitted).

16/ SEC v. Beisinger Indus. Corp., 552 F.2d 15, 18 (1st Cir. 1977).

17/ See e-Smart Tech., Inc., Exchange Act Rel. No. 50514 (Oct. 12, 2004), 83 SEC Docket 3586, 3590-91 n.14.

Eagletech concedes, there is no cure in sight. Therefore, suspension of registration for a period not exceeding twelve months in the hope Eagletech would be able to return to compliance within that period would almost certainly result only in the necessity for another proceeding under Section 12(j) at the end of that period. Accordingly, we conclude that deregistration is necessary and appropriate for the protection of investors.

Eagletech objects to the Commission's apparent failure to respond to Eagletech's urging that the Commission take action against the individuals Eagletech believes engaged in the naked short-sale manipulation. The Division has construed these objections as an attempt to argue that Eagletech is the victim of improper selective prosecution because the Commission has proceeded against Eagletech but not the naked short sellers. To succeed on a claim of improper selective prosecution, Eagletech must establish that it was singled out for enforcement action while others who were similarly situated were not, and that its prosecution was motivated by arbitrary or unjust considerations such as race, religion, or the desire to prevent the exercise of a constitutionally protected right. 18/ Eagletech has failed to allege, much less prove, any of these elements, and we find that Eagletech was not the victim of improper selective prosecution. To the extent that the gravamen of Eagletech's complaint is that the Commission has decided not to take enforcement action against the naked short sellers, any such decision would be within the Commission's prosecutorial and regulatory discretion and would be presumptively unreviewable. 19/

Accordingly, we find that it is necessary and appropriate for the protection of investors to revoke the registration of all classes of Eagletech's securities.

An appropriate order will issue. 20/

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

Nancy M. Morris
Secretary

18/ See United States v. Huff, 959 F.2d 731, 735 (8th Cir. 1992); Brian Prendergast, Securities Exchange Act Rel. No. 44632 (Aug. 1, 2001), 75 SEC Docket 1525, 1542.

19/ Heckler v. Chaney, 470 U.S. 821, 831-35 (1985); Board of Trade of City of Chicago v. SEC, 883 F.2d 525, 531 (7th Cir. 1989).

20/ 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. 54095 / July 5, 2006

Admin. Proc. File No. 3-11832

In the Matter of

EAGLETECH COMMUNICATIONS, INC.
c/o Rodney E. Young, President and CEO
7241 N.W. 6th Street
Plantation, Florida 33317

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 Eagletech Communications, Inc., be, and it hereby is, revoked pursuant to Section 12(j) of the Securities Exchange Act of 1934.

By the Commission.

Nancy M. Morris
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
July 6, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12357

In the Matter of **WARWICK CAPITAL MANAGEMENT, INC. and CARL LAWRENCE,** **Respondents.**	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS 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 Warwick Capital Management, Inc. ("Warwick") and pursuant to Sections 203(f) and 203(k) against Carl Lawrence ("Lawrence") (collectively "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

SUMMARY

1. This proceeding concerns materially misleading advertising by Warwick and Lawrence. From at least 1998 through March 2005, Warwick and Lawrence distributed through third-party subscription services (the "database services") false and misleading information about Warwick that: (i) overstated Warwick's assets under management; (ii) overstated the number of Warwick's clients: (iii) falsely represented performance returns that Warwick and Lawrence knew were false and misleading; (iv) falsely represented that Warwick was in compliance with the Association for Investment Management and Research Performance Presentation Standards ("AIMR-

PPS"); (v) falsely claimed that Warwick was registered with the Commission; and (vi) overstated the length of time Warwick had been in the investment advisory business. In its Form ADV filings from 1998 through 2000, Warwick and Lawrence also overstated the number of clients Warwick had and its assets under management.

2. As a result of the false and misleading returns Lawrence supplied to the database services, Warwick repeatedly ranked at or near the top of certain database services' rankings of investment advisers and money managers. Because of the false information provided to the database services, Warwick appeared to have a greater amount of assets under management than it actually managed and appeared to have a longer operating history than it actually had. As of July 2004, at least five of Warwick's nine clients had entered into advisory agreements with Warwick as a result of the false information Warwick and Lawrence disseminated to the database services.

3. While registered as an investment adviser with the Commission, Warwick did not maintain books and records that the Advisers Act requires registered investment advisers to maintain, such as copies of advertisements and other communications that the investment adviser circulates to over 10 persons, as well as documents necessary to form the basis for Warwick's performance returns.

RESPONDENTS

4. **Warwick** is a New York corporation located in Bronxville, New York. Warwick was registered as an investment adviser with the Commission from March 15, 1996 through January 2002. Warwick was established in 1991 as a sole proprietorship, and was incorporated in 1994. Lawrence and Joan Lawrence, his spouse, each own 50% of Warwick and are its sole employees. Warwick engaged for compensation in the business of advising clients on investing in securities.

5. **Lawrence**, age 70 and a resident of Bronxville, New York, is Warwick's founder, president and sole control person. At all relevant times, Lawrence was responsible for the management of Warwick's business, and made all of Warwick's investment and business decisions. Lawrence engaged for compensation in the business of advising clients on investing in securities.

OTHER RELEVANT ENTITIES

6. **Nelson MarketPlace**[1] ("Nelson's"), **Mobius Group, Inc.**[2] ("Mobius") and **Plan Sponsor Network, Inc.**[3] ("Plan Sponsor Network") (collectively "database services") are database services that obtain, on a voluntary basis, information from money managers regarding each adviser's performance returns and the adviser's assets under management. Nelson's, Mobius and Plan Sponsor Network use the data to create databases that institutional investors and high net worth individuals can access by subscription. Mobius also provided performance numbers to ***Money Management Executive***, an industry publication. An additional database service, ***Money Manager Review***, does not maintain a database, but publishes the data on each reporting firm.

FACTS

Lawrence and Warwick's Misrepresentations Through the Database Services Concerning Warwick's Performance Returns

7. Lawrence supplied the database services with false and misleading performance returns for 2003 that were at least double the performance returns that Lawrence listed in Warwick's own marketing brochure. Lawrence transmitted these false monthly performance returns, by telephone or in writing, to the database services. The 2003 performance returns that Lawrence supplied to the database services varied and far exceeded the returns in Warwick's marketing brochure:

Warwick Brochure	Nelson's	Mobius[4]	Plan Sponsor Network
25.6%	56.3%	77.07%	60.37%

8. In 2004, two prospective clients brought the discrepancy between Warwick's and Nelson's 2003 performance returns to Lawrence's attention. In response, Lawrence told the prospective clients that Warwick's brochure represented the accurate

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[1] Nelson's is a unit of Thompson Financial.

[2] The Mobius group was acquired by CheckFree Corporation in 1999 and the business unit renamed M-Solutions and the database product was branded M-Search. In 2006, Informa Investment Solutions, an Informa Financial Company, acquired the M-Solutions unit of CheckFree Corporation.

[3] Informa Investment Solutions owns the Plan Sponsor Network database.

[4] The annual returns presented here are for the "Equity Only" returns, which exclude cash and fixed income investments.

performance returns. However, Lawrence never changed the 2003 inflated performance returns that Nelson's was publishing. Based upon the inflated performance returns Lawrence supplied, Nelson's repeatedly ranked Warwick at or among the top money managers for returns on investments in equity products.

9. In addition to including Warwick's performance returns in its subscription services, Mobius supplied money manager performance data to ***Money Management Executive***, an industry publication for investment professionals that compiles rankings based upon the performance data. In June 2004, ***Money Management Executive***, using Lawrence's inflated performance numbers, ranked Warwick among the "Top Ten Performing SMA Institutional Managers" for domestic equity, reporting that Warwick generated a 51.26% return from the first quarter of 2003 through the first quarter of 2004. ***Money Management Executive*** also ranked Warwick among the "Top Ten Performing SMA Institutional Managers" during the last half of 2003 based upon inflated performance numbers.

10. In addition to including Warwick's returns in its subscription services, Plan Sponsor Network included Warwick's inflated performance returns in their "Top Gun" rankings based upon information collected through their investment manager questionnaires, placing Warwick within the top ten investment advisers in the "Top Gun" rankings in all four quarters of 2003.

11. Lawrence also supplied Mobius with purported historical performance returns for Warwick for the time period 1987 to 1990, when Warwick did not even exist. In 2004, Mobius made this data available to its subscribers.

12. As of July 2004, five of Warwick's nine clients had contacted Lawrence to open accounts after seeing Warwick's performance results in Mobius, Nelson's, and/or Money Manager Review.

Lawrence's Misrepresentations Concerning Warwick's Assets Under Management, Its Number of Clients, and Its Registration Status

13. At various times between 1998 and 2004, Lawrence supplied through the database services materially misleading numbers that inflated Warwick's assets under management and the number of Warwick's clients. Lawrence provided these inflated numbers to make Warwick appear larger than it actually was to induce prospective clients to open advisory accounts with Warwick. Lawrence inflated these numbers by including the "accounts" to which he made investment recommendations, but which Warwick did not actively manage, in his calculation of the number of clients and Warwick's assets under management. From 1998 to 2004, Warwick actively managed money for between 4 and 10 clients. Lawrence, however, provided inflated numbers through the database services that showed that Warwick had between 9 and 26 clients during this same time period. Further, from 1998 to 2000, Warwick and Lawrence overstated the number of clients that Warwick had and its total assets under management in its Form ADV filings with the Commission.

14. The following charts summarize Warwick and Lawrence's misrepresentations concerning (i) Warwick's assets under management and (ii) the number of clients Warwick actively managed:

Warwick's Assets Under Management

Date	Actual Assets Under Management	As Reported in Form ADV	As Published by Nelson's	As Published by Mobius	As Published by Plan Sponsor Network	As Published by *Money Manager Review*
1Q04	$9.5M		$94.2M			
2003	$10.5M		$95.2M	$95.2M		
4Q03			$64.5M			
3Q03			$64.5M			
1Q03			$57.5M			
2002	$6M		$54.5M	$64.5M		
4Q02			$64.5M			
3Q02			$58.2M		$58.2M	
2001	$6M		$26.9M	$26.86M	$28M	
2Q01			$37.5M			
2000	$4M		$35.2M	$35.5 M	$35M	$36M
3Q00			$48.5M			
2Q00			$35M			
1999	$2M	$37.2M		$47.2M	$47.2M	
1998	$15M	$29.4M		$35.8M		
1997		$28.9M		$31.6M		
1996				$25M		
1995				$42.5M		

Warwick's Number of Clients Actively Managed

Date	Actual Number of Clients	As Reported in Form ADV	As Published by Nelson's	As Published by Mobius	As Published by Plan Sponsor Network
2004	8		26		
1Q04			26		
2003	8		26	26	
4Q03			26		
3Q03			25		
1Q03			20		
2002	5		20	20	
4Q02			20		
3Q02			18		19
2001	5		9	9	12
2Q01			11		
2000	4		11	11	11
3Q00			11		
2Q00			11		
1999	2	16		15	15
1998	10	15		17	
1997		14		17	
1996				14	
1995				15	

15. In 2004 and 2005, Warwick and Lawrence misrepresented through the database services that Warwick was registered with the Commission. The Commission terminated Warwick's registration with the Commission in January 2002, and Warwick was not registered with the Commission thereafter.

Lawrence Knew the Database Services Were Reporting False and Misleading Information for Warwick

16. Lawrence knew that the database services were reporting false and misleading information concerning Warwick. Lawrence personally provided the information to the database services, either by telephone or in writing. Further, on at least two occasions, prospective clients brought the inaccuracies and inconsistent numbers to Lawrence's attention. After the prospective clients brought these discrepancies to Lawrence's attention, Lawrence did not access the database services to verify that the information the database services were reporting was correct. Finally, Lawrence knew that he was supplying information to the database services for the purpose of soliciting potential clients, and he intended that prospective clients rely on the database services rankings in considering and selecting Warwick as an investment adviser.

Warwick's False Statements Through the Database Services Regarding Its AIMR-PPS Compliance

17. Lawrence and Warwick falsely represented through each database service that Warwick was in compliance with AIMR-PPS. Since Lawrence claimed Warwick was AIMR-PPS compliant, he was required to report Warwick's performance returns, assets under management, and number of clients in compliance with AIMR-PPS. AIMR-PPS require investment advisers, in a composite presented, to include only clients to whom the adviser provides discretionary investment advisory services. When calculating and reporting Warwick's assets under management and number of clients to the database services, Lawrence improperly included assets under management and clients for which he did not actively manage money. Furthermore, Lawrence and Warwick did not capture and maintain data and information necessary to support Warwick's performance presentation in the database services in accordance with AIMR-PPS.

Warwick's Inadequate Record Keeping

18. While registered as an investment adviser with the Commission, Warwick did not maintain many of the books and records that the Advisers Act requires registered investment advisers to maintain, such as copies of advertisements and other communications that the investment adviser circulates to over 10 persons, as well as documents necessary to form the basis for Warwick's performance returns.

Warwick's Improper Registration With the Commission

19. From 1998 to 2002, Warwick never had $25 million in assets under management, and therefore, Warwick was improperly registered with the Commission as an investment adviser.

VIOLATIONS

20. As a result of the conduct described above, Respondent Warwick willfully violated, and Lawrence willfully aided and abetted and caused Warwick's violations of, Section 204 of the Advisers Act and Rule 204-2(a)(11) thereunder, by failing to maintain and/or make available for inspection by the Commission copies of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that Warwick circulated or distributed, directly or indirectly, to 10 or more persons;

21. As a result of the conduct described above, Respondent Warwick willfully violated, and Lawrence willfully aided and abetted and caused Warwick's violations of, Section 204 of the Advisers Act and Rule 204-2(a)(16) thereunder by failing to keep all documents that are necessary to form the basis for, or demonstrate the calculation of, the performance or rate of return of any or all managed accounts that it used in advertisements or other communications distributed to 10 or more persons;

22. As a result of the conduct described above, Respondent Warwick willfully violated Section 206(1) and 206(2) of the Advisers Act and Lawrence willfully violated, or willfully aided and abetted and caused Warwick's violations of, Section 206(1) and 206(2) of the Advisers Act by employing devices, schemes or artifices to defraud clients or engaging in transactions, practices or courses of business that defrauded clients or prospective clients;

23. As a result of the conduct described above, Respondent Warwick willfully violated, and Lawrence willfully aided and abetted and caused Warwick's violations of, Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder by engaging in acts, practices or courses of business which were fraudulent, deceptive or manipulative, including publishing, circulating or distributing advertisements that contained untrue statements of material facts, or that were otherwise false or misleading;

24. As a result of the conduct described above, Respondent Warwick willfully violated Section 207 of the Advisers Act and Lawrence willfully violated, or willfully aided and abetted and caused Warwick's violations of, Section 207 of the Advisers Act by making untrue statements of a material fact in registration applications or reports Warwick filed with the Commission and willfully omitting to state in such applications or reports material facts which were required to be stated therein; and

25. As a result of the conduct described above, Respondent Warwick willfully violated, and Lawrence willfully aided and abetted and caused Warwick's violations of, Section 203A of the Advisers Act for having improperly registered with the Commission.

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 hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, of the following remedial action is appropriate in the public interest against Respondents, including, but not limited to, an investment advisory bar pursuant to Section 203(f) of the Advisers Act and civil penalties pursuant to Section 203(i) of the Advisers Act; and

C. Whether, pursuant to Section 203(k) of the Advisers Act, Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 203A, 204, 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rules 204-2(a)(11), 204-2(a)(16) and 206(4)-1(a)(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 Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him 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 Respondent 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 that Section 553 delaying the effective date of any final Commission action.

By the Commission.

Nancy M. Morris
Secretary

By: J. Lynn Taylor
Assistant Secretary

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 41

RIN 3038 AB86

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-54106; File No. S7-07-06]

RIN 3235-AJ54

Joint Final Rules: Application of the Definition of Narrow-Based Security Index to Debt Securities Indexes and Security Futures on Debt Securities

AGENCIES: Commodity Futures Trading Commission and Securities and Exchange Commission.

ACTION: Joint final rules.

SUMMARY: The Commodity Futures Trading Commission ("CFTC") and the Securities and Exchange Commission ("SEC") (together, the "Commissions") are adopting a new rule and amending an existing rule under the Commodity Exchange Act ("CEA") and adopting two new rules under the Securities Exchange Act of 1934 ("Exchange Act"). The rules will modify the applicable statutory listing standards requirements to permit security futures to be based on individual debt securities or a narrow-based security index composed of such securities. In addition, these rules and rule amendment will exclude from the definition of "narrow-based security index" debt securities indexes that satisfy specified criteria. A future on a debt securities index that is excluded from the definition of narrow-based security index will not be a security future and may trade subject to the exclusive jurisdiction of the CFTC.

EFFECTIVE DATE: [Insert date 30 days from publication in the Federal Register.]

FOR FURTHER INFORMATION CONTACT:

CFTC: Elizabeth L. Ritter, Deputy General Counsel, at 202/418-5052, or Julian E. Hammar, Counsel, at 202/418-5118, Office of General Counsel; or Thomas M. Leahy, Jr., Associate Director, Product Review, at 202/418-5278, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

SEC: Yvonne Fraticelli, Special Counsel, at 202/551-5654; or Leah Mesfin, Special Counsel, at 202/551-5655, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-6628.

SUPPLEMENTARY INFORMATION:

The Commissions are adopting Rule 41.15 and amending Rule 41.21 under the CEA,[1] and adding Rule 3a55-4 and Rule 6h-2 under the Exchange Act.[2]

I. Introduction

A. Background

Futures contracts on single securities and on narrow-based security indexes (collectively, "security futures") are jointly regulated by the CFTC and the SEC.[3] The definition of narrow-based security index under both the CEA and the Exchange Act sets forth the criteria for such joint regulatory jurisdiction. Futures on indexes that are not narrow-based security indexes are subject to the exclusive jurisdiction of the CFTC. Under the CEA and the Exchange Act, an index is a narrow-based security index if it

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1 All references to the CEA are to 7 U.S.C. 1 et seq.

2 All references to the Exchange Act are to 15 U.S.C. 78a et seq.

3 See Section 1a(31) of the CEA, 7 U.S.C. 1a(31); Section 3(a)(55)(A) of the Exchange Act, 15 U.S.C. 78c(a)(55)(A).

meets any one of four criteria.[4] Further, the CEA and Exchange Act provide that, notwithstanding the statutory criteria, an index is not a narrow-based security index if a contract of sale for future delivery on the index is traded on or subject to the rules of a board of trade and meets such requirements as are jointly established by rule, regulation, or order of the Commissions.[5]

The statutory definition of narrow-based security index was designed primarily for indexes composed of equity securities, not debt securities.[6] For example, while three criteria in the narrow-based security index definition evaluate the composition and weighting of the securities in the index, another criterion evaluates the liquidity of an index's component securities. The liquidity criterion in the statutory definition of narrow-based security index, which is important for indexes composed of common stock, is not an appropriate criterion for indexes composed of debt securities because debt securities generally do not trade in the same manner as equity securities. In particular, because few debt securities meet the ADTV criterion in the statutory definition of narrow-based security index, most indexes composed of debt securities, regardless of the number or

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4 The four criteria are as follows: (1) it has nine or fewer component securities; (2) any one of its component securities comprises more than 30% of its weighting; (3) any group of five of its component securities together comprise more than 60% of its weighting; or (4) the lowest weighted component securities comprising, in the aggregate, 25% of the index's weighting have an aggregate dollar value of average daily trading volume ("ADTV") of less than $50 million (or in the case of an index with 15 or more component securities, $30 million). See Section 1a(25)(A)(i)-(iv) of the CEA, 7 U.S.C. 1a(25)(A)(i)-(iv); Section 3(a)(55)(B)(i)-(iv) of the Exchange Act, 15 U.S.C. 78c(a)(55)(B)(i)-(iv).

5 See Section 1a(25)(B)(vi) of the CEA, 7 U.S.C. 1a(25)(B)(vi); Section 3(a)(55)(C)(vi) of the Exchange Act, 15 U.S.C. 78c(a)(55)(C)(vi).

6 Debt securities include notes, bonds, debentures, or evidences of indebtedness.

amount of underlying component securities in the index, would fall within the statutory definition of narrow-based security index.

On April 10, 2006, the Commissions proposed rules[7] that would exclude debt securities indexes that satisfied certain criteria from the statutory definition of narrow-based security index. Futures on debt securities indexes that satisfy the criteria of the exclusion would not be security futures and thus would be subject to the exclusive jurisdiction of the CFTC. In addition, the proposed rules and rule amendment would modify the statutory listing standards to permit the trading of security futures on single debt securities and narrow-based security indexes composed of debt securities.

The Commissions received comment letters on the proposed rules from two futures exchanges, the Chicago Mercantile Exchange ("CME") and the Board of Trade of the City of Chicago ("CBOT"),[8] and from the Futures Industry Association ("FIA").[9] All of the commenters generally supported the Commissions' proposal. The CME and the CBOT requested the opportunity for public comment on the listing standards that would

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7 See Securities Exchange Act Release No. 53560 (March 29, 2006), 71 FR 18030 (April 10, 2006) ("Proposing Release").

8 See letter from Craig S. Donohue, Chief Executive Officer, CME, to Jean A. Webb, Secretary, CFTC, and Jonathan G. Katz, Secretary, SEC, dated April 25, 2006 ("CME Letter"); letter from Bernard Dan, CBOT, to Jean A. Webb, Secretary, CFTC, and Nancy M. Morris, Secretary, SEC, dated May 10, 2006 ("CBOT Letter").

9 See letter from John M. Damgard, President, FIA, to Jean A. Webb, Secretary, CFTC, and Nancy M. Morris, Secretary, SEC, dated May 16, 2006 ("FIA Letter"). In addition, the FIA supported the comments of the CME and the CBOT and urged the Commissions to propose a regulatory standard governing the offer and sale of security futures contracts on indexes composed of non-U.S. equities that trade on or are subject to the rules of exchanges or boards of trade located outside of the United States. Because the proposed rules did not relate to indexes composed of non-U.S. equities, the Commissions are not addressing this comment in this release.

apply to security futures on debt securities and indexes composed of debt securities.[10] In addition, the CBOT suggested that the Commissions reduce the minimum remaining outstanding principal amount requirement from $250,000,000 to $100,000,000.[11]

The FIA asked the Commissions to confirm that: (1) a debt security index that meets the criteria in the rules would be broad-based even if the index included products or instruments that are not securities; and (2) in a debt securities index that includes both exempted securities and securities that are not exempted securities, it would be necessary to take into account only securities that are not exempted securities in determining compliance with the criteria in the rules.[12] These comments are discussed more fully below.

B. Overview of Adopted Rules

After careful consideration, the Commissions have determined to adopt the rules and rule amendment largely as proposed, with changes to address certain issues raised by the commenters. The Commissions believe it is appropriate to exclude certain debt securities indexes from the statutory definition of narrow-based security index using criteria that differ in certain respects from the criteria applicable to indexes composed of equity securities. The Commissions believe that such modified criteria for debt securities indexes are necessary or appropriate in the public interest and consistent with the protection of investors because the criteria recognize the differences between equity and debt and would permit security futures to be based on debt securities indexes.[13] In

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10 See CME Letter, supra note 8, at 2; CBOT Letter, supra note 8, at 3-4.

11 See CBOT Letter, supra note 8; at 2-3.

12 See FIA Letter, supra note 9, at 2.

13 See 15 U.S.C. 78mm(a)(1).

particular, the Commissions believe that the modified criteria addressing diversification and public information about, and market familiarity with, the issuers of the securities underlying a debt securities index will reduce the likelihood that a future on such an index would be readily susceptible to manipulation and thus are more appropriate criteria for debt securities indexes.

1. CEA Rule 41.21 and Exchange Act Rule 6h-2

The Commissions are amending CEA Rule 41.21 and adopting Exchange Act Rule 6h-2 to modify the statutory listing standards for security futures to permit the trading of security futures based on debt securities that are notes, bonds, debentures, or evidences of indebtedness and indexes composed of such securities.

2. CEA Rule 41.15 and Exchange Act Rule 3a55-4

The Commissions are adopting CEA Rule 41.15 and Exchange Act Rule 3a55-4, which exclude from the definition of narrow-based security index any debt securities index that satisfies certain criteria. Specifically, CEA Rule 41.15 and Exchange Act Rule 3a55-4 provide that a debt securities index will not be considered a narrow-based security index for purposes of Section 3(a)(55) of the Exchange Act and Section 1a(25) of the CEA if: (1) each index component is a security that is a note, bond, debenture, or evidence of indebtedness; (2) the index is comprised of more than nine securities issued by more than nine non-affiliated issuers; (3) the securities of any issuer included in the index do not comprise more than 30% of the index's weighting; (4) the securities of any five non-affiliated issuers included in the index do not comprise more than 60% of the index's weighting; and (5) the issuer of a security included in an index satisfies certain requirements.

For securities that are not exempted securities, CEA Rule 41.15 and Exchange Act Rule 3a55-4 require that the issuer of a component security: (1) be required to file reports pursuant to section 13 or 15(d) of the Exchange Act; (2) have worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (3) have outstanding securities that are notes, bonds, debentures, or evidences of indebtedness with a total remaining principal amount of at least $1 billion; or (4) be a government of a foreign country or a political subdivision of a foreign country.

In addition, CEA Rule 41.15 and Exchange Act Rule 3a55-4 require each security of an issuer included in an index to have a total remaining principal amount outstanding of at least $250,000,000. Alternatively, to respond to the CBOT's comment, the final rule permits a municipal security in the index to have only $200,000,000 total remaining principal amount outstanding if the issuer of such municipal security has outstanding debt securities with a total remaining principal amount of at least $1 billion.

CEA Rule 41.15 and Exchange Act Rule 3a55-4 provide a de minimis exception from the issuer eligibility and minimum outstanding principal balance criteria if a predominant percentage of the securities comprising the index's weighting satisfy all of the applicable criteria.

In addition, in response to the FIA's comments, the Commissions are adding an alternative provision that would permit exempted securities that are debt securities (other than municipal securities) to be excluded from an index in determining whether such index is not a narrow-based security index under the rules.

Finally, CEA Rule 41.15 and Exchange Act Rule 3a55-4 contain a definition of "control" solely to assess affiliation among issuers for purposes of determining satisfaction of the criteria established in the rules.

II. Discussion of Final Rules

A. Modification of the Statutory Listing Standards Requirements for Security Futures Products

The Commodity Futures Modernization Act of 2000[14] amended the Exchange Act and the CEA by, among other things, establishing the criteria and requirements for listing standards for securities on which security futures products can be based. The Exchange Act[15] provides that it is unlawful for any person to effect transactions in security futures products that are not listed on a national securities exchange or a national securities association registered pursuant to Sections 6(a) or 15A(a), respectively, of the Exchange Act.[16] The Exchange Act[17] further provides that such exchange or association is permitted to trade only security futures products that conform with listing standards filed with the SEC and that meet the criteria specified in Section 2(a)(1)(D)(i) of the CEA.[18] The CEA[19] states that no board of trade shall be designated as a contract market with respect to, or registered as a derivatives transaction execution facility ("DTEF") for, any contracts of sale for future delivery of a security futures product unless the board of trade and the applicable contract meet the criteria specified in that section. Similarly, the

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14 Pub. L. No. 106-554, 114 Stat. 2763 (2000).

15 Section 6(h)(1) of the Exchange Act, 15 U.S.C. 78f(h)(1).

16 15 U.S.C. 78f(a) and 78o-3(a).

17 Section 6(h)(2) of the Exchange Act, 15 U.S.C. 78f(h)(2).

18 7 U.S.C. 2(a)(1)(D)(i).

19 Section 2(a)(1)(D)(i) of the CEA, 7 U.S.C. 2(a)(1)(D)(i).

Exchange Act[20] requires that the listing standards filed with the SEC by an exchange or association meet specified requirements.

In particular, the Exchange Act[21] and the CEA[22] require that, except as otherwise provided in a rule, regulation, or order, a security future must be based upon common stock and such other equity securities as the Commissions jointly determine appropriate. A security future on a debt security or a debt securities index currently would not satisfy this requirement.

The Exchange Act and the CEA, however, provide the Commissions with the authority to jointly modify this requirement to the extent that the modification fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.[23] Pursuant to this authority, the Commissions have determined that it is appropriate in the public interest and consistent with the protection of investors to amend CEA Rule 41.21 and adopt Exchange Act Rule 6h-2 to permit the trading of security futures based on debt securities that are notes, bonds, debentures, or evidences of indebtedness and indexes composed of such securities. This modification is necessary to allow the listing and trading of new and potentially useful financial products.

Security futures on debt securities or indexes composed of debt securities must also conform with the listing standards of the national securities exchange or national securities association on which they trade. The Exchange Act requires, among other

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20 Section 6(h)(3) of the Exchange Act, 15 U.S.C. 78f(h)(3).

21 Section 6(h)(3)(D) of the Exchange Act, 15 U.S.C. 78f(h)(3)(D).

22 Section 2(a)(1)(D)(i)(III) of the CEA, 7 U.S.C. 2(a)(1)(D)(i)(III).

23 Section 6(h)(4)(A) of the Exchange Act, 15 U.S.C. 78f(h)(4)(A); Section 2(a)(1)(D)(v)(I) of the CEA, 7 U.S.C. 2(a)(1)(D)(v)(I).

things, that such listing standards be no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association.[24] In addition, the issuer of any security underlying the security future, including each component security of a narrow-based security index, would have to be subject to the reporting requirements of the Exchange Act due to the requirement that the security be registered under Section 12 of the Exchange Act.[25] The listing standards for a security future also must require that trading in the security future not be readily susceptible to manipulation of the price of such security future, nor to causing or being used in the manipulation of the price of an underlying security, option on such security, or option on a group or index including such securities.[26] Because these listing standards will continue to provide important investor protections and safeguards against such products being readily susceptible to manipulation or causing or being used in the manipulation of any underlying security or option on such underlying security or securities, the Commissions believe that new Exchange Act Rule 6h-2 and the amendments to CEA Rule 41.21 will foster the development of fair and orderly markets in security futures products, are appropriate in the public interest, and are consistent with the protection of investors.

B. Rules Excluding Certain Debt Securities Indexes from the Definition of Narrow-Based Security Index

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24 Section 6(h)(3)(C) of the Exchange Act, 15 U.S.C. 78f(h)(3)(C).

25 Section 2(a)(1)(D)(i)(I) of the CEA, 7 U.S.C. 2(a)(1)(D)(i)(I); Section 6(h)(3)(A) of the Exchange Act, 15 U.S.C. 78f(h)(3)(A).

26 Section 2(a)(1)(D)(i)(VII) of the CEA, 7 U.S.C. 2(a)(1)(D)(i)(VII); Section 6(h)(3)(H) of the Exchange Act, 15 U.S.C. 78f(h)(3)(H).

The Commissions are adopting new CEA Rule 41.15 and Exchange Act Rule 3a55-4, which exclude from the statutory definition of narrow-based security index any debt securities index that satisfies certain criteria. A futures contract on such an index would not be a security future and thus would be subject to the exclusive jurisdiction of the CFTC. The Commissions believe that the criteria in the rules, including the requirements relating to the maximum weighting and concentration of securities of an issuer in an index, the eligibility conditions for issuers, and the minimum remaining outstanding principal amount requirement should reduce the likelihood that a future on such an index would be readily susceptible to manipulation or could be used to manipulate the market for the underlying debt securities.[27]

1. Index composed solely of debt securities

The new rules require that, for an index to qualify for the exclusion from the definition of "narrow-based security index," each component security of the index must be a security[28] that is a note, bond, debenture, or evidence of indebtedness.[29] Further, none of the securities of an issuer included in the index may be an equity security, as

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27 Although broad-based debt securities indexes that meet the criteria in the rules should have a reduced likelihood of being readily susceptible to manipulation, such indexes also must be determined to be not readily susceptible to manipulation, in accordance with Section 2(a)(1)(C)(ii)(II) of the CEA, 7 U.S.C. 2(a)(1)(C)(ii)(II).

28 The term "security" is defined in Section 2(a)(1) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. 77b(a)(1), and Section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10).

29 See Exchange Act Rule 3a55-4(a)(1); CEA Rule 41.15(a)(1). The federal securities laws do not contain a single definition of "debt security." The Commissions, therefore, are using the terms found in the Trust Indenture Act of 1939, 15 U.S.C. 77aaa-bbb (which governs debt securities of all types), to define the debt securities for purposes of these rules and rule amendment.

defined in Section 3(a)(11) of the Exchange Act and the rules adopted thereunder.[30] Thus, any security index that includes an equity security will not qualify for the exclusion for indexes composed of debt securities.[31]

The FIA asked the Commissions to confirm that a debt security index that meets the criteria in the rules would be broad-based even if the index included products or instruments that are not securities.[32] The Commissions' proposed rules required that each component security of an index be a security that is a note, bond, debenture, or evidence of indebtedness. The Commissions did not propose or solicit comment on whether, and to what extent, indexes that include instruments that are not securities should be excluded from the definition of narrow-based security index and have not, to date, considered the regulatory implications of so excluding futures on indexes composed of different product classes. Accordingly, the Commissions are adopting these requirements as proposed without permitting indexes under the criteria to include products or instruments that are not securities.

2. Number and weighting of index components

The exclusion also includes conditions relating to the minimum number of securities of non-affiliated issuers that must be included in an index and the maximum

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30 15 U.S.C. 78c(a)(11). See Exchange Act Rule 3a55-4(a)(2); CEA Rule 41.15(a)(2). A security convertible into an equity security is an equity security under the Exchange Act and the Securities Act.

31 Indexes that include both equity and debt securities would be subject to the criteria for narrow-based security indexes enumerated in Section 1a(25) of the CEA and Section 3(a)(55) of the Exchange Act.

32 See FIA Letter, supra note 9, at 2. The FIA letter did not elaborate on what these other products or instruments might be.

permissible weighting of securities in the index. The new rules provide that, for an index to qualify for the exclusion:

- The index must be composed of more than nine securities issued by more than nine non-affiliated issuers;[33]
- The securities of any issuer cannot comprise more than 30% of the index's weighting;[34] and
- The securities of any five non-affiliated issuers cannot comprise more than 60% of the index's weighting.[35]

The foregoing conditions are virtually identical to the criteria contained in the Exchange Act and the CEA that apply in determining if a security index would not be a narrow-based security index.[36]

In addition, the new rules provide that the term "issuer" includes a single issuer or group of affiliated issuers.[37] An issuer would be affiliated with another issuer for purposes of the exclusion if it controls, is controlled by, or is under common control with, that other issuer. The rules define control, solely for purposes of the exclusion, to mean ownership of 20% or more of an issuer's equity or the ability to direct the voting of 20% or more of an issuer's voting equity.[38] The definition of control will apply solely to CEA

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33 See Exchange Act Rule 3a55-4(a)(3); CEA Rule 41.15(a)(3).

34 See Exchange Act Rule 3a55-4(a)(4); CEA Rule 41.15(a)(4).

35 See Exchange Act Rule 3a55-4(a)(5); CEA Rule 41.15(a)(5).

36 See supra note 4.

37 See Exchange Act Rule 3a55-4(b); CEA Rule 41.15(b).

38 While the definition of affiliate under the federal securities laws is generally a facts-and-circumstances determination based on the definition of affiliate contained in such laws, see, e.g., Securities Act Rule 405, 17 CFR 230.405; Exchange Act Rule 12b-2, 17 CFR 240.12b-2, certain rules under the Exchange

Rule 41.15 and Exchange Act Rule 3a55-4 and is designed to provide a clear standard for determining control and affiliation for purposes of the exclusion. Determining whether issuers are affiliated is important in assessing whether an index satisfies the conditions in the rules adopted today because the debt securities of all affiliated issuers included in an index must be aggregated.

The number and weighting criteria require that an index meet minimum diversification conditions with regard to both issuers and the underlying securities. These criteria provide that for purposes of weighting, all debt securities of all affiliated issuers included in the index are aggregated so that the indexes are not concentrated in the securities of a small number of issuers and their affiliates. These criteria are important elements of the Commissions' determination that the rules are consistent with the protection of investors because they reduce the likelihood that a future on such a debt securities index would be overly dependent on the price behavior of a component single security, small group of securities or issuers, or group of securities issued by affiliated parties.

3. Issuer or security eligibility criteria

New CEA Rule 41.15 and Exchange Act Rule 3a55-4 require that, for an index to qualify for the exclusion from the definition of narrow-based security index, the issuer of each component security that is not an exempted security under the Exchange Act and the rules thereunder must satisfy one of the following:

Act contain a 20% threshold for purposes of determining a relationship between two or more entities. See, e.g., Exchange Act Rule 13d-1(c), 17 CFR 240.13d-1(c); Securities Exchange Act Release No. 39538 (January 12, 1998), 63 FR 2854 (January 16, 1998). See also Rule 3-05 under Regulation S-X, 17 CFR 210.3-05.

- The issuer is required to file reports pursuant to Sections 13 or 15(d) of the Exchange Act;[39]
- The issuer has a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; or
- The issuer has outstanding securities that are notes, bonds, debentures, or evidences of indebtedness having a total remaining principal amount of at least $1 billion.

These issuer eligibility criteria are aimed at conditioning the exclusion for a debt securities index from the definition of narrow-based security index on the public availability of information about the issuers of the securities included in the index. For example, an issuer that is required to file reports pursuant to Sections 13 or 15(d) of the Exchange Act[40] makes regular and public disclosure through its Exchange Act filings. For issuers that are not required to file reports with the SEC under the Exchange Act, the Commissions similarly believe that issuers having worldwide equity market capitalization of $700 million or $1 billion in outstanding debt are likely to have public information available about them.[41] Accordingly, the issuer eligibility criteria are designed to provide that, other than with respect to exempted securities in the index, the debt securities index includes debt securities of issuers for which public information is available, thereby reducing the likelihood that an index qualifying for the exclusion would be readily susceptible to manipulation.

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39 15 U.S.C. 78m and 78o(d).

40 15 U.S.C. 78m and 78o.

41 These thresholds are similar to ones the SEC recently adopted in its Securities Offering Reform rules. See Securities Act Release No. 8591 (July 19, 2005), 70 FR 44722 (August 3, 2005).

Under the rules adopted by the Commissions today, the issuer eligibility criteria do not apply to index components that are exempted securities, as defined in the Exchange Act,[42] or to an issuer that is a government of a foreign country or a political subdivision of a foreign country. The Commissions believe that it is appropriate to allow indexes qualifying for the exclusion to include exempted securities and the debt obligations of foreign countries and their political subdivisions. Current law permits futures on individual exempted debt securities, other than municipal securities, and on certain foreign sovereign debt obligations.[43] Because a future may be based on one of these exempted debt securities, the Commissions believe that it is reasonable and consistent with the purposes of the CEA and the Exchange Act to allow futures to be based on indexes composed of such debt securities.

4. Minimum principal amount outstanding

The rules require that, for a securities index to qualify for the exclusion, each index component, other than a municipal security in certain cases, must have a total remaining principal amount of at least $250,000,000. Although trading in most debt securities is limited, trading volume is generally larger for debt securities with

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42 See 15 U.S.C. 78c(a)(12). While issuers of exempted securities are not subject to the same issuer eligibility conditions, other existing rules and regulatory regimes applicable to most of such issuers provide for ongoing public information about such issuers. See, e.g., Exchange Act Rule 15c2-12, 17 CFR 240.15c2-12.

43 Section 2(a)(1)(C)(iv) of the CEA, 7 U.S.C. 2(a)(1)(C)(iv), prohibits any person from entering into a futures contract on any security except an exempted security under Section 3(a)(12) of the Exchange Act, 15 U.S.C. 78c(a)(12), other than a municipal security, as defined in Section 3(a)(29) of the Exchange Act, 15 U.S.C. 78c(a)(29). In addition, Exchange Act Rule 3a12-8, 17 CFR 240.3a12-8, deems the debt obligations of specified foreign governments to be exempted securities for the purpose of permitting the offer, sale, and confirmation of futures contracts on those debt obligations in the United States.

$250,000,000 or more in total remaining principal amount outstanding.[44] The new rules do not require that the securities included in the index have an investment grade rating. Nor do the rules require particular trading volume, due to the generally lower trading activity in the debt markets compared to the equity markets. Trading activity in a debt security generally increases as the principal amount of the debt security increases. However, non-investment-grade debt securities generally trade more frequently than investment-grade debt securities. As a result of the type of trading activity that occurs in the debt markets, the Commissions do not believe that trading volume is an appropriate criterion for determining whether a debt securities index is narrow-based. Instead, the Commissions are adopting a minimum principal amount criterion which is intended, together with the other criteria in the rules adopted today geared to the debt securities market, to provide a substitute criterion for trading volume. Accordingly, the Commissions believe that including a minimum remaining principal amount criterion, together with the other criteria, will decrease the likelihood that a future on an index qualifying for the exclusion from the definition of narrow-based security index would be readily susceptible to manipulation.

The CBOT urged the Commissions to reduce the minimum remaining outstanding principal amount threshold from $250,000,000 to $100,000,000.[45] The CBOT presented data indicating that only a small number of municipal debt securities are issued in principal amounts exceeding $250,000,000 and argued that it would be difficult to construct an index qualifying for the exclusion composed of municipal securities. The

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44 This is based on data obtained from the Trace Reporting and Compliance Engine (TRACE) database supplied by NASD.

45 See CBOT Letter, supra note 8, at 2-3.

CBOT believed a $100,000,000 threshold was appropriate because it would make it more likely that an exchange would be able to identify a sufficient number of municipal debt securities to be included in an index. The CBOT did not provide any data regarding other debt securities or any data or arguments to demonstrate how its proposed $100,000,000 threshold was consistent with the principle that an index based on municipal debt securities meeting its threshold would not be readily susceptible to manipulation.

The Commissions intend the $250,000,000 threshold to be a proxy for the statutory trading volume criterion for equity securities. As discussed above, trading activity in a debt security generally increases as the principal amount of the debt security increases. The $250,000,000 threshold is not designed to maximize the number of securities that may be included in an index qualifying for an exclusion from the definition of narrow-based security index. Rather, by limiting an index primarily to more liquid securities, this criterion increases the likelihood that information about such securities will be publicly available and that the securities will have a larger market following. The $250,000,000 threshold, together with the other criteria, is designed to reduce the likelihood that the index would be readily susceptible to manipulation.

The Commissions are addressing the CBOT's comment in the final rules by adopting an alternate test for municipal securities. A municipal security could either: (1) meet the original $250,000,000 threshold; or (2) meet the following two-part test: (a) the security has a remaining principal amount outstanding of $200,000,000; and (b) the issuer of the security has outstanding securities that are notes, bonds, debentures, or evidences of indebtedness having a total remaining principal amount of at least $1

billion.[46] As discussed above, the Commissions believe that issuers with $1 billion or more in outstanding debt are likely to be followed in the market, and that information about such issuers is more likely to be publicly available.[47] Providing an alternate lower threshold for principal amount outstanding should provide some flexibility in constructing indexes that include municipal securities by expanding the number of municipal securities issues that could be eligible. At the same time, the alternate $200,000,000 threshold is designed to reduce the likelihood that the market for a security is not highly illiquid and thus more readily susceptible to manipulation.[48] Furthermore, the requirement that the issuer of the security have total debt outstanding of at least $1 billion increases the likelihood that information about the issuer and its securities will be publicly available. The availability of such information should reduce the likelihood that the issuer's securities – including those with a minimum principal amount outstanding of $200,000,000 – would be readily susceptible to manipulation.

5. De minimis exception

As the Commissions proposed, the final rules exclude an index from the definition of "narrow-based security index" even if certain of the issuers of the underlying securities do not meet the issuer eligibility and the securities do not meet the minimum outstanding principal balance requirements. Specifically, an index will still qualify for

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46 CEA Rule 41.15(a)(1)(vii)(B); Exchange Act Rule 3a55-4(a)(1)(vii)(B).

47 See supra note 41 and accompanying text.

48 In a 2004 study of the municipal securities market, the SEC staff found that, over a 10.5-month period, one-third of municipal issuers had no trades in their debt securities and two-thirds of municipal issuers had 25 or fewer trades in their securities. Only 2% of municipal issuers had 1,000 or more trades in their securities during that 10.5-month period. See Office of Economic Analysis, Office of Municipal Securities, and Division of Market Regulation, Report on Transactions in Municipal Securities (2004), at 17.

the exclusion even if an issuer does not satisfy the eligibility criteria described above[49] or the securities do not have $250,000,000, or, for municipal securities of issuers with at least $1 billion in outstanding principal amount of debt, $200,000,000 in remaining principal amount, as applicable, if:

- All securities of such issuer included in the index represent less than 5% of the index's weighting;[50] and
- Securities comprising at least 80% of the index's weighting satisfy the issuer eligibility and minimum outstanding principal balance criteria.[51]

The Commissions believe that an index that includes a very small proportion of securities and issuers that do not satisfy certain of the above criteria should nevertheless be excluded from the definition of narrow-based security index. To satisfy the exclusion, both the 5% and the 80% weighting thresholds must be met at the time of the assessment. The 5% weighting threshold is designed to provide that issuers and securities not satisfying certain of the criteria will comprise only a very small portion of the index. The 80% weighting threshold is designed to provide that a predominant percentage of the securities and the issuers in the debt securities index satisfy the criteria. By allowing debt securities indexes that include debt securities of a small number of issuers and securities that do not satisfy certain of the criteria to qualify for the exclusion, the de minimis

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49 See supra notes 28-46 and accompanying text.

50 In determining whether the 5% threshold is met, all securities of an issuer and its affiliates would be aggregated because of the potential for concentrated risk of the index in a limited group of issuers.

51 The 80% calculation is based on the entire index's weighting without subtracting issuers that are not required to satisfy the issuer eligibility criteria and minimum outstanding principal amount criteria. This is important to ensure that a predominant percentage of the index satisfies the required criteria.

exception provides some flexibility in constructing an index or determining whether a debt securities index satisfies the exclusion. The Commissions believe that the de minimis exemption is appropriate for indexes that are predominantly composed of securities that satisfy the specified criteria, and that providing such flexibility is consistent with the protection of investors and is not likely to increase the possibility that an index that qualifies for the exclusion would be readily susceptible to manipulation.

6. Indexes that Include Exempted Securities

The FIA asked the Commissions to confirm that, in an index that includes exempted securities and securities that are not exempted securities, only securities that are not exempted securities must be taken into account in determining compliance with the rules' criteria.[52] To address the FIA's comment and to clarify the treatment of an index that includes both exempted debt securities and debt securities that are not exempted securities, the final rules permit, but do not require, certain of the index's exempted debt securities (other than municipal securities) to be excluded from the index in determining whether the index is not a narrow-based security index under the rules.[53] Persons making the determination regarding the appropriate treatment under the rules of a debt security index that includes both exempted and non-exempted debt securities may use either test for determining whether the debt security index is not narrow-based. Under the alternative method for determining whether a debt security index is not narrow-based, exempted debt securities (other than municipal securities) may be excluded from the application of the rule criteria. If exempted debt securities are excluded from the application of the rule criteria, the remaining portion of the index must

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52 See FIA Letter, supra note 9, at 2.

53 See CEA Rule 41.15(a)(2); Exchange Act Rule 3a55-4(a)(2).

satisfy each of the rule's criteria without taking into account the portion of the index composed of the exempted debt securities in order for the index as a whole to not be a narrow-based security index under the rules.

The Commissions believe this new provision is consistent with the objective and intent of the proposed rules. The Commissions also believe it responds to the FIA's request for clarification of the treatment of indexes that include exempted securities and securities that are not exempted securities.

C. Tolerance Period

Section 1a(25)(B)(iii) of the CEA[54] and Section 3(a)(55)(C)(iii) of the Exchange Act[55] provide that, under certain conditions, a future on a security index may continue to trade as a broad-based index future, even when the index temporarily assumes characteristics that would render it a narrow-based security index under the statutory definition. An index qualifies for this tolerance and therefore is not a narrow-based security index if: (1) a future on the index traded for at least 30 days as an instrument that was not a security future before the index assumed the characteristics of a narrow-based security index; and (2) the index does not retain the characteristics of a narrow-based security index for more than 45 business days over three consecutive calendar months.[56]

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54 7 U.S.C. 1a(25)(B)(iii).

55 15 U.S.C. 78c(a)(55)(C)(iii).

56 If the index becomes narrow-based for more than 45 days over three consecutive calendar months, the statute then provides an additional grace period of three months during which the index is excluded from the definition of narrow-based security index. See Section 1a(25)(D) of the CEA, 7 U.S.C. 1a(25)(D); Section 3(a)(55)(E) of the Exchange Act, 15 U.S.C. 78c(a)(55)(E).

In addition, current CEA Rule 41.12[57] and Exchange Act Rule 3a55-2[58] address the circumstance when a broad-based security index underlying a future becomes narrow-based during the first 30 days of trading. In such case, the future does not meet the requirement of having traded for at least 30 days to qualify for the tolerance period granted by Section 1a(25)(B)(iii) of the CEA[59] and Section 3(a)(55)(C)(iii) of the Exchange Act.[60] These rules, however, provide that the index will nevertheless be excluded from the definition of narrow-based security index throughout that first 30 days, if the index would not have been a narrow-based security index had it been in existence for an uninterrupted period of six months prior to the first day of trading.

III. Listing Standards for Security Futures on Debt Securities

The listing standards requirements for security futures are set forth in Section 2(a)(1)(D)(i) of the CEA[61] and Section 6(h)(3) of the Exchange Act.[62] Among other things, the listing standards for security futures products must be no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association,[63] and the listing standards must require that trading in the security futures product not be readily susceptible to manipulation of the price of the security futures product, or to causing or being used in the manipulation of the price of an

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57 17 CFR 41.12.

58 17 CFR 240.3a55-2.

59 7 U.S.C. 1a(25)(B)(iii).

60 15 U.S.C. 78c(a)(55)(C)(iii).

61 7 U.S.C. 2(a)(1)(D)(i).

62 15 U.S.C. 78f(h)(3).

63 See Section 6(h)(3)(C) of the Exchange Act, 15 U.S.C. 78f(h)(3)(C).

underlying security, option on such security, or option on a group or index including such securities.[64]

The CME and CBOT urged the SEC to publish for comment the listing standards that would apply to security futures on debt securities.[65] The commenters maintained that interested parties should have an opportunity to provide meaningful comment on the listing standards for such security futures.

As noted above, the Exchange Act and the CEA require that the listing standards for security futures be no less restrictive than comparable listing standards for exchange-traded options.[66] This statutory standard does not require that the SEC adopt rules. Instead, the Exchange Act contemplates that exchanges proposing to list and trade security futures products must file proposed rule changes that include listing standards that, among other things, are consistent with this standard.[67] Currently, the only debt securities on which options trade are U.S. Treasury securities.[68] The SEC, however, recently published for comment a proposed rule change by the Chicago Board Options Exchange to list options on certain corporate debt securities.[69] The SEC would welcome comments from the CME and others on the CBOE's proposal, particularly as it relates to comparable listing standards for security futures on debt securities.

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64 See Section 2(a)(1)(D)(i)(VII) of the CEA, 7 U.S.C. 2(a)(1)(D)(i)(VII); Section 6(h)(3)(H) of the Exchange Act, 15 U.S.C. 78f(h)(3)(H).

65 See CME Letter, supra note 8, at 2; CBOT Letter, supra note 8, at 3-4.

66 See supra note 63.

67 A proposed rule change must, among other things, satisfy the substantive requirements of Section 6 of the Exchange Act and the procedural requirements of Section 19 of the Exchange Act.

68 See CBOE Rule 21.1 et seq.

69 See Securities Exchange Act Release No. 53935 (June 2, 2006), 71 FR 34174 (June 13, 2006).

III. Paperwork Reduction Act

CFTC:

The Paperwork Reduction Act of 1995 ("PRA"),[70] imposes certain requirements on federal agencies (including the CFTC) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The rule and rule amendment do not require a new collection of information on the part of any entities.

SEC:

The PRA does not apply because new Exchange Act Rules 3a55-4 and 6h-2 do not impose any new "collection of information" requirements within the meaning under the PRA.

IV. Costs and Benefits of Final Rules

CFTC:

Section 15(a) of the CEA[71] requires the CFTC to consider the costs and benefits of its actions before issuing new regulations under the CEA. By its terms, Section 15(a) does not require the CFTC to quantify the costs and benefits of new regulations or to determine whether the benefits of the regulations outweigh their costs. Rather, Section 15(a) requires the CFTC to "consider the cost and benefits" of the subject rules in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The CFTC may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that,

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70 44 U.S.C. 3501 et seq.

71 7 U.S.C. 15(a).

notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

The rule and rule amendment will foster the protection of market participants and the public by establishing criteria for futures on broad-based debt securities indexes that will reduce the likelihood that these products would be readily susceptible to manipulation. The statutory listing standards for security futures provide for similar protection of market participants with regard to security futures on narrow-based debt securities indexes and individual debt securities that will be made available for listing and trading pursuant to the final rules.

In addition, the rule and rule amendment will encourage the efficiency and competitiveness of futures markets by permitting the listing for trading of new and potentially useful products on debt securities and security indexes. In the absence of the rule and rule amendment, futures on debt securities indexes that meet the proposed criteria for non-narrow-based security index treatment, as well as security futures on narrow-based debt securities indexes and individual debt securities, would be prohibited. Efficiencies will also be achieved because the rule and rule amendment, in establishing criteria for broad-based debt securities indexes, take into consideration the characteristics of such indexes and the issuers of the underlying debt securities that render joint SEC and CFTC regulation unnecessary. By not subjecting futures on debt securities indexes that meet the criteria to joint SEC and CFTC regulation, the costs for listing such products will be minimized.

The rule and rule amendment will have no material impact from the standpoint of imposing costs or creating benefits, on price discovery, sound risk management practices, or any other public interest considerations.

Although exchanges may incur costs in order to determine whether a debt securities index meets the criteria to be considered broad-based established by the rules, the CFTC believes that these costs are outweighed in light of the factors and benefits discussed above.

SEC:

New Exchange Act Rule 6h-2 permits a national securities exchange to list and trade security futures based on a security that is a note, bond, debenture, or evidence of indebtedness or on a narrow-based index composed of such securities. New Exchange Act Rule 3a55-4 excludes from the definition of "narrow-based security index" those debt securities indexes that satisfy certain criteria.

A. Benefits

The benefits of new Exchange Act Rules 6h-2 and 3a55-4 are related to the benefits that will accrue as a result of expanding the range of securities on which security futures and other index futures may be based. By permitting the trading of security futures based on debt securities or debt securities indexes and excluding certain indexes based on debt securities from the definition of narrow-based security index, new Exchange Act Rule 6h-2 permits a greater variety of financial products to be listed and traded that potentially could facilitate price discovery and the ability to hedge. New Exchange Act Rule 3a55-4 provides clear, objective criteria for excluding from the jurisdiction of the SEC futures contracts on certain debt securities indexes. By providing

an objective rule to determine when a debt securities index is not a narrow-based securities index for purposes of the Exchange Act Section 3(a)(55), new Exchange Act Rule 3a55-4 alleviates any additional regulatory costs of dual CFTC and SEC jurisdiction where it is appropriate to do so. Futures contracts on debt securities indexes that do not meet the criteria in Exchange Act Rule 3a55-4 for the exclusion from the definition of narrow-based debt security index will be subject to the joint jurisdiction of the SEC and CFTC. Futures on debt securities indexes that do meet the criteria for the exclusion, however, will be subject to the exclusive jurisdiction of the CFTC and may be traded only on designated contract markets and registered DTEFs. Investors generally will benefit from the new rules by having a wider choice of financial products to buy and sell. The amount of the benefit will likely be correlated to the volume of trading in these new instruments.

B. Costs

In complying with the new rules, a national securities exchange, national securities association, designated contract market, registered DTEF, or foreign board of trade (each a "listing market") that wishes to list and trade futures contracts based on debt securities indexes will incur certain costs.[72] A listing market that wishes to list and trade such a futures contract will be required to ascertain whether the underlying debt securities index is or is not a narrow-based debt security index, according to the criteria set forth in Rule 3a55-4, and thus whether a future on such debt security index is subject to the exclusive jurisdiction of the CFTC or to the joint jurisdiction of the SEC and CFTC. This

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72 In the Proposing Release, supra note 7, the Commissions requested comment on the costs and benefits associated with the proposed rules and rule amendment but did not receive any specific cost or benefit data in response.

analysis will have to be performed at the initial listing and monitored periodically to ensure continued compliance under new Exchange Act Rule 3a55-4. The SEC notes, however, that in the absence of new Exchange Act Rule 3a55-4, a listing market desiring to list futures on a debt securities index would still have to bear the costs associated with performing a similar analysis under the statutory definition of narrow-based security index. The costs associated with new Exchange Act Rule 3a55-4 would largely replace the costs of performing an analysis under the statutory definition of narrow-based security index for debt securities indexes and, therefore, there is little or no cost increase.

The determination of whether a debt securities index is excluded from the definition of narrow-based debt security index will require listing markets to make certain calculations based on the type of issuer and concentration of the security in the index, including calculations, as appropriate, relating to the issuer eligibility provisions,[73] the total outstanding principal of each of the underlying securities, and calculations related to the weighting of each of the securities in the index. A listing market may incur costs if it contracts with an outside party to perform these calculations. In addition, a listing market may incur costs associated with obtaining and accessing appropriate data from an independent third-party vendor. For example, a listing market may be required to pay certain fees to a vendor to acquire the necessary information. Furthermore, if these calculations require data that are not readily available, particularly if foreign data are needed, a listing market may possibly incur additional costs to obtain such data.

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[73] The issuer eligibility calculations for issuers of non-exempted securities, non-Exchange Act reporting issuers, or issuers that are not foreign governments could include the worldwide market value of outstanding common equity held by non-affiliates of such issuer or the aggregate remaining principal amount of outstanding debt of such issuer.

Market participants that elect to create debt securities indexes for trading futures thereon will also incur non-regulatory costs associated with constructing these products. Such costs will be the ordinary costs of doing business.

V. Consideration of Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

SEC:

Section 3(f) of the Exchange Act[74] requires the SEC, when engaged in a rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act[75] requires the SEC, in adopting rules under the Exchange Act, to consider the impact any rule will have on competition. In particular, Section 23(a)(2) of the Exchange Act prohibits the SEC from adopting any rule that will impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In the Proposing Release, the SEC requested comment on these statutory considerations and received none that addressed them specifically.

New Exchange Act Rule 6h-2 will permit the listing and trading of security futures based on debt securities and narrow-based debt securities indexes. New Exchange Act Rule 3a55-4 sets forth clear methods and guidelines for a listing market to distinguish futures contracts on debt securities indexes that are subject to joint jurisdiction of the SEC and CFTC from futures contracts on debt securities indexes that are subject to the exclusive jurisdiction of the CFTC. The SEC believes that the new

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74 15 U.S.C. 78c(f).

75 15. U.S.C. 78w(a)(2).

rules, by allowing listing markets to list and trade new financial products, will promote efficiency and competition. The new rules will create opportunities for listing markets to compete in the market for such new products and perhaps to create new products that will compete with existing products. The resulting increased competition and more efficient markets should not have an adverse impact on capital formation.

VI. Regulatory Flexibility Act Certifications

CFTC:

The Regulatory Flexibility Act ("RFA")[76] requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The rules herein will affect contract markets and registered DTEFs. The CFTC previously established certain definitions of "small entities" to be used by the CFTC in evaluating the impact of its rules on small entities in accordance with the RFA.[77] In its previous determinations, the CFTC has concluded that contract markets and DTEFs are not small entities for the purpose of the RFA.[78]

SEC:

In the Proposing Release, the Commission certified, pursuant to Section 605(b) of the RFA,[79] that new Exchange Act Rules 3a55-4 and 6h-2 would not have a significant economic impact on a substantial number of small entities. The Commission solicited comment as to the nature of any impact on small entities, including empirical data to

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76 5 U.S.C. 601 et seq.

77 See 47 FR 18618 (April 20, 1982).

78 See 47 FR 18618, 18619 (April 20, 1982) (discussing contract markets); 66 FR 42256, 42268 (August 10, 2001) (discussing DTEFs).

79 5 U.S.C. 605(b).

support the extent of such impact costs and benefits associated with the proposed amendment, and no comments were received.

VII. Statutory Authority

Pursuant to the CEA and the Exchange Act, and, particularly, Sections 1a(25)(B)(vi) and 2(a)(1)(D) of the CEA[80] and Sections 3(a)(55)(C)(vi), 3(b), 6(h), 23(a), and 36 of the Exchange Act,[81] the Commissions are adopting Rule 41.15 and amendments to Rule 41.21 under the CEA,[82] and Rules 3a55-4 and 6h-2 under the Exchange Act.[83]

VIII. Text of Adopted Rules

List of Subjects

17 CFR Part 41

Security futures products.

17 CFR Part 240

Securities.

Commodity Futures Trading Commission

In accordance with the foregoing, Title 17, chapter I, part 41 of the Code of Federal Regulations is proposed to be amended as follows:

PART 41 – SECURITY FUTURES PRODUCTS

1. The authority citation for part 41 continues to read as follows:

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80 7 U.S.C. 1a(25)(B)(vi) and 2(a)(1)(D).

81 15 U.S.C. 78c(a)(55)(C)(vi), 78c(b), 78f(h), 78w(a), and 78mm.

82 17 CFR 41.15 and 41.21.

83 17 CFR 240.3a55-4 and 240.6h-2.

Authority: Sections 206, 251 and 252, Pub. L. 106–554, 114 Stat. 2763, 7 U.S.C. 1a, 2, 6f, 6j, 7a–2, 12a; 15 U.S.C. 78g(c)(2).

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Subpart B—Narrow-based Security Indexes

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2. Add Section 41.15 to read as follows:

§ 41.15 Exclusion from Definition of Narrow-Based Security Index for Indexes Composed of Debt Securities

(a) An index is not a narrow-based security index if:

(1) (i) Each of the securities of an issuer included in the index is a security, as defined in section 2(a)(1) of the Securities Act of 1933 and section 3(a)(10) of the Securities Exchange Act of 1934 and the respective rules promulgated thereunder, that is a note, bond, debenture, or evidence of indebtedness;

(ii) None of the securities of an issuer included in the index is an equity security, as defined in section 3(a)(11) of the Securities Exchange Act of 1934 and the rules promulgated thereunder;

(iii) The index is comprised of more than nine securities that are issued by more than nine non-affiliated issuers;

(iv) The securities of any issuer included in the index do not comprise more than 30 percent of the index's weighting;

(v) The securities of any five non-affiliated issuers included in the index do not comprise more than 60 percent of the index's weighting;

(vi) Except as provided in paragraph (a)(1)(viii) of this section, for each security of an issuer included in the index one of the following criteria is satisfied:

(A) The issuer of the security is required to file reports pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934;

(B) The issuer of the security has a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more;

(C) The issuer of the security has outstanding securities that are notes, bonds, debentures, or evidences of indebtedness having a total remaining principal amount of at least $1 billion;

(D) The security is an exempted security as defined in section 3(a)(12) of the Securities Exchange Act of 1934 and the rules promulgated thereunder; or

(E) The issuer of the security is a government of a foreign country or a political subdivision of a foreign country; and

(vii) Except as provided in paragraph (a)(1)(viii) of this section, for each security of an issuer included in the index one of the following criteria is satisfied:

(A) The security has a total remaining principal amount of at least $250,000,000; or

(B) The security is a municipal security (as defined in section 3(a)(29) of the Securities Exchange Act of 1934 and the rules promulgated thereunder) that has a total remaining principal amount of at least $200,000,000 and the issuer of such municipal security has outstanding securities that are notes, bonds, debentures, or evidences of indebtedness having a total remaining principal amount of at least $1 billion; and

(viii) Paragraphs (a)(1)(vi) and (a)(1)(vii) of this section will not apply to securities of an issuer included in the index if:

(A) All securities of such issuer included in the index represent less than five percent of the index's weighting; and

(B) Securities comprising at least 80 percent of the index's weighting satisfy the provisions of paragraphs (a)(1)(vi) and (a)(1)(vii) of this section.

(2)(i) The index includes exempted securities, other than municipal securities as defined in section 3(a)(29) of the Securities Exchange Act of 1934 and the rules promulgated thereunder, that are:

(A) Notes, bonds, debentures, or evidences of indebtedness; and

(B) Not equity securities, as defined in section 3(a)(11) of the Securities Exchange Act of 1934 and the rules promulgated thereunder; and

(ii) Without taking into account any portion of the index composed of such exempted securities, other than municipal securities, the remaining portion of the index would not be a narrow-based security index meeting all the conditions under paragraph (a)(1) of this section.

(b) For purposes of this section:

(1) An issuer is affiliated with another issuer if it controls, is controlled by, or is under common control with, that issuer.

(2) For purposes of this section, "control" means ownership of 20 percent or more of an issuer's equity, or the ability to direct the voting of 20 percent or more of the issuer's voting equity.

(3) The term "issuer" includes a single issuer or group of affiliated issuers.

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Subpart C—Requirements and Standards for Listing Security Futures Products

3. Amend Section 41.21 by:

a. Removing "or" at the end of paragraph (a)(2)(i);

b. Removing "; and," at the end of paragraph (a)(2)(ii) and adding ", or" in its place;

c. Adding paragraph (a)(2)(iii);

d. Removing "or" at the end of paragraph (b)(3)(i)

e. Removing "; and," at the end of paragraph (b)(3)(ii) and adding ", or" in its place; and

f. Adding paragraph (b)(3)(iii).

The revisions and additions read as follows:

§ 41.21 Requirements for underlying securities

(a) * * *

(2) The underlying security is:

(i) Common stock,

(ii) Such other equity security as the Commission and the SEC jointly deem appropriate, or

(iii) a note, bond, debenture, or evidence of indebtedness; and,

(3) * * *

(b) * * *

(3) The securities in the index are:

(i) Common stock,

(ii) Such other equity securities as the Commission and the SEC jointly deem appropriate, or

(iii) a note, bond, debenture, or evidence of indebtedness; and,

(4) * * *

Securities and Exchange Commission

In accordance with the foregoing, Title 17, chapter II, part 240 of the Code of Federal Regulations is amended as follows:

PART 240--GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

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2. Section 240.3a55-4 is added to read as follows:

§240.3a55-4 Exclusion from definition of narrow-based security index for indexes composed of debt securities.

(a) An index is not a narrow-based security index if:

(1)(i) Each of the securities of an issuer included in the index is a security, as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) and section 3(a)(10) of the Act (15 U.S.C. 78c(a)(10)) and the respective rules promulgated thereunder, that is a note, bond, debenture, or evidence of indebtedness;

(ii) None of the securities of an issuer included in the index is an equity security, as defined in section 3(a)(11) of the Act (15 U.S.C. 78c(a)(11)) and the rules promulgated thereunder;

(iii) The index is comprised of more than nine securities that are issued by more than nine non-affiliated issuers;

(iv) The securities of any issuer included in the index do not comprise more than 30 percent of the index's weighting;

(v) The securities of any five non-affiliated issuers included in the index do not comprise more than 60 percent of the index's weighting;

(vi) Except as provided in paragraph (a)(1)(viii) of this section, for each security of an issuer included in the index one of the following criteria is satisfied:

(A) The issuer of the security is required to file reports pursuant to section 13 or section 15(d) of the Act (15 U.S.C. 78m and 78o(d));

(B) The issuer of the security has a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more;

(C) The issuer of the security has outstanding securities that are notes, bonds, debentures, or evidences of indebtedness having a total remaining principal amount of at least $1 billion;

(D) The security is an exempted security as defined in section 3(a)(12) of the Act (15 U.S.C. 78c(a)(12)) and the rules promulgated thereunder; or

(E) The issuer of the security is a government of a foreign country or a political subdivision of a foreign country;

(vii) Except as provided in paragraph (a)(1)(viii) of this section, for each security of an issuer included in the index one of the following criteria is satisfied:

(A) The security has a total remaining principal amount of at least $250,000,000; or

(B) The security is a municipal security, as defined in section 3(a)(29) of the Act (15 U.S.C. 78c(a)(29)) and the rules promulgated thereunder that has a total remaining principal amount of at least $200,000,000 and the issuer of such municipal security has outstanding securities that are notes, bonds, debentures, or evidences of indebtedness having a total remaining principal amount of at least $1 billion; and

(viii) Paragraphs (a)(1)(vi) and (a)(1)(vii) of this section will not apply to securities of an issuer included in the index if:

(A) All securities of such issuer included in the index represent less than five percent of the index's weighting; and

(B) Securities comprising at least 80 percent of the index's weighting satisfy the provisions of paragraphs (a)(1)(vi) and (a)(1)(vii) of this section; or

(2) (i)The index includes exempted securities, other than municipal securities, as defined in section 3(a)(29) of the Act and the rules promulgated thereunder, that are:

(A) Notes, bonds, debentures, or evidences of indebtedness; and

(B) Not equity securities, as defined in section 3(a)(11) of the Act (15 U.S.C. 78c(a)(11)) and the rules promulgated thereunder; and

(ii) Without taking into account any portion of the index composed of such exempted securities, other than municipal securities, the remaining portion of the index would not be a narrow-based security index meeting all the conditions under paragraph (a)(1) of this section.

(b) For purposes of this section:

(1) An issuer is affiliated with another issuer if it controls, is controlled by, or is under common control with, that issuer.

(2) For purposes of this section, control means ownership of 20 percent or more of an issuer's equity, or the ability to direct the voting of 20 percent or more of the issuer's voting equity.

(3) The term issuer includes a single issuer or group of affiliated issuers.

3. Section 240.6h-2 is added to read as follows:

§240.6h-2 Security future based on note, bond, debenture, or evidence of indebtedness.

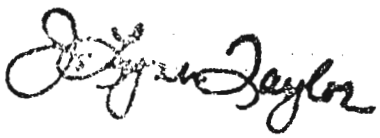
A security future may be based upon a security that is a note, bond, debenture, or evidence of indebtedness or a narrow-based security index composed of such securities.

Dated:

By the Commodity Futures Trading Commission.

Eileen A. Donovan
Acting Secretary

By the Securities and Exchange Commission.



J. Lynn Taylor
Assistant Secretary

Dated: July 6, 2006

Chairman Cox and Commissioner Atkins Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 54108 / July 6, 2006

INVESTMENT ADVISERS ACT OF 1940
Release No. 2531 / July 6, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12358

In the Matter of

TODD J. COHEN,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND 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 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Todd J. Cohen ("Cohen" 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

and Section 203(f) of the Investment Advisers Act of 1940, 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[1] that:

A. RESPONDENT

Todd J. Cohen, age 40, was a principal at Suncoast Capital Group, Ltd. ("Suncoast"), a registered broker-dealer based in Ft. Lauderdale, Florida, from the time he and another person founded the firm in 1993 until its sale to another broker-dealer in 2000. He was also Suncoast's president and the supervisor of the trading desk. Cohen had a one-third interest in the general partner that owned approximately sixty-five percent of Suncoast. Cohen currently heads the marketing department of a registered investment adviser located in Weston, Florida. Cohen holds NASD Series 7 and 24 licenses. Cohen lives in Weston, Florida.

B. OTHER RELEVANT ENTITIES AND INDIVIDUALS

1. Suncoast was a broker-dealer registered with the Commission from 1993 to 2000 pursuant to Section 15(b) of the Exchange Act. Suncoast's principal place of business was in Fort Lauderdale, Florida. Suncoast's assets were sold to another broker-dealer in 2000.

2. New York Life Insurance Company, Inc. ("New York Life"), a mutual insurance company headquartered in New York City, is owned by its policyholders and regulated by the New York State Department of Insurance. From late 1997 through 1999, New York Life was a customer of Suncoast with regard to certain proprietary investments made by New York Life.

3. Anthony Dong-Yin Shen ("Shen") was employed by New York Life from 1995 until approximately October 1999 as a trader of government agency and mortgage-backed securities held in New York Life's proprietary accounts. Shen was Suncoast's contact at New York Life.[2]

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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.

[2] The Commission filed a civil action against Shen on March 22, 2001, and Shen consented, without admitting or denying the allegations in the Commission's Complaint, to a final judgment that was entered on November 19, 2003, enjoining Shen from violating Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The final judgment also ordered Shen to pay disgorgement of $278,000. *See SEC v. Anthony D. Shen, et al.*, 01 Civ. 2438 (GDB) (S.D.N.Y.), Litigation Release No. 18478 (November 24, 2003).

4. Deborah J. Breckenridge ("Breckenridge") was a registered representative and salesperson at Suncoast from 1993 until approximately August 1999. Breckenridge was the Suncoast salesperson assigned to the New York Life account.[3]

5. Howard S. Singer ("Singer"), age 57, was a trader at Suncoast from July 1998 until the sale of its assets to another broker-dealer in 2000. At Suncoast, Singer worked as a trader on the trading desk and had primary responsibility for trading Treasury securities. While at Suncoast, Singer worked under Cohen's supervision. Singer no longer works in the securities industry.[4]

6. A Suncoast trader who worked under Cohen's supervision ("Trader A") from August 1997 until the sale of Suncoast's assets to another broker-dealer in 2000 had primary responsibility for trading mortgage-backed securities.

C. BACKGROUND

Over a seventeen-month period in 1998 and 1999, Breckenridge, a registered representative at broker-dealer Suncoast, paid cash bribes and kickbacks and arranged for other gifts and gratuities to Shen, a trader at Suncoast's largest client, New York Life. In exchange, Shen directed a number of transactions in Treasury securities and mortgage-backed securities to Suncoast. Most of the trades that Shen directed to Suncoast were executed at prices that were off-market or at prices that were more favorable to Suncoast and detrimental to New York Life than the prices that were otherwise available in the market. Most of the trades that Shen directed to Suncoast were executed by Singer or Trader A. Singer and Trader A both knew that the prices Suncoast charged in many of these transactions bore no reasonable relationship to prevailing market prices.

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[3] The Commission filed a civil action against Breckenridge on March 22, 2001, and Breckenridge consented, without admitting or denying the allegations in the Commission's Complaint, to a final judgment that was entered on March 31, 2004, enjoining her from violating Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The final judgment also ordered Breckenridge to pay $236,562 in disgorgement and prejudgment interest. *See SEC v. Anthony D. Shen, et al.*, 01 Civ. 2438 (GDB) (S.D.N.Y.), Litigation Release No. 18667 (April 13, 2004). On April 13, 2004, the Commission instituted settled administrative proceedings pursuant to Section 15(b) of the Exchange Act barring Breckenridge from association with any broker or dealer.

[4] On September 25, 2003, the Commission instituted settled administrative and cease-and-desist proceedings against Singer pursuant to Section 8A of the Securities Act and Sections 15(b) and 21C of the Exchange Act. In those proceedings, the Commission found that Singer executed six trades in U.S. Treasury securities at prices that were off-market and not reasonably related to prevailing market prices, and that Singer thereby violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The Commission also found that Singer willfully aided and abetted Breckenridge and Shen's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. In settlement of those proceedings, Singer consented, without admitting or denying the Commission's findings, to the issuance of an order that: (i) ordered him to cease and desist from committing or causing any violations 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, (ii) suspended Singer from association with any broker or dealer for a period of three months, and (iii) ordered him to pay a civil money penalty of $25,000.

D. COHEN'S FAILURE TO SUPERVISE

1. Cohen directly supervised Singer from July 1998 until the sale of Suncoast's assets in 2000. Cohen failed reasonably to supervise Singer with a view to detecting and preventing Singer's violations of the federal securities laws. Cohen failed to respond to various "red flags" relating to Singer's trading activity, including the fact that the prices charged in several of the trades of Treasury securities executed for New York Life were excessively marked down and not reasonably related to prevailing market prices, as well as the unusually high commissions earned by Suncoast on those trades.

2. Six of the Treasury securities trades executed by Singer included markdowns of 5.5/32 percent to 10/32 percent of the face value of the securities. The Commission found that, under the relevant particular facts, including industry practice, prices on comparable transactions, and the riskless nature of the securities transactions, the prices on the Treasury trades were excessively marked down and not reasonably related to prevailing market prices. Singer consented, without admitting or denying the Commission's findings, to the issuance of an order that: (i) ordered him to cease and desist from committing or causing any violations 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, (ii) suspended Singer from association with any broker or dealer for a period of three months, and (iii) ordered him to pay a civil money penalty of $25,000.

3. The Commission also found that Singer had a duty to treat Suncoast's customers fairly and to inform Suncoast's customers of material information relevant to their trading relationship. Singer failed to disclose to New York Life the material information that the Treasury trades were executed at prices that were off-market and not reasonably related to prevailing market prices.

4. Based on the foregoing findings, the Commission found that Singer willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities. The Commission also found that Singer willfully aided and abetted and caused Breckenridge and Shen's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

5. As Singer's supervisor, Cohen reviewed and approved Singer's trade tickets and reviewed daily trading blotters reflecting Singer's trading activity. Suncoast's written supervisory procedures required Cohen to review each order ticket or review the firm's trading blotters reflecting commissions and markups. The written supervisory procedures also required Cohen to ensure that markups, markdowns and commissions charged by the firm on trades executed by Singer were consistent with the firm's policies and based upon prevailing market prices.

6. Cohen did not adequately evaluate whether Singer's trading activity involved off-market pricing despite the red flags presented by the order tickets and trading blotters. As Singer's immediate and direct supervisor, Cohen was responsible for detecting and preventing Singer's violations of the federal securities laws as a result of the excessive markdowns charged to New

York Life. Cohen did not discharge his supervisory duties because he failed to take any steps to investigate the red flags presented by Singer's trading activity.

7. Cohen directly supervised Trader A from August 1997 until the sale of Suncoast's assets in 2000. Cohen failed reasonably to supervise Trader A with a view to detecting and preventing Trader A's violations of the federal securities laws. Cohen failed to respond to various "red flags" relating to Trader A's trading activity, including the excessive prices charged in several of the trades of mortgage-backed securities executed for New York Life and the unusually high commissions earned by Suncoast on those trades. Cohen ignored an additional red flag when he failed to question or follow up on Breckenridge and Shen's request to significantly decrease the markup on one of the trades that had been executed by Trader A. If he had inquired or followed up, he may have detected that Trader A, Breckenridge and Shen were attempting to conceal the excessive markups from New York Life.

8. Twenty-one trades of mortgage-backed securities executed by Trader A included markups or markdowns of 2.25/32 percent to 42.5/32 percent of the face value of the securities. Under the particular facts of this case, including industry practice, prices on comparable transactions, and the riskless nature of the securities transactions, the prices on the mortgage-backed security trades were excessive and not reasonably related to prevailing market prices.

9. Trader A had a duty to treat Suncoast's customers fairly and to inform Suncoast's customers of material information relevant to their trading relationship. Trader A failed to disclose to New York Life the material information that the mortgage-backed security trades were executed at prices that were off-market and not reasonably related to prevailing market prices.

10. As Trader A's supervisor, Cohen reviewed and approved Trader A's trade tickets and reviewed daily trading blotters reflecting Trader A's trading activity. Suncoast's written supervisory procedures required Cohen to review each order ticket or review the firm's trading blotters reflecting commissions and markups. The written supervisory procedures also required Cohen to ensure that markups and commissions charged by the firm on trades executed by Trader A were consistent with the firm's policies and based upon prevailing market prices.

11. Cohen did not evaluate whether Trader A's trading activity involved off-market pricing despite the red flags presented by the order tickets and trading blotters. As Trader A's immediate and direct supervisor, Cohen was responsible for detecting and preventing Trader A's violations of the federal securities laws as a result of the excessive markups charged to New York Life. Cohen did not discharge his supervisory duties because he failed to take any steps to investigate the red flags presented by Trader A's trading activity.

12. As a principal with a one-third interest in the general partner that owned approximately sixty-five percent of Suncoast, Cohen shared in the profits generated by the excessive commissions on the trades executed by Singer and Trader A.

E. VIOLATIONS

Section 15(b)(6) of the Exchange Act, incorporating by reference Section 15(b)(4)(E) of the Exchange Act, authorizes the Commission to sanction any person who is associated, or at the time of the alleged misconduct was associated, with a broker or dealer if it finds that the sanction is in the public interest and the person "has failed reasonably to supervise, with a view to preventing violations of the [federal securities laws], another person who commits such a violation, if such person is subject to his supervision." Exchange Act § 15(b)(4)(E); Exchange Act § 15(b)(6). Similarly, Section 203(f) of the Advisers Act, incorporating by reference Section 203(e)(6) of the Advisers Act, authorizes the Commission to sanction any person who is associated, or at the time of the alleged misconduct was associated, with an investment adviser if it finds that the sanction is in the public interest and the person "has failed reasonably to supervise, with a view to preventing violations of the [federal securities laws], another person who commits such a violation, if such person is subject to his supervision." Advisers Act § 203(e)(6); Advisers Act § 203(f).

A supervisor must respond reasonably when confronted with indications suggesting that a registered representative or other person subject to the supervisor's supervision may be engaged in improper activity. In the Matter of John H. Gutfreund, 51 S.E.C. 93, 113, Exchange Act Release No. 34-31554 (Dec. 3, 1992). "The supervisory obligations imposed by the federal securities laws require a vigorous response even to indications of wrongdoing." Id. at 108. "Red flags and suggestions of irregularities demand inquiry as well as adequate follow-up and review. When indications of impropriety reach the attention of those in authority, they must act decisively to detect and prevent violations of the federal securities laws." In the Matter of Edwin Kantor, 51 S.E.C. 440, 447, Exchange Act Release No. 32341 (May 20, 1993) (internal quotations omitted).

As a result of the conduct described above, Cohen failed reasonably to supervise Singer and Trader A with a view to detecting and preventing their violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Cohen also failed reasonably to supervise Singer and Trader A with a view to detecting and preventing their aiding and abetting Breckenridge and Shen's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Singer's causing of such violations.

F. UNDERTAKING

Cohen shall provide to the Commission, within ten (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. Such affidavit shall be submitted under cover letter that identifies Todd J. Cohen as a Respondent and the file number of these proceedings, and hand-delivered or mailed to Antonia Chion, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, D.C. 20549-7553.

IV.

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

Accordingly, pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act, it is hereby ORDERED that:

A. Cohen be, and hereby is, suspended from acting in a supervisory capacity for any broker, dealer, or investment adviser for a period of six (6) months, effective beginning the second Monday following the issuance of this Order.

B. Respondent shall, within ten (10) days of the entry of this Order, pay disgorgement of $52,897.11 and prejudgment interest of $30,504.45 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, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies Todd J. Cohen 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 Antonia Chion, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, D.C. 20549-7553.

C. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $50,000 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, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies Todd J. Cohen 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 Antonia Chion, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, D.C. 20549-7553.

By the Commission.

Nancy M. Morris
Secretary

By: J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
July 7, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12359

In the Matter of **ANTHONY C. SNELL, and CHARLES E. LECROY** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 15(b)(6), 15B(c)(4), and 21C 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 Sections 15(b)(6), 15B(c)(4), and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Anthony C. Snell and Charles E. LeCroy (collectively, "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Anthony C. Snell ("Snell"), age 46, a resident of Smyrna, Georgia, was a Vice President in J.P. Morgan Securities, Inc.'s ("J.P. Morgan") Atlanta, Georgia office from January 1998 until March 2004. Snell has held Series 7, 52, 53, and 63 securities licenses.

2. Charles E. LeCroy ("LeCroy"), age 51, a resident of Winter Park, Florida, was Snell's direct supervisor and the Managing Director of J.P. Morgan's Southeast Regional Office in Orlando, Florida. LeCroy has held Series 7, 24, 53, and 63 securities licenses.

B. OTHER RELEVANT ENTITIES

1. J.P. Morgan Securities, Inc., a member of the NASD and NYSE, is a broker-dealer and a municipal securities dealer registered with the Commission. J.P. Morgan is incorporated in Delaware and its principal place of business is in New York, New York.

C. CONDUCT OF SNELL AND LECROY

1. In April 2003, in an effort to circumvent the requirements of Rule G-38 of the Municipal Securities Rulemaking Board ("MSRB"), Snell and LeCroy submitted a fictitious invoice to J.P. Morgan seeking a $50,000 payment for legal services to Ronald A. White ("White"), an influential attorney with close ties to senior city officials in the City of Philadelphia, when they knew that such legal services had not been provided. Among other things, Rule G-38 requires municipal securities dealers to prepare written agreements memorializing their relationship with consultants[1] and to disclose their consulting arrangements to relevant issuers and the Municipal Securities Rulemaking Board.[2]

2. White had previously declined to sign a Rule G-38 agreement with J.P. Morgan. However, White still wanted to perform consulting services and be paid for acting as a Rule G-38 consultant. White ultimately did advocate on behalf of J.P. Morgan for municipal securities business from the City of Philadelphia. To satisfy White's requests for payment, Snell instructed him to prepare the invoice so that it appeared to be solely for legal services performed in connection with a bond issue that had recently closed in Mobile, Alabama. The provision of such legal services would have been exempt from the requirements of Rule G-38. Snell and LeCroy submitted the invoice to J.P. Morgan for payment, despite knowing that White had not, in fact, provided any legal services on the Mobile, Alabama bond offering ("Mobile deal"). J.P. Morgan honored the invoice and paid White $50,000.

3. In June 2004, the United States Attorneys' Office for the Eastern District of Pennsylvania ("USAO") indicted Snell and LeCroy, in addition to several other individuals, on multiple counts related, primarily, to Philadelphia's "pay to play" system of awarding municipal securities business. Snell and LeCroy were each charged with two counts of wire fraud stemming

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[1] At the time of this payment in 2003, Rule G-38 defined "consultant" to mean any person used by a broker, dealer, or municipal securities dealer to obtain or retain municipal securities business through direct or indirect communication by such person with an issuer on behalf of such broker, dealer or municipal securities dealer where the communication is undertaken by such person in exchange for, or with the understanding of receiving, payment from the broker, dealer or municipal securities dealer or any other person; provided, however, that the following persons shall not be considered consultants for purposes of this rule: (A) a municipal finance professional of the broker, dealer or municipal securities dealer; and (B) any person whose sole basis of compensation from the broker, dealer or municipal securities dealer is the actual provision of legal, accounting or engineering advice, services or assistance in connection with the municipal securities business that the broker, dealer or municipal securities dealer is seeking to obtain or retain.

[2] On August 17, 2005, the Commission approved amendments to Rule G-38, which replaced the existing rule on consultants with a new rule prohibiting municipal securities dealers from paying any persons not affiliated with the dealer to solicit municipal securities business. The revised Rule G-38 became effective on August 29, 2005 and provides in relevant part that "no broker, dealer, or municipal securities dealer may provide or agree to provide, directly or indirectly, payment to any person who is not an affiliated person of the broker, dealer or municipal securities dealer for a solicitation of municipal securities business on behalf of such broker, dealer or municipal securities dealer."

from the fictitious $50,000 invoice. Snell and LeCroy pleaded guilty to both counts of wire fraud in January 2005, and were sentenced by the Court in July 2005.

4. Snell and LeCroy met with White in 2001 and believed that because of White's relationship with senior city officials, White could assist them in obtaining municipal business as a hired consultant for J.P. Morgan. In December 2001, Snell and LeCroy arranged for White to meet with J.P. Morgan's head of public finance to discuss entering into a formal Rule G-38 consulting agreement. White declined to sign a Rule G-38 agreement with J.P. Morgan because he did not want to make the required disclosures, and because J.P. Morgan prohibited its consultants from making any political contributions or other payments to issuers.

5. Snell and LeCroy knew that White had declined to enter into a Rule G-38 consulting agreement with the firm. J.P. Morgan was still interested in fostering a relationship with White, however, and agreed to use his legal services, make contributions to his favorite charities and provide opportunities for a printing company, RPC Unlimited, Inc. ("RPC"), owned by White's paramour, in order to establish and maintain a relationship with him. J.P. Morgan enlisted White's legal assistance on one bond issue involving the Philadelphia International Airport which closed in April 2002. J.P. Morgan paid White for his legal services on this offering.

6. Although White declined to sign a Rule G-38 consulting agreement with J.P. Morgan, White did lobby on behalf of J.P. Morgan in conversations with both the Treasurer and Director of Finance for the City of Philadelphia. For example, in early 2003, Snell contacted White to request his assistance with the Philadelphia Municipal Authority bond offering (the "PMA deal"), a transaction on which J.P. Morgan was working with the City. Initially, the PMA deal was going to be a swap transaction. Swaps typically generate much larger fees for the investment banks involved in the transactions than traditional bond offerings. In April 2003, Snell learned that the City decided not to structure the deal as a swap, but rather as a standard cash market refunding. In April 2003, Snell called White and asked him to contact the Treasurer on J.P. Morgan's behalf to see if he would take a second look at the deal and allow J.P. Morgan to do the transaction as a swap, as originally planned. As Snell requested, White agreed to talk to the Treasurer about switching the deal back to a swap transaction. Although the transaction remained a bond offering, J.P. Morgan received $423,963 as senior manager on this offering.

7. In addition, the Director of Finance testified throughout the criminal trial that White had "advocated" on behalf of J.P. Morgan. The Director of Finance identified at least four separate transactions, including the PMA Deal, in which White endorsed J.P. Morgan for City business. Specifically, she testified that White advocated for J.P. Morgan's inclusion in a bond issue involving the Philadelphia Convention Center, although the deal ultimately did not close. White advocated for J.P. Morgan to be included in a swap transaction involving the Philadelphia Airport, which closed in 2002. The Director of Finance also identified a workers' compensation deal which did not come to fruition due to tax issues.

8. Although White may not have always been successful in his efforts to increase J.P. Morgan's role in municipal securities business with the City of Philadelphia, it is clear that White acted on J.P. Morgan's behalf, and attempted to get J.P. Morgan included on multiple

deals with the City of Philadelphia. As Snell testified at trial, White had managed to "assist J.P. Morgan in getting city business here in Philadelphia."

9. White did not advance J.P. Morgan's interests for free. Rather, White promoted J.P. Morgan in exchange for J.P. Morgan's contributions to his favorite charitable causes, use of his paramour's printing business, and the retention of his law firm for legitimate legal services. Over time, it became difficult for Snell and LeCroy to find ways to legally compensate White to White's satisfaction since White had refused to be a publicly-disclosed Rule G-38 consultant for J.P. Morgan.

10. J.P. Morgan refused requests from Snell for larger contributions to White's charities, and Snell and LeCroy could not find transactions for which it was appropriate to retain White's legal services. On several occasions, White told Snell that he was dissatisfied with what he considered J.P. Morgan's "reciprocating or meeting [their] commitments to him" with respect to his efforts in helping J.P. Morgan get municipal securities business in Philadelphia. Snell and LeCroy were concerned that White, if not satisfied, could be "an impediment to doing business in Philadelphia," and would tell officials in the City government that J.P. Morgan should not be included in municipal finance transactions.

11. Ultimately, in April 2003, after failing to secure printing business for RPC, and failing to identify additional legal work for White's firm, Snell and LeCroy devised a plan whereby J.P. Morgan would pay White $50,000 for legal services White had not provided. LeCroy suggested they pay White from the fees J.P. Morgan had received from the Mobile bond issue. In April 2003, Snell and White instructed White's bookkeeper to prepare an invoice in the amount of $50,000 from White to J.P. Morgan for services rendered in connection with the Mobile bond issue. LeCroy was the senior J.P. Morgan employee on the Mobile offering; Snell did not work on it. The invoice, directed from White's law firm to LeCroy and Snell at J.P. Morgan, is dated April 8, 2003, references the "$121,550,000 Mobile County, Alabama, Limited Obligation School Warrants, Series 2003," and bills $50,000 "for professional services rendered as special counsel to the underwriter." It sought a wire payment to a Ronald A. White, PC corporate account at Commerce Bank in Philadelphia.

12. Over the next several weeks, White checked with his office and with Snell several times to make sure the invoice was sent and paid. In a telephone conversation on May 23, 2003 during which White was in Philadelphia and Snell was in his office in Atlanta, Snell assured White that the invoice would be paid within approximately one week. At J.P. Morgan, the invoice was approved by LeCroy, then by LeCroy's supervisor, and finally by a corporate attorney who signed off on legal bills as a "formality." On May 30, 2003, J.P. Morgan wired $50,000 from its bank account in Tampa, Florida to White's law firm's account in Philadelphia.

13. After arranging for J.P. Morgan to pay White $50,000 for services he did not provide, Snell and LeCroy continued to search for municipal securities business with the City of Philadelphia that could involve legal work for White's firm, printing work for RPC, and charitable contributions to White's favorite causes.

14. On June 29, 2004, the USAO announced the filing of a 56-count indictment against Snell, LeCroy, and ten other individuals charging, among other things, wire fraud, mail fraud, conspiracy to commit honest services fraud, perjury and extortion. See U.S. v. White, et.al. Crim. No. 04-00370 (E.D. Pa., June 29, 2004). The charges in the indictment stemmed, primarily, from the relationship between the former Treasurer of the City of Philadelphia, and White. Among other things, the indictment alleged that the defendants unlawfully bestowed gifts upon the Treasurer and/or White in exchange for favorable treatment from senior city officials. Specifically, the indictment alleged that Snell and LeCroy unlawfully arranged for White to receive $50,000 for work White did not perform.

15. On January 13, 2005 and January 18, 2005, respectively, Snell and LeCroy pleaded guilty to two counts of mail fraud in violation of Title 18 United States Code, Section 1343 before the United States District Court for the Eastern District of Pennsylvania, in United States v. White, et al., Crim. No. 04-00370. Snell was sentenced to two years probation, including 90 days house arrest, and was ordered to pay a $15,000 fee and $200 special assessment. LeCroy was sentenced to three months incarceration per charge, to be served concurrently, and two years supervised release including 90 days home custody. The Court also ordered LeCroy to pay a fine in the amount of $15,000 and a $200 special assessment. LeCroy and Snell were jointly and severally liable for paying restitution to J.P. Morgan in the amount of $50,000.

16. The counts of the criminal indictment to which Snell and LeCroy pleaded guilty alleged that they had engaged in a scheme or artifice to defraud and to obtain money or property by means of materially false or fraudulent pretenses, representations, or promises by directing White to submit a false invoice to J.P. Morgan seeking the payment of $50,000 for legal work which White did not actually perform.

17. The convictions of Snell and LeCroy arose out of the conduct of a broker-dealer and municipal securities dealer.

D. VIOLATIONS

1. As a result of the conduct described above, Respondents willfully violated Section 15B(c)(1) of the Exchange Act by using the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in contravention of any rule of the Municipal Securities Rulemaking Board.

2. As a result of the conduct described above, Respondents willfully violated MSRB Rule G-38 which requires broker-dealers and associated persons of broker-dealers that use consultants to set forth in writing, at a minimum, the name, company, role and compensation arrangement of each such consultant prior to the consultant communicating with any issuer on its behalf, and to disclose this information both to the relevant issuer and the MSRB for public dissemination.

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 Respondents pursuant to Sections 15(b) and 15B(c) of the Exchange Act including, but not limited to civil penalties pursuant to Section 21B of the Exchange Act;

C. Whether, pursuant to Section 21C of the Exchange Act, Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Section 15B(c)(1) of the Exchange Act and MSRB Rule G-38.

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.

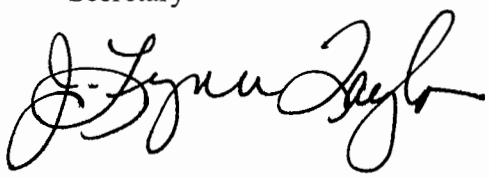
IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

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



By: J. Lynn Taylor
Assistant Secretary

Commissioners Glassman and Campos Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 54115 / July 10, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12360

In the Matter of	:	
DONALD FRANK MINTMIRE, ESQ.	:	**ORDER OF SUSPENSION PURSUANT TO RULE 102(e)(2) OF THE COMMISSION'S RULES OF PRACTICE**
Respondent.	:	

I.

The Securities and Exchange Commission deems it appropriate to issue an order of forthwith suspension of Donald Frank Mintmire, Esq. ("Mintmire") pursuant to Rule 102(e)(2) of the Commission's Rules of Practice [17 C.F.R. § 200.102(e)(2)].[1]

II.

The Commission finds that:

1. Mintmire is an attorney and was licensed to practice law in the State of Florida on July 19, 1984.

2. On February 9, 2005, Mintmire was convicted by a federal jury in United States v. Donald Frank Mintmire, No. 04-14020-CR-Grah, in the United States District Court for the Southern District of Florida, of one count of Obstruction of Official Proceeding (18 U.S.C. § 1512(c)(2)) and one count of Conspiracy to Obstruct Justice (18 U.S.C. §§ 1505 and 371). On February 8, 2006, the Court entered a judgment and sentenced

[1] Rule 102(e)(2) provides in pertinent part: "Any attorney who has been suspended or disbarred by a court of the United States or of any State; . . . or any person who has been convicted of felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission. A disbarment, suspension, revocation or conviction within the meaning of this section shall be deemed to have occurred when the disbarring, suspending, revoking or convicting agency or tribunal enters its judgment or order. . . ."

Mintmire to 21 months in federal prison, fining him $80,000, and prohibiting him from engaging in any business that offers securities, investments or business opportunities.

3. On February 20, 2006, the Supreme Court of Florida ordered an automatic suspension of Mintmire from the Florida Bar pursuant to Rule 3-72(e) of the Rules Regulating the Florida Bar based on his federal felony conviction. On or about April 1, 2006, Mintmire's license to practice law in Florida was suspended by the Florida State Bar based on his conviction. On May 18, 2006, the Supreme Court of Florida entered a judgment barring Mintmire from practicing law in Florida.

III.

In view of the foregoing, the Commission finds that Mintmire has been suspended by a court and has been convicted of a felony within the meaning of Rule 102(e)(2) of the Commission's Rules of Practice.

Accordingly, it is ORDERED, that Donald Frank Mintmire is forthwith suspended from appearing or practicing before the Commission pursuant to Rule 102(e)(2) of the Commission's Rules of Practice.

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. 54114 / July 10, 2006

INVESTMENT ADVISERS ACT OF 1940
Release No. 2532 / July 10, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12361

In the Matter of

RICHARD W. DEBOE,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND 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 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Richard W. DeBoe ("DeBoe" 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 and Section 203(f) of the Investment Advisers Act of 1940, 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. From August 1998 to May 2000, DeBoe was a registered representative associated with Deutsche Banc Alex Brown ("Deutsche Banc"), a broker-dealer and investment adviser registered with the Commission. Deutsche Banc is now Deutsche Bank Securities, Inc. DeBoe, 70 years old, is a resident of New York, New York.

2. On March 3, 2005, the Commission filed an action, entitled SEC v. Richard W. DeBoe, Civil Action No. 05 CV 2522 (AKH) (S.D.N.Y.). The complaint alleged that DeBoe, while employed as a registered representative at Deutsche Banc, engaged in fraudulent conduct concerning certain customer accounts and aided and abetted the fraudulent conduct in the same accounts by Peter N. Brant ("Brant"). According to the complaint, DeBoe, a former colleague and social friend of Brant, knew of Brant's conviction for felony securities fraud. Between 1998 and 1999, DeBoe opened four new accounts at Deutsche Banc for customers referred to him by Brant. The complaint further alleged that each of the customers gave Brant trading authority. According to the complaint, Brant's role as investment adviser and his acceptance of fees for these services violated his bar from the securities industry, which was known by DeBoe or he was reckless in not knowing. The complaint also alleged that once the accounts were opened, DeBoe gave free rein to Brant over the accounts, participated with Brant in churning the accounts, violated explicit instructions from customers, and allowed Brant to misappropriate funds from DeBoe's customer accounts for Brant's own use. This fraudulent conduct generated commissions for DeBoe, who before opening these accounts referred by Brant, had been a "low" producer who earned relatively low commission income.

3. On June 26, 2006, a final judgment was entered by consent against DeBoe, 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, and aiding and abetting violations of Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled SEC v. Richard W. DeBoe, Civil Action Number 05 CV 2522 (AKH), in the United States District Court for the Southern District of New York.

IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act, that Respondent Richard W. DeBoe be, and hereby is barred from association with any broker, dealer, or investment adviser.

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

By: J. Lynn Taylor
Assistant Secretary

Commissioner Nazareth Not Participating

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 54127 / July 11, 2006

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 2533 / July 11, 2006

Admin. Proc. File No. 3-11179

In the Matter of

IFG NETWORK SECURITIES, INC.,
WILLIAM KISSINGER, and
DAVID LEDBETTER

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

INVESTMENT ADVISER PROCEEDING

CEASE-AND-DESIST PROCEEDING

Grounds for Remedial Action

Fraud

Alleged Aiding and Abetting or Causing Fraud

Alleged Failure to Supervise

Registered representative of broker-dealer committed fraud by negligently omitting to disclose material facts concerning the cost structure associated with different classes of multiple-class mutual funds. Held, it is in the public interest to order registered representative to cease and desist from committing any violations or future violations, and to pay disgorgement.

Charge that broker-dealer and president of broker-dealer failed to exercise reasonable supervision over registered representative with a view to preventing his violations of the antifraud provisions was not sustained. Held, proceedings with respect to broker-dealer and president of broker-dealer are dismissed.

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APPEARANCES:

Peter J. Anderson, Lawrence A. Dany III, Olga Greenberg, and Brian L. Rubin, of Sutherland Asbill & Brennan LLP, for IFG Network Securities, Inc. and David Ledbetter.

Matthew J. Siembieda, Timothy D. Katsiff, and Evan H. Lechtman, of Blank Rome LLP, for William Kissinger.

David L. Kornblau, William P Hicks, M. Graham Loomis, and William S. Dixon, for the Division of Enforcement.

Appeal filed: March 3, 2005
Last brief received: June 1, 2005
Oral argument: November 15, 2005 1/

I.

The Division of Enforcement appeals from the decision of an administrative law judge. 2/ The law judge dismissed the Division's charges that William Kissinger violated Section 17(a) of the Securities Act of 1933, 3/ Section 10(b) of the Securities Exchange Act of 1934, 4/ and Rule 10b-5 thereunder, 5/ and that Kissinger aided and abetted or was a cause of

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1/ Rule of Practice 451(d), 17 C.F.R. § 201.451(d), provides that a member of the Commission who does not attend an oral argument may participate in the decision of the proceeding if that member reviews the oral argument transcript. Commissioner Glassman, who did not attend the oral argument in this matter, has performed the requisite review.

2/ IFG Network Securities, Inc., William Kissinger, Kissinger Advisory, Inc., Bert Miller, Glenn Wilkinson, and David Ledbetter, Initial Decision Rel. No. 273 (Feb. 10, 2005), 84 SEC Docket 3287. On appeal, the Division has dropped respondents Miller and Wilkinson from its case, and it has also dropped Kissinger Advisory, which no longer exists. The Division also does not appeal with respect to Kissinger's sales to one of his customers, Lucy Portier, which were included in the proceeding before the law judge.

3/ 15 U.S.C. § 77q(a).

4/ 15 U.S.C. § 78j(b).

5/ 17 C.F.R. § 240.10b-5.

violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940. 6/ Kissinger formerly operated an office of supervisory jurisdiction ("OSJ") of registered broker-dealer IFG Network Securities, Inc. ("IFG"). Kissinger was an OSJ principal and registered representative associated with IFG, and he was associated with Kissinger Advisory, Inc., a registered investment adviser. The Division's allegations arose in connection with Kissinger's sales to advisory and non-advisory customers of Class B shares of certain mutual funds in the Kemper Funds and Oppenheimer Funds mutual fund families. The law judge also dismissed the Division's allegations that IFG and David Ledbetter, IFG's president, failed to exercise reasonable supervision over Kissinger with a view to preventing his violations of the antifraud provisions, as required by Exchange Act Sections 15(b)(4)(E) and 15(b)(6), 7/ because she found that the Division had failed to establish that Kissinger committed any violations.

The Division argues that the law judge erred in concluding that Kissinger's actions did not constitute fraud and aiding and abetting or causing fraud. The Division contends that Kissinger, in recommending that his customers invest in Class B, rather than Class A, shares of mutual funds, failed adequately to disclose to six of his customers the differences in expense structure of investments in these different share classes. The Division also contends that Kissinger failed to disclose to the customers that Class A shares would outperform Class B shares for investments of at least $250,000, which qualified for a breakpoint discount. The Division further alleges that Kissinger failed to disclose to his customers that he received a larger commission from the investors' purchase of Class B shares than he would have received had the customers invested in Class A shares instead. These alleged omissions are the basis for the Division's charges that Kissinger violated the antifraud provisions of the Securities Act and the Exchange Act and aided and abetted or was a cause of Kissinger Advisory's violations of the antifraud provisions of the Advisers Act. The Division seeks an order barring Kissinger from association with any broker, dealer, or investment adviser and a cease-and-desist order. The Division also seeks $36,170 in disgorgement from Kissinger, an amount that the Division contends is the difference between the commissions he received for selling Class B shares and what he would have received for selling Class A shares in the transactions at issue here. The Division also seeks a civil money penalty of $100,000.

Kissinger contends that he adequately disclosed all material information to the six customers with respect to their investments in Class B shares. He further contends that the disclosures that the Division argues Kissinger should have made were not in accordance with industry practice at the time of the events in question. Kissinger maintains that there is no basis in the public interest for the imposition of the sanctions sought by the Division.

6/ 15 U.S.C. § 80b-6(1) and (2).

7/ 15 U.S.C. § 78o(b)(4)(E) and (6).

The Division argues that IFG and Ledbetter failed reasonably to supervise Kissinger in that they did not adequately ensure that he disclosed all material facts regarding transactions in multiple-class funds to his customers. The Division asks that the Commission censure IFG and bar Ledbetter from association with any broker or dealer in a supervisory capacity. In addition, the Division seeks $3,604 in disgorgement from IFG, which the Division alleges represents the excess commissions IFG received from selling Class B shares to the six customers at issue in this case. The Division also requests that Ledbetter and IFG pay civil money penalties of $100,000 and $300,000 respectively.

IFG and Ledbetter contend that the Division failed to establish that Kissinger acted fraudulently and, therefore, there can be no failure to supervise. IFG and Ledbetter argue further that, even if Kissinger is found to have acted fraudulently, IFG's supervisory system adequately ensured proper disclosure. IFG and Ledbetter, therefore, assert that no sanctions are warranted. We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal.

II.

A. Background

Kissinger formed Kissinger Financial Services ("KFS"), of which he was the president and controlling owner, in 1984. 8/ KFS included both Kissinger Advisory and an entity referred to as Kissinger Securities, Inc. 9/ During the period from 1994 to 2001, Kissinger operated an OSJ of IFG, a broker-dealer headquartered in Atlanta, Georgia. 10/ Kissinger was an OSJ principal and registered representative associated with IFG. Ledbetter was president of IFG from November 1989 until May 2000, at which time he became IFG's vice president. As IFG's

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8/ Kissinger is a certified public accountant, and he testified that he "holds the designation of personal financial specialist," is a certified financial planner, and holds Series 7, Series 63, Series 24, and Series 31 securities licenses.

9/ The record does not indicate that Kissinger Securities, Inc. was a registered broker-dealer. However, Kissinger refers to it in his testimony as a commission-based "brokerage" firm. In any event, there is no dispute that the commissions earned through the transactions at issue here ultimately were distributed by IFG -- either through KFS or Kissinger Securities, Inc. -- to Kissinger.

10/ NASD Conduct Rule 3010 defines an OSJ as any office of a member at which occurs any of certain defined functions, including, among other things, the final acceptance of new accounts on behalf of the member or the review and endorsement of customer orders. In 2001, Kissinger ended his association with IFG and associated with registered broker-dealer Sanders Morris Harris, after which Kissinger Advisory ceased doing business. Kissinger is currently a registered representative of Sanders Morris Harris.

president, Ledbetter was ultimately responsible for supervision of OSJ principals such as Kissinger.

During the period from July 1998 to December 2000 (the "relevant period"), Kissinger averaged approximately $2,000,000 in annual revenues, of which approximately 70% comprised commissions from the sale of mutual fund shares and 30% comprised advisory fees. Kissinger had approximately 350 advisory customers and approximately 700 non-advisory customers. In 2000, investments in Class B shares of mutual funds represented approximately 11% of the $300,000,000 that Kissinger had under management. Kissinger described his customer base, including the six customers at issue here, as long term, buy-and-hold investors, who were interested in making a financial plan and organizing their financial futures, as opposed to day traders looking to make rapid trades for quick profits.

B. Class A and Class B Shares of Mutual Funds

The Division's allegations in this matter revolve around Kissinger's disclosures to six of his customers when he recommended that they invest in Class B, rather than Class A, shares of Kemper and Oppenheimer mutual funds. Typically, Class A shares differ from Class B shares with respect to their cost structure. Class A shares usually include an initial sales charge, or front-end load, a fee that is levied upon the purchase of mutual fund shares, while Class B shares do not. Class A shares include breakpoint discounts, which reduce the front-end load incrementally in the event that the investor invests specified amounts in the fund. At each breakpoint, the representative's commission rate is reduced. In Kemper funds, the front-end load for Class A shares was reduced from 3.5% at the $100,000 breakpoint to 2.6% at the $250,000 investment level and 2.0% at the $500,000 level. For Oppenheimer funds, the front-end load was reduced from 3.75% at the $100,000 breakpoint to 2.5% at the $250,000 level and 2.0% at the $500,000 level.

Unlike Class A shares, Class B shares usually include a contingent deferred sales charge ("CDSC"), or back-end load, which is a fee that is levied upon the sale of mutual fund shares. Exchanges between funds in a fund family do not trigger a CDSC, if those exchanges also are into shares of the same class. The CDSC in both Kemper and Oppenheimer funds reduced with each year that the investor held the fund shares, phasing out entirely after six years, at which point the Class B shares would convert into Class A shares. Since there are no breakpoints for Class B shares, there is no reduction in the commission rate for larger investments in Class B shares. This means that, for investments at or above the breakpoint levels, the representative receives a larger percentage commission for Class B shares than for Class A shares.

A mutual fund's expense ratio measures the fund's total annual expenses expressed as a percentage of the fund's net assets. The expense ratio includes asset-based sales charges, such as charges permitted under Investment Company Act Rule 12b-1, 11/ that are taken from the mutual fund's assets to pay to market the fund and distribute its shares. The expense ratios for Class B shares generally are higher than the expense ratios for Class A shares. During the relevant period, Class B shares in both the Kemper and Oppenheimer fund families had annual expense ratios that were 75 basis points higher than the annual expense ratios for Class A shares in the same funds, because of the higher 12b-1 fees associated with Class B share investments.

All of the investments at issue in this proceeding were purchases of the Class B shares of Kemper and Oppenheimer funds in amounts greater than the $250,000 breakpoints established by both fund families. Two of the investments were for $500,000, which was the next breakpoint offered by both fund families. The prospectuses of both Kemper and Oppenheimer funds disclosed the differences in fee structures between the share classes. Oppenheimer's prospectuses stated that, at the $1,000,000 level, Class A shares generally outperformed Class B shares because of the availability of breakpoint discounts; both fund families' prospectuses stated that the fund families would not accept Class B share investments in amounts above $500,000.

C. IFG's and Ledbetter's Supervisory System

IFG's home office consisted of several departments which were headed by general securities principals. These department heads reported to Ledbetter in connection with compliance matters. Julie Ann Sullivan, a registered principal, was IFG's chief compliance officer during a portion of the relevant period, and she reported to Ledbetter. Edward Woll, a registered principal, also worked in IFG's compliance department during this time, and he reported to Sullivan. Supervision of the OSJ principals was diffused among various home office principals (including Business Review Principals ("BRPs"), a trading officer, an operations officer, and an advertising review principal) based on functional responsibilities. In addition, IFG's compliance department conducted annual audits of branch offices and OSJs. IFG also had a mutual fund coordinator to answer representatives' questions about mutual fund sales. 12/ Ledbetter testified that, as president of IFG, he had ultimate responsibility to ensure that adequate supervisory procedures were in place at IFG.

11/ 17 C.F.R. § 270.12b-1.

12/ Ledbetter estimated that IFG had fewer than ten complaints per year related to mutual funds and that, other than the complaint of Kissinger's customer Myrna Moran, discussed in greater detail below, IFG received no complaint concerning the adequacy of disclosures with respect to the sale of Class A and Class B shares.

BRPs reported directly to IFG's Chief Operations Officer who, in turn, reported to the president. It was the responsibility of BRPs to review and approve each transaction by every OSJ principal and registered representative. They reviewed these transactions for issues such as suitability and sales practice violations, including failure to take advantage of breakpoints. During the relevant period, when BRPs reviewed investments of $250,000 or more in Class B shares of a mutual fund, they looked for, but did not require, written documentation that IFG's registered representatives had disclosed the various cost structures associated with Class A and Class B shares. BRPs also reviewed transactions for compliance with the Class B share purchase limits set forth in the applicable mutual fund prospectuses. BRPs referred transactions about which they had concerns to the compliance department.

IFG's Registered Representative Manual ("Manual") included information concerning representatives' disclosure responsibilities with respect to multiple-class mutual funds. In November 1995, material related to the disclosure obligations at issue here was added to the Manual. In February 1998, IFG distributed a pamphlet to all of its OSJs and branch offices entitled "Dos and Don'ts For Registered Representatives Who Provide Mutual Fund Advice," published by the Investment Company Institute, that contained information about multiple-class funds, including information about breakpoints and fund fees.

Subsequently, in November 1998, IFG issued a Compliance Alert, recommending that its representatives utilize what it labeled a Mutual Fund Disclosure Form as part of their regular sales practices for purchases of mutual funds with multiple-share classes. The November 1998 Compliance Alert stated that representatives were not required to use the Mutual Fund Disclosure Form, but that the form would assist in documenting the fact that representatives had made the necessary disclosures. The Mutual Fund Disclosure Form highlighted the features of Class A, B, and C shares. It stated that mutual fund class designations relate to the fee and commission structure employed by the fund. The Mutual Fund Disclosure Form further stated that each fund had its own schedule of fees set forth in its prospectus, and it directed potential investors to review the prospectus carefully.

The Mutual Fund Disclosure Form stated that Class A shares generally are structured such that a sales charge is assessed, and a commission paid to the representative, at the time of purchase. It noted that most Class A shares provide commission discounts called breakpoints for large purchases. The Mutual Fund Disclosure Form stated that generally Class B shares are structured so that no commission is charged at the time of purchase, but that funds usually charge higher marketing fees for Class B shares than for Class A shares in order to pay commissions and marketing expenses. The Mutual Fund Disclosure Form stressed that Class A shares are usually more advantageous than Class B shares for investors able to invest enough to qualify for breakpoint discounts. The form noted that, for this reason, many mutual funds will not accept Class B share purchases in excess of $500,000 because, at this level, Class A shares charge such a reduced commission that they are preferable to other fee and commission structures.

The Mutual Fund Disclosure Form contained a section that identified the customer's investment choice, including the share class of the fund selected and the amount invested. The form also contained a place for the customer's signature to confirm that he or she had received and reviewed the applicable prospectuses, understood the sales charges associated with the class of shares selected, and had an opportunity "to discuss all issues" with the registered representative. Kissinger testified that he could not specifically recall whether he received the November 1998 Compliance Alert, which included the Mutual Fund Disclosure Form, but he testified that he used the form with his customers "when it was suggested." 13/

D. Kissinger's Disclosures to Customers

Kissinger had both advisory and non-advisory customers. Kissinger spent the first meeting with prospective advisory customers analyzing the customer's financial position but did not make any specific investment recommendations or engage in even generic financial planning until the customer had signed the standard advisory contract. The three advisory customers at issue here signed this contract. The contract contained information about the services to be provided by Kissinger and the manner in which Kissinger would receive payment from the customer, including a flat fee for the creation of the customer's financial plan, a periodic fee-based monitoring service, and commissions paid to IFG in the event that the customer accepted Kissinger's specific investment recommendations. 14/

After the customer signed the advisory contract, Kissinger would prepare a generic financial plan that set forth his suggested allocation of assets and investment strategy without reference to specific investments. If the customers agreed to implement the plan, Kissinger would hold another meeting with the customer during which he recommended specific funds. Kissinger testified that, prior to recommending any specific investment to an advisory customer, he would inform the customer that he was acting in his capacity as a salesperson. Kissinger would explain to the customer basic information about the funds he recommended, such as the fund manager, some of the fund's major investments, its overall strategy, and certain other information, and he would provide the customer with the fund prospectuses. Kissinger generally instructed the customer to take the prospectuses home and think about the information provided

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13/ In May 1999, IFG issued to its registered representatives a Compliance Alert stating that, for customers qualifying for breakpoint discounts available for Class A shares, the higher annual expenses associated with Class B share investments generally make Class A shares less expensive than Class B shares.

14/ The customers at issue here, both advisory and non-advisory, used brokerage services provided by Kissinger as an associated person of IFG.

for a week or two before making any investment decisions. Each customer also signed or initialed an asset positioning form upon investing. 15/

Non-advisory customers were individuals who chose not to receive comprehensive financial planning advice from Kissinger. Kissinger recommended investments in specific funds to non-advisory customers, providing them with prospectuses for each recommended investment. Non-advisory customers did not sign the advisory contract, did not have the same types of generic, broad financial planning meetings with Kissinger as advisory customers had, and compensated Kissinger solely by means of commissions from the sales of mutual funds, not through the flat fees and periodic monitoring fees that advisory customers paid.

E. Kissinger's Recommendation of Class B Mutual Fund Shares

Kissinger asserts that many of his customers expressed a strong aversion to paying any up-front fees and that he interpreted such statements as meaning that the customer did not want to purchase Class A shares, because all Class A shares entailed up-front fees. When a customer expressed such a strong preference, Kissinger felt that "there was no need to keep beating [the customers] over the head" by telling them about the availability of breakpoint discounts and other elements of the expense structure of investments in Class A shares and about other distinctions between the two share classes. Kissinger told his customers that Class B shares entailed an early withdrawal penalty (the CDSC), that was reduced each year that the customer held the fund's shares until, after a six-year holding period, the Class B shares converted to Class A shares. Kissinger thought of a fund prospectus as his "Bible" when making recommendations to customers. He believed that, because the Kemper and Oppenheimer prospectuses permitted investors to make purchases of Class B shares up to a $500,000 limit, investments in Class B shares in amounts up to $500,000 would be advantageous for the customer. 16/

It was Kissinger's practice to provide customers with a print-out of a performance analysis of any fund he recommended, using a CDA Weisenberger software program that

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15/ Kissinger referred to this form as a "switching form." It identified the Class B share investments of the customers, but did not show the differences between Class B and Class A investments.

16/ The relevant Kemper prospectuses at the time stated that orders for Class B shares for $500,000 or more would be declined. The relevant Oppenheimer prospectuses at the time stated that, at the $1,000,000 investment level, Class A shares will generally outperform Class B shares, and that, as a result, Oppenheimer normally will not accept purchase orders of $500,000 or more of Class B shares. Kissinger testified that, because of this language, he believed that the Oppenheimer prospectus was unclear as to the relative advantages of the two share classes at the $500,000 level but that Oppenheimer would approve Class B share transactions in amounts up to and including at least $500,000.

compared the historical results of a given investment against certain benchmarks. However, Kissinger did not perform such an analysis comparing the expected performance of Class A versus Class B shares for either the Kemper or Oppenheimer funds. Kissinger testified that he believed that the reasoning behind the initial creation of Class B shares as an investment option was to provide an investment vehicle for investors who opposed paying up-front fees.

Kissinger told the six customers at issue in this proceeding that Class B shares involved no up-front fees and that all of their money could "go to work" for them in Class B shares. Kissinger testified that he believed that Class B shares were the superior investment for these customers at the time he made the recommendations. All of the customers stated that they did not consider themselves to be expert in investing and finance, and that they relied heavily on Kissinger's expertise in making their investment choices. All of the customers received prospectuses for the funds Kissinger recommended.

The three advisory customers were Mary Ann Cline, Myrna Moran, and Mary Jane Daley. Cline invested approximately $423,000 in April 1999. Although she acknowledged signing and initialing her asset positioning form, which showed that she was investing in Class B shares of the Kemper funds, Cline recalled no discussion with Kissinger of the differences between the two classes of shares. Cline testified that Kissinger did not discuss breakpoint discounts, expenses, or relative commissions that he would receive. Cline testified that she had a long history of working with Kissinger and that she trusted his advice. She testified that she had no understanding of the differences between Class B shares and Class A shares when she invested in the Kemper Class B shares.

Moran invested $500,000 in April 1999 as part of a total investment of $1.7 million. Moran testified that she communicated to Kissinger that her investing goal was to preserve her money and earn enough to live on for the rest of her life. She thought of herself as a long-term investor. Although Moran acknowledged signing and initialing her asset positioning form, which showed that she was investing in Class B shares of the Kemper funds, Moran recalled no discussion with Kissinger of the differences between the two classes of shares. Moran said that she knew that different share classes existed, but did not know what the differences between the classes were. She testified that Kissinger did not discuss breakpoint discounts, expenses, or relative commissions that Kissinger would receive. Moran testified that Kissinger told her nothing about any disadvantages of investing in Class B shares. Moran testified that she had no understanding of the differences between Class B shares and Class A shares at the time she invested in the Kemper Class B shares. Moran acknowledged signing Kissinger's standard advisory contract and initialing the asset positioning form, but she said that she did not read these documents carefully and did not understand what they said when she signed them.

Moran came to Kissinger in or around June 1998. Because her $1.7 million investment amount was much larger than that typically invested by Kissinger's customers, Kissinger contacted IFG with a request for documents necessary to ensure that he properly disclosed relevant facts about Moran's investments, including the $500,000 purchase of Class B shares of

Kemper funds at issue here. In response, Sullivan provided Kissinger with a document called a "Mutual Fund Disclosure Form." 17/ This June 1998 disclosure form did not specifically explain the cost differences between investments in Class A and Class B shares. It included a paragraph that said, "Please note that the above-referenced fund families offer other share classes, with different fees and compensation structures. Please refer to the prospectuses provided for more detailed explanation of fund classes available and their respective fees." The form originally provided by Sullivan included a sentence for each fund that was being recommended to Moran (Kissinger recommended certain Fidelity funds in addition to the Kemper Class B funds), which said, "First year charges related to compensation are estimated to be XXX, and XX per year, thereafter." Kissinger suggested to Sullivan that this sentence was improper in projecting future performance and that it should be deleted. Sullivan agreed to remove this language from the document. Moran signed this revised version of the Mutual Fund Disclosure Form on June 12, 1998. 18/

Daley invested approximately $326,000 in January 2000. Daley stated that she believed that Kissinger had her best interests in mind when he recommended that she invest in Class B shares, that she knew Kissinger would receive commissions for the sales of mutual fund shares in her account, and that she remains a satisfied customer. Daley also stated that she recalls no specific discussion of breakpoint discounts or expense differences between share classes.

The three non-advisory customers were William Moulyn, Barry Hart, and Satwant Chona. Moulyn invested approximately $250,000 in December 1999. He testified that he relied on Kissinger's investment advice "100%" and that he had never heard of the concept of different share classes until the time he received his subpoena to testify in this proceeding. 19/

17/ This was a different document from the Mutual Fund Disclosure Form included with IFG's November 1998 Compliance Alert, discussed above.

18/ On November 7, 1999, Moran wrote Kissinger a letter complaining about the way in which he was handling her investments. Kissinger sent the letter to Sullivan who forwarded it to Ledbetter. Ledbetter investigated Moran's complaint on behalf of IFG and participated in a mediation with Moran and her attorney that resolved her complaint by converting her Class B shares into Class A shares and by IFG's paying of her legal expenses. Ledbetter testified that, based on speaking with Moran and participating in the mediation, he believed that her complaint was related to the performance of the funds that Kissinger had recommended, not to the differences between share classes of the Kemper funds.

19/ Moulyn is no longer a customer of Kissinger, largely because he wished to invest in individual stocks and sought to make frequent trades in and out of positions in those stocks, which is not the investment model that Kissinger typically employs with his customers.

Hart invested approximately $426,000 in January 2000. He testified that he came to Kissinger seeking rapidly to invest his retirement money because his former employer's 401(k) plan was about to close, and he needed to transfer his funds into a new account. Hart testified that he entrusted his retirement funds to Kissinger. Hart recalled that Kissinger stressed the lack of up-front fees for Class B shares. Hart understood from Kissinger that the main drawback to an investment in Class B shares was that he would have to maintain his investment for an extended period of time in order to avoid early withdrawal penalties, but this did not concern Hart because he thought of himself as a long-term investor, not seeking to turn quick profits. Hart acknowledged that he communicated to Kissinger a strong desire not to lose any of his money in the course of transferring his account from his employer's 401(k) plan, and Hart told Kissinger that he opposed paying up-front fees for that reason. Hart acknowledged having signed and initialed his asset positioning form, which indicated that he would be investing in Class B shares, and he also signed the version of the Mutual Fund Disclosure Form recommended in IFG's November 1998 Compliance Alert, but he said that he did not truly understand the distinction between share classes. Hart testified that he trusted Kissinger as an expert to explain all of the salient facts about his investments.

In January 2000, an Oppenheimer representative contacted Kissinger's office and asked that IFG's compliance department approve the $426,000 trade by Hart before Oppenheimer processed the trade because the value of the transaction was "substantially large" for a purchase of Class B shares. Woll reviewed the trade. In an e-mail addressed to Sullivan and others, but not to Ledbetter, Woll concluded that "the difference between A share and B share returns are real and significant," and urged Sullivan to obtain additional information from Kissinger before IFG approved the transaction. IFG's compliance department requested that Kissinger's office forward the Mutual Fund Disclosure Form that Hart had signed. The record indicates that Oppenheimer subsequently processed the transaction. 20/

Chona invested $500,000 in June 2000. He explained that he sought to retire and entrusted Kissinger to invest his money in a way that would permit this to happen. Chona told Kissinger that the return on his investments was very important to him and that he disliked

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20/ Kissinger testified that he does not recall receiving a telephone call from Oppenheimer about Hart's transaction. Christopher Pollitt, an employee of Kissinger, testified that he received Oppenheimer's initial telephone call requesting approval of the transaction by IFG's compliance department. Pollitt then telephoned IFG's compliance department, where he spoke to Richard Dunston. Dunston asked that Pollitt fax documentation related to Hart's transaction. Pollitt testified that after he faxed the relevant documents to Dunston explaining the transaction, he never heard from Oppenheimer or IFG again regarding Hart's transactions. Pollitt recalled that Oppenheimer did not state that the transaction was *per se* improper. Pollitt testified that he processed all of Kissinger's trades, and he did not recall that any transactions in Class B shares for the other five investors at issue here drew any questions from a fund family regarding the size of the transaction.

paying up-front charges. Chona acknowledged that he signed his asset allocation "switching form" and another document asserting that he had read all the prospectuses that Kissinger provided to him, but he testified that he had not actually read the prospectuses. Chona also signed the version of the Mutual Fund Disclosure Form recommended in the November 1998 Compliance Alert but testified that Kissinger never told him about the availability of breakpoint discounts for his investment or the relative expenses of the different share classes.

III.

A. Kissinger's Violations of Antifraud Provisions

The antifraud provisions of the Securities Act prohibit fraudulent and deceptive acts and practices in connection with the offer, purchase, or sale of a security; the Advisers Act prohibits advisers from defrauding customers. Proof of scienter is required to establish violations of Securities Act Section 17(a)(1), Exchange Act Section 10(b) and Rule 10b-5 thereunder, and Advisers Act Section 206(1); 21/ to establish violations of Securities Act Sections 17(a)(2) and 17(a)(3), and Advisers Act Section 206(2), negligence is sufficient. 22/ Securities Act Sections 17(a)(2) and 17(a)(3) make it unlawful for any person in the offer or sale of any securities to obtain money or property by means of any material misrepresentations or omissions, or to engage in any transaction, practice, or course of business that operates as a fraud or deceit on the purchaser. Advisers Act Section 206(2) makes it unlawful for any investment adviser to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon a client. It is undisputed that all of Kissinger's conduct was in connection with the offer, purchase, or sale of a security and that the omissions alleged to have been fraudulent were made to Kissinger's customers, whether advisory or non-advisory. The issues before us are whether the omissions were misleading and, if so, whether they were material and made with the requisite mental state to constitute a violation.

Misleading Omissions

The Division alleged that Kissinger omitted to disclose to his customers: (1) that Class A shares were likely to produce higher returns than Class B shares for them at the investment amounts at which they purchased Class B shares; (2) the availability of breakpoint discounts at

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21/ See Aaron v. SEC, 446 U.S. 680, 695, 697 (1980); Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 (1976); Steadman v. SEC, 603 F.2d 1126, 1134 (5th Cir. 1979), aff'd, 450 U.S. 91 (1981).

22/ Aaron, 446 U.S. at 680, 697 & 701-02 (establishing that a showing of scienter is not required for findings of violations of Securities Act Sections 17(a)(2) and 17(a)(3)); SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 195 (1963) (finding that mere negligence may establish a violation of Advisers Act Section 206(2)).

the $250,000 and $500,000 levels, as applicable, if they had purchased Class A shares; 23/ (3) that Class B shares of the Kemper and Oppenheimer funds had expense ratios that were 75 basis points higher than the expense ratios for Class A shares in the same funds, because of the higher Rule 12b-1 fees associated with the Class B shares; and (4) the fact that Kissinger received a larger commission for the sale of Class B shares than he would have received if the customers had purchased Class A shares instead. Kissinger acknowledges that he made none of these disclosures to the six customers at issue here.

Class A and Class B shares of any particular fund own the same underlying assets; thus, any difference in the relative performance levels of the two share classes (the first omitted disclosure alleged by the Division) will result from the differences in the cost structures of the two classes (the latter omitted disclosures), together with the impact of the Class B CDSC, or early withdrawal penalty. We find that Kissinger's failure to make full disclosures as to the differences in cost structures between the two classes of shares was misleading, in light of his admitted recommendations to these customers that they should invest in Class B shares, rather than Class A shares, because all of their money could "go to work" with such an investment. Without knowledge of these cost differences, the customers were not in a position to make fully informed decisions as to the appropriate choice between the two classes of shares. While the information Kissinger disclosed to his customers about their Class B share investments (that they entail no up-front fees and have a CDSC) is literally true, it presented an incomplete picture of the relative cost structure of the two share classes and the potential impact of the cost structure on the returns on their investments and therefore made his recommendation to invest in Class B shares misleading. 24/

Moreover, in support of its position that it was misleading to omit any disclosure of the relative performance of Class A versus Class B shares, the Division offers an expert opinion and mathematical calculations showing that, for investors with a certain investment profile, Class A investments will produce higher returns than Class B shares. The investment profile of the six customers in this case presented many characteristics tending to suggest that Class A shares were likely to be advantageous for them. These customers intended to hold their investments for the long term without withdrawals and, with the exception of customer Moulyn, invested in tax-advantaged accounts. The Division's model in its brief on appeal and expert testimony presented by the Division before the administrative law judge indicate that, under reasonable assumptions for these particular investors, relatively simple mathematical calculations would have shown that

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23/ All of the customers here invested amounts that qualified for the $250,000 breakpoint discount, and Moran and Chona qualified for the $500,000 breakpoint discount.

24/ See John J. Kenny, Securities Act Rel. No. 8234 (May 14, 2003), 80 SEC Docket 564, 576 ("Although the letters contain some truthful statements, the letters are misleading because of the omitted information"), aff'd, Kenny v. S.E.C., 87 Fed. Appx. 608 (8th Cir. 2004).

Class A shares were the superior investment. 25/ Kissinger's defense that, under certain circumstances, Class B shares will produce higher returns (e.g. if the customer takes maximum annual withdrawals throughout the six-year CDSC period), while technically true, does not render any less misleading his omissions, in light of his affirmative recommendation of Class B shares to these particular customers based on his assurances that Class B shares would allow all of their money to "go to work."

Materiality

Generally speaking, "[a]n omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important." 26/ The rate of return of an investment is important to a reasonable investor. In the context of multiple-share-class mutual funds, in which the only bases for the differences in rate of return between classes are the cost structures of investments in the two classes, information about this cost structure would accordingly be important to a reasonable investor. Kissinger's argument that his customers' stated desire to avoid up-front fees in their investments rendered additional information about the cost structure differential between the two share classes not material conflicts with his concession that the rate of return on the investments was the issue of greatest importance to all six customers at issue here. Without additional information about the cost differences between share classes, his customers did not have the "total mix of information" necessary to make their investment decisions. 27/ We find that there is a substantial likelihood that a reasonable investor would consider information that might have enabled them to understand the likely return differences between an investment in Class A shares and an investment in Class B shares to be important in making the decision about which share class to purchase.

25/ Respondents argue that the Division's case is based on a theory that Class A shares always outperform Class B shares, a premise that they contend is not supported by the record. However, as discussed in the text, we believe that the Division amply demonstrated at the hearing below that its case with respect to Kissinger and Kissinger Advisory was based on the theory that, under the facts and circumstances of this case, Kissinger's omissions as to the differences in cost structure between share classes were misleading. For these six customers of Kissinger, who intended to hold their investments for the long term without systematic withdrawals, Kissinger's omission to disclose the availability of breakpoints at their investment levels and the higher expense ratios and commissions in Class B shares was misleading. This is especially true in light of his advice that Class B shares would satisfy the goal of avoiding up-front fees.

26/ SEC v. Steadman, 967 F.2d 636, 643 (D.C. Cir. 1992) (quoting TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976)).

27/ See Basic, Inc. v. Levinson, 485 U.S. 224, 231 (1988).

Requisite Mental State

Negligence is the failure to exercise reasonable care. 28/ The IFG Compliance Manual, the Investment Company Institute pamphlet distributed by IFG in February 1998, and the IFG Compliance Alerts of November 1998 and May 1999 all discussed the differences in cost structure of multiple-class mutual funds and the importance of ensuring that investors understood the impact of these costs on their investments. 29/ These documents would have given notice to a reasonable securities industry professional that some analysis of the impact of these different cost structures on the return on an investment was required before recommending one class of shares rather than the other, especially in amounts above the breakpoint levels. Kissinger never attempted such an analysis, nor did he request that IFG or the fund families provide him with an analysis of which share class would likely outperform, given these customers' investment profiles. All of the investments at issue occurred after IFG's November 1998 Compliance Alert, and all but the Cline and Moran investments occurred after the May 1999 Compliance Alert.

Kissinger was aware of the existence of breakpoint discounts available for the purchase of Class A shares, and that Class B shares entailed higher expense ratios and greater commissions to Kissinger than Class A shares. He knew that, in advising his customers that an investment in Class B shares would avoid the up-front fees of Class A shares and enable all of their money to "go to work," he was omitting information about the difference in cost structure between the share classes. Kissinger testified that, at the time he recommended the Class B shares at issue here, he believed that the recommendations presented a "win-win" situation for both him and his customers because he received a greater commission than he would have received had the customers invested in Class A shares, and the customers would enjoy greater returns on their investments because they did not have to pay any up-front fees on the Class B shares. Kissinger had not, however, performed any mathematical analysis (or made any sort of inquiry) to support this belief, although the software for doing so was readily available to him. Thus, he did not have a reasonable basis for concluding that disclosure of these additional costs were unnecessary and his failure to do so was a departure from the standard of reasonable prudence and was negligent. 30/

28/ SEC v. Hughes Capital Corp., 124 F.3d 449, 453-54 (3d Cir. 1997). See also Ira Weiss, Securities Act Rel. No. 8641 (Dec. 2, 2005), __ SEC Docket ____, ____.

29/ Kissinger claimed that he never received the January 1995 document and testified that he did not recall whether he received the November 1998 and May 1999 Compliance Alerts. He was not questioned about and did not testify whether he received the Investment Company Institute pamphlet distributed by IFG in February 1998.

30/ Lieb v. Merrill Lynch, 461 F.Supp. 951, 953 (E.D. Mich. 1978) (holding that brokers must study recommended securities sufficiently to become informed as to the nature, price, and financial prognosis of the security), aff'd, 647 F.2d 165 (6th Cir. 1981) (Table).

(continued...)

In his defense, Kissinger points out that Oppenheimer and Kemper both permitted investments in Class B shares in amounts up to $500,000, and he notes that neither the fund families nor IFG stopped the execution of his customers' transactions when he submitted the transactions for execution. In addition, he argues that under certain assumptions, which did not apply to the customers at issue here, Class B shares may be the better investment. These factors do not provide a reasonable basis for an unequivocal recommendation of Class B shares without full disclosure of the cost structure differences.

Kissinger argues that it was not customary securities industry practice during the relevant period to make the disclosures at issue here. Kissinger states that neither industry practice, Commission regulations, nor any rules implemented by the relevant fund families, obligated him to make such disclosures and that, therefore, he was not obligated to make them. Kissinger points out that IFG (and Kemper and Oppenheimer, as applicable) processed all of the relevant transactions, and Kissinger claims that he interpreted the lack of comments or questions about the transactions as providing implicit approval of the transactions. Kissinger claims that IFG never specifically instructed him to make the disclosures at issue here, although he acknowledges that IFG told all of its registered representatives to make full and accurate disclosures about any investments recommended to their customers.

Kissinger's claim that non-disclosure of the differences between share classes was standard industry practice at the time is without merit. The courts and the Commission have repeatedly held that a practice may be prevalent in the industry and still be fraudulent. 31/ Moreover, Kissinger has not shown that the practice in which he engaged was universal in the industry. He told the customers that Class B shares did not have an up-front fee and would allow all of their money to "go to work," even though he was aware of a number of other elements of the cost structure (besides the lack of an up-front fee) that could have made an investment in Class B shares at these amounts less advantageous for the customer. He failed to take any steps to determine if B shares were in fact most advantageous for his customers.

30/ (...continued)
Kissinger's failure to conduct any analysis that included the impact of expense ratios and breakpoint discounts on the recommended investments, or even to request that such an inquiry be done before he recommended an investment in Class B shares, falls short of this requirement. Given Kissinger's knowledge that investments in Class B shares did not include the possibility of taking advantage of breakpoint discounts and also involved higher expense ratios than Class A shares, we find that his failure to make further inquiry beyond merely considering the impact of the up-front fees for Class A shares to have been unreasonable.

31/ Newton v. Merrill Lynch, Pierce, Fenner & Smith, 135 F.3d 266, 274 (3d Cir. 1998); Fundamental Portfolio Advisors, Inc., Securities Act Rel. No. 8574 (May 23, 2005), 85 SEC Docket 1754, 1760 n.16; Marc N. Geman, 54 S.E.C. 1226, 1256 and n. 64 (2001), aff'd, Geman v. SEC, 334 F.3d 1183 (10th Cir. 2003).

Accordingly, we find that Kissinger negligently omitted to disclose material information to his customers that made the disclosures relating to his recommendation of Class B shares misleading, thereby violating Securities Act Sections 17(a)(2) and 17(a)(3). 32/

B. IFG's and Ledbetter's Supervision of Kissinger

The Commission may censure, suspend, limit the activities of, or revoke the registration of, any broker or dealer if we find that (1) such sanction is in the public interest and (2) the broker or dealer "failed reasonably to supervise, with a view to preventing [securities] violations . . . , another person who commits such a violation, if such other person is subject to his supervision." 33/ We also may sanction any natural person associated with a broker or dealer if we find that such individual has failed to supervise. 34/ No firm or individual shall be disciplined for failure to supervise, however, if there were in place "procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect" the securities violation in question, and the person responsible for administering such procedures and system "reasonably discharged [his] duties and obligations . . . without reasonable cause to believe that such procedures and system were not being complied with." 35/

The Division contends that IFG and Ledbetter failed reasonably to supervise Kissinger in that the process for reviewing and approving Class B share transactions was unreasonable, and that IFG and Ledbetter did not adequately ensure that Kissinger disclosed all material facts to his customers. For example, the Division argues that, because IFG and Ledbetter lacked any system for contacting customers making large Class B share investments to inquire about the basis for their investments, as provided for in IFG's dealer agreements with Oppenheimer and Kemper, the system established by IFG and Ledbetter for complying with the dealer agreements was ineffective, thereby making it more difficult for IFG and Ledbetter to identify whether adequate disclosures were made by IFG's registered representatives. The Division further argues that BRPs reviewed only whether a Class B share transaction complied with the fund family's dollar share limits on Class B investments. Under the Division's theory, a closer inspection of the transactions would have included analysis of whether the investments would have received breakpoint discounts if they had been made in Class A shares instead of Class B shares. The

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32/ In light of Kissinger's violations of Securities Act Sections 17(a)(2) and 17(a)(3) and, as discussed below, the sanctions imposed, we do not reach the Division's allegations that Kissinger aided and abetted or was a cause of Kissinger Advisory's violations of Section 206 of the Advisers Act.

33/ Exchange Act Section 15(b)(4)(E), 15 U.S.C. § 78o(b)(4)(E).

34/ Exchange Act Section 15(b)(6), 15 U.S.C. § 78o(b)(6).

35/ Exchange Act Section 15(b)(4)(E), 15 U.S.C. § 78o(b)(4)(E).

Division theorized that a transaction review policy that included such an analysis would have been more reasonably designed to prevent Kissinger's violations.

Although the evidence and arguments presented by the Division in this case are not without force, we find that the Division has not established that IFG and Ledbetter failed to exercise reasonable supervision. IFG and Ledbetter implemented procedures that were addressed specifically to disclosure by IFG's associated persons of material facts with respect to the different cost structures of Class A and Class B shares and that could reasonably have been expected to prevent Kissinger's violations. IFG discharged its supervisory duties in two ways: through written materials and through specific oversight and investigation of individual offices and transactions. With respect to IFG's written materials, IFG had in place a Registered Representative Manual that addressed the disclosure obligations with respect to multiple-class mutual funds. IFG also distributed the pamphlet "Dos and Don'ts For Registered Representatives Who Provide Mutual Fund Advice" in February 1998 and Compliance Alerts in November 1998 and May 1999, each of which provided information about the differences in cost structure and commissions in multiple-class funds.

In addition to its written compliance materials, IFG and Ledbetter had in place procedures and a system for reviewing and approving purchases of multiple-class mutual funds that would have reasonably been expected to ensure that its associated persons disclosed all material facts to their customers. BRPs reviewed and approved every transaction by every OSJ principal and registered representative. BRPs also reviewed transactions for compliance with the Class B share purchase limits set forth in the applicable mutual fund prospectuses. 36/ In addition, IFG's compliance department conducted annual audits of branch offices and OSJs and annually reviewed OSJ principals' customer files. Accordingly, we conclude that under the circumstances of this case, the Division has not established that IFG and Ledbetter failed to exercise reasonable supervision with a view to preventing Kissinger's antifraud violations within the meaning of Sections 15(b)(4)(E) and 15(b)(6) of the Exchange Act.

IV.

Securities Act Section 8A(a) authorizes the Commission to impose a cease-and-desist order upon any person who "is violating, has violated, or is about to violate" any provision of either of these acts or any rule or regulation thereunder, or against any person who "is, was, or would be a cause of [a] violation, due to an act or omission the person knew or should have known would contribute to such [a] violation." 37/ In determining whether a cease-and-desist

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36/ We note that the amounts in question in the transactions at issue here represent a relatively small portion of Kissinger's business.

37/ 15 U.S.C. §§ 77h-1(a).

order is an appropriate sanction, we look to whether there is some risk of future violations. 38/ The risk of future violations required to support a cease-and-desist order is significantly less than that required for an injunction. 39/ We also consider whether other factors demonstrate a risk of future violations, but not all factors need to be considered, and no factor is dispositive. Beyond the seriousness of the violation, these include 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, recognition of the wrongful nature of the conduct, opportunity to commit future violations, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions sought in the proceeding. 40/

We conclude that Kissinger's violations are sufficiently serious, were recurrent, and raise a sufficient risk of future violation to warrant imposition of a cease-and-desist order against him. Kissinger's failure to disclose all of the material facts concerning Class A and Class B shares harmed customers by making it more difficult for the customers to make an informed investment decision. At stake in that decision were the amount of fees the customers would pay, the amount of returns they would receive, and the amount of commissions Kissinger would receive, on the customers' investments. Although a small portion of Kissinger's business, his violations were committed in transactions with six customers over a period from July 1998 to December 2000; thus, his violations were recurrent. In addition, a cease-and-desist order will serve the remedial purpose of encouraging Kissinger to take his responsibilities more seriously in the future.

Exchange Act Section 21B authorizes orders of disgorgement in, among others, cases involving willful violations of the Securities Act. 41/ Disgorgement is an equitable remedy designed to deprive wrongdoers of unjust enrichment and to deter others from violating the securities laws. 42/ The Division asks that we order Kissinger to disgorge $36,170, an amount it states represents the difference in commissions that Kissinger received for selling Class B shares

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38/ KPMG Peat Marwick, 54 S.E.C. 1135, 1185 (2001), petition denied, 289 F.3d 109 (D.C. Cir. 2002).

39/ Id. at 1191.

40/ Id. at 1192.

41/ 15 U.S.C. §§ 78u-2(e). Kissinger's conduct was willful. Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) ("Generally, [willful] means. . . that [a] person . . . knows what he is doing. It does not mean that, in addition, he must suppose that he is breaking the law").

42/ S.E.C. v. First City Financial Corp., 890 F.2d 1215, 1230 (D.C. Cir. 1989); S.E.C. v. Robert Johnston and Fiduciary Planning, Inc., 143 F.3d 260, 263 (6th Cir. 1998); John J. Kenny, 80 SEC Docket at 595.

instead of Class A shares to the six customers at issue. Kissinger does not contest this amount. Disgorgement here will prevent Kissinger from reaping substantial financial gain from his violations. Disgorgement also will impress upon him and other securities professionals the need to make full and accurate disclosures in connection with sales of multi-class mutual fund shares. Accordingly, we order Kissinger to pay $36,170 in disgorgement together with prejudgment interest pursuant to Rule 600 of the Commission's Rules of Practice. 43/

An appropriate order will issue. 44/

By the Commission (Chairman COX and Commissioners GLASSMAN, ATKINS and CAMPOS); Commissioner NAZARETH not participating.

Nancy M. Morris
Secretary

By: Jill M. Peterson
Assistant Secretary

43/ 17 C.F.R. § 201.600.

44/ We have considered all of the parties' contentions. We have rejected or sustained these contentions to the extent that they are inconsistent or in accord with the views expressed herein.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 54127 / July 11, 2006

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 2533 / July 11, 2006

Admin. Proc. File No. 3-11179

In the Matter of the Application of

IFG NETWORK SECURITIES, INC.,
WILLIAM KISSINGER, and
DAVID LEDBETTER

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that William Kissinger cease and desist from committing any violations or future violations of Section 17(a)(2) and 17(a)(3) of the Securities Act of 1933; and it is further

ORDERED that Kissinger disgorge the amount of $36,170, plus prejudgment interest, as calculated in accordance with Commission Rule of Practice 600;

Payment of the amount to be disgorged shall be: (i) made by United States postal money order, certified check, bank cashier's check, or bank money order; (ii) made payable to the Securities and Exchange Commission; (iii) mailed or delivered by hand to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Virginia 22312; and (iv) submitted under cover letter that identifies the

respondent and the file number of this proceeding. A copy of the cover letter and check shall be sent to William P. Hicks, counsel for the Division of Enforcement, Securities and Exchange Commission, 3475 Lenox Road, NE, Suite 1000, Atlanta, Georgia 30326-1232.; and it is further

ORDERED that the proceeding with respect to IFG Network Securities Inc. and David Ledbetter be, and it hereby is, dismissed.

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. 54128 / July 11, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2459 / July 11, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12363

In the Matter of **Marvin Winick,** **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 Marvin Winick ("Respondent" or "Winick") 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.

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(4) 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. Winick, from Thornhill, Ontario, is an accountant who frequently serves as a consultant to issuers that have a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78l] or that are required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)] ("U.S. public companies"). He also frequently serves as an officer or director of and provides other miscellaneous services on behalf of U.S. public companies.

2. In 2003, Winick was hired as a consultant by Greentech USA, Inc. ("Greentech"), Information Architects Corporation ("IACH") and Tekron, Inc. ("Tekron") (collectively referred to here as "the issuers"). He was responsible for preparing the issuers' financial statements and preparing and filing their Commission filings.

3. At all relevant times, Greentech, IACH and Tekron each had a class of securities that was registered with the Commission pursuant to Section 12(g) of Exchange Act and was traded on the Over-the-Counter Bulletin Board ("OTCBB").

4. On June 30, 2006, the Commission filed a complaint against Winick in SEC v. Marvin Winick, et al. (Civil Action No. 306-CV-1164-D) in the U.S. District Court for the Northern District of Texas, Dallas Division. On July 5, 2006, the court entered an order permanently enjoining Winick, by consent, from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rules 10b-5 and 13b2-1 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, 13a-1 and 13a-13 thereunder. Winick was also ordered to pay $30,985 in disgorgement of ill-gotten gains, plus prejudgment interest, and ordered to surrender 50,000 shares of IACH stock he received from IACH. He was also ordered to pay a $100,000 civil penalty, and prohibited from acting as an officer or director of any U.S. public company.

5. The Commission's complaint alleged that Winick was hired by Greentech, IACH and Tekron as a consultant charged with responsibility for, among other things, properly preparing

and filing the issuers' Commission filings; instead Winick filed 2003 Forms 10-KSB on each issuer's behalf that included fraudulent Reports of Independent Certified Public Accountants ("Audit Report(s)") and fraudulent auditor's consent letters ("Consent(s)"). More specifically, the Commission alleged that Winick placed an electronic signature of an Oklahoma City-based accounting firm ("accounting firm") on the Audit Reports and Consents without authorization from the accounting firm; in fact, neither the accounting firm nor any other auditor had audited the issuers' 2003 financial statements. The complaint further alleged that Winick subsequently filed on the issuers' behalf Forms 10-QSB that contained a balance sheet comparing the financial results for the current quarter with those for the previous annual period and falsely designating the annual period as "audited." According to the complaint, after the accounting firm confronted Winick about the fraudulent Audit Reports and Consents, Winick filed a 2003 Form 10-KSB/A on behalf of IACH that included an Audit Report and Consent putatively signed by a second auditor, based in Colorado. Again, Winick placed this signature on the Auditor Report and Consent without authorization from the auditor and, in fact, no audit had been completed. The complaint further alleged that in February 2005, Winick filed on Tekron's behalf another Form 10-QSB that contained a balance sheet comparing the financial results of the current quarter with those of the prior annual period, falsely designating the annual period as "audited."

IV.

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

Accordingly, it is hereby ORDERED, effective immediately, that Winick is suspended from appearing or practicing before 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 240

[Release No. 34-54122; File No. S7-11 -06]

RIN 3235-AJ58

CONCEPT RELEASE CONCERNING MANAGEMENT'S REPORTS ON INTERNAL CONTROL OVER FINANCIAL REPORTING

AGENCY: Securities and Exchange Commission.

ACTION: Concept Release; request for comment.

SUMMARY: The Commission is publishing this Concept Release to understand better the extent and nature of public interest in the development of additional guidance for management regarding its evaluation and assessment of internal control over financial reporting so that any guidance the Commission develops addresses the needs and concerns of public companies, consistent with the protection of investors.

DATES: Comments should be submitted on or before [insert date 60 days after the date of 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/concept.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-11-06 on the subject line; or
- Use the Federal eRulemaking Portal (http://www.regulations.gov). Follow the instructions for submitting comments.

Document #9 of 49

Paper comments:

- Send paper submissions 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 S7-11-06. 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/concept.shtml). Comments also are 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: Lillian Brown, Division of Corporation Finance or Michael Gaynor, Office of Chief Accountant, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

SUPPLEMENTAL INFORMATION:

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I. BACKGROUND

Section 404(a) of the Sarbanes-Oxley Act of 2002[1] directed the Commission to prescribe rules that require each annual report that a company, other than a registered investment company, files pursuant to Section 13(a) or 15(d)[2] of the Securities Exchange Act of 1934[3] to contain an internal control report: (1) stating management's responsibilities for establishing and maintaining adequate internal control structure and procedures for financial reporting; and (2) containing an assessment, as of the end of the company's most recent fiscal year, of the effectiveness of the company's internal controls and procedures for financial reporting. On June 5, 2003, the Commission adopted rules implementing Section 404 with regard to management's obligations to report on internal control over financial reporting.

Domestic reporting companies that meet the definition of "accelerated filer" under the Commission's rules were required to comply with the internal control reporting provisions for the first time in connection with their fiscal years ending on or after November 15, 2004. Foreign private issuers that meet the definition of accelerated filer must comply with those provisions for their first fiscal year ending on or after July 15, 2006. On September 22, 2005, the Commission postponed the compliance date for domestic and foreign non-accelerated filers until their first fiscal years ending on or after July 15, 2007.

On May 17, 2006, the Commission announced its intent to issue an additional postponement for compliance for non-accelerated filers. As announced in that press

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[1] 75 U.S.C. 7262.

[2] 15 U.S.C. 78m(a) or 78o(d).

[3] 15 U.S.C. 78a et. seq.

release, the Commission expects to propose an additional extension of the dates for complying with our internal control over financial reporting requirements for companies that are non-accelerated filers, including foreign private issuers that are non-accelerated filers.

Section 404(b) of Sarbanes-Oxley, as well as the Commission's rules adopted to implement the requirements of that section of the Act, require every registered public accounting firm that prepares or issues a financial statement audit report for a company also to attest to and report on management's assessment of internal control over financial reporting, in accordance with standards to be established by the Public Company Accounting Oversight Board (PCAOB). On June 17, 2004, the Commission issued an order approving PCAOB Auditing Standard No. 2, "An Audit of Internal Control over Financial Reporting Performed in Conjunction with an Audit of the Financial Statements" (AS No. 2), which established the requirements that apply when an independent auditor is engaged to provide an attestation and report on management's assessment of the effectiveness of a company's internal control over financial reporting.

In the release adopting the Commission's rules implementing Section 404, we expressed our belief that the methods of conducting assessments of internal control over financial reporting will, and should, vary from company to company.[4] We continue to believe that it is impractical to prescribe a single methodology that meets the needs of every company. However, we have received feedback that the limited nature and extent of detailed management guidance available has resulted in management's implementation and assessment efforts being driven largely by AS No. 2. Therefore, we are planning to

[4] See SEC Final Rule: Management's Reports on Internal Control over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports, Release No. 34-47986 (June 5, 2003) [68 FR 36636] (hereinafter "Adopting Release") at Section II.B.3.d.

issue additional guidance to assist management in its performance of its assessment of internal control over financial reporting. On May 17, 2006, we announced, among other things, our intent to issue this Concept Release seeking comment on a variety of issues that might be the subject of Commission guidance for management. As we noted in that announcement, in writing any guidance we will be sensitive to the fact that many companies already have invested substantial resources to establish and document programs and procedures to perform their assessments over the last few years.

II. INTRODUCTION

Based on the cumulative feedback received since the adoption of the rules implementing Section 404, the Commission deems it necessary to issue additional guidance for management on its assessment of the effectiveness of internal control over financial reporting. We currently anticipate that the guidance issued would be in the form of a rule, which would address the topics that we have outlined in this Concept Release: risk and control identification, management's evaluation, and documentation requirements (each of these topics is addressed separately throughout the remainder of this document). Additionally, we anticipate that the rule would be written in such a manner that if companies followed the rule, they would be deemed to have complied with Rules 13a-15(c) and 15d-15(c) of the Exchange Act. Further, we anticipate any modifications to AS No. 2 would be consistent with the rule.

The Commission is publishing this Concept Release to solicit public comment on the provision of additional guidance to management of public companies that are subject to the SEC's rules related to management's assessment of internal control over financial reporting and, to assist the Commission so that any guidance it ultimately develops

addresses the needs and concerns of all public companies. We raise a series of questions throughout this release on assessing risks, identifying controls, evaluating effectiveness of internal control, and documenting the basis for the assessment. Through the questions in this Concept Release, we seek to elicit specific public comment on such matters including, but not limited to, the extent and nature of public interest in the development of additional management guidance, whether additional guidance would be useful for all reporting companies or just a subset of those companies, the particular subject areas that any additional guidance should address, and the extent of additional guidance that would be useful.

Since the Commission adopted rules in June 2003 to implement Section 404 of the Sarbanes-Oxley Act, companies and third parties have devoted considerable attention to the methods that management may use to assess the effectiveness of internal control over financial reporting. To date, many public companies have developed their own assessment procedures internally. Many also have retained consultants or purchased commercial software and other products to establish or improve their assessment procedures. When the Commission first adopted the internal control over financial reporting requirements, we emphasized two broad principles: (1) that the scope and process of the assessment must be based on procedures sufficient both to evaluate its design and to test its operating effectiveness;[5] and (2) that the assessment, including testing, must be supported by reasonable evidential matter.[6] We stated that it was important for each company to use its informed judgment about its own operations, risks, and processes in documenting and evaluating its controls. We continue to believe that

[5] See Adopting Release at Section II.B.3.d.

[6] See Adopting Release at Section II.B.3.d.

management must bring its own experience and informed judgment to bear in designing an assessment process that meets the needs of its company and that provides reasonable assurance as to whether the company's internal control over financial reporting is effective.

While we emphasized the concept of management flexibility in adopting our rules implementing Section 404, our rules do require management to base its assessment of a company's internal control on a suitable evaluation framework, in order to facilitate comparability between the assessment reports. It is important to note that our rules do not mandate the use of a particular framework, because multiple frameworks exist and others may be developed in the future. However, in the release adopting the Section 404 requirements, the Commission identified the Internal Control—Integrated Framework created and published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) as an example of a suitable framework.[7, 8]

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[7] See COSO, Internal Control-Integrated Framework (1992). In 1994, COSO published an addendum to the Reporting to External Parties volume of the COSO Report. The addendum discusses the issue of, and provides a vehicle for, expanding the scope of a public management report on internal control to address additional controls pertaining to safeguarding of assets. In 1996, COSO issued a supplement to its original framework to address the application of internal control over financial derivative activities.

The COSO framework is the result of an extensive study of internal control to establish a common definition of internal control that would serve the needs of companies, independent public accountants, legislators, and regulatory agencies, and to provide a broad framework of criteria against which companies could evaluate and improve their control systems. The COSO framework divides internal control into three broad objectives: effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations. Our rules relate only to reliability of financial reporting. Each of the objectives in the COSO framework is further broken down into five interrelated components: control environment, risk assessment, control activities, information and communication, and monitoring. Under the COSO framework, management is able to monitor, evaluate, and improve their control systems through the use of the five components.

[8] In that release, we also cited the Guidance on Assessing Control published by the Canadian Institute of Chartered Accountants and the Turnbull Report published by the Institute of Chartered Accountants in England & Wales as examples of other suitable frameworks that issuers could choose in evaluating the effectiveness of their internal control over financial reporting. We encourage companies to examine and select a framework that may be useful in their own circumstances and the further development of alternative frameworks.

While the COSO framework provides an integrated framework that identifies the components and objectives of internal control, it does not set forth detailed guidance as to the steps that management must follow in assessing the effectiveness of a company's internal control over financial reporting. We, therefore, distinguish between the COSO framework as an internal control framework and other forms of guidance that illustrate how to conduct an assessment of the effectiveness of internal control over financial reporting. Any additional management guidance that we may issue is not intended to replace or modify the COSO framework or any other suitable framework.

In determining the need for additional guidance to management on how to conduct its assessment, it is important to consider the steps that already have been taken by the Commission and others to provide guidance to companies and audit firms. The Commission held its first roundtable discussion about implementation of the internal control reporting provisions on April 13, 2005. The Commission held the 2005 roundtable to seek input to consider the impact of the Section 404 reporting requirements in view of the fact that the implementation of the requirements resulted in a major change for management and auditors. A broad range of interested parties, including representatives of managements and boards of domestic and foreign public companies, auditors, investors, legal counsel, and board members of the PCAOB, participated in the discussion. We also invited and received written submissions from the public regarding Section 404 in advance of the roundtable.

Feedback obtained from the 2005 roundtable indicated that the internal control reporting requirements had led to increased focus by management on internal control over financial reporting. However, the feedback also identified particular implementation

areas in need of further clarification to reduce unnecessary costs and burdens without jeopardizing the benefits of the new requirements.

In response to this feedback, the Commission and its staff issued guidance on May 16, 2005.[9] An overarching message of that guidance was that it is the responsibility of management, not the auditor, to determine the appropriate nature and form of internal controls for the company and to scope their evaluation procedures accordingly. Additionally, based on feedback received, a number of the implementation issues arose from an overly conservative application of the Commission rules and AS No 2, and the requirements of AS No. 2 itself, as well as questions regarding the appropriate role of the auditor. Accordingly, much of the guidance in the staff statement emphasized and clarified existing provisions of the rules and other Commission guidance relating to the exercise of professional judgment, the concept of reasonable assurance, and the permitted communications between management and auditors.

The staff's guidance addressed implementation issues in the following seven areas:

- The purpose of internal control over financial reporting;
- The concept of reasonable assurance, the importance of a top-down, risk-based approach, and scope of testing and assessment;
- Evaluating internal control deficiencies;

[9] Commission Statement on Implementation of Internal Control Reporting Requirements, Press Release No. 2005-74 (May 16, 2005) (hereinafter "May 2005 Commission Guidance"); Division of Corporation Finance and Office of Chief Accountant: Staff Statement on Management's Report on Internal Control Over Financial Reporting (May 16, 2005) (hereinafter "May 2005 Staff Guidance) available at SEC.gov/spotlight/soxcom/.htm.

Also on May 16, 2005, the PCAOB and its staff issued guidance to auditors on their audits under Auditing Standard No. 2. The PCAOB's guidance focused on areas in which the efficiency of the audit could be substantially improved. Topics included the importance of the integrated audit, the role of risk assessment throughout the process, the importance of taking a top-down approach, and auditors' use of the work of others.

- Disclosures about material weaknesses;
- Information technology issues;
- Communications with auditors; and
- Issues related to small businesses and foreign private issuers.

Overall, the May 16, 2005 guidance was well-received, and some commenters have indicated there has been some improvement in the effectiveness and efficiency of Section 404 compliance efforts. However, some constituents, especially smaller public companies, continue to request the provision of additional guidance. For example, in its Final Report to the Commission, issued on April 23, 2006, the Commission's Advisory Committee on Smaller Public Companies raised a number of concerns it perceived regarding the ability of smaller companies to comply cost-effectively with the requirements of Section 404. The Advisory Committee identified as an overarching concern the difference in how smaller and larger public companies operate. The Advisory Committee focused in particular on three characteristics: 1) the limited number of personnel in smaller companies constrains the companies' ability to segregate conflicting duties; 2) top management's wider span of control and more direct channels of communication increase the risk of management override; and 3) the dynamic and evolving nature of smaller companies limits their ability to maintain well-documented static business processes.[10]

The Advisory Committee suggests these characteristics create unique differences in how smaller companies achieve effective internal control over financial reporting that may not be adequately accommodated in AS No. 2 or other implementation guidance as

[10] Final Report of the Advisory Committee on Smaller Public Companies to the United States Securities and Exchange Commission (April 23, 2006) (hereinafter "Advisory Committee Report") at 35-36, available at SEC.gov/info/smallbus/acspc.shtml.

currently applied in practice.[11] In addition, the Advisory Committee noted serious cost ramifications for smaller public companies stemming from the cost of frequent documentation change and sustained review and testing for perceived compliance with Section 404.

The Advisory Committee's final report set forth several recommendations for the Commission to consider regarding the application of the Section 404 requirements to smaller public companies. The Advisory Committee recommended partial or complete exemptions for specified types of smaller public companies from the internal control reporting requirements under certain conditions, unless and until a framework is developed for assessing internal control over financial reporting that recognizes the characteristics and needs of those companies. The Advisory Committee also recommended, among other things, that COSO and the PCAOB provide additional guidance to help facilitate the design and assessment of internal control over financial reporting and make processes related to internal control more cost-effective.[12] In addition, some commenters on the Advisory Committee's exposure draft of its report suggested that the Commission reexamine the appropriate role of outside auditors in connection with the management assessment required by Section 404.[13]

Further, in April 2006, the U.S. Government Accountability Office issued a Report to the Committee on Small Business and Entrepreneurship, U.S. Senate, entitled Sarbanes-Oxley Act, Consideration of Key Principles Needed in Addressing Implementation for Smaller Public Companies, which recommends that in considering

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[11] Advisory Committee Report at 37, available at SEC.gov/info/smallbus/acspc.shtml.
[12] Advisory Committee Report at 52, available at SEC.gov/info/smallbus/acspc.shtml.
[13] See, e.g., letter from BDO Seidman, LLP (April 3, 2006), available at SEC.gov/info/smallbus/acspc.shtml.

the concerns of the Advisory Committee, the Commission should assess the available guidance on management's assessment to determine whether it is sufficient or whether additional action is needed. The report indicates that management's implementation and assessment efforts were largely driven by AS No. 2, as guidance at a similar level of detail was not available for management's implementation and assessment process.[14] Further, the GAO report recommended that the Commission coordinate with the PCAOB to help ensure that the Section 404-related audit standards and guidance are consistent with any additional management guidance issued.[15]

On May 10, 2006, the Commission and PCAOB conducted a second Roundtable on Internal Control Reporting and Auditing Provisions to solicit feedback on accelerated filers' second year of compliance with the Section 404 requirements. Although some participants expressed reservations about changing the processes they have already implemented, a number of the participants expressed at the roundtable and in their written comments the view that additional guidance was needed.[16]

COSO plans to publish additional application guidance on its control framework in the near future.[17] This guidance is intended to assist the management of smaller companies in understanding and applying the COSO framework. It is expected that COSO's new guidance will outline principles fundamental to the five components of

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[14] United States Government Accountability Office Report to the Committee on Small Business and Entrepreneurship, U.S. Senate: Sarbanes-Oxley Act: Consideration of Key Principles Needed in Addressing Implementation for Smaller Public Companies (April 2006) (hereinafter "GAO Report") at 52-53.

[15] GAO Report at 58.

[16] See transcript of Roundtable on Internal Control Reporting and Auditing Provisions, May 10, 2006, Panels 1, 2, 3, and 5; letter from The Institute of Internal Auditors (IIA) (May 1, 2006); letter from Institute of Management Accountants (IMA) (May 4, 2006); letter from Canadian Bankers Association (CBA) (April 28, 2006); letter from Deloitte & Touche LLP (May 1, 2006); letter from Ernst & Young LLP (May 1, 2006); letter from KPMG LLP (May 1, 2006); letter from PricewaterhouseCoopers LLP (May 1, 2006) and letter from Pfizer Inc. (May 1, 2006).

[17] See letter from Larry Rittenberg, COSO (May 16, 2006) [File Number 4-511].

internal control described in the COSO framework. The guidance will define each principle and describe the attributes of each, list a variety of approaches that smaller companies can use to apply the principles, and include examples of how smaller companies have applied the principles. As noted in the May 17, 2006 announcement, we anticipate that this guidance will help organizations of all sizes to better understand and apply the COSO framework as it relates to internal control over financial reporting.

We are issuing this Concept Release to understand better the extent of public interest in the development of additional guidance for management regarding its evaluation and assessment of internal control over financial reporting. As noted in our May 17, 2006 announcement, so that this guidance might be helpful to all companies, the Commission currently intends that any future guidance we issue will be scalable and responsive to individual circumstances. We also are interested in understanding what additional guidance accelerated filers would find helpful.[18]

1. Would additional guidance to management on how to evaluate the effectiveness of a company's internal control over financial reporting be useful? If so, would additional guidance be useful to all reporting companies subject to the Section 404 requirements or only to a sub-group of companies? What are the potential limitations to developing guidance that can be applied by most or all reporting companies subject to the Section 404 requirements?

[18] We emphasize that the publication of this Concept Release does not reflect a general dissatisfaction by the Commission with the assessments accelerated filers have completed to date. Rather, we are issuing this Concept Release because we are committed to doing as much as we can to reduce any concerns about the nature and extent of assessment procedures that management must establish and maintain, to assist in making the requirements scalable for companies of all sizes and complexity, and to help companies evaluate internal control over financial reporting in a practical and cost-efficient manner.

2. Are there special issues applicable to foreign private issuers that the Commission should consider in developing guidance to management on how to evaluate the effectiveness of a company's internal control over financial reporting? If so, what are these? Are such considerations applicable to all foreign private issuers or only to a sub-group of these filers?

3. Should additional guidance be limited to articulation of broad principles or should it be more detailed?

4. Are there additional topics, beyond what is addressed in this Concept Release, that the Commission should consider issuing guidance on? If so, what are those topics?

5. Would additional guidance in the format of a Commission rule be preferable to interpretive guidance? Why or why not?

6. What types of evaluation approaches have managements of accelerated filers found most effective and efficient in assessing internal control over financial reporting? What approaches have not worked, and why?

7. Are there potential drawbacks to or other concerns about providing additional guidance that the Commission should consider? If so, what are they? How might those drawbacks or other concerns best be mitigated? Would more detailed Commission guidance hamper future efforts by others in this area?

8. Why have the majority of companies who have completed an assessment, domestic and foreign, selected the COSO framework rather than one of the other frameworks available, such as the Turnbull Report? Is it due to a lack of awareness, knowledge, training, pressure from auditors, or some other reason? Would companies benefit from the development of additional frameworks?

9. Should the guidance incorporate the May 16, 2005 "Staff Statement on Management's Report on Internal Control Over Financial Reporting"? Should any portions of the May 16, 2005 guidance be modified or eliminated? Are there additional topics that the guidance should address that were not addressed by that statement? For example, are there any topics in the staff's "Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports Frequently Asked Questions (revised October 6, 2004)"[19] that should be incorporated into any guidance the Commission might issue?

10. We also seek input on the appropriate role of outside auditors in connection with the management assessment required by Section 404(a) of Sarbanes-Oxley, and on the manner in which outside auditors provide the attestation required by Section 404(b). Should possible alternatives to the current approach be considered and if so, what? Would these alternatives provide investors with similar benefits without the same level of cost? How would these alternatives work?

III. RISK AND CONTROL IDENTIFICATION

While companies have been required to establish and maintain internal accounting controls since the enactment of the Foreign Corrupt Practices Act in 1977,[20] Section 404 of the Sarbanes-Oxley Act re-emphasized the importance of the relationship between effective internal controls and reliable financial reporting. An integral element of establishing and maintaining effective internal control over financial reporting involves identifying risks to reliable financial reporting and designing appropriate internal controls

[19] Available at www.sec.gov/info/accountants/controlfaq1004.htm.

[20] Title I of Pub. L. No. 95-213. The FCPA required the Commission to adopt rules requiring public companies to make and keep accurate financial records, and to maintain a system of internal accounting controls. See Exchange Act Section 13(b).

that address the risks. The controls that management identifies as addressing risks to financial reporting include those that operate at a company level and are pervasive to many individual account balances and disclosures, as well as those that are specific to certain individual account balances or disclosures. Echoing the Commission's statement in its May 16, 2005 guidance that management must bring reasoned judgment to the process, the staff stated that management should use its cumulative knowledge, experience, and judgment (applying both qualitative and quantitative factors) in identifying these controls and designing the appropriate procedures for their documentation and testing.

Feedback that the Commission has received indicates that, in implementing the requirements of Section 404, many companies did not efficiently and effectively identify risks to reliable financial reporting and relevant internal control functions, ultimately leading to the identification, documentation, and testing of an excessive number of controls.[21] We are also skeptical of the large number of internal controls that some companies have identified, documented and tested. While there were likely numerous contributing factors to these implementation issues, one cause may have been the overly conservative application of AS No. 2 by auditors in the initial years.

The Commission also has heard that companies had difficulty in determining how controls related to the prevention of fraud should be included in their risk assessment.[22] However, as noted in the May 16, 2005 staff guidance, while no system of internal control can prevent or detect every instance of fraud, effective internal control over

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[21] See transcript of Roundtable on Internal Control Reporting and Auditing Provisions, May 10, 2006, Panels 2 and 3; letter from Protiviti Inc. (April 28, 2006); letter from Computer Sciences Corporation (CSC) (April 28, 1006); and letter from IMA (May 4, 2006).

[22] See letter from QUALCOMM Inc. (April 27, 2006); and letter from Diane Allen, 3M (Allen) (April 28, 2006).

financial reporting can help companies deter fraudulent financial accounting practices or detect them earlier.

As noted above, the Advisory Committee observed that the distinct characteristics of smaller public companies affect the financial reporting risks and the controls needed to address them. For example, the significant risk of management override that arises from wider spans of control and more direct channels of communication may create an increased need for entity level controls and board oversight. Moreover, the difficulty in segregating duties and changing business processes may impact the implementation of internal controls at these companies.

We anticipate additional guidance in this area would cover a number of the implementation issues that have arisen during the first two years of compliance. Guidance issued in this area would address how management should determine the overall objectives for internal control over financial reporting and identify the related risks. In determining the objectives for internal control over financial reporting, the guidance would discuss how management might address company-level, financial statement account and disclosure level considerations, as well as fraud risks. Additionally, we anticipate that we would provide additional guidance on how management identifies the controls to address the recognized risks. This would include guidance on common issues that exist in identifying controls (e.g. materiality considerations, multi-location issues, concept of "key" controls).

11. What guidance is needed to help management implement a "top-down, risk-based" approach to identifying risks to reliable financial reporting and the related internal controls?

12. Does the existing guidance, which has been used by management of accelerated filers, provide sufficient information regarding the identification of controls that address the risks of material misstatement? Would additional guidance on identifying controls that address these risks be helpful?

13. In light of the forthcoming COSO guidance for smaller public companies, what additional guidance is necessary on risk assessment or the identification of controls that address the risks?

14. In areas where companies identified significant start-up efforts in the first year (e.g., documentation of the design of controls and remediation of deficiencies) will the COSO guidance for smaller public companies adequately assist companies that have not yet complied with Section 404 to efficiently and effectively conduct a risk assessment and identify controls that address the risks? Are there areas that have not yet been addressed or need further emphasis?

15. What guidance is needed about the role of entity-level controls in evaluating and assessing the effectiveness of internal control over financial reporting? What specific entity-level control issues should be addressed (e.g., GAAP expertise, the role of the audit committee, using entity-level controls rather than low-level account and transactional controls)? Should these issues be addressed differently for larger companies and smaller companies?

16. Should guidance be given about the appropriateness of and extent to which quantitative and qualitative factors, such as likelihood of an error, should be used when assessing risks and identifying controls for the entity? If so, what factors

should be addressed in the guidance? If so, how should that guidance reflect the special characteristics and needs of smaller public companies?

17. Should the Commission provide management with guidance about fraud controls? If so, what type of guidance? Is there existing private sector guidance that companies have found useful in this area? For example, have companies found the 2002 guidance issued by the AICPA Fraud Task Force entitled "Management Antifraud Programs and Controls"[23] useful in assessing these risks and controls?

18. Should guidance be issued to help companies with multiple locations or business units to understand how those affect their risk assessment and control identification activities? How are companies currently determining which locations or units to test?

IV. MANAGEMENT'S EVALUATION

As noted, the Commission's and the staff's May 16, 2005 guidance emphasized that management's assessment should be based on the particular risks of individual companies, and recommended a top-down, risk-based approach to determine the accounts and related processes that management should consider in its assessment. Therefore, management's judgments about the significance and complexity of the risk areas it has identified should form the basis not only for determining what controls to evaluate, but also for determining the nature, timing, and extent of its evaluation procedures. A risk-based evaluation can allow management to assess whether the company's internal control over financial reporting is effective at a "reasonable assurance" level.[24]

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[23] Management Antifraud Programs and Controls: Guidance to Help Prevent and Deter Fraud, commissioned by the Fraud Task Force of the American Institute of Certified Public Accounting's Auditing Standards Board (2002), available at http://www.aicpa.org/download/members/div/auditstd/AU-00316.PDF.

[24] See Rules 13a-15(f) and 15d-15(f) of the Exchange Act.

One of the reasons cited most frequently by accelerated filers for the higher than anticipated costs in their first year of compliance with the Section 404 requirements is that too much work was done to test and document low-risk areas.[25] The Commission continues to hear that management has difficulty applying a top-down, risk-based approach in their individual assessments and some believe that compliance costs are, and may continue to be, higher than necessary.[26]

The Commission's rules require that management's assessment be "as of" the company's fiscal year end, but the rules do not preclude management from obtaining evidence to support its assessment through cumulative knowledge it acquires throughout the year and in prior years. In fact, management's daily interactions with its internal controls may provide it with an enhanced ability to make informed judgments regarding the areas that present the greatest risk to the reliability of the financial statements, as well as how to evaluate the relevant controls. We have heard anecdotal evidence that, in some cases, management may have unnecessarily tested controls using separate evaluation-type testing in connection with its annual assessment, rather than relying on its ongoing monitoring activities, which may include, for example, cumulative knowledge and experiences from its daily interactions with controls.

In addition to testing, another key part of management's assessment process is the evaluation of control deficiencies it discovers in the process of its evaluation. Paramount to evaluating the significance of an individual control deficiency, or combination of

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[25] See transcript of Roundtable on Internal Control Reporting and Auditing Provisions, May 10, 2006, Panels 2 and 3; letter from Watson Wyatt Worldwide (March 31, 2006); letter from QUALCOMM Inc. (April 27, 2006); and letter from Association for Financial Professionals (May 1, 2006).

[26] See transcript of Roundtable on Internal Control Reporting and Auditing Provisions, May 10, 2006, Panels 1 and 2; letter from Pfizer Inc. (May 1, 2006); letter from Sotheby's Holdings, Inc. (May 1, 2006); and letter from U.S. Chamber of Commerce (May 3, 2006).

control deficiencies, is to have a comprehensive understanding of the nature of the deficiency, its cause, the relevant financial statement assertion the control was designed to support, its effect on the broader control environment, and whether effective compensating controls exist.[27] Management must exercise judgment in a reasonable manner in the evaluation of deficiencies in internal control, considering both quantitative and qualitative factors.[28]

As noted above, the Advisory Committee observed that the distinct characteristics of smaller public companies affect the assessment of financial reporting risks and the controls implemented to address them. These characteristics may also affect how those companies evaluate their internal control.

Another area where the Commission continues to hear that companies are having difficulty in completing their assessment of internal control over financial reporting involves the impact of information technology (IT) processes. For example, some commenters have expressed concerns over the extent to which IT processes should be included in the scope of their assessment.[29] As the staff's May 16, 2005 staff guidance indicates, Section 404 is not a one-size-fits-all approach to assessing controls, and for that reason, while we believe that controls not related to internal control over financial reporting should not be included in the assessment, providing a list of the exact general IT controls that should be included in an assessment may not be practical. Given that

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[27] See May 2005 Staff Guidance at B.

[28] Id.

[29] See transcript of Roundtable on Internal Control Reporting and Auditing Provisions, May 10, 2006, Panels 2 and 3; letter from IIA (May 1, 2006); letter from CSC (April 28, 2006); letter from Allen (April 28, 2006); letter from WPS Resources Corp. (May 5, 2006); and letter from R.G. Scott & Associates, LLC (April 8, 2006).

fact, we would like to explore whether there are specific areas related to IT where additional guidance could be provided.

Based on the cumulative feedback received, we believe that guidance on management's evaluation process and revisions to AS No. 2 may help reduce or eliminate the excessive testing of internal controls by improving the focus on risk and better use of entity-level controls. We anticipate that the guidance would cover topics such as the overall objective of evaluation procedures; methods or approaches available to management to gather evidence to support its assessment (i.e. on-going monitoring, benchmarking, and updating prior evaluations); and factors that management should consider in determining the nature, timing and extent of its evaluation procedures. This guidance would address whether and how entity-level controls may adequately address risk at the financial statement and disclosure level and considerations as to the extent information technology general controls are included in the scope of management's assessment. Further, we anticipate the guidance would cover considerations of management in determining the severity of an identified control deficiency.

19. What type of guidance would help explain how entity-level controls can reduce or eliminate the need for testing at the individual account or transaction level? If applicable, please provide specific examples of types of entity-level controls that have been useful in reducing testing elsewhere.

20. Would guidance on how management's assessment can be based on evidence other than that derived from separate evaluation-type testing of controls, such as on-going monitoring activities, be useful? What are some of the sources of evidence that companies find most useful in ongoing monitoring of control effectiveness? Would

guidance be useful about how management's daily interaction with controls can be used to support its assessment?

21. What considerations are appropriate to ensure that the guidance is responsive to the special characteristics of entity-level controls and management at smaller public companies? What type of guidance would be useful to small public companies with regard to those areas?

22. In situations where management determines that separate evaluation-type testing is necessary, what type of additional guidance to assist management in varying the nature and extent of the evaluation procedures supporting its assessment would be helpful? Would guidance be useful on how risk, materiality, attributes of the controls themselves, and other factors play a role in the judgments about when to use separate evaluations versus relying on ongoing monitoring activities?

23. Would guidance be useful on the timing of management testing of controls and the need to update evidence and conclusions from prior testing to the assessment "as of" date?

24. What type of guidance would be appropriate regarding the evaluation of identified internal control deficiencies? Are there particular issues in evaluating deficient controls that have only an indirect relationship to a specific financial statement account or disclosure? If so, what are some of the key considerations currently being used when evaluating the control deficiency?

25. Would guidance be helpful regarding the definitions of the terms "material weakness" and "significant deficiency"? If so, please explain any issues that should be addressed in the guidance.

26. Would guidance be useful on factors that management should consider in determining whether management could conclude that no material weakness in internal control over financial reporting exists despite the discovery of a need to correct a financial statement error as part of the financial statement close process? If so, please explain.

27. Would guidance be useful in addressing the circumstances under which a restatement of previously reported financial information would not lead to the conclusion that a material weakness exists in the company's internal control over financial reporting?

28. How have companies been able to use technology to gain efficiency in evaluating the effectiveness of internal controls (e.g., by automating the effectiveness testing of automated controls or through benchmarking strategies)?

29. Is guidance needed to help companies determine which IT general controls should be tested? How are companies determining which IT general controls could impact IT application controls directly related to the preparation of financial statements?

30. Has management generally been utilizing proprietary IT frameworks as a guide in conducting the IT portion of their assessments? If so, which frameworks? Which components of those frameworks have been particularly useful? Which components of those frameworks go beyond the objectives of reliable financial reporting?

V. DOCUMENTATION TO SUPPORT THE ASSESSMENT

Developing and maintaining an appropriate amount of evidential matter is an inherent element of effective internal control.[30] This evidential matter should provide

[30] Section 13(b)(2)(A) of the Exchange Act requires companies 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." We have previously stated, as a matter of policy, that under Section 13(b)(2) "every public company needs to establish and maintain records of sufficient accuracy to meet adequately four interrelated objectives: appropriate reflection of corporate transactions and the disposition of assets; effective administration of other facets of the issuer's internal control system; preparation of its financial statements in accordance with generally accepted accounting principles; and proper auditing." Statement

reasonable support for the assessment of whether controls are designed to prevent or detect material misstatements or omissions; for the conclusion that tests to assess the effectiveness of internal control were appropriately planned and performed; and for the conclusion that the results of such tests were appropriately considered in management's conclusion about effectiveness.[31] Further, public accounting firms that attest to, and report on, management's assessment of the effectiveness of the company's internal control over financial reporting may review evidential matter supporting management's assessment.[32]

Feedback that the Commission received in connection with its 2005 Roundtable and other feedback on the first year of compliance indicates that, in implementing the requirements of Section 404 for the first time, many companies approached risk and control identification more formally than they may have historically and, consequently, companies may have incurred significant documentation costs.[33] This documentation consisted of, among other things, detailed process maps describing controls over initiating, recording, processing and reconciling account balances, classes of transactions, and disclosures included in the financial statements. Many companies also have indicated that in their initial implementation of Section 404, too many controls were

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of Policy Regarding the Foreign Corrupt Practices Act of 1977, Release No. 34-17500 (Jan. 29, 1981) [46 FR 11544].

[31] Instruction 1 to Item 308 of Regulations S-K and S-B, Instruction 1 to Item 15 of Form 20-F and Instruction 1 to paragraphs (b), (c), (d), and (e) of General Instruction B.6 to Form 40-F provide that "the Registrant must maintain evidential matter, including documentation, to provide reasonable support for management's assessment of the effectiveness of the registrant's internal control over financial reporting."

[32] AS No. 2 sets forth the criteria auditors should use when evaluating whether management's documentation provides reasonable support for its assessment of internal control over financial reporting. See ¶¶42-46 of PCAOB Auditing Standard No. 2, An Audit of Internal Control over Financial Reporting Performed in Conjunction with an Audit of Financial Statements.

[33] See transcript of Roundtable on Implementation of Internal Control Reporting Provisions, April 13, 2005; letter from Mortgage Bankers Association (February 25, 2005); letter from Paula Jourde (March 4, 2005); letter from White Mountains Insurance Group (March 29, 2005); and letter from Intel Corporation (March 31, 2005).

identified, which resulted in excessive documentation.[34] Frequently, this excessive documentation was blamed, at least in part, on the auditors and their application of AS No. 2. Further, we have anecdotally heard that this documentation, in many cases, substantially exceeded that normally produced by financial institutions under the Federal Deposit Insurance Corporation Improvement Act of 1991,[35] notwithstanding substantially similar statutory language to that found in Section 404.

In its report, the Advisory Committee suggested that smaller public companies have unique characteristics and needs for flexibility that make the documentation elements of Section 404 particularly burdensome for those companies. In its opinion, the Section 404 internal control reporting requirements as currently applied in practice might impose a lack of flexibility on smaller public companies that would put them at a competitive disadvantage. We have also heard that excessive documentation demands might impose extra or particularly burdensome costs on smaller public companies.

The Commission anticipates that management would benefit from additional guidance on the appropriate and required levels of documentation to support their assertion on the effectiveness of internal control over financial reporting. Topics addressed might include clarifying the overall objectives of the documentation, including

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[34] See transcript of Roundtable on Internal Control Reporting and Auditing Provisions, May 10, 2006, Panels 1 and 2; letter from IIA (May 1, 2006); letter from America's Community Bankers (May 1, 2006); letter from Stephan Stephanov (March 27, 2006); and letter from Institute of Chartered Accountants in England and Wales (March 28, 2006).

[35] 12 U.S.C. 1831m. Section 112 of the Federal Deposit Insurance Corporation Improvement Act of 1991 added Section 36, "Independent Annual Audits of Insured Depository Institutions," to the Federal Deposit Insurance Act. Section 36 required the Federal Deposit Insurance Corporation, in consultation with appropriate federal banking agencies, to promulgate regulations requiring each insured depository institution with at least $150 million in total assets, as of the beginning of its fiscal year, to have an annual independent audit of its financial statements performed in accordance with generally accepted auditing standards, and to provide a management report and an independent public accountant's attestation concerning both the effectiveness of the institution's internal control structure and procedures for financial reporting and its compliance with designated safety and soundness laws.

factors that might influence documentation requirements and other common documentation concerns (e.g. updating of previously created documentation or how to address controls for which operation does not result in documented evidence). We also anticipate that guidance might be helpful in addressing the flexibility and cost containment needs of smaller public companies in particular.

31. Were the levels of documentation performed by management in the initial years of completing the assessment beyond what was needed to identify controls for testing? If so, why (e.g., business reasons, auditor required, or unsure about "key" controls)? Would specific guidance help companies avoid this issue in the future? If so, what factors should be considered?
32. What guidance is needed about the form, nature, and extent of documentation that management must maintain as evidence for its assessment of risks to financial reporting and control identification? Are there certain factors to consider in making judgments about the nature and extent of documentation (e.g., entity factors, process, or account complexity factors)? If so, what are they?
33. What guidance is needed about the extent of documentation that management must maintain about its evaluation procedures that support its annual assessment of internal control over financial reporting?
34. Is guidance needed about documentation for information technology controls? If so, is guidance needed for both documentation of the controls and documentation of the testing for the assessment?

35. How might guidance be helpful in addressing the flexibility and cost containment needs of smaller public companies? What guidance is appropriate for smaller public companies with regard to documentation?

VI. SOLICITATION OF ADDITIONAL COMMENTS

In addition to the areas for comment identified above, we are interested in any other issues that commenters may wish to address relating to companies' compliance with the SEC's rules related to management's assessment of internal control over financial reporting. For example, we are interested in whether commenters believe that there are additional topics not addressed in this Concept Release for which guidance would be useful. We also invite commenters to provide to us descriptions of, or actual process plans, that they have utilized or created for portions or all of management's assessment. Please be as specific as possible in your discussion and analysis of any additional issues. Where possible, please provide empirical data or observations to support or illustrate your comments.

By the Commission.

Nancy M. Morris
Secretary

Dated: July 11, 2006

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Commissioner Campos
Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2535 / July 12, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12364

In the Matter of **TERRY F. ALLEN** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS PURSUANT TO SECTION 203(f) 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 proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Terry F. Allen ("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 paragraph III.2., which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings, Making Findings, and Imposing Remedial Sanctions Pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Order"), as set forth below.

III.

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

1. Respondent, Terry F. Allen, age 65, is a resident of Ferrisburg, Vermont. Allen is the founder, owner and control person of Terry's Tips, Inc. Allen acted as an unregistered investment adviser.

2. On June 12, 2006, a final judgment was entered by consent against Allen, permanently enjoining him from future violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. Terry's Tips, Inc., et al., Civil Action Number 2:05-CV-188, in the United States District Court for the District of Vermont. Respondent was ordered to disgorge $100,000 and pay a civil penalty of $120,000.

3. The Commission's complaint alleged that Allen solicited customers for Terry's Tips autotrading program through the use of false and misleading performance projections. Terry's Tips autotrading program allowed individuals to designate Terry's Tips as the entity authorized to send trading instructions to a broker-dealer to execute trades based on those instructions in the client's personal brokerage account. Allen made all the decisions regarding which trades to place in the client's autotrading accounts.

4. The Complaint also alleges that, in addition to the trading instructions sent to the broker-dealer, Allen and his staff provided advice regarding the autotrading program to clients over the telephone and by e-mail. Allen or a member of his staff personally responded to all client e-mail and telephone inquiries regarding autotrading. Allen or a member of his staff provided clients, on an individualized basis, specific advice on matters such as the degree of risk associated with each autotrading strategy, which of the several strategies to select given the client's investment objectives and when to switch from one strategy to another. Through this conduct, the complaint alleged that Allen acted as an investment adviser.

IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 203(f) of the Advisers Act, that Respondent Allen be, and hereby is barred from association with any investment adviser, with the right to reapply for association after two years to the appropriate self-regulatory organization, or if there is none, 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

Commissioner Atkins
Not Participating

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES ACT OF 1933
Rel. No. 8721 / July 13, 2006

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 54143 / July 13, 2006

Admin. Proc. File No. 3-11465

In the Matter of

DOLPHIN AND BRADBURY, INCORPORATED

and

ROBERT J. BRADBURY

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

CEASE-AND-DESIST PROCEEDING

Grounds for Remedial Action

Antifraud violations

Broker-dealer acting as underwriter for public offering of municipal bonds, and firm's chief executive officer, offered and sold bonds based on offering documents that recklessly omitted to disclose material fact that made information provided misleading, in violation of Section 17(a) of the Securities Act of 1933, Sections 10(b) and 15B(c)(1) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Municipal Securities Rulemaking Board Rule G-17. Held, it is in the public interest to order broker-dealer and officer to cease and desist from committing or causing any violation or future violation of the provisions they were found to have violated; to order both to pay civil money penalty; and to order broker-dealer to disgorge ill-gotten profits plus prejudgment interest.

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APPEARANCES:

Philip G. Kircher, William J. Winning, Scott Magargee, and Patricia Sons Biswanger, of Cozen O'Connor, for Dolphin and Bradbury, Incorporated and Robert J. Bradbury.

Amy J. Greer, Denise D. Colliers, and Mark R. Zehner, for the Division of Enforcement.

Appeal filed: March 17, 2005
Last brief received: June 1, 2005
Oral argument: October 31, 2005

I.

Dolphin and Bradbury, Incorporated ("D & B"), a broker-dealer registered with the Commission since 1986, Robert J. Bradbury, who owns 38% of D & B and serves as its chairman, chief executive officer, and chief operating officer (together, "Respondents"), and the Division of Enforcement appeal from the decision of an administrative law judge. 1/ The law judge found that, as alleged in the Order Instituting Proceedings ("OIP"), offering documents used by Respondents to market to investors long-term, non-taxable municipal bonds were misleading. D & B served as underwriter of the bond issue. The law judge found that, through their conduct in connection with the bond issue, Respondents willfully violated Section 17(a) of the Securities Act of 1933, 2/ Section 10(b) of the Securities Exchange Act of 1934 3/ and Rule 10b-5 thereunder, 4/ and Municipal Securities Rulemaking Board Rule G-17 ("MSRB Rule G-17"), and that D & B willfully violated, and Bradbury willfully aided and abetted and caused D & B's violation of, Exchange Act Section 15B(c)(1). 5/ The law judge ordered D & B and Bradbury to cease and desist from committing or causing violations of the provisions they were found to have violated; jointly and severally to disgorge $482,562.50, plus prejudgment interest; and to pay civil penalties of $400,000 and $82,000 respectively. The law judge rejected the Division's request that he create a fund for the benefit of investors into which the disgorgement

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1/ We take official notice of the fact that, on March 8, 2006, D & B filed with the Commission a request to withdraw its registration as a broker-dealer on Form BDW (Uniform Request - Withdrawal from Broker-Dealer Registration), which request remains pending. D & B therefore continues to be registered with the Commission as a broker-dealer.

2/ 15 U.S.C. § 77q(a).

3/ 15 U.S.C. § 78j(b).

4/ 17 C.F.R. § 240.10b-5.

5/ 15 U.S.C. § 78o-4(c)(1).

and civil penalties would be paid. 6/ We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal.

II.

Acquisition by the Dauphin County General Authority of Forum Place

In July 1998, the Dauphin County General Authority ("DCGA" or "Authority"), a municipal authority, issued bonds to finance its acquisition of Forum Place, a multi-story building in Harrisburg, Pennsylvania, with approximately 376,000 square feet of net leasable office space and a parking garage for approximately 1,090 vehicles. DCGA acquired Forum Place, which is located in downtown Harrisburg adjacent to the Capitol Complex, for the public purpose of leasing space to departments and agencies of the Commonwealth or other governmental units. 7/ Before the purchase, John Vartan of Vartan Enterprises, Inc., acting on behalf of the private owner of Forum Place, the Musalair Trust, had negotiated leases for much of the office space; at closing, the seller assigned these leases to DCGA.

DCGA financed the purchase through the public offer and sale of unrated, non-taxable revenue bonds, with the source of funds for repayment limited to the stream of revenue generated by the building. 8/ The Forum Place offering comprised $72.25 million of Office and Parking Revenue Bonds, Series A of 1998; $3.1 million Subordinated Office and Parking Revenue Bonds, Series B of 1998; and $10.9 million of Subordinated Office and Parking Revenue Bonds,

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6/ See Sarbanes-Oxley Act § 308, Pub. L. No. 107-204, 116 Stat. 745 (2002); 17 C.F.R. §§ 201.1100-06.

7/ Harrisburg is the seat of Dauphin County as well as the capital of Pennsylvania. The Commonwealth of Pennsylvania ("Commonwealth") is the largest employer in Dauphin County.

In a separate proceeding, also based on the Forum Place bond offering, DCGA, without admitting or denying the Commission's allegations, consented to the entry of findings that it violated Sections 17(a)(2) and 17(a)(3) of the Securities Act and to the imposition of a cease-and-desist order. See Dauphin County Gen. Auth., Securities Act Rel. No. 8415 (Apr. 26, 2004), 82 SEC Docket 2884.

8/ General obligation bonds, in contrast, are backed by the full faith and credit of the issuer. See John Downes & Jordan Elliot Goodman, Barron's Dictionary of Finance and Investment Terms 235 (5th ed. 1998).

Series C of 1998. 9/ The Series A bonds had maturity dates ranging from 2003 to 2025, 10/ and the two types of Series B bonds matured in either 2003 or 2009. 11/

The Forum Place bonds initially qualified as non-taxable under Section 103 of the Internal Revenue Code ("Code"), 12/ and DCGA pledged to preserve that status throughout the life of the bonds. Section 103(a) of the Code generally excludes from a taxpayer's gross income interest received on state or local bonds. The general rule in Section 103(a) is, however, subject to several exceptions set forth in Section 103(b). Among these is an exception for private activity bonds. 13/ In order to avoid coming within that exception, at least 90% of the lease revenues at Forum Place had to come from state and local government tenants. 14/ If payments for use by the federal government, individuals, and private entities collectively exceeded 10%, the bonds' non-taxable status could be lost. 15/

Leasing at Forum Place at the Time of the DCGA Acquisition

Before DCGA purchased Forum Place, Vartan had already negotiated several leases for office space at Forum Place with the Commonwealth and other entities. By mid-1998, approximately 375,000 square feet of the 376,000 square feet of total net leasable space in the office building were occupied. Terms of the office leases ran from two to ten years, with various renewal options; terms of the parking leases ran from three to eight years. The principal tenant at Forum Place was the Commonwealth's Department of Transportation ("PennDOT").

9/ The Series C Bonds were not sold publicly and are not the subject of this proceeding.

10/ More specifically, $4.8 million matured in 2003; $7.8 million were to mature in 2008, $3.9 million in 2010, and the majority – $55.6 million – in 2025.

11/ Two million dollars' worth of Series B bonds matured in 2003, and $1.1 million were to mature in 2009.

12/ 26 U.S.C. § 103(a).

13/ Id. § 103(b).

14/ 26 U.S.C. § 141.

15/ One month prior to the purchase of Forum Place, DCGA had publicly issued approximately $45 million in revenue bonds to finance the acquisition of Riverfront Office Center ("Riverfront"), another privately-owned office building in Harrisburg, for the purpose of leasing space to the Commonwealth and other government tenants. The Riverfront transaction, in which Respondents were also involved, was in this sense very similar to the Forum Place transaction, and the official statement ("OS") – the principal disclosure document – for Riverfront was used as a model in drafting the Forum Place OS.

Until 1994, most of PennDOT's Harrisburg employees had offices in the Transportation & Safety Building ("T & S Building"), which was owned by the Commonwealth. A 1994 fire, plus ongoing environmental problems, caused government officials to seek temporary facilities for the occupants of the T & S Building. In October 1995, PennDOT, acting through the Commonwealth's Department of General Services ("DGS"), and Vartan Enterprises, Inc., acting for the Musalair Trust, signed a lease for 284,142 net usable square feet of office space at Forum Place (the "PennDOT lease"), which was then under construction, for use by some of PennDOT's administrative employees. 16/ The PennDOT lease was for a term of sixty-one and one-half months, with an option to renew for an additional year. When the PennDOT lease was signed, the Commonwealth had not yet decided whether to reconstruct the fire-damaged T & S Building or replace it with new construction, but it always intended to move the PennDOT employees out of Forum Place once renovation or replacement of the T & S Building was completed.

In January 1996, DGS publicly announced that the T & S Building would be demolished and replaced with a new structure, the Keystone Building. In October 1996, PennDOT's employees moved into Forum Place; the Commonwealth's lease on space for PennDOT would expire in November 2001.

In July 1998, when DCGA acquired Forum Place, the PennDOT lease accounted for approximately 79% of the office space in Forum Place, and it generated approximately 60% of Forum Place's total lease revenues. Although DGS had announced its intent to construct the Keystone Building, the demolition of the T & S Building and construction of the Keystone Building were delayed by environmental and legal problems. Thus, as of July 1998, when DCGA acquired Forum Place, the T & S Building was still standing, and site preparation for the Keystone Building had not begun.

Although the T & S Building was to be demolished, other buildings used by the Commonwealth as office space for various agencies were undergoing renovation in the mid-1990's. Before the PennDOT lease was signed in October 1995, Vartan met with Gary Crowell, the Secretary of DGS, who informed Vartan that the Commonwealth would use all of the space covered by that lease either for PennDOT administrative employees or as "swing space" for other agencies during the renovation period. 17/ DGS made no commitment, however, to use this "swing space" for a particular period of time. Several years later, a few months before DCGA's acquisition of Forum Place, a local newspaper reported that Crowell said that, after the PennDOT

16/ DGS acted as the Commonwealth's leasing agent. Vartan Enterprises, Inc. acted as agent for the Musalair Trust.

17/ DGS serves, among other things, as the leasing agent for most of the Commonwealth's agencies. "Swing space," as the term is used here, means flexible, vacant office space that could be used by Commonwealth agencies or departments that needed temporary quarters.

employees moved out of Forum Place, the Commonwealth would "likely use that building as 'swing space' to house a variety of agencies" that would be temporarily dislocated as the Commonwealth continued to renovate Capitol Complex buildings. 18/

Preparation of the Offering Documents

Robert D. Fowler, president of Public Finance Consultants, Inc. ("PFC"), a financial advisory business, served as the financial advisor to DCGA on the Forum Place transaction. 19/ On Fowler's recommendation, DCGA retained D & B as underwriter of the Forum Place bond issue and Pepper Hamilton LLP ("Pepper Hamilton") as bond counsel. David W. Sweet served as lead attorney for Pepper Hamilton on the Forum Place transaction. On June 22, 1998, Sweet and Bradbury placed a telephone call to Thomas O'Neill of the firm Lamb, Windle & McErlane, P.C. ("LWM"), proposing that LWM serve as underwriter's counsel on the Forum Place transaction. O'Neill agreed to act as the principal LWM lawyer with respect to the Forum Place transaction; O'Neill's partner, James McErlane, subsequently acted for the firm while O'Neill was on vacation.

Bradbury, Fowler, Sweet, and O'Neill all had extensive experience with municipal bonds, and all had worked together previously. Bradbury first did business with Fowler's company, PFC, in 1989; he also had a long-standing business relationship with Pepper Hamilton. D & B had worked on more than fifty bond offerings for DCGA since 1986. 20/ Sweet had known Fowler since approximately 1990 and had worked on several transactions with PFC. Sweet and O'Neill had been law partners at one time and were still social friends. O'Neill had known Fowler for thirty years. O'Neill had worked on more than 100 transactions with D & B, one dozen transactions with PFC, and three or four transactions with DCGA.

During the June 22 call, Bradbury and Sweet told O'Neill that Forum Place was a relatively novel transaction involving the acquisition by a municipal authority of a building that would be leased almost entirely to governmental agencies, so that the interest from bonds issued to finance the transaction would be exempt from federal taxes because the building was publicly owned and publicly used. O'Neill was also told that there was a "tight time frame" for the Forum Place project and that he should use the preliminary official statement ("POS") from an earlier, similar transaction as a model in drafting the Forum Place POS because doing so "would save a

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18/ Jack Sherzer, "State Lease Study Spurs City Fears," The Patriot-News, Feb. 15, 1998, at B-1.

19/ The OIP charged PFC and Fowler with having caused DCGA's violations of Securities Act Sections 17(a)(2) and 17(a)(3). The law judge found that these charges were not established. Neither Fowler nor PFC is a party to this appeal.

20/ Bradbury testified that D & B assisted DCGA on the "remarketing of notes" approximately fifty times, as well as five or ten new bond issues.

lot of time." 21/ Because Pepper Hamilton had served as underwriter's counsel to D & B on the earlier project, Sweet had access to computerized versions of key documents used in that transaction. Sweet therefore sent O'Neill a computer disc containing offering documents from DCGA's preceding bond issue, which O'Neill used as models in preparing the Forum Place documents. O'Neill had not been advised, by Bradbury or anyone else, of any distinctions between the two transactions, and he assumed there were none. Thus, the disclosures he included in the Forum Place POS are almost identical to comparable provisions used in the earlier transaction. O'Neill circulated a first draft of the POS for comments on or about June 26, 1998. 22/

On June 30, 1998, Fowler, Sweet, and Crowell met, primarily to discuss the Commonwealth's plans for leasing space at Forum Place after PennDOT moved to the Keystone Building. 23/ Participants in the meeting had conflicting recollections as to the specifics of Crowell's remarks, but all agreed that Crowell gave no commitments or guarantees that the Commonwealth would continue to lease space at Forum Place after PennDOT's departure. 24/ Bradbury did not attend this meeting, relying instead on the description of the meeting given him by Fowler and Sweet. Neither Bradbury, nor anyone else, informed O'Neill or his partner McErlane about either the meeting or PennDOT's plans to move out of Forum Place when the Keystone Building was ready for occupancy.

On July 7, O'Neill sent the first half of the revised POS and a draft purchase contract to Sweet for distribution at a DCGA meeting on the following day. The agenda for the July 8 meeting included approval of DCGA's purchase of Forum Place, approval of the bond purchase contract with D & B, approval of the POS, and related matters. During the meeting, the issue of PennDOT's anticipated move from Forum Place into the Keystone Building arose. Fowler

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21/ As explained supra note 15, DCGA had acquired the Riverfront Office Complex in June 1998.

22/ The record contains three versions of the POS and the official statement ("OS"), the latter dated July 17, 1998. There are no relevant differences among these four documents with respect to the omissions at issue.

23/ Fowler testified that he had recognized as early as April 1998 that the fate of Forum Place after PennDOT's move was likely to be a concern for prospective bondholders.

24/ According to Fowler, Crowell said that he expected the Commonwealth to use Forum Place as swing space for the next fifteen to twenty years. According to Sweet, Crowell said that Forum Place would be ideal for Commonwealth use as swing space for a five- to ten-year period during which various government buildings were undergoing renovation. Crowell testified, however, that he said that the Commonwealth's need for swing space could not be projected with any certainty, but that Forum Place could possibly be used as swing space for the remainder of the original term of the PennDOT lease and the additional one-year option period.

reported on the June 30 meeting with Crowell, stating that Crowell had said the Commonwealth might use Forum Place as swing space for fifteen or twenty years. 25/ There was no discussion at the meeting as to whether PennDOT's anticipated move should be disclosed in the POS. Bradbury did not attend this meeting.

At the July 8 meeting, Fowler also presented financial projections of anticipated tenant revenues at Forum Place through 2008. The projections were provided so that DCGA could determine whether future cash flow at Forum Place would be sufficient to service the debt and eventually retire the bonds. Fowler based his cash flow analysis on the assumption that the existing tenants would extend their leases without interruption, or would be replaced immediately by other qualified tenants at similar rates. Bradbury, who had received Fowler's projections before they were presented to the DCGA at the July 8 meeting, discussed the assumptions with Fowler, concluded that they were reasonable, and added footnotes to the projections. The first of these footnotes stated, "Revenues based on actual Commonwealth of Pennsylvania, U.S. Government[,] and other leases now in effect at the time of Closing and assume[] all leases will continue to option date or renew on similar terms (see Lease Terms and Options on page 5)." The projections listed the individual leases, providing information such as agency, start date, term, and space occupied, identified PennDOT's lease as "Lease #91988 (PENDOT)" and "Lease #91988 Pennsylvania Dept. of Transportation," and in columns to the right listed projected revenues from each lease for each year from 1998 through 2008. Neither the projections nor the footnotes contained any mention of PennDOT's anticipated departure from Forum Place.

DCGA voted to approve the purchase of Forum Place and proceed with the bond offering. It reaffirmed the appointment of PFC as financial advisor and Pepper Hamilton as bond counsel, and approved the appointment of other professionals involved with the project. DCGA also approved the content of the POS and authorized its distribution. 26/ Because O'Neill was on vacation at the time, his partner McErlane finalized the Forum Place POS after the July 8 meeting, adding a more detailed summary of tenant leases that included their expiration dates. The final version of the official statement ("OS") is dated July 17, 1998.

The OS stated that the Forum Place bonds were "limited obligations of the Authority," that they were secured solely by the receipts and revenues received by DCGA from payment on leases for office and parking space, and that neither the general credit of DCGA nor the credit or taxing power of Dauphin County, the Commonwealth, or any political subdivision thereof was

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25/ Sweet was present at the July 8 DCGA meeting. Although Sweet's testimony as to what Crowell said at the June 30 meeting about the Commonwealth's likely use of Forum Place as swing space differed from that of Fowler (whose testimony was consistent with the summary Fowler presented at the July 8 meeting), the record does not show that Sweet took issue with Fowler's summary.

26/ The record does not show that DCGA authorized the distribution of the financial projections to investors.

pledged for the payment of the principal and interest on the bonds. The OS further warned that the Pennsylvania General Assembly was not required to appropriate the funds necessary to make the payments due under the leases.

The OS explained that the current terms of leases at Forum Place ran from two to ten years, with various renewal options. 27/ The OS warned, in capital letters and bold type, that "THE OFFICE LEASES ARE SCHEDULED TO EXPIRE PRIOR TO THE MATURITY OF THE 1998 BONDS. THERE IS NO COMMITMENT, REQUIREMENT OR GUARANTEE THAT THE COMMONWEALTH WILL RENEW OR EXTEND ANY OF THE LEASES." The OS did not, however, contain any disclosure regarding PennDOT's anticipated departure from Forum Place once the Keystone Building was completed. Although Bradbury, Fowler, and Sweet all knew that PennDOT intended to leave Forum Place when the Keystone Building was completed, none of them conducted any investigation into the construction schedule for the Keystone Building. Moreover, none of them initiated any discussion as to whether PennDOT's intended move from Forum Place should be disclosed in the offering documents, and none of them raised the issue in any way with others working on the transaction.

Sales of the Forum Place Bonds

In late June 1998, D & B sales agents began contacting institutional investors to find out whether they would be interested in acquiring the Forum Place bonds. D & B put together an information package containing, among other things, the POS, the existing Forum Place leases, and the financial projections prepared by Fowler with Bradbury's added footnotes. 28/ D & B sent the package to those investors who expressed an interest. 29/ D & B also arranged for interested prospective investors to tour Forum Place; on July 7, 1998, two such tours were conducted by Vartan and attended by a member of D & B's sales staff. 30/ Bradbury did not

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27/ An appendix to the OS provided more information about the individual leases, including agency, start date, term, and space occupied.

28/ The information package also contained a March 1997 building appraisal that showed, among other things, that occupancy rates for "Class A" office space in Harrisburg's Central Business District were 97% to 99%. Although the OIP charged that the vacancy rate information in the appraisal, taken together with other information sent to investors, was misleading, the law judge found that the appraisal was not misleading, either taken alone or when considered with other information. The Division has not appealed this finding, and it is not now before us.

29/ Steven Syfert, a senior vice president at D & B who worked in the area of institutional sales, testified that several of the customers he approached had no interest in participating in the offering because it involved long-term bonds supported by short-term leases.

30/ Bradbury did not inform his sales staff about PennDOT's intended departure from Forum Place.

attend these tours himself, but spoke over the telephone to several potential investors about the investment.

Bradbury testified that it was his "general understanding" that in the Harrisburg market for office space, tenants, and particularly state agencies, tended to stay in the buildings they occupied. Nevertheless, in his discussions with investors, Bradbury failed to disclose that, contrary to the usual trend, PennDOT planned to vacate Forum Place as soon as construction of the Keystone Building was completed. 31/

Bradbury also discussed with some investors his understanding that Forum Place would be used as swing space by the Commonwealth. In testimony, Bradbury recalled that he "was advised that . . . the State would be using [Forum Place as] swing space," but conceded that the Commonwealth had neither committed to doing so nor clearly specified any period of time it planned to use the PennDOT space following expiration of the existing PennDOT lease. Indeed, the record reveals significant disagreement among the members of the finance team with respect to their understanding of the Commonwealth's intentions regarding Forum Place. 32/

Despite these uncertainties, Bradbury assured prospective investors about the future of Forum Place by referring to the Commonwealth's swing space needs. Putnam's McCormack testified that Bradbury answered several questions she had about the future occupancy of Forum Place; notes that McCormack had made contemporaneously with Putnam's purchase state that after PennDOT vacated Forum Place, the head of DGS "fully expects this building to always be needed – many of the [Capitol] Complex buildings are older and have asbestos problems." Barnett Sherman, an analyst at Morgan Stanley, testified that he "had a conversation with Mr. Bradbury . . . and, broadly speaking, my recollection was that there was an insurance that regardless of who came and went in the building, because of the building's proximity to the state capitol, that there would be generally a lot of demand for other government services or other government agencies to come in and use that building. So whoever left would be quickly replaced." Similarly, Keith Lowe, an analyst for Evergreen Funds, testified that he discussed with Bradbury "the State Capitol Complex and the fact that the buildings were very old and in

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31/ Bradbury did, however, disclose this information in response to direct questioning by Susan McCormack, a credit analyst for Putnam Investments, Inc. ("Putnam"), in what McCormack called "an iterative process." McCormack's contemporaneous notes state that PennDOT's old building, the T&S Building, "will be imploded this summer due to asbestos, and a new one built" and that PennDOT "will probably move out of" Forum Place in 2001 or 2002. When asked why he did not feel that PennDOT's departure needed to be disclosed to all investors, Bradbury testified that this information "would have been speculative" and that he "believed that what we disclosed was sufficient within the official statement explaining the short-term nature of the leases and the long-term bonds."

32/ See supra note 24.

need of repairs, if something more specific to the lines of asbestos or mediation, that this complex that we were looking to purchase this building would provide very viable swing space so that those entities could move in and out, if need be, as part of the reconfiguration or the upgrading of those facilities." 33/

D & B sold a total of $72.3 million of Series A bonds to four institutional investors, with conditional trade dates between July 10 and July 14; these trades would settle at closing on July 31, 1998. 34/ Putnam, which discovered that PennDOT planned to vacate Forum Place when the Keystone Building was complete, nevertheless was the single largest purchaser of the Series A bonds, buying almost $27 million of the bonds. Other purchasers in the primary market, none of whom then knew about PennDOT's intended move, were Merrill Lynch, PaineWebber, and Evergreen Funds. 35/ D & B sold about two-thirds of the subordinated Series B bonds to Wilmington Trust Bank; it sold some of the Series B bonds to members of Bradbury's family and to persons Bradbury characterized as "good friends" of his, and retained the remainder for D & B's own account. 36/

33/ The law judge considered McCormack and Sherman to be "very credible," and Lowe "generally credible." Credibility determinations of the fact-finder are "entitled to considerable weight and deference." Leslie A. Arouh, Securities Exchange Act Rel. No. 50889 (Dec. 20, 2004), 84 SEC Docket 1880, 1893 n.40; see also Universal Camera Corp. v. NLRB, 340 U.S. 474, 496 (1951). Moreover, we note that Respondents do not question the credibility of any witness who testified at the hearing.

34/ Because the Forum Place bonds were new issues, D & B's initial sales were conditional, or "when issued," transactions; that is, the trades were made conditionally because the bonds, though authorized, had not yet been issued. See Barron's Dictionary of Financial and Investment Terms 699 (5th ed. 1998).

35/ Evergreen Funds was a subsidiary of First Union Bank, D & B's primary bank and clearing agent. Morgan Stanley eventually purchased $4 million in Forum Place bonds in the secondary market from PaineWebber. In August 1998, Merrill Lynch learned that PennDOT would be moving out of Forum Place and sold all of the bonds it had purchased in July.

36/ A few months after the closing of the Forum Place bond transaction, D & B sold its Series B bonds to First Financial Bank, of which Bradbury was a member of the Board of Directors.

Closing of the Transaction and Subsequent Events

The Forum Place transaction closed on July 31, 1998. D & B purchased the Series A and Series B bonds from DCGA at a 1% discount from par value. 37/

In connection with the closing, D & B received various opinion letters from counsel associated with the transaction. LWM, as underwriter's counsel, provided an opinion letter stating, among other things, that "nothing has come to our attention that would lead us to believe that the [OS] as of its date . . . contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein . . . not misleading." 38/ Pepper Hamilton, as bond counsel, provided a supplemental opinion letter to D & B, stating that certain sections of the OS fairly described the matters they discussed and that the tax matters discussed in the OS accurately reflected the firm's opinion. 39/

On August 1, 1998, the day after the Forum Place bond closing, the T & S Building was imploded. Through the remainder of 1998 and 1999, Forum Place remained filled with Commonwealth agency tenants. In late 2000, PennDOT vacated most of its space in Forum Place and moved into the newly completed Keystone Building. 40/ The Commonwealth continued to pay rent on the vacant PennDOT space at Forum Place until the lease expired on November 15, 2001. By December 2001, Forum Place was 55% empty. At the time of the hearing, the Series A bonds were in technical default, with principal and interest payments being made from the debt service reserve fund rather than from revenues, and the Series B bonds were in default, with no payments being made to bondholders. 41/

37/ The record does not suggest that D & B or Bradbury received any compensation for underwriting the Forum Place bonds beyond this 1% profit margin on sales of the bonds.

38/ As previously noted, no one told O'Neill about PennDOT's intended move.

39/ The bond purchase agreement also references an opinion letter from Goldberg, Katzman & Shipman, P.C., the solicitor for DCGA, apparently affirming DCGA's authority to issue the bonds and consummate the transaction and opining as to representations in the OS. This letter, which is not part of the record or referenced in the parties' briefs, was apparently limited on its face to "statements made with respect to the Authority."

40/ PennDOT vacated 257,410 net usable square feet of space. Some PennDOT computer operations remained at Forum Place.

41/ An analyst from Evergreen Funds, which still held Forum Place bonds at the time of the hearing, testified that DCGA tapped the debt service reserve fund to pay the principal and interest due on the Series A bonds, which, he stated, was a violation of a trust indenture covenant made by DCGA. A chronology prepared by Fowler indicates that the Series B

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In 2003, the bondholders forced Forum Place into receivership. 42/ At the time of the hearing before the law judge, in August 2004, the occupancy rate for Forum Place was approximately 55%, and the Series A bonds traded at approximately half of their par value.

III.

A. Section 17(a), Section 10(b), and Rule 10b-5

Securities Act Section 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b-5 all prohibit fraudulent and deceptive acts and practices in connection with the offer, purchase, or sale of a security. Violations of Section 17(a)(1), Section 10(b), and Rule 10b-5 may be established by a showing that persons acting with scienter omitted material facts in connection with securities transactions, such that the omission rendered disclosures that were made materially false or misleading. 43/ Scienter need not be shown to establish a violation of Sections 17(a)(2) and (3); such violations may be premised on a showing of negligence. 44/ An omission is material if there is a substantial likelihood that a reasonable investor would have considered the omitted fact important in making an investment decision, and disclosure of the omitted fact would have significantly altered the total mix of information available. 45/

The Forum Place POS and OS contained disclosures about the use of rent for space at Forum Place to pay the principal and redemption price of and interest on the bonds. They also contained disclosures about the tax-exempt status of the bonds and the importance to that status of the continued use of Forum Place as office space for the Commonwealth. An appendix provided details about the existing leases, including the PennDOT lease. The financial projections that Respondents distributed with the POS contained revenue projections that

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41/ (...continued)
bonds entered default on July 15, 2002; because the trust indenture summary indicates that replenishment of the debt service reserve fund must occur before Series B bonds can be paid, it is likely that the Series A and B bonds entered default at about the same time; i.e., July 2002.

42/ See Mfrs. & Traders Trust Co. v. Dauphin County Gen. Auth., Dauphin County Court of Common Pleas, Equity Action No. 2003-EQ-0040.

43/ Basic Inc. v. Levinson, 485 U.S. 224, 239 n.17 (1988); Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976).

44/ Aaron v. SEC, 446 U.S. 680, 701-02 (1980).

45/ Basic, 485 U.S. at 231-32; TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976); see also SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 186 (1963) (stating that a fundamental purpose of the federal securities laws is "to substitute a philosophy of full disclosure for the philosophy of caveat emptor").

assumed the continuation of the PennDOT lease, or the immediate replacement of PennDOT by another qualified tenant at a similar rate, through 2008. Moreover, in discussing the Forum Place bonds with potential investors, Bradbury assured them of the continued viability of the project by indicating that, regardless of the short-term nature of the existing leases, the Commonwealth planned to use Forum Place as swing space for an indefinite, but substantial, amount of time.

Whether the Forum Place leases would generate enough revenue to service the bonds and whether the bonds would maintain their tax-exempt status would have been crucially important considerations to investors. 46/ PennDOT was the principal tenant of Forum Place by a wide margin, occupying more than three-quarters of the space and generating 60% of the total lease revenues; moreover, it was a state government entity, so its lease was critically important in light of the tax rule that allowed the bonds to maintain their non-taxable status as long as 90% of the lease revenues at Forum Place were from qualified tenants. We find that a reasonable investor would have considered the intended departure of a tenant of this importance significant in deciding whether to purchase Forum Place bonds. 47/ Thus, Respondents' failure to disclose the anticipated departure of PennDOT from Forum Place upon the completion of the Keystone Building was a material omission. 48/ This omission rendered the disclosures made in the POS, OS, and financial projections about the financial underpinnings of the bonds materially false and misleading: PennDOT's intended departure would make it much more difficult for DCGA to achieve the necessary level of revenues to service the bonds and to preserve their tax-exempt status.

46/ The investors who testified at the hearing all agreed that the information would have been important to them, characterizing it variously as "very critical," "a critical factor," "very material," and "important." Even Respondents' expert testified that the information "would have been important."

47/ The fact that Putnam bought almost $27 million of the bonds despite its knowledge of PennDOT's intended move does not alter our conclusion. See Raymond L. Dirks, 47 S.E.C. 434, 443 (1981) (stating that actual investment decisions are a factor that the Commission may consider, but they are not dispositive of the issue of materiality), aff'd, 681 F.2d 824 (D.C. Cir. 1982), rev'd on other grounds, 463 U.S. 646 (1983). Because Bradbury orally disclosed information about PennDOT's intended move to Putnam, however, there was no material omission of the information with respect to Putnam, and we therefore impose no liability based on those sales.

48/ The OIP recited that the financial projections, like the OS, "omitted information about PennDOT's relocation to the Keystone building." We find that the projections, although distributed to investors with the OS, were not physically part of the OS, but rather a separate document, and that the failure to disclose PennDOT's intended move in the projections was also a material omission that provides the basis for additional findings of violation.

Respondents invoke the "bespeaks caution" doctrine to argue that cautionary language in the OS negates the materiality of the alleged omissions. They argue that the OS contained warnings to the effect that (1) the bonds would be secured solely by revenues generated from the office building, (2) DCGA was obligated to service the bond debt "solely from rents and other available revenues," (3) the leases held by tenants in the building would expire prior to the maturity of most of the bonds being sold, 49/ and (4) PennDOT occupied almost 80% of Forum Place, and the lease on that space would expire in 2001. Moreover, they argue, the OS contained a bold-faced statement in upper-case letters that there was no commitment or guarantee that the Commonwealth would renew or extend any of the office leases. These portions of the OS, Respondents contend, generally disclosed the risk that leases would not be renewed, creating problems with debt service and security of the bonds, such that the omission of the specific disclosure of PennDOT's anticipated move was not material.

We find that the inclusion of the language on which Respondents rely was not sufficient to render the omission of PennDOT's intended move immaterial. Language warning of risks forms part of the "total mix" of information against which we assess materiality, and in appropriate circumstances, adequate warnings may render certain omissions immaterial. But "[c]autionary words about future risk cannot insulate from liability the failure to disclose that the risk has transpired." 50/ Here, the cautionary language cited by Respondents warns of future risks of non-renewal, but it does not disclose the actual knowledge that PennDOT at the time intended to move out of Forum Place when the Keystone Building was completed. Thus, the inclusion of these warnings does not alter our conclusion as to the materiality of the omission.

Respondents contend that PennDOT's anticipated move to the Keystone Building was publicly available information and that they cannot be held liable for failing to disclose material information that is readily accessible in the public domain. Respondents argue that the information about the plans for PennDOT was readily accessible from several different sources: it was reported in Harrisburg's Patriot-News, discussed at the public meetings of DCGA (and reported in the official minutes of those meetings), discussed by DGS representatives in response to questions posed, and available for discussion at the investor tours arranged by D & B. Sophisticated institutional investors, Respondents argue, must be presumed to know what is in the newspapers, and it must be assumed that they understand that newspapers in the local markets where bonds are issued are a valuable source of information.

49/ Approximately $5 million of the Series A bonds matured on January 15, 2003, and one lease was not scheduled to end until 2007.

50/ Rombach v. Chang, 355 F.3d 164, 173 (2d Cir. 2004) (stating that the "bespeaks caution" doctrine does not protect "someone who warns his hiking companion to walk slowly because there might be a ditch ahead when he knows with near certainty that the Grand Canyon lies one foot away") (quoting In re Prudential Sec. Inc. P'ships Litig., 930 F. Supp. 68, 72 (S.D.N.Y. 1996)).

The extent to which information is publicly available can be a factor in assessing materiality because, in determining whether an omission is material, we consider whether disclosure of the omitted fact would be viewed by a reasonable investor as having significantly altered the "total mix" of information available. 51/ The "total mix" of information may include "information already in the public domain and facts known or reasonably available to shareholders." 52/ The information, however, must be "reasonably" available. 53/ Publication of a few articles in local newspapers with limited circulation and discussion at DCGA meetings that were open to the public do not meet this standard. 54/ Moreover, although Respondents argue that the entities that purchased the bonds were "large Wall Street institutions that employed sophisticated analysts responsible for researching potential bond purchases," this was a public offering, and our inquiry is based on the total mix of information that was reasonably available to investors generally, not the entire universe of information that might have been found by

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51/ Basic, Inc. v. Levinson, 485 U.S. at 231-32.

52/ United Paperworkers Int'l v. Int'l Paper Co., 985 F.2d 1190, 1199 (2d Cir. 1993) (quoting Rodman v. Grant Found., 608 F.2d 64, 70 (2d Cir. 1979)).

53/ See Koppel v. 4987 Corp., 167 F.3d 125, 131-32 (2d Cir. 1999) (quoting United Paperworkers, 985 F.2d at 1198).

54/ See, e.g., United Paperworkers, 985 F.2d at 1199 (finding that eight newspaper articles were too "few in number, narrow in focus, and remote in time" to affect materiality analysis; "the mere presence in the media of sporadic news reports . . . should not be considered to be part of the total mix of information" for purpose of assessing materiality of disclosures in proxy statements); RichMark Capital Corp., Exchange Act Rel. No. 48758 (Nov. 7, 2003), 81 SEC Docket 2205, 2214-15 & n.24 (stating that press release plus brief mentions in April media reports were not part of "total mix" of information reasonably available to investors in July-September time period) (citing United Paperworkers), aff'd, 86 Fed. Appx. 744 (5th Cir. 2004); cf. Koppel, 167 F.3d at 131 (holding that offering shareholders opportunity to review report that was available at one location during limited hours did not make report part of "total mix" of information available).

Although Respondents argue that the Patriot-News "frequently reported on" PennDOT's proposed move and related issues, the record contains only one such article, dated five months before the Forum Place bond closing. Evidence as to other press coverage is inconclusive.

sophisticated investors. 55/ Moreover, the protection of the antifraud provisions of the securities laws extends to sophisticated investors as well as those less sophisticated. 56/

As noted above, liability under Securities Act Section 17(a)(1) and Exchange Act Section 10(b) and Rule 10b-5 thereunder requires a showing of scienter. Scienter may be established by a showing of recklessness. 57/ Reckless conduct involves "an 'extreme departure from the standards of ordinary care, . . . which presents a danger of misleading buyers or sellers that is either known to the [actor] or is so obvious that the actor must have been aware of it.'" 58/

The standard of care to which municipal underwriters are expected to adhere is informed by releases we issued in 1988 and 1994, in which we explained that underwriters have a "duty to the investing public to have a reasonable basis for recommending any municipal securities, and [a] responsibility, in fulfilling that obligation, to review in a professional manner the accuracy of statements made in connection with the offering." 59/ Moreover, we have observed that, when municipal securities professionals underwrite a bond offering, they impliedly represent to the investing public that they have a "reasonable basis for belief in the truthfulness and completeness of the key representations made in any disclosure documents used in the offerings," documents that should "accurately reflect all material facts which a prudent investor should know in order to evaluate the offering before reaching an investment decision." 60/

55/ Respondents argue that Merrill Lynch, which purchased $5.6 million of the bonds, reviewed Harrisburg and Pittsburgh newspapers routinely and that Putnam, which purchased almost $27 million of the bonds, commonly reviewed out-of-town newspapers as part of its research on investments. The fact that these investors reviewed local newspapers does not relieve D & B and Bradbury of the obligation to disclose material information in connection with their offer and sale of the bonds.

56/ Brian A. Schmidt, Exchange Act Rel. No. 45330 (Jan. 24, 2002), 76 SEC Docket 2255, 2271 & n.40 (citing additional authority).

57/ See, e.g., Robert M. Fuller, Securities Act Rel. No. 8273 (Aug. 25, 2003), 80 SEC Docket 3539, 3546 n.20, petition denied, 95 Fed. Appx. 361 (D.C. Cir. 2004).

58/ SEC v. Steadman, 967 F.2d 636, 641-42 (D.C. Cir. 1992) (quoting Sundstrand Corp. v. Sun Chemical Corp., 553 F.2d 1033, 1044-45 (7th Cir. 1977)).

59/ Statement of the Commission Regarding Disclosure Obligations of Municipal Securities Issuers and Others, 59 Fed. Reg. 12748, 12758 (Mar. 17, 1994) (interpretation; solicitation of comments).

60/ Municipal Securities Disclosure, 53 Fed. Reg. 37,778, 37,787 & 37,788 n.76 (Sept. 28, 1988) (proposed rulemaking).

(continued...)

We conclude that, based on a consideration of all the circumstances, Respondents' conduct in connection with the Forum Place offering constituted an extreme departure from the standards of ordinary care. As we have discussed, the majority of the Forum Place bonds had a twenty-seven-year term. The leases ran from two to ten years with various renewal options. The lease revenues were the only source of funding for the bonds. PennDOT was the principal tenant at Forum Place and was a type of tenant on which the non-taxable status of the Forum Place bonds depended. It is undisputed that Bradbury knew that PennDOT planned to vacate Forum Place when construction of the Keystone Building was complete. Neither the OS nor the financial projections disclosed this information. Bradbury could not specifically recall reviewing the Forum Place POS or discussing the need to disclose PennDOT's intended departure with any member of the finance team. Indeed, Bradbury never informed his own counsel, who prepared the OS, of PennDOT's plans. Nor did Bradbury make any effort to determine when the Keystone Building would be completed and how the completion of that building and the resulting departure of PennDOT from Forum Place would affect DCGA's ability to service the bonds. Under the circumstances, Bradbury had far from a reasonable basis for belief in the completeness of the OS or accompanying financial projections, which served as his primary sales material.

Respondents must have appreciated that the omission of PennDOT's planned departure from Forum Place would result in a significant understatement of the risks associated with an investment in the bonds, especially as PennDOT's departure ran counter to the presumption in the Harrisburg market for office space that state agencies tended to relocate only rarely. Modeled on an offering that did not involve the impending departure of a major tenant, the OS contained general cautionary language that advised investors that the Forum Place leases were scheduled to expire before the maturity date of the bonds and that there was no guarantee that the Commonwealth would renew its leases. However, as one investor put it, "[T]here's a big difference between facing the potential loss of your biggest tenant and actually knowing that you'll have to replace your major tenant within three years." Similarly, Respondents must have appreciated that the financial projections would mislead investors as to the associated risks. The projections presented a healthy financial outlook for the project based on the assumption that PennDOT's space in Forum Place would remain leased under similar contract terms for at least ten years. That assumption was far more risky than it appeared to an investor reading the projections because of the undisclosed fact that PennDOT planned to move to a new building.

We cannot accept that someone with Bradbury's experience in municipal financing and with Bradbury's knowledge of PennDOT's intended move would fail to recognize that the

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60/ (...continued)
We note that Respondents' own expert stated that a municipal underwriter had an obligation "to form a basis, reasonable basis for a belief in key representations in the official statement, to disclose material information of which the underwriter is aware; and I would go beyond that and say to disclose material information of which the underwriter should be aware as a result of [an] investigation to form a reasonable basis for belief in key representations."

intended move would be significant to investors and that the failure to disclose that move would render the information provided misleading. The fact that Bradbury told investors about the Commonwealth's potential use of Forum Place as swing space shows that he believed that investors would consider the continued occupancy of Forum Place office space by qualified tenants significant. 61/ Nor can we accept that Bradbury could justify his failure to disclose PennDOT's planned departure – to both his own sales team and to potential investors – because it was "speculative," when, at the same time, he reassured investors by telling them of the Commonwealth's intentions to use the building as swing space despite the fact that he learned about the swing space program secondhand, admittedly did not know how long the Commonwealth intended to use swing space, and made no effort to clarify or confirm the information. We find, therefore, that Respondents acted recklessly, and thus with the requisite scienter to support findings of violation under the anti-fraud provisions charged. 62/

In challenging the law judge's finding of scienter, Respondents assert that they did not attempt to restrict the flow of information, but rather helped investors get information by

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61/ We note that the OIP charges Respondents with the fraudulent offer and sale of the Forum Place bonds based on the "misleading Official Statement and financial projections" without making reference to Bradbury's oral representations to investors about the use of Forum Place as swing space. However, this issue of Bradbury's oral representations was litigated extensively during the proceeding and was the subject of testimony from several witnesses and from Bradbury himself. We therefore deem it appropriate to consider the evidence regarding this issue in assessing Respondents' scienter.

62/ In arguing that they did not act with scienter, Respondents rely, among other things, on Howard v. SEC, 376 F.3d 1136 (D.C. Cir. 2004). In Howard, the court held that the type of recklessness required to support liability for aiding and abetting a securities law violation may be established by showing that the alleged aider and abettor encountered "'red flags,' or 'suspicious events creating reasons for doubt' that should have alerted him to the improper conduct of the primary violator" or a danger of misleading investors so obvious that the alleged aider and abettor must have been aware of it. Id. at 1142-43 (citing Steadman, 967 F.2d at 641-42; Sundstrand Corp., 553 F.2d at 1045). On the facts of that case, the court found that Howard did not encounter "red flags," id. at 1147, and its discussion of the uncertainty of the state of the law with respect to the primary violation at issue suggests that the court did not regard the danger in question as obvious. Id. at 1145-46. Because the present case does not charge aiding and abetting of the antifraud provisions under Securities Act Section 17(a)(1) and Exchange Act Section 10(b) and Rule 10b-5 thereunder, this aspect of Howard is not directly applicable to the primary violations of those provisions at issue here. Under the Howard test, in any event, we find that Respondents acted recklessly: we find that the danger that failing to mention PennDOT's intended departure would mislead investors about the financial underpinnings of the bond issue was "obvious" and thus, under Howard, Respondents acted recklessly.

referring them to others involved with the Forum Place transaction and arranging Forum Place tours. Additionally, they assert that Bradbury disclosed PennDOT's intended move to one investor and would have disclosed it to others if they had asked about it. They further state that Bradbury "did not consciously reject any suggestion from any other member of the finance team to disclose material information" in the OS and that he involved in the transaction family members, friends, and institutions with which Respondents had significant connections.

We do not believe these facts contradict a finding of scienter. The fact that Respondents did not restrict, and even enabled or facilitated, access by specific investors to certain information about the Forum Place transaction does not contradict our finding that they acted recklessly in offering and selling the bonds based on offering documents that failed to disclose a particular, and critical, piece of information. 63/ The OIP does not charge Respondents with having withheld information from investors who requested it; it charges them with having failed to present the information to investors who would have considered it significant in light of the other information provided. The absence of evidence showing that Bradbury consciously rejected suggestions that PennDOT's intended move should have been disclosed in the OS does not negate his scienter; the need to disclose that information was so obvious that Bradbury must have realized the danger of omitting it, even without having it brought to his attention by others. 64/

63/ As noted above, however, we impose no liability with respect to the sales to Putnam, to whom Bradbury disclosed information about PennDOT's intended move.

64/ Respondents argue that a finding of recklessness is inconsistent with Bradbury's actual knowledge that others involved in the transaction never suggested that PennDOT's intended move should be disclosed. However, whether or not others were culpable in failing to ensure that the information about PennDOT's intended move was disclosed does not exonerate Respondents.

We also reject Respondents' argument that the "comfort" they received from the supplemental letter, in which Pepper Hamilton opined, among other things, that the section of the OS captioned "Security and Sources of Payment for the 1998 Bonds" "fairly described" the information provided therein, is inconsistent with a finding that they acted recklessly with respect to the failure to disclose PennDOT's intended move. While Pepper Hamilton opined that the security and sources of payment were fairly described, the letter explicitly stated that the firm "[was] not passing upon" and "[did] not assume any responsibility for" the completeness of the statements contained in the OS. Similarly, the fact that Respondents received an opinion letter from LWM stating that nothing "had come to [the firm's] attention" that would lead it to believe that the OS contained material misstatements or omissions does not undercut the conclusion that they acted recklessly in failing to disclose the intended move, because Bradbury did not inform O'Neill about the move and did not inquire as to whether O'Neill was aware of it (which he was not).

Finally, it is well established that investing one's own funds, or the funds of friends or family members, does not negate scienter. 65/

Respondents argue that it is inconsistent to find that they acted with scienter while various others involved with Forum Place were not charged with any violations, or, in the case of DCGA, consented only to negligence-based violations. A refusal to prosecute is a "classic illustration of a decision committed to agency discretion," and agency decisions about the best use of staff time are a matter of prosecutorial judgment. 66/ Further, it is well established that respondents who offer to settle may properly receive lesser sanctions than they otherwise might have based on "pragmatic considerations such as the avoidance of time-and-manpower-consuming adversary proceedings." 67/ The Commission's decision not to charge certain others involved in the Forum Place bond offering, or to accept an offer of settlement that includes consent to a lesser violation, does not imply approval or exoneration of the conduct involved. We thus conclude that Respondents willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Rule G-17 and Section 15B(c)(1)

MSRB Rule G-17 imposes on brokers, dealers, and municipal securities dealers an obligation to deal fairly and not to engage in any deceptive, dishonest, or unfair practice. 68/ Bradbury, as an associated person of D & B, was also bound by this rule. 69/ We have held that

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65/ See, e.g., Gilbert F. Tuffli, Jr., 46 S.E.C. 401, 405 (1976) (stating that respondent's "willingness to gamble with [his] own funds [gives him] no license to deceive others") (citing cases); see also Alfred Miller, 43 S.E.C. 233, 238 (1966) ("Merely informing a customer, whether he is a friend or former customer, that the stock is speculative, is not sufficient disclosure of an issuer's adverse financial condition, and in any event cannot excuse making false or misleading representations to him.").

66/ Chicago Bd. of Trade v. SEC, 883 F.2d 525, 530-31 (7th Cir. 1989) (citations omitted).

67/ David A. Gringas, 50 S.E.C. 1286, 1293-94 (1992) (citing Nassar & Co., 47 S.E.C. 20, 26 (1978), aff'd, 600 F.2d 180 (D.C. Cir. 1979)).

68/ The MSRB recently noted that Rule G-17 encompasses two basic principles: an antifraud prohibition and a general duty to deal fairly even in the absence of fraud. The MSRB stated that Rule G-17 "was implemented to establish a minimum standard of fair conduct." Interpretative Notice Regarding Rule G-17, on Disclosure of Material Facts (Mar. 20, 2002).

69/ See Wheat, First Sec., Inc., Exchange Act Rel. No. 48378 (Aug. 20, 2003) 80 SEC Docket 3406, 3421 n.29; Pryor, McClendon, Counts & Co., Exchange Act Rel. No. 48094 (June 26, 2003), 80 SEC Docket 1728, 1735.

Rule G-17 can be violated, at a minimum, through negligent conduct. 70/ Under these circumstances, in light of our finding that Respondents acted with scienter in connection with the offer and sale of Forum Place bonds, we find that Respondents also violated Rule G-17.

Exchange Act Section 15B(c)(1) prohibits any broker, dealer, or municipal securities dealer from using the mails or interstate commerce "to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in contravention of any rule of the [MSRB]." 71/ Based on our findings above that D & B violated MSRB Rule G-17, we find that D & B also willfully violated Section 15B(c)(1). 72/

To show that Bradbury aided and abetted D & B's violation of Section 15B(c)(1), the Division was required to establish that (1) D & B committed the primary violation; (2) Bradbury had a general awareness that his role was part of an overall activity that was improper; and (3) Bradbury substantially assisted the primary violation. 73/ We have already found that D & B violated Section 15B(c)(1), and our finding that Bradbury acted recklessly – that the omission of the information about PennDOT's intended move posed a danger so obvious that he must have been aware of it – is sufficient to establish his general awareness that his conduct was part of an activity that was improper. 74/ Finally, Bradbury's use of the OS to market the bonds to investors, while knowing of the omission of the information at issue, establishes that he substantially assisted the primary violation. Thus, we find that Bradbury willfully aided and abetted D & B's violation of Section 15B(c)(1). 75/

70/ Wheat, First Sec., 80 SEC Docket at 3425 (holding that MSRB Rule G-17 requires a showing of at least negligence to establish an unfair practice violation); SEC v. Dain Rauscher, Inc., 254 F.3d 852, 856 (9th Cir. 2001) (holding that negligence satisfies the standard for liability under MSRB Rule G-17).

71/ 15 U.S.C. § 78o-4(c)(1).

72/ See Wheat, First Sec., 80 SEC Docket at 3421.

73/ See Graham v. SEC, 222 F.3d 994, 1000 (D.C. Cir. 2000); Investors Research Corp. v. SEC, 628 F.2d 168, 178 (D.C. Cir. 1980).

74/ See Howard, 376 F.3d at 1142-44 (holding that, in assessing liability for aiding and abetting a securities law violation, awareness of wrongdoing may be established by showing a danger so obvious that alleged aider and abettor must have been aware of it, and considering obviousness of danger in analyzing scienter).

75/ Our finding that Bradbury aided and abetted D & B's violation necessarily makes him a "cause" of that violation. See, e.g., Zion Capital Mgmt., LLC, Securities Act Rel. No. 8345 (Dec. 11, 2003), 81 SEC Docket 3063, 3077 (citing Sharon M. Graham, 53 S.E.C. 1072, 1085 n.35 (1998), aff'd, 222 F.3d 994 (D.C. Cir. 2000)). Moreover, we may find

(continued...)

IV.

A. Disgorgement, Civil Penalties, and Ability to Pay

Disgorgement is a remedy designed to deprive respondents of ill-gotten gains by forcing them to give up the amount by which they were unjustly enriched by their misconduct. 76/ The law judge ordered that Respondents disgorge a sum representing the difference between the price at which they purchased the Forum Place bonds sold in the transactions at issue and the resale price of those bonds. 77/ We conclude that this calculation of disgorgement is appropriate but reduce the amount to $313,995.31, plus prejudgment interest, because we do not impose liability for Respondents' sales to Putnam. 78/ Where, as here, two respondents "collaborate or have a close relationship in engaging in the violations of the securities laws," joint and several liability for the disgorgement of illegally obtained proceeds is often appropriate. 79/ Bradbury, the chairman, chief executive officer, chief operating officer, and 38% owner of D & B, is intimately

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75/ (...continued)
that Bradbury acted willfully – as we do here – by finding that he knowingly engaged in the conduct at issue, whether or not he knew that conduct violated the law. See, e.g., Fu-Sung Peter Wu, Exchange Act Rel. No. 45694 (Apr. 4, 2002), 77 SEC Docket 922, 934 n.31 (citing Wonsover v. SEC, 205 F.3d 408, 415 (D.C. Cir. 2000)).

76/ SEC v. Blavin, 760 F.2d 706, 713 (6th Cir. 1985) (citing SEC v. Commonwealth Chem. Sec., Inc., 574 F.2d 90, 102 (2d Cir. 1978)).

77/ The law judge ordered disgorgement in the amount of $482,560.50: $31,000 for the Series B bonds and $451,562.50 for the Series A bonds. Because we do not impose liability for the sale of bonds to Putnam, to whom Bradbury disclosed PennDOT's anticipated departure, we have accordingly reduced the latter figure by $168,567.19, the difference between the purchase and resale prices of the almost $27 million of Series A bonds sold to Putnam.

78/ Although Respondents argue that the prejudgment interest ordered by the law judge is excessive given the period of time tolled by the agreement between the parties, Respondents explicitly agreed, in the tolling agreement they executed, not to seek to "avoid or reduce any sanctions or relief to be imposed" in these proceedings. Nonetheless, our conclusion that liability should not be imposed for the sale of bonds to Putnam results in a reduction in the amount of prejudgment interest imposed.

79/ SEC v. First Pac. Bancorp, 142 F.3d 1186, 1191-92 (9th Cir. 1998) (holding that the "close relationship" warranting joint and several liability existed because the individual defendant was chairman of the board, chief executive officer, and majority shareholder of the corporate co-defendant); see also SEC v. Great Lakes Equities Co., 775 F. Supp. 211, 214 (E.D. Mich. 1991) (finding that, where the actions of an individual respondent are "inextricably interwoven" with the actions of a corporate respondent, joint and several liability for payment of the disgorgement is appropriate).

related to his co-respondent company, and his actions serve as the basis for D & B's liability. Nevertheless, the record is unclear as to whether Bradbury personally received commissions or other direct benefit from the sale of the Forum Place bonds. 80/ Therefore, under the circumstances, we have determined, in our discretion, to impose liability for the disgorgement amount only on D & B. 81/

Section 21B of the Exchange Act allows the imposition of civil money penalties in administrative proceedings where respondents have willfully violated or willfully aided and abetted any violations of the Securities Act, the Exchange Act, or the rules and regulations thereunder, and where such penalties are in the public interest. 82/ For each act or omission involving fraud that "directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons," third-tier civil penalties may be warranted. We find that a civil penalty against Respondents is in the public interest and that third-tier penalties are appropriate because Respondents' activities created a significant risk of substantial losses.

The Division sought civil penalties of $550,000 against D & B and $110,000 against Bradbury, amounts that equal the statutory maximum for each violation in the third tier. 83/ Although the facts of this case could have supported penalties of at least the amount requested by the Division, we find that penalties in the amounts of $400,000 against D & B and $82,000 against Bradbury are appropriate, taking into consideration Respondents' prior lack of disciplinary history and the need to deter misconduct by others. 84/

D&B argues that its financial condition has materially changed since the Forum Place bond offering, and that it is no longer in a position to satisfy the disgorgement, interest, and penalty amounts ordered by the law judge. It argues that "since the Forum Place transaction occurred," its financial health has declined due to "the proceedings themselves, the Division's lengthy delay in issuing the OIP[,] and the negative publicity caused by the Division's allegations against [Respondents]." Bradbury has not claimed that he is unable to pay any monetary

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80/ We are mindful of the fact that disgorgement is intended to be remedial, not punitive, in nature. See SEC v. Blatt, 583 F.2d 1325, 1335 (5th Cir. 1978).

81/ We note that, to the extent Bradbury, as a part-owner of D & B, benefitted indirectly from the sale of the Forum Place bonds, he will likely be impacted indirectly by the disgorgement assessed against the firm. We consider this an appropriate result.

82/ 15 U.S.C. § 78u-2.

83/ See Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, title III, §31001; 17 C.F.R. § 201.1001.

84/ These penalty amounts, which are the same as those imposed by the law judge, have not been appealed by either party and are well within the statutory maximum for third-tier penalties.

sanctions levied against him at this time, but "reserves the right to make such an argument once the issue [of joint and several liability] is ultimately determined."

We have held that, "since the respondent carries the burden of demonstrating an inability to pay, financial information supporting that argument must be presented before the law judge, who may then require the filing of sworn financial statements." 85/ We also have held that an argument regarding a respondent's inability to pay may be waived if not raised before the law judge. 86/ Under the circumstances, we conclude that Bradbury, who did not raise this issue below, does not raise it now, and has not provided any evidence in support of such a claim, has waived any argument regarding his ability to pay monetary sanctions. 87/

D & B also failed to raise its claim of inability to pay before the law judge and, like Bradbury, has not offered any grounds for that failure. D & B requests for the first time in this proceeding that we consider as evidence its audited reports filed annually with the Commission pursuant to Exchange Act Section 17 88/ and Rule 17a-5 thereunder. 89/ The requirements of Rule of Practice 410(c), 90/ however – which states that any "person who files a petition for review of an initial decision that asserts inability to pay either disgorgement, interest or a penalty shall file with its opening brief a sworn financial disclosure statement containing the information specified in [Rule of Practice] 630(b)" – are mandatory, not permissive, 91/ and the reports to which D & B directs our attention do not satisfy these requirements. In any event, the

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85/ Brian A. Schmidt, Exchange Act Rel. No. 45330 (Jan. 24, 2002), 76 SEC Docket 2255, 2273.

86/ Id.

87/ We have further recognized that there may be instances where a respondent can satisfy the standards presented in Rule of Practice 452, 17 C.F.R. § 201.452, regarding new evidence concerning its financial situation that the party had "reasonable grounds for fail[ing] to adduce" earlier in the proceeding. See Schmidt, 76 SEC Docket at 2273. Under such circumstances – not present here – we may consider a claim of inability to pay that the respondent had not raised before the law judge.

88/ 15 U.S.C. § 78q.

89/ 17 C.F.R. § 240.17a-5.

90/ 17 C.F.R. § 201.410(c).

91/ See Terence Michael Coxon, Order Denying Motion to Delay Submission of Claim of Inability to Pay and Requesting Additional Briefs, Exchange Act Rel. No. 42485 (Mar. 2, 2000), 71 SEC Docket 2257.

information in D & B's reports does not indicate that D & B is unable to pay the monetary sanctions imposed herein. 92/

B. Cease-and-Desist Order

Securities Act Section 8A(a) and Exchange Act Section 21C authorize the Commission to impose a cease-and-desist order upon any person who "is violating, has violated, or is about to violate" any provision of either of these acts or any rule or regulation thereunder, or against any person who "is, was, or would be a cause of [a] violation" due to an act or omission the person "knew or should have known would contribute to such a violation." 93/ In determining whether a cease-and-desist order is an appropriate sanction, we look to whether there is some risk of future violations. 94/ The risk of future violations required to support a cease-and-desist order is significantly less than that required for an injunction. 95/ A single egregious violation can be sufficient to indicate some risk of future violation. 96/ We also consider whether other factors demonstrate a risk of future violations. Beyond the seriousness of the violation, these include 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, recognition of the wrongful nature of the conduct, opportunity to commit future violations, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions sought in the proceeding. 97/ Not all of these factors need to be considered, and none of them, by itself, is dispositive.

92/ To the extent D & B may be attempting to argue that its financial condition has suffered a "substantial reverse" since the hearing, see Terry T. Steen, 53 S.E.C. 618, 628 n.26 (1998), we find that the annual reports D & B asked us to consider do not establish such a financial reversal. Further, although we have taken official notice of D & B's filing of a Form BDW subsequent to the completion of the briefing schedule and oral argument in this case, see supra note 1, neither party has addressed the extent to which that filing affects D & B's ability to pay disgorgement, interest, or a fine. As indicated, the burden was on D & B to do so. We therefore lack a basis for making findings regarding the impact of the Form BDW on D & B's financial situation and ability to pay.

93/ 15 U.S.C. §§ 77A(a), 78u-3.

94/ KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1185 (2001), reconsideration denied, 74 SEC Docket 1351 (Mar. 8, 2001), petition denied, 289 F.3d 109 (D.C. Cir. 2002).

95/ KPMG, 54 S.E.C. at 1191.

96/ See Geiger v. SEC, 363 F.3d 481, 489 (D.C. Cir. 2004).

97/ KPMG, 54 S.E.C. at 1192.

Here, Respondents knew of the central importance of PennDOT's tenancy to the financial viability of the Forum Place bonds, but the POS, the OS, and the accompanying projections they distributed to investors omitted any mention of PennDOT's intent to vacate Forum Place once the Keystone Building was completed. The omission of this information deprived investors of a material fact as they considered the purchase of the bonds, and the omission rendered disclosures that were made misleading. The investors to whom PennDOT's intent to move was not disclosed were harmed by the omission and by the consequently misleading disclosures.

As found above, Respondents acted recklessly in offering and selling the Forum Place bonds based on offering documents that failed to include information about PennDOT's intended move. Respondents provide no assurances that they would avoid future violations by acting differently under similar circumstances. Bradbury has been employed by D & B since high school, and his continuing involvement in the securities industry presents an opportunity to commit future violations. Although we have ordered disgorgement and the payment of civil penalties, the issuance of a cease-and-desist order should serve the remedial purpose of encouraging Respondents to take their responsibilities more seriously in the future. 98/

We find that the record as a whole, especially the evidence with regard to the seriousness of the violation, the lack of assurances against future violations, and the opportunity to commit future violations, establishes a sufficient risk that Respondents would commit future violations to warrant imposition of a cease-and-desist order. 99/ Based on all of these factors, we find a cease-and-desist order to be in the public interest. 100/

C. Creation of Fair Fund

Section 308(a) of the Sarbanes-Oxley Act of 2002 authorizes the Commission, in an administrative action brought under the federal securities laws, to create a fund into which civil

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98/ See McCurdy v. SEC, 396 F.3d 1258, 1265 (D.C. Cir. 2005) (recognizing that order suspending auditor from practice before the Commission for one year had remedial purpose of encouraging more rigorous compliance with generally accepted auditing standards in the future).

99/ We reach this conclusion despite our findings that the violation at issue was not recent and was not recurrent.

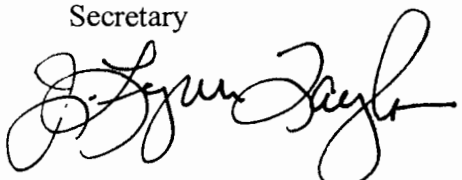
100/ D & B's filing of an application to terminate its broker-dealer registration, which remains pending, does not alter our conclusion that the potential for further violations exists even if D & B's registration is terminated.

penalties and disgorgement funds may be paid for the benefit of persons harmed by the violations. 101/ The Division asks us to create such a fund, and Respondents do not oppose its request. We therefore direct that the civil penalties and disgorgement funds ordered in this matter be paid into a fund to benefit investors harmed by the violations we have found above.

An appropriate order will issue. 102/

By the Commission (Chairman COX and Commissioners GLASSMAN, CAMPOS, and NAZARETH; Commissioner ATKINS not participating).

Nancy M. Morris
Secretary



By: J. Lynn Taylor
Assistant Secretary

101/ 15 U.S.C. § 7246(a). We have recently amended our Rules of Practice to make clear that law judges have the authority to create such funds in appropriate circumstances. See Adoption of Amendments to the Rules of Practice and Related Provisions and Delegations of Authority of the Commission, 70 Fed. Reg. 72,566 (Dec. 5, 2005) (final rule).

102/ 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 ACT OF 1933
Rel. No. 8721 / July 13, 2006

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 54143 / July 13, 2006

Admin. Proc. File No. 3-11465

In the Matter of DOLPHIN AND BRADBURY, INCORPORATED and ROBERT J. BRADBURY	ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Dolphin and Bradbury, Incorporated ("D & B") and Robert J. Bradbury cease and desist from committing or causing any violations or future violations of Section 17(a) of the Securities Act of 1933, Sections 10(b) and 15B(c)(1) of the Securities Exchange Act of 1934 (including failing to deal fairly with all persons and engaging in any deceptive, dishonest, or unfair practice under Rule G-17 of the Municipal Securities Rulemaking Board) and Rule 10b-5 thereunder; and it is further

ORDERED that D & B disgorge the amount of $313,995.31, plus prejudgment interest as calculated in accordance with Commission Rule of Practice 600(b); and it is further

ORDERED that D & B pay a civil money penalty of $400,000 and that Bradbury pay a civil money penalty of $82,000; and it is further

ORDERED that the amounts of disgorgement and civil money penalties be used to create a "Fair Fund" for the benefit of investors pursuant to Commission Rules of Practice 1100-1106; and it is further

ORDERED that the Division of Enforcement submit to the Commission a proposed plan for the administration and distribution of funds in the Fair Fund established in this order no later

than 60 days after payment of the amounts due and any appeals of this Order have been waived or are no longer available.

Payment of the amount to be disgorged and the civil money penalties shall be: (i) made by United States postal money order, certified check, bank cashier's check, or bank money order; (ii) made payable to the Securities and Exchange Commission; (iii) mailed or delivered by hand to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, VA 22312; and (iv) submitted under cover letter that identifies respondents and the file number of this proceeding.

A copy of the cover letter and check shall be sent to Amy J. Greer, counsel for the Division of Enforcement, Securities and Exchange Commission, Philadelphia District Office, The Mellon Independence Center, 701 Market Street, Philadelphia, PA 19106-1532.

By the Commission.

Nancy M. Morris
Secretary

By: J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8720 / July 13, 2006

SECURITIES EXCHANGE ACT OF 1934
Release No. 54139 / July 13, 2006

Administrative Proceeding
File No. 3-12365

In the Matter of **IFMG SECURITIES, INC.,** **Respondent.**	**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 SECTIONS 15(b) AND 21C 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 Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against IFMG Securities, Inc. ("IFMG").

II.

In anticipation of the institution of these proceedings, IFMG 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, IFMG 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 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

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

Respondent

1. IFMG Securities, Inc. and/or its predecessor, Liberty Securities Corp., has been registered with the Commission as a broker-dealer pursuant to Section 15 of the Exchange Act since 1983. It is also a member of the National Association of Securities Dealers ("NASD"). IFMG's principal offices are located in Purchase, New York. IFMG is a subsidiary of Sun Life Financial (U.S.) Holdings, Inc. which is in turn, a subsidiary of Sun Life Financial Inc., a publicly held corporation headquartered in Toronto, Canada. IFMG is affiliated with a third-party marketer of mutual funds and insurance products, which sets up programs with depository institutions such as banks and savings and loan associations to allow those institutions to offer securities to their customers. IFMG's approximately 700 registered representatives sell mutual funds, variable insurance products and general securities in the lobbies of depository institutions nation-wide. IFMG has over 700 registered branch offices nation-wide, and all but two of its branch offices are physically located in the lobbies of depository institutions.

Overview

2. From at least January 2000 through November 2003, IFMG gave preferred sales treatment to certain mutual fund complexes and certain variable insurance product issuers which participated in its revenue sharing program (the "Preferred Program"). Revenue sharing is a form of additional compensation, over and above regular commissions and distribution fees, which is typically paid by mutual fund advisers and insurers to broker-dealers for sales of the mutual funds or variable insurance products.

3. Under the Preferred Program, in exchange for revenue sharing payments, IFMG provided participating mutual fund families and insurers ("Preferred Families") preferential sales treatment, including increased access to its registered representatives and sales managers and placement on its preferred list. IFMG also paid enhanced compensation to its registered representatives for sales of certain of the Preferred Families' products. However, IFMG, in violation of Section 17(a)(2) of the Securities Act and Rule 10b-10 under the Exchange Act, failed to adequately disclose to its customers the existence of its Preferred Program and the potential conflict of interest created by these payments.

IFMG's Preferred Program

4. From at least January 2000 through November 2003, five mutual fund families participated in IFMG's Preferred Program.

5. Each of these mutual fund families made revenue sharing payments to IFMG in varying amounts in exchange for preferential sales treatment. IFMG received two types of revenue sharing payments from these mutual fund families: fees based on total assets under management (asset-based fees) and fees based on new sales (sales-based fees). IFMG generally received between .1% and .18% of new sales and between .03% to .05% of the funds' assets under management. Most of these payments were made to IFMG in cash from the distributor or the adviser. However, one mutual fund family made its revenue sharing payments to IFMG via directed brokerage commissions.[1] Sales of mutual funds from the Preferred Families accounted for approximately 81% of IFMG's total sales in 2000, 88% of its total sales in 2001, 89% of its total sales in 2002, and 87% of its total sales in 2003.

6. From at least January 2000 through November 2003, between six and twelve insurers offering variable insurance products, at various times, participated in IFMG's Preferred Program. IFMG received revenue sharing payments from these insurers that generally ranged from .1% to 1% on sales of new contracts, with an average payment of .5%. Payments were generally made in cash by the insurer.

7. The revenue sharing payments that IFMG received were in addition to standard fees paid by the respective mutual funds and insurers such as sales charges, commissions and distribution fees paid out of fund assets pursuant to a Rule 12b-1 Plan.

8. Revenue sharing was a factor, among others, in IFMG's selection and retention of mutual fund families and insurers for participation in the Preferred Program. In fact, IFMG informed some insurers that the payment of .5% in revenue sharing on new contracts was required to be considered for IFMG's Preferred Program. At least one insurer was removed from IFMG's Preferred Program after it reduced its revenue sharing payments to less than .5%. IFMG did not offer any variable insurance products from insurers that did not participate in the Preferred Program; in most cases, insurers that were included in the Preferred Program made revenue sharing payments. In most cases, mutual fund providers that were included in the

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[1] Directed brokerage refers to the practice of fund advisers "directing" mutual fund brokerage transactions to broker-dealer firms as a reward for sales the broker-dealer makes of that adviser's funds. The brokerage commissions on the directed brokerage are used to reduce the adviser's revenue sharing obligations to the broker-dealer and are paid out of fund assets.

Preferred Program made revenue sharing payments, while mutual fund providers that were not included in the Preferred Program did not make revenue sharing payments.

9. As part of the Preferred Program, IFMG provided financial incentives to its registered representatives to sell funds from the Preferred Families over other funds. IFMG reduced the commission it paid to its registered representatives for the sale of products whose advisers or insurers did not participate in its Preferred Program. Specifically, IFMG reduced the sales commission paid to its registered representatives for the sale of non-preferred products by approximately 33%. In March 2000, IFMG informed its sales staff that the reason that IFMG implemented this differential compensation policy was because some mutual fund families and insurers provided "either sub-par service and/or less than competitive financial support." IFMG discontinued its differential compensation policy in December 2003.

10. Preferred Families participating in IFMG's Preferred Program received other forms of preferential sales treatment which were not available to the non-Preferred Families. First, the Preferred Families were placed on a preferred list which was then distributed to IFMG's sales personnel as a means of encouraging sales of their products. Second, the Preferred Families were given prominent billing in new business presentations to potential and existing clients (typically depository institutions) and at least some of the Preferred Families were listed on IFMG's website. Third, IFMG gave the Preferred Families enhanced access to sales and other meetings attended by its sales managers, its registered representatives, and/or its depository institution clients. Finally, IFMG allowed representatives from the Preferred Families to call or meet with IFMG's registered representatives.

IFMG Did Not Adequately Disclose its Revenue Sharing Program to its Customers

11. During the relevant period, IFMG made statements on its website indicating that it used certain criteria in selecting its Preferred Families. IFMG's website stated that, "[e]ach mutual fund on our preferred list has been evaluated utilizing the stringent requisites developed by Independent Financial and IFMG Securities, Inc. (IFMGSI). Specifically, we review each fund provider concentrating on its longevity, size, quality, focus and breadth." IFMG's website also stated that its preferred products "are regularly reviewed, using stringent criteria regarding performance, service, breadth of product, and fees." Although IFMG's website was accessible to the public, the intended audience were potential depository institution clients, not brokerage clients.

12. During the relevant period, IFMG did not adequately disclose to its customers who purchased mutual fund shares or variable insurance products the existence of the Preferred Program and IFMG's receipt of revenue sharing payments pursuant to the Preferred Program. During the relevant period, IFMG also did not adequately disclose that it considered revenue sharing payments in selecting participants for the Preferred Program. IFMG also did not

adequately disclose the dimensions of the potential conflicts of interest created by these payments.

13. Instead, IFMG relied on disclosures made by the Preferred Families themselves in prospectuses and Statements of Additional Information ("SAIs") to satisfy its disclosure obligations regarding the revenue sharing payments and its Preferred Program.[2] During the relevant period, these documents failed to disclose to IFMG's customers adequate information about the source and the amount of the revenue sharing payments to IFMG and the dimension of the resulting potential conflicts of interest.

14. As a result of the conduct described above, IFMG willfully[3] violated:

a. Section 17(a)(2) of the Securities Act, which provides that it is "unlawful for any person in the offer or sale of any securities . . . by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly . . . to obtain money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statements made, in the light and circumstances under which they were made, not misleading;" and

b. Rule 10b-10 under the Exchange Act, which provides in pertinent part that it is "unlawful for any broker or dealer to effect for or with an account of a customer any transaction in, or to induce the purchase or sale by such customer of, any security . . . unless such broker or dealer, at or before completion of such transaction, gives or sends to such customer written notification disclosing . . . [t]he source and amount of any other remuneration received or to be received by the broker in connection with the transaction."

Neither Section 17(a)(2) nor Rule 10b-10 requires a showing of scienter.[4]

Undertakings

15. IFMG undertakes the following:

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[2] While mutual fund distributors are required to provide customers with a prospectus, they are not required to provide an SAI unless a customer requests a copy.

[3] "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. Id.

[4] Scienter refers to a "mental state embracing intent to deceive, manipulate, or defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 (1976).

(a) IFMG shall place and maintain on its website, within 15 days from the date of entry of the Order, disclosures regarding its revenue sharing program to include, if applicable: (i) the existence of the program; (ii) the fund complexes and insurers participating in the program; (iii) the maximum amount of payment that IFMG receives, expressed in basis points, in connection with the fund complexes' and insurers' participation in the program; and (iv) the source of such payments. IFMG shall make this information available via a hyperlink on the home page of its website.

(b) IFMG shall retain, within 45 days from the date of entry of the Order, the services of an Independent Consultant, who is not unacceptable to the Commission's staff. IFMG shall require the Independent Consultant to perform all of the services and tasks described below. IFMG shall exclusively bear all costs, including compensation and expenses, associated with the retention and performance of the Independent Consultant.

(c) IFMG shall retain and shall require the Independent Consultant to conduct a comprehensive review of (i) the completeness of the disclosures regarding IFMG's revenue sharing program; and (ii) the policies and procedures relating to IFMG's recommendations to its customers of mutual funds and variable insurance products in the revenue sharing program. IFMG shall retain the Independent Consultant to recommend policies and procedures that address deficiencies, if any, in these areas.

(d) IFMG shall further retain and require the Independent Consultant to prepare and, within 90 days from the date of entry of the Order, submit to IFMG and the Commission's staff an Initial Report. The Initial Report shall address, at a minimum: (i) the adequacy of the disclosures regarding IFMG's revenue sharing program; (ii) the adequacy of the policies and procedures regarding IFMG's recommendations and disclosures to its customers of mutual funds and variable insurance products in its revenue sharing program. The initial report must include a description of the review performed, the conclusions reached, and the Independent Consultant's recommendations for policies and procedures to address any deficiencies identified, an effective system for implementing the recommended policies and procedures and an effective system for establishing and maintaining written records that evidence compliance with the recommended policies and procedures.

(e) Within 100 days from the date of entry of the Order, IFMG shall in writing advise the Independent Consultant and the Commission's staff of the recommendations from the Initial Report that it is adopting and the recommendations that it considers unnecessary or inappropriate. With respect to any recommendations that IFMG considers unnecessary or inappropriate, IFMG shall explain why the objective or purpose of such recommendation is unnecessary or inappropriate or provide in writing an alternative policy, procedure or system designed to achieve the same objective.

(f) With respect to any recommendation about which IFMG and the Independent Consultant do not agree IFMG shall attempt in good faith to reach an agreement with the Independent Consultant within 120 days from the date of entry of the Order. In the event the Independent Consultant and IFMG are unable to agree on an alternative proposal, IFMG shall abide by the recommendation of the Independent Consultant.

(g) IFMG shall further retain and shall require the Independent Consultant to complete the aforementioned review and submit a written Final Report to IFMG and to the Commission's staff within 140 days from the date of entry of the Order. The Final Report must recite the efforts the Independent Consultant undertook to review: (i) IFMG's disclosures regarding its revenue sharing program; and (ii) the policies and procedures regarding IFMG's recommendations of the mutual funds and variable insurance products in its revenue sharing program. The Final Report shall also set forth in detail the Independent Consultant's recommendations and a reasonable time frame(s), not to exceed 180 days from the date of entry of the Order, for IFMG to implement its recommendations. The Final Report must also describe how IFMG proposes to implement those recommendations within the time period(s) set forth in the Final Report.

(h) IFMG shall take all necessary and appropriate steps to adopt and implement all recommendations and proposals contained in the Independent Consultant's Final Report.

(i) To ensure the independence of the Independent Consultant, IFMG: (i) shall not have the authority to terminate the Independent Consultant, without the prior written approval of the Commission's staff; (ii) shall compensate the Independent Consultant, and persons engaged to assist the Independent Consultant, for services rendered pursuant to the Order at their reasonable and customary rates; and (iii) shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports or documents to the Commission or the Commission's staff.

(j) To further ensure the independence of the Independent Consultant, for the period of the engagement and for a period of two years from the completion of the engagement, IFMG, its present or former affiliates, directors, officers, employees, and agents acting in their capacity shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with the Independent Consultant. Further, IFMG, its present or former affiliates, directors, officers, employees, and agents acting in their capacity shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with any firm with which the Independent Consultant is affiliated in performance of his or her duties under the Order, or agents acting in their capacity, for the period of the engagement and for a period of two years after the engagement without prior written consent of the Commission's staff.

(k) IFMG shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with prompt access to IFMG's files, books, records and personnel as the Independent Consultant reasonably deems necessary or appropriate in fulfilling any function or completing any task described in these undertakings.

(l) For good cause shown, and upon receipt of a timely application from the Independent Consultant or IFMG, 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 agreed to in Respondent IFMG's Offer.

Accordingly, pursuant to Section 8A of the Securities Act and Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. IFMG shall cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and Rule 10b-10 under the Exchange Act;

B. IFMG is censured;

C. IFMG shall, within 30 days from the date of the entry of the Order, pay disgorgement and prejudgment interest in the amount of $2,827,408 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 IFMG 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 David P. Bergers, District Administrator, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110;

D. IFMG shall, within 30 days from the date of the entry of the Order, pay a civil money penalty in the amount of $1 million 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 IFMG 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 David P. Bergers, District Administrator, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110; and

E. IFMG shall comply with the undertakings enumerated in Section III.B.15. above.

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. 34-54154; File No. S7-12-06]

RIN 3235-AJ57

Amendments to Regulation SHO

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing amendments to Regulation SHO under the Securities Exchange Act of 1934 (Exchange Act). The proposed amendments are intended to further reduce the number of persistent fails to deliver in certain equity securities, by eliminating the grandfather provision and narrowing the options market maker exception. The proposals also are intended to update the market decline limitation referenced in Regulation SHO.

DATES: Comments should be received on or before [insert date 60 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/proposed.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-12-06 on the subject line; or
- Use the Federal eRulemaking Portal (http://www.regulations.gov). Follow the instructions for submitting comments.

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 S7-12-06. 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/proposed.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: James A. Brigagliano, Acting Associate Director, Josephine J. Tao, Branch Chief, Joan M. Collopy, Special Counsel, Lillian S. Hagen, Special Counsel, Elizabeth A. Sandoe, Special Counsel, Victoria L. Crane, Special Counsel, Office of Trading Practices and Processing, Division of Market Regulation, at (202) 551-5720, at the Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on proposed amendments to Rules 200 and 203 of Regulation SHO [17 CFR 242.200 and 242.203] under the Exchange Act.

I. Introduction

Regulation SHO, which became fully effective on January 3, 2005, provides a new regulatory framework governing short sales.[1] Among other things, Regulation SHO imposes a

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[1] See Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004) ("Adopting Release"), available at http://www.sec.gov/rules/final/34-50103.htm. For more information on Regulation

close-out requirement to address problems with failures to deliver stock on trade settlement date and to target abusive "naked" short selling (e.g., selling short without having stock available for delivery and intentionally failing to deliver stock within the standard three-day settlement period) in certain equity securities.[2] While the majority of trades settle on time,[3] Regulation SHO is intended to address those situations where the level of fails to deliver for the particular stock is so substantial that it might harm the market for that security. These fails to deliver may result from either short sales or long sales of stock.[4]

SHO, see "Frequently Asked Questions" and "Key Points about Regulation SHO" (at http://www.sec.gov/spotlight/shortsales.htm).

A short sale is the sale of a security that the seller does not own or any sale that is consummated by the delivery of a security borrowed by, or for the account of, the seller. In order to deliver the security to the purchaser, the short seller may borrow the security, typically from a broker-dealer or an institutional investor. The short seller later closes out the position by purchasing equivalent securities on the open market, or by using an equivalent security it already owns, and returning the security to the lender. In general, short selling is used to profit from an expected downward price movement, to provide liquidity in response to unanticipated demand, or to hedge the risk of a long position in the same security or in a related security.

2 Generally, investors must complete or settle their security transactions within three business days. This settlement cycle is known as T+3 (or "trade date plus three days"). T+3 means that when the investor purchases a security, the purchaser's payment must be received by its brokerage firm no later than three business days after the trade is executed. When the investor sells a security, the seller must deliver its securities, in certificated or electronic form, to its brokerage firm no later than three business days after the sale. The three-day settlement period applies to most security transactions, including stocks, bonds, municipal securities, mutual funds traded through a brokerage firm, and limited partnerships that trade on an exchange. Government securities and stock options settle on the next business day following the trade. Because the Commission recognized that there are many legitimate reasons why broker-dealers may not deliver securities on settlement date, it designed and adopted Rule 15c6-1, which prohibits broker-dealers from effecting or entering into a contract for the purchase or sale of a security that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction. 17 CFR 240.15c6-1. However, failure to deliver securities on T+3 does not violate the rule.

3 According to the National Securities Clearing Corporation (NSCC), on an average day, approximately 1% (by dollar value) of all trades, including equity, debt, and municipal securities, fail to settle. In other words, 99% (by dollar value) of all trades settle on time. The vast majority of these fails are closed out within five days after T+3.

4 There may be many reasons for a fail to deliver. For example, human or mechanical errors or processing delays can result from transferring securities in physical certificate rather than book-entry form, thus causing a failure to deliver on a long sale within the normal three-day settlement period. Also, broker-dealers that make a market in a security ("market makers") and who sell short thinly-traded, illiquid stock in response to customer demand may encounter difficulty in obtaining securities when the time for delivery arrives.

The close-out requirement, which is contained in Rule 203(b)(3) of Regulation SHO, applies only to broker-dealers for securities in which a substantial amount of fails to deliver have occurred (also known as "threshold securities").[5] As discussed more fully below, Rule 203(b)(3) of Regulation SHO includes two exceptions to the mandatory close-out requirement. The first is the "grandfather" provision, which excepts fails to deliver established prior to a security becoming a threshold security;[6] and the second is the "options market maker exception," which excepts any fail to deliver in a threshold security resulting from short sales effected by a registered options market maker to establish or maintain a hedge on options positions that were created before the underlying security became a threshold security.[7]

At the time of Regulation SHO's adoption in August 2004, the Commission stated that it would monitor the operation of Regulation SHO, particularly whether grandfathered fail positions were being cleared up under the existing delivery and settlement guidelines or whether any further regulatory action with respect to the close-out provisions of Regulation SHO was warranted.[8] In addition, with respect to the options market maker exception, the Commission

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5 A threshold security is defined in Rule 203(c)(6) as any equity security of an issuer that is registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78l) or for which the issuer is required to file reports pursuant to section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) for which there is an aggregate fail to deliver position for five consecutive settlement days at a registered clearing agency of 10,000 shares or more, and that is equal to at least 0.5% of the issue's total shares outstanding; and is included on a list disseminated to its members by a self-regulatory organization ("SRO"). 17 CFR 242.203(c)(6). This is known as the "threshold securities list." Each SRO is responsible for providing the threshold securities list for those securities for which the SRO is the primary market.

6 The "grandfathered" status applies in two situations: (1) to fail positions occurring before January 3, 2005, Regulation SHO's effective date; and (2) to fail positions that were established on or after January 3, 2005 but prior to the security appearing on the threshold securities list. 17 CFR 242.203(b)(3)(i).

7 17 CFR 242.203(b)(3)(ii).

8 See Adopting Release, 69 FR at 48018.

noted that it would take into consideration any indications that this provision was operating significantly differently from the Commission's original expectations.[9]

Based on examinations conducted by the Commission's staff and the SROs since Regulation SHO's adoption, we are proposing revisions to Regulation SHO. As discussed more fully below, our proposals would modify Rule 203(b)(3) by eliminating the grandfather provision and narrowing the options market maker exception. Regulation SHO has achieved substantial results. However, some persistent fails to deliver remain. The proposals are intended to reduce the number of persistent fails to deliver attributable primarily to the grandfather provision and, secondarily, to reliance on the options market maker exception. The proposals also would include a 35 settlement day phase-in period following the effective date of the amendment. The phase-in period is intended to provide additional time to begin closing out certain previously-excepted fail to deliver positions. Our proposals also would update the market decline limitation referenced in Rule 200(e)(3) of Regulation SHO. We also seek comment about other ways to modify Regulation SHO.

II. Background

A. Rule 203(b)(3)'s Close-out Requirement

One of Regulation SHO's primary goals is to reduce fails to deliver.[10] Currently, Regulation SHO requires certain persistent fail to deliver positions to be closed out. Specifically, Rule 203(b)(3)'s close-out requirement requires a participant of a clearing agency registered with the Commission to take immediate action to close out a fail to deliver position in a threshold

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[9] See id. at 48019.

[10] Id. at 48009.

security in the Continuous Net Settlement (CNS)[11] system that has persisted for 13 consecutive settlement days by purchasing securities of like kind and quantity.[12] In addition, if the failure to deliver has persisted for 13 consecutive settlement days, Rule 203(b)(3)(iii) prohibits the participant, and any broker-dealer for which it clears transactions, including market makers, from accepting any short sale orders or effecting further short sales in the particular threshold security without borrowing, or entering into a bona-fide arrangement to borrow, the security until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity.[13]

B. Grandfathering under Regulation SHO

Rule 203(b)(3)'s close-out requirement does not apply to positions that were established prior to the security becoming a threshold security.[14] This is known as grandfathering. Grandfathered positions include those that existed prior to the effective date of Regulation SHO and positions established prior to a security becoming a threshold security.[15] Regulation SHO's

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[11] The majority of equity trades in the United States are cleared and settled through systems administered by clearing agencies registered with the Commission. The NSCC clears and settles the majority of equity securities trades conducted on the exchanges and over the counter. NSCC clears and settles trades through the CNS system, which nets the securities delivery and payment obligations of all of its members. NSCC notifies its members of their securities delivery and payment obligations daily. In addition, NSCC guarantees the completion of all transactions and interposes itself as the contraparty to both sides of the transaction. While NSCC's rules do not authorize it to require member firms to close out or otherwise resolve fails to deliver, NSCC reports to the SROs those securities with fails to deliver of 10,000 shares or more. The SROs use NSCC fails data to determine which securities are threshold securities for purposes of Regulation SHO.

[12] 17 CFR 242.203(b)(3).

[13] 17 CFR 242.203(b)(3)(iii). It is possible under Regulation SHO that a close out by a broker-dealer may result in a failure to deliver position at another broker-dealer if the counterparty from which the broker-dealer purchases securities fails to deliver. However, Regulation SHO prohibits a broker-dealer from engaging in "sham close outs" by entering into an arrangement with a counterparty to purchase securities for purposes of closing out a failure to deliver position and the broker-dealer knows or has reason to know that the counterparty will not deliver the securities, and which thus creates another failure to deliver position. 17 CFR 242.203(b)(3)(v); Adopting Release, 69 FR at 48018 n. 96.

[14] 17 CFR 242.203(b)(3)(i).

grandfathering provision was adopted because the Commission was concerned about creating volatility through short squeezes[16] if large pre-existing fail to deliver positions had to be closed out quickly after a security became a threshold security.

C. Regulation SHO's Options Market Maker Exception

In addition, Regulation SHO's options market maker exception excepts from the close-out requirement of Rule 203(b)(3) any fail to deliver position in a threshold security that is attributed to short sales by a registered options market maker, if and to the extent that the short sales are effected by the registered options market maker to establish or maintain a hedge on an options position that was created before the security became a threshold security.[17] The options market maker exception was created to address concerns regarding liquidity and the pricing of options. The exception does not require that such fails be closed out within any particular timeframe.

D. Regulation SHO Examinations

Since Regulation SHO's effective date in January 2005, the Staff and the SROs have been examining firms for compliance with Regulation SHO, including the close-out provisions. We have received preliminary data that indicates that Regulation SHO appears to be significantly

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[15] See Adopting Release, 69 FR at 48018. However, any new fails in a security on the threshold list are subject to the mandatory close-out provisions of Rule 203(b)(3).

[16] The term short squeeze refers to the pressure on short sellers to cover their positions as a result of sharp price increases or difficulty in borrowing the security the sellers are short. The rush by short sellers to cover produces additional upward pressure on the price of the stock, which then can cause an even greater squeeze. Although some short squeezes may occur naturally in the market, a scheme to manipulate the price or availability of stock in order to cause a short squeeze is illegal.

[17] 17 CFR 242.203(b)(3)(ii).

reducing fails to deliver without disruption to the market.[18] However, despite this positive impact, we continue to observe a small number of threshold securities with substantial and persistent fail to deliver positions that are not being closed out under existing delivery and settlement guidelines.

Based on these examinations and our discussions with the SROs and market participants, we believe that these persistent fail positions may be attributable primarily to the grandfather provision and, secondarily, to reliance on the options market maker exception. Although high fails levels exist only for a small percentage of issuers,[19] we are concerned that large and persistent fails to deliver may have a negative effect on the market in these securities. First, large and persistent fails to deliver can deprive shareholders of the benefits of ownership, such as voting and lending. Second, they can be indicative of manipulative naked short selling, which could be used as a tool to drive down a company's stock price. The perception of such

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[18] For example, in comparing a period prior to the effectiveness of the current rule (April 1, 2004 to December 31, 2004) to a period following the effective date of the current rule (January 1, 2005 to May 31, 2006) for all stocks with aggregate fails to deliver of 10,000 shares or more as reported by NSCC:

- the average daily aggregate fails to deliver declined by 34.0%;
- the average daily number of securities with aggregate fails for at least 10,000 shares declined by 6.5%;
- the average daily number of fails to deliver positions declined by 15.3%;
- the average age of a fail position declined by 13.4%;
- the average daily number of threshold securities declined by 38.2%; and
- the average daily fails of threshold securities declined by 52.4%.

Fails to deliver in the six securities that persisted on the threshold list from January 10, 2005 through May 31, 2006 declined by 68.6%.

[19] The average daily number of securities on the threshold list in May 2006 was approximately 298 securities, which comprised 0.38% of all equity securities, including those that are not covered by Regulation SHO. Regulation SHO's current close-out requirement applies to any equity security of an issuer that is registered under Section 12 of the Exchange Act, or that is required to file reports pursuant to Section 15(d) of the Exchange Act. NASD Rule 3210, which became effective on July 3, 2006, applies the Regulation SHO close-out framework to non-reporting equity securities with aggregate fails to deliver equal to, or greater than, 10,000 shares and that have a last reported sale price during normal trading hours that would value the aggregate fail to deliver position at $50,000 or greater for five consecutive settlement days. See Securities Exchange Act Release No. 53596 (April 4, 2006), 71 FR 18392 (April 11, 2006) (SR-NASD-2004-044). If the proposed amendments to Regulation SHO are adopted, we anticipate NASD Rule 3210 will be similarly amended.

manipulative conduct also may undermine the confidence of investors. These investors, in turn, may be reluctant to commit capital to an issuer they believe to be subject to such manipulative conduct.

Allowing these persistent fails to deliver to continue runs counter to one of Regulation SHO's primary goals of reducing fails to deliver in threshold securities. While some delays in closing out may be understandable and necessary, a seller should deliver shares to the buyer within a reasonable time period. Thus, we believe that all fails in threshold securities should be closed out after a certain period of time and not left open indefinitely. As such, we believe that eliminating the grandfathering provision and narrowing the options market maker exception is necessary to reduce the number of fails to deliver.

Although we believe that no failure to deliver should last indefinitely, we note that requiring delivery without allowing flexibility for some failures may impede liquidity for some securities. For instance, if faced with a high probability of a mandatory close out or some other penalty for failing to deliver, market makers may find it more costly to accommodate customer buy orders, and may be less willing to provide liquidity for such securities. This may lead to wider bid-ask spreads or less depth. Allowing flexibility for some failures to deliver also may deter the likelihood of manipulative short squeezes because manipulators would be less able to require counterparties to purchase at above-market value.

Regulation SHO's close-out requirement is narrowly tailored in consideration of these concerns. For instance, Regulation SHO does not require close outs of non-threshold securities. The close-out provision only targets those securities where the level of fails is very high (0.5% of total shares outstanding and 10,000 shares or more) for a continuous period (five consecutive settlement days), and where a participant of a clearing agency has had a persistent fail in such

threshold securities for 13 consecutive settlement days. Requiring close out only for securities with large, persistent fails limits the market impact. While some reduction in liquidity may occur as a result of requiring close out of these limited number of securities, we believe this should be balanced against the value derived from delivery of such securities within a reasonable period of time. We also seek specific comment on whether the proposed close-out periods are appropriate in light of these concerns.

III. Discussion of Proposed Amendments to Regulation SHO

A. Proposed Amendments to the Grandfather Provision

To further reduce the number of persistent fails to deliver, we propose to eliminate the grandfather provision in Rule 203(b)(3)(i). In particular, the proposal would require that any previously-grandfathered fail to deliver position in a security that is on the threshold list on the effective date of the amendment be closed out within 35 settlement days[20] of the effective date of the amendment.[21] If a security becomes a threshold security after the effective date of the amendment, any fails to deliver in that security that occurred prior to the security becoming a

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[20] If the security is a threshold security on the effective date of the amendment, participants of a registered clearing agency must close out that position within 35 settlement days, regardless of whether the security becomes a non-threshold security after the effective date of the amendment.

We chose 35 settlement days because 35 days is used in the current rule, and to allow participants additional time to close out their previously-grandfathered fail to deliver positions, given that some participants may have large previously-excepted fails with respect to a number of securities.

Only previously-grandfathered fail to deliver positions in securities that are threshold securities on the effective date of the amendment would be subject to this 35 settlement day phase-in period. For instance, any previously-grandfathered fail position in a security that is a threshold security on the effective date of the amendment that is removed from the threshold list anytime after the effective date of the amendment but that reappears on the threshold list anytime thereafter would no longer qualify for the 35 day phase-in period and would be required to be closed out under the requirements of Rule 203(b)(3) as amended, i.e., if the fail persists for 13 consecutive settlement days.

[21] In addition, similar to the pre-borrow requirement in current Rule 203(b)(3)(iii), if the fail to deliver position has persisted for 35 settlement days, the proposal would prohibit a participant, and any broker-dealer for which it clears transactions, including market makers, from accepting any short sale orders or effecting further short sales in the particular threshold security without borrowing, or entering into a bona-fide arrangement to borrow, the security until the participant closes out the entire fail to deliver position by purchasing securities of like kind and quantity.

threshold security would become subject to Rule 203(b)(3)'s mandatory 13 settlement day close-out requirement, similar to any other fail to deliver position in a threshold security.

The amendment would help prevent fails to deliver in threshold securities from persisting for extended periods of time. At the same time, the amendment would provide participants flexibility and advance notice to close out the originally grandfathered fail to deliver positions.

Request for Comment

- The grandfather provision of Regulation SHO was adopted because the Commission was concerned about creating volatility from short squeezes where there were large pre-existing fail to deliver positions. The Commission intended to monitor whether grandfathered fail to deliver positions are being cleaned up to determine whether the grandfather provision should be amended to either eliminate the provision or limit the duration of grandfathered fail positions. Is the elimination of the grandfather provision from the close-out requirement in Rule 203(b)(3) appropriate? Should we consider instead providing a longer period of time to close out fails that occurred before January 3, 2005 (the effective date of Regulation SHO),[22] or fails that occur before a security becomes a threshold security, or both? (e.g., 20 days)? Please explain in detail why a longer period should be allowed.
- Should we provide a longer (or shorter) phase-in period (e.g., 60 days instead of 35), or no phase-in period? What are the economic tradeoffs associated with a longer or shorter phase-in period? How much do these tradeoffs matter?
- Is a 35 settlement day phase-in period necessary as firms will have been on notice that they will have to close out previously-grandfathered fails following the effective

[22] Between the effective date of Regulation SHO and March 31, 2006, 99.2% of the fails that existed on Regulation SHO's January 3, 2005 effective date have been closed out. This calculation is based on data, as reported by NSCC, that covers all stocks with aggregate fails to deliver of 10,000 shares or more.

date of the amendment? Should we consider changing the phase-in period to 35 calendar days? If so, would this create systems problems or other costs? Would a phase-in period create examination or surveillance difficulties?

- Would the proposed amendments create additional costs, such as costs associated with systems, surveillance, or recordkeeping modifications that may be needed for participants to track fails to deliver subject to the 35 day phase-in period from fails that are not eligible for the phase-in period? If there are additional costs associated with tracking fails to deliver subject to the 35 versus 13 settlement day requirements, do these additional costs outweigh the benefits of providing firms with a 35 settlement day phase-in period?
- Please provide specific comment as to what length of implementation period is necessary to put firms on notice that positions would need to be closed out within the applicable timeframes, if adopted?
- Current Rule 203(b)(3) and the proposal to eliminate the grandfather provision are based on the premise that a high level of fails to deliver for a particular stock might harm the market for that security. In what ways do persistent grandfathered fails to deliver harm market quality for those securities, or otherwise have adverse consequences for investors?
- To what degree would the proposed amendments help reduce abusive practices by short sellers? Conversely, to what degree will eliminating the grandfather provision make it more difficult for short sellers to provide market discipline against abusive practices on the long side?

- To what extent will eliminating the grandfather provision affect the potential for manipulative activity? For instance, could it increase the potential for manipulative short squeezes?
- How much would the amendments affect the specific compliance costs for small, medium, and large clearing members (e.g., personnel or system changes)?
- What are the benefits of allowing fails of a certain duration, and what is the appropriate length of time for which a fail could have such a benefit?
- Should we consider changing the period of time in which any fail is allowed to persist before a firm is required to close out that fail (e.g., reduce the 13 consecutive settlement days to 10 consecutive settlement days)?
- What are the economic costs of eliminating the grandfather provision? How will eliminating the grandfather provision affect the liquidity of equity securities? Are there any other costs associated with this proposal?
- Should grandfathering be eliminated only for those threshold securities where the highest levels of fails exist? If so, how should such positions be identified? What criteria should be used? What time period, if any, would be appropriate to grandfather threshold securities with lower levels of fails? Is there a *de minimis* amount of fails that should not be subject to a mandatory close out? If so, what is that amount?
- Should the Commission consider granting relief to allow market participants to close out fails in threshold securities that occurred because of an obvious or inadvertent trading error? If so, what factors should the Commission consider before granting the request? What documentation should market participants be required to create and

maintain to demonstrate eligibility for relief? Should the cost of closing out the fail be a part of the economic cost of making a trading error? How would the proposed amendments affect price efficiency for fails resulting from trading errors?

- Some market participants have suggested that delivery failures in certain structured products, such as exchange traded funds (ETFs) do not raise the same concerns as fails in securities of individual issuers. We also understand that there may be particular difficulties in complying with the close-out requirements because of the structure of these products. Are there unique challenges associated with the clearance and settlement of ETFs? If so, what are these unique challenges? Should ETFs or other types of structured products be excepted from being considered threshold securities? If so, what reasons support excepting these securities?
- We understand that deliveries on sales of Rule 144 restricted securities are sometimes delayed through no fault of the seller (e.g., to process removal of the restrictive legend). Should the current close-out requirement of 13 consecutive settlement days for Rule 144 restricted threshold securities be extended, e.g., to 35 settlement days? Please identify specific delivery problems related to Rule 144 restricted securities. Should the current close-out requirement of 13 consecutive settlement days be similarly extended for any other type of securities and, if so, why?
- We solicit comment on any legitimate reason why a short or long seller may be unable to deliver securities within the current 13 consecutive settlement day period of Rule 203(b)(3), or within any other alternative timeframes.
- The current definition of a "threshold security" is based, in part, on a security having a threshold level of fails that is "equal to at least one-half of one percent of an issuer's

total shares outstanding."[23] Is the current threshold level (one-half of one percent) too low or too high? If so, how should the current threshold level be changed?

- When Regulation SHO was proposed, commenters noted difficulties tracking individual accounts in determining fails to deliver.[24] However, we understand that some firms now track internally the accounts responsible for fails. Should we consider requiring customer account-level close out? Should firms be required to prohibit all short sales in that security by an account if that account becomes subject to close out in that security, rather than requiring that account to pre-borrow before effecting any further short sales in the particular threshold security?
- Should we impose a mandatory "pre-borrow" requirement (i.e., that would prohibit a participant of a registered clearing agency, or any broker-dealer for which it clears transactions, from accepting any short sale order or effecting further short sales in the particular threshold security without borrowing, or entering into a bona-fide arrangement to borrow, the security) for all firms whenever there are extended fails in a threshold security regardless of whether that particular firm has an extended fail position in that security? If so, how should we identify such securities? What criteria should be used to identify an extended fail? Should this alternative apply to all threshold securities? What are the costs and benefits of imposing such a mandatory pre-borrow requirement? What percentage of these pre-borrowed shares would eventually be required for delivery?
- Rule 203(b)(1)'s current locate requirement generally prohibits brokers from using the same shares located from the same source for multiple short sales. However, Rule

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[23] See supra note 5.

[24] See Adopting Release, 69 FR at 48017.

203(b)(1) does not similarly restrict the sources that provide the locates. We understand that some sources may be providing multiple locates using the same shares to multiple broker-dealers. Thus, should we amend Rule 203(b)(1) to provide for stricter locates? For example, should we require that brokers obtain locates only from sources that agree to, and that the broker reasonably believes will, decrement shares (so that the source may not provide a locate of the same shares to multiple parties)? Would doing so reduce the potential for fails to deliver? Should we consider other amendments to the locate requirement? Would requiring stricter locate requirements reduce liquidity? If so, would the reduction in liquidity affect some types of securities more than others (e.g., hard to borrow securities or securities issued by smaller companies)? Should stricter locate requirements be implemented only for securities that are hard to borrow (e.g., threshold securities)?

- Some people have asked for disclosure of aggregate fail to deliver positions to provide greater transparency. Should we require the amount or level of fails to deliver in threshold securities to be publicly disclosed? Would requiring information about the amount of fails to deliver help reduce the number of persistent fails to deliver? Should such disclosure be done on an aggregate or individual stock basis? If so, who should make this disclosure (e.g., should each broker be required to disclose the aggregate fails to deliver amount for each threshold security or, alternatively, should the SROs be required to post this information)? How should this information be disseminated? In what way would providing the investing public with access to aggregate fails data be useful? Would providing the investing public with access to this information on an individual stock basis increase the potential for

manipulative short squeezes? If not, why not? How frequently should this information be disseminated? Should it be disseminated on a delayed basis to reduce the potential for manipulative short squeezes? If so, how much of a delay would be appropriate?

- Are there certain transactions or market practices that may cause fail to deliver positions to remain for extended periods of time that are not currently addressed by Rule 203 of Regulation SHO? If so, what are these transactions or practices? How should Rule 203 be amended to address these transactions or practices?
- Would borrowing, rather than purchasing, securities to close out a position be more effective in reducing fails to deliver, or could borrowing result in prolonging fails to deliver?
- Can the close-out provision of Rule 203(b) be easily evaded? If so, please explain.
- Does allowing some level of fails of limited duration enable market makers to create a market for less liquid securities? How long of a duration is reasonable? Does eliminating the grandfather provision mean fewer market makers will be willing to make markets in those securities, and could this increase costs and liquidity for those securities? Are there any other concerns or solutions associated with the effect of the amendment on market makers in highly illiquid stocks?
- Current Rule 203(a) provides that on a long sale, a broker-dealer cannot fail or loan shares unless, in advance of the sale, it has demonstrated that it has ascertained that the customer owned the shares, and had been reasonably informed that the seller would deliver the security prior to settlement of the transaction. Former NASD Rule 3370 required that a broker making an affirmative determination that a customer was

long must make a notation on the order ticket at the time an order was taken which reflected the conversation with the customer as to the present location of the securities, whether they were in good deliverable form, and the customer's ability to deliver them to the member within three business days. Should we consider amending Regulation SHO to include these additional documentation requirements? If so, should any modifications be made to these additional requirements? In the prior SRO rules, brokers did not have to document long sales if the securities were on deposit in good deliverable form with certain depositories, if instructions had been forwarded to the depository to deliver the securities against payment ("DVP trades"). Under Regulation SHO, a broker may not lend or arrange to lend, or fail, on any security marked long unless, among other things, the broker knows or has been reasonably informed by the seller that the seller owns the security and that the seller would deliver the security prior to settlement and failed to do so. Is it generally reasonable for a broker to believe that a DVP trade will settle on time? Should we consider including or specifically excluding an exception for DVP trades or other trades on any rule requiring documentation of long sales?

B. Proposed Amendments to the "Options Market Maker Exception"

We also propose to limit the duration of the options market maker exception in Rule 203(b)(3)(ii). Under the proposed amendment, for securities that are on the threshold list on the effective date of the amendment, any previously excepted fail to deliver position in the threshold security that resulted from short sales effected to establish or maintain a hedge on an options position that existed before the security became a threshold security, but that has expired or been liquidated on or before the effective date of the amendment, would be required to be closed out

within 35 settlement days of the effective date of the amendment.[25] However, if the security appears on the threshold list after the effective date of the amendment, and if the options position has expired or been liquidated, all fail to deliver positions in the security that result or resulted from short sales effected to establish or maintain a hedge on an options position that existed before the security became a threshold security must be closed out within 13 consecutive settlement days of the security becoming a threshold security or of the expiration or liquidation of the options position, whichever is later.[26]

Thus, under the proposed amendment, registered options market makers would still be able to continue to keep open fail positions in threshold securities that are being used to hedge options positions, including adjusting such hedges, if the options positions that were created prior to the time that the underlying security became a threshold security have not expired or been liquidated. Once the security becomes a threshold security and the specific options position has expired or been liquidated, however, such fails would be subject to a 13 consecutive settlement day close-out requirement.

We understand that, without the ability to hedge a pre-existing options position by selling short the underlying security, options market makers may be less willing to make markets in

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[25] In addition, similar to the pre-borrow requirement of current Rule 203(b)(3)(iii), if the fail to deliver has persisted for 35 settlement days, the proposal would prohibit a participant, and any broker-dealer for which it clears transactions, including market makers, from accepting any short sale orders or effecting further short sales in the particular threshold security without borrowing, or entering into a bona-fide arrangement to borrow, the security until the participant closes out the entire fail to deliver position by purchasing securities of like kind and quantity.

[26] Also, similar to the pre-borrow requirement of current Rule 203(b)(iii), if the options position has expired or been liquidated and the fail to deliver has persisted for 13 consecutive settlement days from the date on which the security becomes a threshold security or the option position expires or is liquidated, whichever is later, the proposal would prohibit a participant, and any broker-dealer for which it clears transactions, including market makers, from accepting any short sale orders or effecting further short sales in the particular threshold security without borrowing, or entering into a bona-fide arrangement to borrow, the security until the participant closes out the entire fail to deliver position by purchasing securities of like kind and quantity.

securities that are threshold securities.[27] This in turn may reduce liquidity in such securities, to the detriment of investors in options. We also understand that additional time may be needed to close out a fail to deliver position resulting from a hedge on an options position that existed before the security became a threshold security. However, once the options position expires or is liquidated, we see no reason for maintaining the fail position. We believe that the 13 consecutive settlement day period provided for in this proposal would be a sufficient amount of time to allow a fail to remain that results from a short sale by an options market maker to hedge a pre-existing options position that has expired or been liquidated. Therefore, once the options position that was being hedged by a short sale in the underlying threshold security expires or is liquidated, reliance on the options market maker exception is no longer warranted and the fail to deliver position associated with that expired options position should be subsequently closed out.[28] In addition, if the proposed amendments are adopted, we anticipate an implementation period that would put the firms on notice that positions need to be closed out within the applicable time frames.

We believe the proposed amendments foster Regulation SHO's goal of reducing fails to deliver while still permitting options market makers to hedge existing options positions until the specific options position being hedged has expired or been liquidated. The 35 settlement day phase-in period also would provide options market makers advance notice to adjust to the new requirement. At the same time, the amendments would limit the amount of time in which a fail to deliver position can persist.

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[27] See Adopting Release, 69 FR at 48018.

[28] Consistent with the current rule, options market makers would not be permitted to move their hedge on an original options position to another pre-existing options position to avoid application of the proposed close-out requirements. Once the options position expires or is liquidated, the proposed amendment would require closing out the fail that resulted from that original hedge. To clarify this, the proposed rule would amend Rule 203(b)(3)(ii) to refer to "an options position" rather than "options positions."

Request for Comment

- The options market maker exception was created to permit options market makers flexibility in maintaining and adjusting hedges for pre-existing options positions. Is narrowing the options market maker exception appropriate? If not, why not? Will narrowing the exception reduce the willingness of options market makers to make markets in threshold securities? Will narrowing this exception reduce liquidity in threshold securities? Should we consider providing a limited amount of additional time for options market makers to close out after the expiration or liquidation of the hedge (e.g., from 13 days to 20 days)? What other measures or time frames would be effective in fostering Regulation SHO's goal of reducing fails while at the same time encouraging liquidity and market making by options market makers?
- Should we narrow the options market maker exception only for threshold securities with the highest level of fails? If so, how should such positions be identified? What criteria should be used? Should we provide a limited exception for threshold securities with a lower levels of fails? If so, how much time should we provide for options market maker fails in those securities (e.g., 20 days)?
- Should we eliminate the options market maker exception altogether? Would this impede liquidity, or otherwise reduce the willingness of options market makers to make markets in threshold securities? Please provide specific reasons and information to support an alternative recommendation.
- After the options position has expired or been liquidated, are there circumstances that might cause an options market maker to need to maintain an excepted fail to deliver

position longer than 13 consecutive settlement days? If so, what are those circumstances?

- Is there any legitimate reason an options market maker should be permitted to never have to close out a fail position that is excepted from the close-out requirement of this proposal? If so, what are the reasons?
- Are the terms "expiration" and "liquidation" of an options position sufficiently inclusive to prevent participants from evading the proposed close-out requirements? Are these terms understandable for compliance purposes? If not, what terms would be more appropriate? Please explain.
- Under the current rule a broker-dealer asserting the options market maker exception must demonstrate eligibility for the exception. Some market participants have noted that more specific documentation requirements may make it easier to establish a broker-dealer's eligibility for the exception. Should a broker-dealer asserting the options market maker exception be required to make and keep more specific documentation regarding their eligibility for the exception? Such documentation may include tracking fail positions resulting from short sales to hedge specific pre-existing options positions and the options position. What other types of documentation would be helpful, and why?
- Should Rule 203(b)(3) of Regulation SHO be amended to permit options market makers to move excepted positions to hedge other, or new, pre-existing options positions? If so, please provide specific reasons and information to support your answer.

- Based on current experience with Regulation SHO, what have been the costs and benefits of the current options market maker exception?
- What are the costs and benefits of the proposed amendments to the options market maker exception?
- What technical or operational challenges would options market makers face in complying with the proposed amendments?
- Would the proposed amendments create additional costs, such as costs associated with systems, surveillance, or recordkeeping modifications that may be needed for participants to track fails to deliver subject to the 35 day phase-in period from fails that are not eligible for the phase-in period? If there are additional costs associated with tracking fails to deliver subject to the 35 versus 13 settlement day requirements, do these additional costs outweigh the benefits of providing firms with a 35 settlement day phase-in period? Is a 35 settlement day phase-in period necessary given that firms will have been on notice that they will have to close out these fails to deliver positions following the effective date of the amendment?
- Should we consider changing the proposed phase-in period to 35 calendar days? If so, would this create systems problems or other costs? Would a phase-in period create examination or surveillance difficulties?
- Please provide specific comment as to what length of implementation period is necessary to put firms on notice that positions would need to be closed out within the applicable timeframes, if adopted.

IV. Proposed Amendments to Rule 200(e) Exception for Unwinding Index Arbitrage Positions

We also propose to update Rule 200(e) of Regulation SHO to reference the NYSE Composite Index (NYA), instead of the Dow Jones Industrial Average (DJIA), for purposes of the market decline limitation in subparagraph (e)(3) of Rule 200.

A. Background

Regulation SHO provides a limited exception from the requirement that a person selling a security aggregate all of the person's positions in that security to determine whether the seller has a net long position. This provision, which is contained in Rule 200(e), allows broker-dealers to liquidate (or unwind) certain existing index arbitrage positions involving long baskets of stocks and short index futures or options without aggregating short stock positions in other proprietary accounts if and to the extent that those short stock positions are fully hedged.[29] The exception, however, does not apply if the sale occurs during a period commencing at a time when the DJIA has declined below its closing value on the previous trading day by at least two percent and terminating upon the establishment of the closing value of the DJIA on the next succeeding trading day.[30] If a market decline triggers the application of Rule 200(e)(3), a broker-dealer must

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[29] To qualify for the exception under Rule 200(e), the liquidation of the index arbitrage position must relate to a securities index that is the subject of a financial futures contract (or options on such futures) traded on a contract market, or a standardized options contract, notwithstanding that such person may not have a net long position in that security. 17 CFR 242.200(e).

[30] Specifically, the exception under Rule 200(e) is limited to the following conditions: (1) the index arbitrage position involves a long basket of stock and one or more short index futures traded on a board of trade or one or more standardized options contracts; (2) such person's net short position is solely the result of one or more short positions created and maintained in the course of bona-fide arbitrage, risk arbitrage, or bona-fide hedge activities; and (3) the sale does not occur during a period commencing at the time that the DJIA has declined below its closing value on the previous day by at least two percent and terminating upon the establishment of the closing value of the DJIA on the next succeeding trading day. Id.

aggregate all of its positions in that security to determine whether the seller has a net long position.[31]

The reference to the DJIA was based in part on NYSE Rule 80A (Index Arbitrage Trading Restrictions). As amended in 1999, NYSE Rule 80A provided for limitations on index arbitrage trading in any component stock of the S&P 500 Stock Price Index ("S&P 500") whenever the change from the previous day's close in the DJIA was greater than or equal to two percent calculated pursuant to the rule.[32] In addition, the two-percent market decline restriction was included in Rule 200(e)(3) so that the market could avoid incremental temporary order imbalances during volatile trading days.[33] The two-percent market decline restriction limits temporary order imbalances at the close of trading on a volatile trading day and at the opening of trading on the following day, since trading activity at these times may have a substantial effect on the market's short-term direction.[34] The two-percent safeguard also provides consistency within the equities markets.[35]

On August 24, 2005, the Commission approved an amendment to NYSE Rule 80A to use the NYA to calculate limitations on index arbitrage trading as provided in the rule instead of the DJIA.[36] The effective date of the amendment was October 1, 2005. The Commission's approval order notes that, according to the NYSE, the NYA is a better reflection of market activity with

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31 17 CFR 242.200(e)(3); Adopting Release, 69 FR at 48012.

32 The restrictions were removed when the DJIA retreated to one percent or less, calculated pursuant to the rule, from the prior day's close.

33 Adopting Release, 69 FR at 48011.

34 Id.

35 In 1999, the NYSE amended its rules on index arbitrage restrictions to include the two-percent trigger. The Commission's adoption of the same trigger provided a uniform protective measure. See Securities Exchange Act Release No. 41041 (February 11, 1999), 64 FR 8424 (SR-NYSE-98-45) (February 19, 1999).

36 Securities Exchange Act Release No. 52328 (Aug. 24, 2005), 70 FR 51398 (Aug. 30, 2005).

respect to the S&P 500 and thus, a better indicator as to when the restrictions on index arbitrage trading provided by NYSE Rule 80A should be triggered.[37] While Rule 200(e)(3) currently does not refer to the basis for determining the two-percent limitation, NYSE Rule 80A provides that the two percent is to be calculated at the beginning of each quarter and shall be two percent, rounded down to the nearest 10 points, of the average closing value of the NYA for the last month of the previous quarter.[38]

B. Proposed Amendments to Rule 200(e)

In order to maintain uniformity with NYSE Rule 80A and to maintain a uniform protective measure, we propose to amend Rule 200(e)(3) of Regulation SHO to: (i) reference the NYA instead of the DJIA; and (ii) add language to clarify how the two-percent limitation is to be calculated in accordance with NYSE Rule 80A for purposes of Rule 200(e)(3).[39]

Request for Comment

- Are the proposed changes to the market decline limitation appropriate? Would another index be a more appropriate measure for the exception than the NYA?
- Is the proposed clarification language regarding the two-percent calculation useful?
- Does this limitation affect the expected cost of entering into index arbitrage positions? Does the limitation reduce market efficiency by slowing down price discovery? Does the limitation affect only temporary order imbalances or does it also keep prices from fully adjusting to their fundamental value?

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[37] Id.

[38] Id. See also NYSE Rule 80A (Supplementary Material .10).

[39] Id. See also Proposed Rule 200(e)(3). In addition, because the NYA is already posted with this calculation, the amendment would make this reference point more easily accessible to market participants.

- What are the costs and benefits of the proposed amendments to Regulation SHO's exception for unwinding index arbitrage positions?

V. General Request for Comment

The Commission seeks comment generally on all aspects of the proposed amendments to Regulation SHO under the Exchange Act. Commenters are requested to provide empirical data to support their views and arguments related to the proposals herein. In addition to the questions posed above, commenters are welcome to offer their views on any other matter raised by the proposed amendments to Regulation SHO. With respect to any comments, we note that they are of the greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments and by alternatives to our proposals where appropriate.

VI. Paperwork Reduction Act

The proposed amendments to Regulation SHO would not impose a new "collection of information" within the meaning of the Paperwork Reduction Act of 1995.[40] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VII. Consideration of Costs and Benefits of Proposed Amendments to Regulation SHO

The Commission is considering the costs and the benefits of the proposed amendments to Regulation SHO. The Commission is sensitive to these costs and benefits, and encourages commenters to discuss any additional costs or benefits beyond those discussed here, as well as any reductions in costs. In particular, the Commission requests comment on the potential costs for any modification to both computer systems and surveillance mechanisms and for information gathering,

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[40] 44 U.S.C. 3501 et seq.

management, and recordkeeping systems or procedures, as well as any potential benefits resulting from the proposals for registrants, issuers, investors, brokers or dealers, other securities industry professionals, regulators, and other market participants. Commenters should provide analysis and data to support their views on the costs and benefits associated with the proposed amendments to Regulation SHO.

A. Proposed Amendments to Rule 203(b)(3)'s Delivery Requirements

1. Amendments to Rule 203(b)(3)(i)'s Grandfather Provision

a. Benefits

The proposed amendments would eliminate the grandfather provision in Rule 203(b)(3)(i) of Regulation SHO. In particular, the proposal would require that any previously-grandfathered fail to deliver position in a security that is on the threshold list on the effective date of the amendment be closed out within 35 settlement days. If a security becomes a threshold security after the effective date of the amendment, any fails to deliver that occurred prior to the security becoming a threshold security would become subject to Rule 203(b)(3)'s mandatory 13 settlement days close-out requirement, similar to any other fail to deliver position in a threshold security. We have observed a small number of threshold securities with substantial and persistent fail to deliver positions that are not being closed out under existing delivery and settlement guidelines. We believe that these persistent fail positions are attributable primarily to the grandfather provision. We believe that the proposal to eliminate the grandfather provision would further reduce the number of persistent fails to deliver. We believe the proposed amendments to Rule 203(b)(3)(i) will protect and enhance the operation, integrity, and stability of the market.

Consistent with the Commission's investor protection mandate, the proposed amendment will benefit investors. The proposed amendments would facilitate receipt of shares so that more investors receive the benefits associated with share ownership, such as the use of the shares for voting and lending purposes. The proposal may alleviate investor apprehension as they make investment decisions by providing them with greater assurance that securities will be delivered as expected. It should also foster the fair treatment of all investors.

The proposed amendments should also benefit issuers. A high level of persistent fails in a security may be perceived by potential investors negatively and may affect their decision about making a capital commitment. Thus, the proposal may benefit issuers by removing a potential barrier to capital investment, thereby increasing liquidity. An increase in investor confidence in the market by providing greater assurance that trades will be delivered may also facilitate investment. In addition, some issuers may believe they have endured reputational damage if there are a high level of persistent fails in their securities as a high level of fails is often viewed negatively. Eliminating the grandfather provision may be perceived by these issuers as helping to restore their good name. Some issuers may also believe that they have been the target of potential manipulative conduct as a result of failures to deliver from naked short sales. Eliminating the grandfather provision may remove a potential means of manipulation, thereby decreasing the possibility of artificial market influences and, therefore, contributing to price efficiency.

We believe the 35 day phase-in period should reduce disruption to the market and foster greater market stability because it would provide time for participants to close out grandfathered positions in an orderly manner. In addition, this proposed amendment would put market participants on notice that the Commission is considering this approach.

The proposed amendment would provide flexibility because it gives a sufficient length of time to effect purchases to close out in an orderly manner. We are seeking comment on an appropriate length of implementation period that should provide sufficient notice. Market participants may begin to close out grandfathered positions at anytime before the 35 day phase-in period may be adopted.

We solicit comment on any additional benefits that may be realized with the proposed amendment, including both short-term and long-term benefits. We solicit comment regarding other benefits to market efficiency, pricing efficiency, market stability, market integrity, and investor protection.

b. Costs

In order to comply with Regulation SHO when it became effective in January 2005, market participants needed to modify their systems and surveillance mechanisms. Thus, the infrastructure necessary to comply with the proposed amendments should already be in place. Any additional changes to the infrastructure should be minimal. We request specific comment on the system changes to computer hardware and software, or surveillance costs that might be necessary to comply with this rule. We solicit comment on whether the costs will be incurred on a one-time or ongoing basis, as well as cost estimates. In addition, we seek comment as to whether the proposed amendment would decrease any costs for any market participants. We seek comment about any other costs and cost reductions associated with the proposed amendment or alternative suggestion. Specifically:

- What are the economic costs of eliminating the grandfather provision? How will this affect the liquidity of equity securities? Are there any other costs associated with the proposal?

- How much would the amendments to the grandfather provision affect the compliance costs for small, medium, and large clearing members (e.g., personnel or system changes)? We seek comment on the costs of compliance that may arise as a result of these proposed amendments. For instance, to comply with the proposed amendments, will broker-dealers be required to:
    - Purchase new systems or implement changes to existing systems? Will changes to existing systems be significant? What are the costs associated with acquiring new systems or making changes to existing systems? How much time would be required to fully implement any new or changed systems?
    - Change existing records? What changes would need to be made? What are the costs associated with any changes? How much time would be required to make any changes?
    - Increase staffing and associated overhead costs? Will broker-dealers have to hire more staff? How many, and at what experience and salary level? Can existing staff be retrained? What are the costs associated with hiring new staff or retraining existing staff? If retraining is required, what other costs might be incurred, i.e., would retrained staff be unable to perform existing duties in order to comply with the proposed amendments? Will other resources need to be re-dedicated to comply with the proposed amendments?
    - Implement, enhance or modify surveillance systems and procedures? Please describe what would be needed, and what costs would be incurred.
    - Establish and implement new supervisory or compliance procedures, or modify existing procedures? What are the costs associated with such

changes? Would new compliance or supervisory personnel be needed? What are the costs of obtaining such staff?

- Are there any other costs that may be incurred to comply with the proposed amendments?
- In connection with error trades, should the cost of closing out the fail be a part of the economic cost of making a trading error? What costs may be involved with trading errors under the proposed amendments? How would price efficiency be effected for fails resulting from trading errors under the proposed amendments?
- Does eliminating the grandfather provision mean fewer market makers will be willing to make markets in those securities, and could this increase transaction costs and liquidity for those securities? Would such an effect be more severe for liquid or illiquid securities?
- Are there any costs that market participants may incur as a result of the proposed 35 day phase-in period? Would the costs of a phase-in period outweigh the costs of not having one? Would a phase-in create examination or surveillance difficulties?
- What are the costs and economic tradeoffs associated with longer or shorter phase-in periods? How much do these costs and tradeoffs matter?
- Similar to the pre-borrow requirements of current Rule 203(b)(iii), we are including a pre-borrow requirement for previously grandfathered fail positions when they become subject to either the proposed 35-day phase-in period or the 13-day close-out requirement. Thus, the proposal would prohibit a participant, and any broker-dealer for which it clears transactions, including market makers, from accepting any short sale orders or effecting further short sales in the particular threshold security without

borrowing, or entering into a bona-fide arrangement to borrow, the security until the participant closes out the entire fail to deliver position by purchasing securities of like kind and quantity. What are the costs associated with including the pre-borrow requirement for the proposed amendments to the grandfather provision? What are the costs of excluding a pre-borrow requirement for these proposals?

- We ask what length of implementation period is necessary to put firms on notice that positions would need to be closed out within the applicable timeframes, if the proposed amendments are adopted. What are the costs associated with providing a lengthy implementation period?

In addition, in Section III.A., we ask whether we should consider amendments to other provisions of Regulation SHO. We also solicit comment on the costs associated with these proposals. Specifically:

- We ask whether we should consider imposing a mandatory pre-borrow requirement in lieu of a locate requirement for threshold securities with extended fails. What are the costs and benefits of such a proposal?
- We ask whether the current close-out requirement of 13 consecutive settlement days for Rule 144 restricted threshold securities or other types of threshold securities should be extended. Are there costs associated with extending the current close-out requirement for these, or other types of threshold securities? Who would bear these costs?
- What would be the costs of excepting ETFs or other types of structured products from the definition of threshold securities? Who would bear these costs?

- We ask whether we should consider tightening the locate requirements. For instance, should we consider requiring that brokers obtain locates only from sources that agree to, and that the broker reasonably believes will, decrement shares (so that the source may not provide a locate of the same shares to multiple parties)? What are the costs associated with such a proposal? Would it hinder liquidity, or raise the cost of borrowing? What would be the costs associated with other proposals to strengthen the locate requirements?
- What are the costs associated with dissemination of aggregate fails data or fails data by individual security?
- We ask whether allowing some level of fails of limited duration enables market makers to create a market for less liquid securities, or whether eliminating the grandfather provision means fewer market makers will be willing to make markets in those securities, and could this increase costs and liquidity for those securities. Are there any other costs associated with the effect of the amendments on market makers in highly illiquid stocks?
- What are the potential costs of requiring additional specific documentation of long sales? Are there systems costs, personnel costs, recordkeeping costs, etc? What costs could be saved by specifically excluding DVP trades? What costs may be incurred by excluding DVP trades from long sale documentation requirements?

2. Amendments to Rule 203(b)(3)(ii)'s Options Market Maker Exception

a. Benefits

The proposed amendments also would limit the duration of the options market maker exception in Rule 203(b)(3)(ii) of Regulation SHO. In particular, the proposal would require

firms, within specified timeframes, to close out all fail to deliver positions in threshold securities resulting from short sales that hedge options positions that have expired or been liquidated and that were established prior to the time the underlying security became a threshold security. In the Regulation SHO Adopting Release, the Commission acknowledged assertions by options market makers that, without the ability to hedge a pre-existing options position by selling short the underlying security, options market makers may be less willing to make markets in threshold securities.[41] We also understand that additional time may be needed in order to close out a previously-excepted fail to deliver position resulting from a hedge on an options position that existed before the security became a threshold security. However, once the options position expires or is liquidated, we see no reason for maintaining the fail position or for allowing continued reliance on the options market maker exception. We believe the proposal promotes Regulation SHO's goal of reducing fails to deliver without interfering with the purpose of the options market maker exception. Further, the amendments would provide participants and options market makers that have been allocated the close-out obligation flexibility and advance notice to close out the fail to deliver positions. We believe the proposed amendments to Rule 203(b)(3)(ii) will protect and enhance the operation, integrity, and stability of the market.

b. Costs

Broker-dealers asserting the options market maker exception under Regulation SHO should already have systems in place to close out non-excepted fails to deliver. Broker-dealers may, however, need to modify their systems and surveillance mechanisms to track the fails to deliver and the options positions to ensure compliance with the proposed amendments. In addition, broker-dealers may need to put in place mechanisms to facilitate communications between participants and options market makers. We request specific comment on the systems

[41] See Adopting Release, 69 FR at 48018.

changes to computer hardware and software, or surveillance costs necessary to implement this rule. Specifically:

- What are the costs and benefits of the proposed amendments to the options market maker exception? For instance, what are the costs associated with narrowing the exception if the amendments reduce the willingness of options market makers to make markets in threshold securities?
- We ask whether we should consider providing a limited amount of additional time for options market makers to close out after the expiration or liquidation of the hedged options position (e.g., from 13 days to 20 days). What costs would be associated with such a proposal? What costs might be saved by allowing additional time?
- Similar to the pre-borrow requirements of current Rule 203(b)(iii), if the options position has expired or been liquidated and the fail to deliver has persisted for 13 consecutive settlement days from the date on which the security becomes a threshold security or the option position expires or is liquidated, whichever is later (or 35 settlement days from the effective date of the amendment if the phase-in period applies), the proposal would prohibit a participant, and any broker-dealer for which it clears transactions, including market makers, from accepting any short sale orders or effecting further short sales in the particular threshold security without borrowing, or entering into a bona-fide arrangement to borrow, the security until the participant closes out the entire fail to deliver position by purchasing securities of like kind and quantity. What are the costs associated with including the pre-borrow requirement for the proposed amendments to the options market maker exception? What are the costs of excluding a pre-borrow requirement for these proposals?

- We ask whether we should eliminate the options market maker exception altogether. What costs might be associated with such a proposal?
- What costs would be associated with requiring options market makers to make and keep more specific documentation of fail positions resulting from short sales to hedge specific pre-existing options positions?
- Based on the current requirements of Regulation SHO, what have been the costs and benefits of the current options market maker exception?
- What are the specific costs associated with any technical or operational challenges that options market makers face in complying with the proposed amendments?
- Would the proposed amendments create additional costs, such as costs associated with systems, surveillance, or recordkeeping modifications that may be needed for participants to track fails to deliver subject to the 35 versus 13 settlement days requirements? If there are additional costs associated with tracking fails to deliver would these additional costs outweigh the benefits of providing firms with a 35 settlement day close-out requirement? Is a 35 settlement day close out period necessary as firms will have been on notice that they will have to close out these fails to deliver positions following the effective date of the amendment?
- How much would the amendments to the options market maker exception affect compliance costs for small, medium, and large clearing members (e.g., personnel or system changes)? We seek comment on the costs of compliance that may arise. For instance, to comply with the proposed amendments regarding the options market maker exception, will broker-dealers be required to:

- Purchase new systems or implement changes to existing systems? Will changes to existing systems be significant? What are the costs associated with acquiring new systems or making changes to existing systems? How much time would be required to fully implement any new or changed systems?
- Change existing records? What changes would need to be made? What are the costs associated with any changes? How much time would be required to make any changes?
- Increase staffing and associated overhead costs? Will broker-dealers have to hire more staff? How many, and at what experience and salary level? Can existing staff be retrained? What are the costs associated with hiring new staff or retraining existing staff? If retraining is required, what other costs might be incurred, i.e., would retrained staff be unable to perform existing duties in order to comply with the proposed amendments? Will other resources need to be re-dedicated to comply with the proposed amendments?
- Implement, enhance or modify surveillance systems and procedures? Please describe what would be needed, and what costs would be incurred.
- Establish and implement new supervisory or compliance procedures, or modify existing procedures? What are the costs associated with such changes? Would new compliance or supervisory personnel be needed? What are the costs of obtaining such staff?

- Are there any other costs that may be incurred to comply with the proposed amendments?

- Are there any costs that market participants may incur as a result of the proposed 35 day phase-in period? Would the costs of a phase-in period outweigh the costs of not having one? Would a phase-in create examination or surveillance difficulties?
- What are the economic tradeoffs associated with longer or shorter phase-in periods? How much do these tradeoffs matter?
- We ask what length of implementation period is necessary to put firms on notice that positions would need to be closed out within the applicable timeframes, if adopted. What are the costs associated with providing a lengthy implementation period?

B. Proposed Amendments to Rule 200(e)(3)

1. Benefits

The proposed modification to Rule 200(e) of Regulation SHO would reference the NYA, instead of the DJIA, for purposes of the market decline limitation in subparagraph (e)(3) of Rule 200. The reference to the DJIA was based in part on NYSE Rule 80A, which provided for limitations on index arbitrage trading in any component stock of the S&P 500 Stock Price Index (S&P 500) whenever the change from the previous day's close in the DJIA was greater than or equal to two-percent calculated pursuant to the rule. We also propose to add language to clarify that the two-percent limitation is to be calculated in accordance with NYSE Rule 80A for purposes of Rule 200(e)(3). On August 24, 2005, the Commission approved an amendment to NYSE Rule 80A to use the NYA to calculate limitations on index arbitrage trading as provided in the rule instead of the DJIA.[42] According to the NYSE, the NYA is a better reflection of market activity with respect to the S&P 500 and thus, a better indicator as to when the

[42] Securities Exchange Act Release No. 52328 (Aug. 24, 2005), 70 FR 51398 (Aug. 30, 2005).

restrictions on index arbitrage trading provided by NYSE Rule 80A should be triggered.[43] We believe the amendment is appropriate in order to maintain uniformity with NYSE Rule 80A and to maintain a uniform protective measure. We also believe that, because the NYA is already posted with the two-percent calculation, the proposed amendment would make this reference point more easily accessible to market participants.

2. Costs

We do not anticipate that this proposed amendment will impose any significant burden or cost on market participants. Indeed, the proposed amendment may save costs by promoting uniformity with NYSE Rule 80A so that broker-dealers will need to refer to only one index with respect to restrictions regarding index arbitrage trading.

- Does this limitation affect the expected cost of entering into index arbitrage positions? Does the limitation reduce market efficiency by slowing down price discovery? Does the limitation affect only temporary order imbalances or does it also keep prices from fully adjusting to their fundamental value?
- What are the costs and benefits of the proposed amendments to Regulation SHO's exception for unwinding index arbitrage positions?

VIII. Consideration of Burden and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and whenever it is required to consider or determine if an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency,

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[43] Id.

competition, and capital formation.[44] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[45] Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

We believe the proposed amendments may promote price efficiency. The proposed amendments to Regulation SHO are intended to promote efficiency by reducing persistent fails to deliver securities that have the potential to disrupt market operations and pricing systems. To the extent that the proposed amendments increase the cost of market making, the proposed amendments may impact liquidity in some threshold securities. We believe that these concerns are mitigated by the scope and flexibility of the proposed amendments. We seek comment on whether the proposals promote price efficiency, including whether the proposals might impact liquidity and the potential for manipulative short squeezes.

In addition, we believe that the proposals may promote capital formation. Large and persistent fails to deliver can deprive shareholders of the benefits of ownership, such as voting and lending. They can also be indicative of manipulative conduct. The deprivation of the benefits of ownership, as well as the perception that manipulative naked short selling is occurring in certain securities, may undermine the confidence of investors. These investors, in turn, may be reluctant to commit capital to an issuer they believe to be subject to such manipulative conduct. We solicit comment on whether the proposed amendments would

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[44] 15 U.S.C. 78c(f).

[45] 15 U.S.C. 78w(a)(2).

promote capital formation, including whether the proposed increased short sale restrictions would affect investors' decisions to invest in certain equity securities.

The Commission also believes the proposed amendments may not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act. By eliminating the grandfather provision and narrowing the options market maker exception, the Commission believes the proposed amendments to Regulation SHO would promote competition by requiring similarly situated market participants to close out fails to deliver in threshold securities within the same timeframe. We solicit comment on whether the proposed amendments would promote competition, including whether investors are more or less likely to choose to invest in foreign markets with more relaxed short selling restrictions.

The Commission requests comment on whether the proposed amendments would promote efficiency, competition, and capital formation.

IX. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or "SBREFA,"[46] we must advise the Office of Management and Budget as to whether the proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effect on competition, investment or innovation.

[46] Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

If a rule is "major," its effectiveness will generally be delayed for 60 days pending Congressional review. We request comment on the potential impact of the proposed amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

X. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA), in accordance with the provisions of the Regulatory Flexibility Act (RFA),[47] regarding the proposed amendments to Regulation SHO, Rules 200 and 203, under the Exchange Act.

A. Reasons for the Proposed Action

Based on examinations conducted by the Commission's staff and the SROs since Regulation SHO's adoption, we are proposing revisions to Rules 200 and 203 of Regulation SHO. The proposed amendments to Rule 203(b)(3) of Regulation SHO are designed to reduce the number of persistent fails to deliver. We are concerned that large and persistent fails to deliver may have a negative effect on the market in these securities. Although high fails levels exist only for a small percentage of issuers, they could potentially impede the orderly functioning of the market for such issuers, particularly issuers of less liquid securities. The proposed amendment to update the market decline limitation referenced in Rule 200(e)(3) would maintain uniformity with NYSE Rule 80A and would promote a uniform protective measure.

B. Objectives

Our proposals are intended to further reduce the number of persistent fails to deliver in threshold securities, by eliminating the grandfather provision and narrowing the options market maker exception to the delivery requirement. The proposed amendments are designed to help

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[47] 5 U.S.C. 603.

reduce persistent, large fail positions, which may have a negative effect on the market in these securities and also may be used to facilitate some manipulative strategies. Although high fails levels exist only for a small percentage of issuers, they could impede the orderly functioning of the market for such issuers, particularly issuers of less liquid securities. A significant level of fails to deliver in a security also may have adverse consequences for shareholders who may be relying on delivery of those shares for voting purposes, or could otherwise affect an investor's decision to invest in that particular security. To allow market participants sufficient time to comply with the new close-out requirements, the proposals include a 35 settlement day phase-in period following the effective date of the amendment. The phase-in period is intended to provide market participants flexibility and advance notice to begin closing out originally grandfathered fail to deliver positions. The proposed amendments to Rule 200(e)(3) are intended to update the market decline limitation referenced in the rule in order to maintain uniformity with the NYSE Rule 80A and to maintain uniform protective measures.

C. Legal Basis

Pursuant to the Exchange Act and, particularly, Sections 2, 3(b), 9(h), 10, 11A, 15, 17(a), 19, 23(a) thereof, 15 U.S.C. 78b, 78c, 78i, 78j, 78k-1, 78o, 78q, 78s, 78w(a), the Commission is proposing amendments to Regulation SHO, Rules §§ 242.200 and 242.203.

D. Small Entities Subject to the Rule

Paragraph (c)(1) of Rule 0-10[48] states that the term "small business" or "small organization," when referring to a broker-dealer, means a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to §240.17a-5(d); and is not

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48 17 CFR 240.0-10(c)(1)

affiliated with any person (other than a natural person) that is not a small business or small organization. As of 2005, the Commission estimates that there were approximately 910 broker-dealers that qualified as small entities as defined above.[49] The Commission's proposed amendments would require all small entities to modify systems and surveillance mechanisms to ensure compliance with the new close-out requirements.

E. Reporting, Recordkeeping, and other Compliance Requirements

The proposed amendments may impose some new or additional reporting, recordkeeping, or compliance costs on broker-dealers that are small entities. In order to comply with Regulation SHO when it became effective in January, 2005, small entities needed to modify their systems and surveillance mechanisms. Thus, the infrastructure necessary to comply with the proposed amendments regarding elimination of the grandfather provision should already be in place. Any additional changes to the infrastructure should be minimal. In addition, small entities engaging in options market making should already have systems in place to close out non-excepted fails to deliver as required by Regulation SHO. These small entities, however, may need to modify their systems and surveillance mechanisms to track the fails to deliver and the options positions to ensure compliance with the proposed amendments. These entities may also need to put in place mechanisms to facilitate communications between participants and options market makers. We solicit comment on what new recordkeeping, reporting or compliance requirements may arise as a result of these proposed amendments.

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[49] These numbers are based on the Commission's Office of Economic Analysis's review of 2005 FOCUS Report filings reflecting registered broker dealers. This number does not include broker-dealers that are delinquent on FOCUS Report filings.

F. Duplicative, Overlapping or Conflicting Federal Rules

The Commission believes that there are no federal rules that duplicate, overlap or conflict with the proposed amendments.

G. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small issuers and broker-dealers. Pursuant to Section 3(a) of the RFA,[50] the Commission must consider the following types of alternatives: (a) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule, or any part thereof, for small entities.

The primary goal of the proposed amendments is to reduce the number of persistent fails to deliver in threshold securities. As such, we believe that imposing different compliance requirements, and possibly a different timetable for implementing compliance requirements, for small entities would undermine the goal of reducing fails to deliver. In addition, we have concluded similarly that it would not be consistent with the primary goal of the proposals to further clarify, consolidate or simplify the proposed amendments for small entities. The Commission also preliminarily believes that it would be inconsistent with the purposes of the Exchange Act to use performance standards to specify different requirements for small entities or to exempt broker-dealer entities from having to comply with the proposed rules. We seek comment on alternatives for small entities that conduct business in threshold securities.

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[50] 5 U.S.C. 603(c).

H. Request for Comments

The Commission encourages the submission of written comments with respect to any aspect of the IRFA. In particular, the Commission seeks comment on (i) the number of small entities that would be affected by the proposed amendments; and (ii) the existence or nature of the potential impact of the proposed amendments on small entities. Those comments should specify costs of compliance with the proposed amendments, and suggest alternatives that would accomplish the objective of the proposed amendments.

XI. Statutory Authority

Pursuant to the Exchange Act and, particularly, Sections 2, 3(b), 9(h), 10, 11A, 15, 17(a), 17A, 23(a) thereof, 15 U.S.C. 78b, 78c, 78i, 78j, 78k-1, 78o, 78q, 78q-1, 78w(a), the Commission is proposing amendments to § 240.200 and 203.

Text of the Proposed Amendments to Regulation SHO

List of Subjects

17 CFR Part 242

Brokers, Fraud, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II, Part 242, of the Code of Federal Regulations is proposed to be amended as follows.

PART 242 — REGULATIONS M, SHO, ATS, AC, NMS, AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

1. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k-1(c), 78l, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd-1, 78mm, 80a-23, 80a-29, and 80a-37.

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2. Section 242.200 is proposed to be amended by revising paragraph (e)(3) to read as follows:

§ 242.200 Definition of "short sale" and marking requirements.

* * * * *

(1) * * *

(e) * * *

(3) The sale does not occur during a period commencing at the time that the NYSE Composite Index has declined by two percent (as calculated pursuant to NYSE Rule 80A) or more from its closing value on the previous day and terminating upon the establishment of the closing value of the NYSE Composite Index on the next succeeding trading day.

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3. Section 242.203(b)(3) is proposed to be amended by:

a. Revising paragraphs (b)(3)(i), (b)(3)(ii), and adding new paragraphs (b)(3)(iii) and (b)(3)(iv).

b. Revising paragraphs (b)(3)(ii) to changing "options positions" to "an options position."

c. Redesignating current paragraphs (b)(3)(iii), (b)(3)(iv), and (b)(3)(v), as (b)(3)(v), (b)(3)(vi), and (b)(3)(vii).

The proposed revisions read as follows:

§ 242.203 Borrowing and delivery requirements.

* * * * *

(b)(3) * * *

(i) Provided, however, that a participant that has a fail to deliver position at a registered clearing agency in a threshold security on the effective date of this amendment and which, prior to the effective date of this amendment, had been previously grandfathered from the close-out requirement in paragraph (b)(3) (i.e., because the participant of a registered clearing agency had a fail to deliver position at a registered clearing agency on the settlement day preceding the day that the security became a threshold security), shall immediately close out that fail to deliver position within thirty-five settlement days of the effective date of this amendment by purchasing securities of like kind and quantity;

(ii) The provisions of this paragraph (b)(3) shall not apply to the amount of the fail to deliver position in the threshold security that is attributed to short sales by a registered options market maker, if and to the extent that the short sales are effected by the registered options market maker to establish or maintain a hedge on an options position that were created before the security became a threshold security;

(a) Provided, however, if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in a threshold security that is attributed to short sales by a registered options market maker, if and to the extent that the short sales are effected by the registered options market maker to establish or maintain a hedge on an options position that was created before the security became a threshold security, if the options position has expired or been liquidated and the participant has had such fail to deliver position in the

threshold security for thirteen consecutive settlement days from the date on which the security became a threshold security or the date of expiration or liquidation of the options position, whichever is later, the participant must immediately close out the fail to deliver position by purchasing securities of like kind and quantity;

(b) Provided, however, that a participant that has a fail to deliver position at a registered clearing agency in a threshold security on the effective date of this amendment which, prior to the effective date of this amendment, had been previously excepted from the close-out requirement in paragraph (b)(3) (i.e., because the participant of a registered clearing agency had a fail to deliver position in the threshold security that is attributed to short sales by a registered options market maker, if and to the extent that the short sales are effected by the registered options market maker to establish or maintain a hedge on an options position that was created before the security became a threshold security) and where such options position has expired or been liquidated on or prior to the effective date of the amendment, shall close out that fail to deliver position within thirty-five settlement days of the effective date of this amendment by purchasing securities of like kind and quantity;

(iii) If a participant of a registered clearing agency entitled to rely on the thirty-five settlement day close out requirement contained in paragraphs (b)(3)(i) and (b)(3)(ii) of this section has a fail to deliver position at a registered clearing agency in the threshold security for thirty-five settlement days, the participant and any broker or dealer for which it clears transactions, including any market maker, that would otherwise be entitled to rely on the exception provided in paragraph (b)(2)(ii) of this section, may not accept a short sale order in the threshold security from another person, or effect a short sale in the threshold security for its own account, without borrowing the security or entering into a bona-fide arrangement to

borrow the security, until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity;

(iv) If a participant of a registered clearing agency entitled to rely on the thirteen consecutive settlement day close out requirement contained in paragraph (b)(3)(ii) of this section has a fail to deliver position at a registered clearing agency in a threshold security for thirteen consecutive settlement days following the expiration or liquidation of the options position, the participant and any broker or dealer for which it clears transactions, including any market maker that would otherwise be entitled to rely on the exception provided in paragraph (b)(2)(ii) of this section, may not accept a short sale order in the threshold security from another person, or effect a short sale in the threshold security for its own account, without borrowing the security or entering into a bona-fide arrangement to borrow the security, until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity;

* * * * *

By the Commission.

Nancy Morris
Secretary

Dated: July 14, 2006

By: J. Lynn Taylor
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54155; File No. SR-NASDAQ-2006-001)

July 14, 2006

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 Thereto Relating to the Nasdaq Market Center

I. Introduction

On February 7, 2006, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to integrate the operations of the existing Nasdaq Market Center, along with Nasdaq's Brut and INET facilities. On March 29, 2006, Nasdaq submitted Amendment No. 1 to the proposed rule change ("Amendment No. 1"). The proposed rule change, as amended by Amendment No. 1, was published for comment in the Federal Register on April 14, 2006.[3] The Commission received twelve comments regarding the proposal.[4]

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 53583 (March 31, 2006), 71 FR 19573 ("Single Book Proposal").

4 See letter from Kim Bang, Chief Executive Officer, Bloomberg Tradebook LLC ("Bloomberg") ("Kim Bang") to Brian G. Cartwright, General Counsel, Commission, dated March 6, 2006 ("Bloomberg Comment Letter I"); letter from Kim Bang, David Cummings, Chief Executive Officer, BATS Trading, Inc. ("BATS") ("David Cummings"), Ronald Pasternak, President, Direct Edge ECN LLC, and Martin Kaye, Chief Executive Officer, Track ECN ("Track") ("Martin Kaye") to Robert L.D. Colby, Acting Director, Division of Market Regulation ("Division"), Commission, dated March 21, 2006 ("ECN Comment Letter"); letter from Kim Bang to Jonathan G. Katz, Secretary, Commission ("Jonathan Katz"), dated May 5, 2006 ("Bloomberg Comment Letter II"); letter from David Cummings to Christopher Cox, Chairman, Commission ("Chairman Cox"), dated May 5, 2006 ("BATS Comment Letter"); letter from Martin

On July 7, 2006, Nasdaq filed Amendment No. 2 to the proposed rule change ("Amendment No. 2"). On July 14, 2006, Nasdaq filed Amendment No. 3 to the proposed rule change ("Amendment No. 3"). This order approves the proposed rule change, as amended by Amendment No. 1. Simultaneously, the Commission is providing notice of filing of Amendment Nos. 2 and 3 and granting accelerated approval of Amendment Nos. 2 and 3.

II. Description

Nasdaq proposes to combine the operations of the existing Nasdaq Market Center with its Brut and INET facilities to create a single integrated system, with a single pool of liquidity (the "Integrated System" or "System"). The Integrated System would only accept automatic executions and would eliminate Nasdaq's current order delivery functionality. The Integrated System is designed to enable Nasdaq to operate its execution system as that of a national securities exchange rather than as a national securities association, pursuant to the Commission order, dated January 13, 2006, approving Nasdaq's application to register as a national securities exchange.[5] In addition, Nasdaq has designed the Integrated System to comply with the requirements of Rules 610 and 611

Kaye to Chairman Cox, dated May 5, 2006 ("Track Comment Letter I"); letter from Leonard J. Amoruso, Senior Managing Director and Chief Compliance Officer, Knight Capital Group, Inc. ("Knight") to Nancy M. Morris, Secretary, Commission ("Nancy Morris"), dated May 5, 2006 ("Knight Comment Letter"); letter from C. Thomas Richardson, Managing Director, Citigroup Global Markets Inc. ("Citigroup") to Nancy Morris, dated May 17, 2006 ("Citigroup Comment Letter"); letter from Kim Bang to Nancy Morris, dated May 30, 2006 ("Bloomberg Comment Letter III"); letter from David C. Chavern, Vice President, Capital Markets Program, U.S. Chamber of Commerce ("USCC") to Nancy Morris, dated June 8, 2006 ("USCC Comment Letter"); letter from David Colker, National Stock Exchange ("NSX") to Chairman Cox, dated June 20, 2006 ("NSX Comment Letter"); letter from Kim Bang to Nancy Morris, dated June 23, 2006 ("Bloomberg Comment Letter IV"); and letter from Martin Kaye to Chairman Cox, dated July 3, 2006 ("Track Comment Letter II").

5 See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) ("Exchange Application Order").

of Regulation NMS under the Act ("Regulation NMS").[6] Nasdaq has designated August 28, 2006 as the initial implementation date for this System.[7]

Nasdaq currently operates three execution systems: (1) the Nasdaq Market Center, formerly known as SuperMontage ("NMC Facility"); (2) the Brut ECN, a registered broker-dealer that is a Nasdaq subsidiary ("Brut Facility"); and (3) the INET ECN, which is operated by Brut, LLC, a subsidiary of Nasdaq ("INET Facility") (collectively, the "Nasdaq Facilities").[8] Currently, the Nasdaq Facilities are all linked, but separate, each operating pursuant to independent Commission-approved rules, with the NMC Facility operating under the 4700 Series, the Brut Facility operating under the 4900 Series, and the INET Facility operating under the 4950 Series.

Under the proposal, as amended, Nasdaq seeks to integrate the matching systems of the three Nasdaq Facilities into a single matching system, governed by a single set of rules. To ease the transition for Nasdaq participants, the Integrated System would be accessible through the same connectivity by which users currently access each of the Nasdaq Facilities, and use functionality that is already approved and operating within one or more of the Nasdaq Facilities. For example, the Integrated System would use slightly modified functionality from the INET Facility for order entry, display, processing, and routing, and draw on functionality in the NMC

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6 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

7 See Amendment No. 3.

8 In its Single Book Proposal, Nasdaq noted that, until January 31, 2006, INET ATS, Inc. was a registered broker-dealer and a member of the NASD. On February 1, 2006, the INET broker-dealer was merged into the Brut broker-dealer which is a member of the New York Stock Exchange ("NYSE"). Nasdaq states that it will continue to operate the

Facility for the opening and closing processes. Participants would remain subject to general obligations applicable to all Nasdaq Facilities, including honoring System trades, complying with all Commission and Nasdaq rules, and properly clearing and settling trades. The proposed rule change, as amended, is designed to ensure Nasdaq's readiness to comply with Regulation NMS and facilitate Nasdaq's operation as a national securities exchange.

As the proposed rule change merges the three Nasdaq Facilities into a single platform, it also simplifies Nasdaq's rules by merging five sets of rules (the 4600, 4700, 4900, 4950, and 5200 Series) into two (the 4600 and 4750 Series). The proposed 4600 Series would govern Nasdaq participants, while the proposed 4750 Series would govern the operation of the Integrated System. The proposed rule change would delete in the following series of rules in their entirety: Series 4700 (Nasdaq Market Center – Execution Services), Series 4900 (Brut Systems), Series 4950 (INET System), and Series 5200 (Intermarket Trading System/Computer Assisted Execution System). The proposed rule change would add new Series 4750 (Nasdaq Market Center – Execution Services) and modify current Series 4600 (Requirements for Nasdaq Market Makers and Other Nasdaq Market Center Participants), including renumbering rules governing participants' obligations to honor trades and to comply with applicable rules and registration requirements.

In addition to reorganizing the rules, and making changes to the Exchange's rules for exchange and Regulation NMS readiness, the proposed rule change, as amended, addresses, among other things, openings and closings, the order display/matching system, order types, time

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Brut Facility and INET Facility under the rubric of a single broker-dealer until the Integrated System is fully operational. See Single Book Proposal at 19589.

in force designations, anonymity, routing, book processing, adjustment of open orders,[9] and Nasdaq's plan for a phased-in implementation of the proposed rule change.

In Amendment No. 2, because of the extension of certain compliance dates relating to Regulation NMS, Nasdaq proposed to modify certain rules such that their effectiveness would coincide with the Regulation NMS compliance dates announced by the Commission. Amendment No. 2 also contained a number of non-substantive changes and technical corrections to clarify the proposal.

In Amendment No. 3, Nasdaq proposed to schedule the implementation of the System beginning August 28, 2006.[10] Nasdaq described its planned phase-in schedule for the Integrated System and intention to test the System during the month of July and early in August prior to the transition. Then, beginning August 28, 2006, Nasdaq would transition Nasdaq-listed securities in three groups over a three-week period with 15 to 30 Nasdaq-listed stocks the first week, an additional 100-200 Nasdaq-listed stocks the second week, followed by the remaining Nasdaq-listed stocks the third week. Following the transition of Nasdaq stocks, Nasdaq would transition all non-Nasdaq-listed securities (i.e., NYSE, American Stock Exchange ("Amex"), and regional-listed stocks). Nasdaq noted that it plans to monitor the implementation and adjust the schedule as needed to maintain an orderly transition.

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9 See supra note 3.

10 The Commission notes that Amendment No. 3 replaces the August 14, 2006 implementation date that Nasdaq had proposed in Amendment No. 2.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment Nos. 2 and 3 are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2006-001 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 SR-NASDAQ-2006-001. This file number should be included on the subject line if e-mail is used. To help the Commission 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/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal

identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2006-001 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Summary of Comments Received

The Commission received twelve comment letters, representing seven different entities, on the proposed rule change.[11] Five of the seven commenters either directly or indirectly operate electronic communications networks ("ECNs"). Each of the ECN commenters opposed the proposed rule change. The remaining two commenters did not directly support or oppose the proposal.

Bloomberg submitted four comment letters. The Bloomberg Comment Letter I was submitted prior to Nasdaq's submission of Amendment No. 1. In that letter, Bloomberg commented on one provision of the proposal that would have prohibited members from charging access fees triggered by the execution of a quotation within the System.[12] Bloomberg suggested that such a provision would violate Section 6(e)(1) of the Act,[13] which states that "no national securities exchange may impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members." In addition, the Bloomberg Comment Letter I

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11 See supra note 4. Other than the Bloomberg Comment Letter I, all the comment letters discussed not only SR-NASDAQ-2006-001, but SR-NASD-2006-048 as well. In SR-NASD-2006-048, Nasdaq proposes to charge an order delivery fee of 10 cents per 100 shares to order delivery participants on its system. See Securities Exchange Act Release No. 53644 (April 13, 2006), 71 FR 20149 (April 19, 2006) ("Order Delivery Fee Proposal"). The summary here focuses on the comment letter discussions relating to SR-NASDAQ-2006-001, rather than those relating to the Order Delivery Fee Proposal.

12 Bloomberg Comment Letter I at 1-2.

13 15 U.S.C. 78f(e)(1).

asserted that the Form 19b-4 did not adequately discuss or justify the burdens on competition with respect to the proposed prohibition on fees.[14] Bloomberg recommended that Nasdaq withdraw the provision of the proposal regarding the prohibition of fees. In Amendment No. 1, Nasdaq eliminated its proposal to prohibit members from charging access fees.[15]

In its second comment letter, Bloomberg objected to proposed Nasdaq Rule 4623(b)(5), which would eliminate the order delivery functionality from Nasdaq's rules, because it would expose ECNs to the risk of dual liability.[16] Bloomberg said that dual liability was "a risk that in the past the Commission found to justify requiring Nasdaq to provide order delivery as opposed to execution delivery."[17] Bloomberg opined that eliminating the order delivery functionality, and thereby requiring all Nasdaq participants to accept automatic execution, would force ECNs to "abandon their current business models and begin to act, involuntarily, as dealers;" currently, unlike market makers, ECNs act as agency brokers and do not carry inventory or act as principal.[18] Bloomberg also asserted that because ECNs do not earn a market maker's bid-ask spread, being forced to "eat" an execution could "never be profitable" for ECNs.[19] Bloomberg concluded that this aspect of the proposal would force ECNs out of the Nasdaq market. Bloomberg questioned

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14 Bloomberg Comment Letter I at 2-4.

15 See infra Section V.

16 Bloomberg Comment Letter II at 1.

17 Bloomberg Comment Letter II at 8-9, note 7 (citing Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) ("SuperMontage Order")). See also ECN Comment Letter at 3.

18 Bloomberg Comment Letter II at 4; see also Citigroup Comment Letter at 1.

19 Bloomberg Comment Letter II at 4.

how investors and the national market system would be well served by eliminating the competitive liquidity and investor choices provided by ECNs from the Nasdaq platform.[20]

The Bloomberg Comment Letter II took issue with Nasdaq's claim that the order delivery functionality of ECNs made Nasdaq less competitive by slowing its execution services. Bloomberg stated that Nasdaq's claim did not include any data or factual support, and was "incredible on its face."[21] Bloomberg noted that Nasdaq market participants entering orders could effectively choose to have their orders sent to automatic execution participants; thus, if order delivery ECNs were consistently slower or less efficient, they would suffer dire business consequences.[22] The comment letter also noted that Nasdaq itself routes orders to other market centers, such as Archipelago, and that there was no indication that this routing slowed down its system. Bloomberg stated that its typical response time to incoming Nasdaq orders was 5-20 milliseconds. Bloomberg posited that slow quotation updates, rather than order delivery delays, were the true cause of Nasdaq's system slowdowns. Bloomberg noted that the Nasdaq Quotation Dissemination Service feed had latencies of 500 milliseconds or more during periods of high market activity.[23]

Bloomberg also disagreed with Nasdaq's characterization of the Division's response to Question 5 of its Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610

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20 Bloomberg Comment Letter II at 2, 10. Bloomberg noted that the "independent ECNs" at risk represent some 15% of the total Nasdaq volume.

21 Bloomberg Comment Letter II at 5.

22 Bloomberg Comment Letter II at 5-6.

23 Bloomberg Comment Letter II at 6-8.

of Regulation NMS.[24] In the Single Book Proposal, Nasdaq stated that it did not believe that it could offer order delivery functionality and also satisfy Question 5's standard of continuously providing "a response to incoming orders that does not significantly vary between orders handled entirely within the SRO trading facility and orders delivered to the ECN."[25] In Bloomberg's view, Questions 5 does not "authorize Nasdaq to drop order delivery without considering the factors the Division cited." Bloomberg believed that the Division suggested that Nasdaq could "continue to deliver orders to an ECN as long as Nasdaq's order-handling performance does not significantly vary between orders handled entirely within the SRO trading facility and orders delivered to the ECN."[26] Rather than considering whether it could meet the conditions outlined by the Division in its NMS FAQs relating to order delivery functionality, Bloomberg believed that Nasdaq chose not to confront the issue. Bloomberg believed that the "facts demonstrate that there is no valid basis for Nasdaq's proposed deletion of order delivery to ECNs that can respond within milliseconds."[27]

Bloomberg also argued that the proposed rule change was inconsistent with the Act, in that Nasdaq's analysis of the proposal's impact on competition failed to consider "the liquidity that ECN participants provide to investors, the advantage this brings to investors and the internal discipline and drive to innovation within Nasdaq itself that is provided by the ECNs."[28]

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24 Division of Market Regulation ("Division"), Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS, dated January 27, 2006 ("NMS FAQs") (available at http://www.sec.gov/divisions/marketreg/rule611faq.pdf)

25 Single Book Proposal at 19591, citing NMS FAQs at Question 5.

26 Bloomberg Comment Letter II at 7.

27 Bloomberg Comment Letter II at 7-8.

28 Bloomberg Comment Letter II at 8.

Bloomberg posited that the proposed rule change was inconsistent with Section 6(b)(5) of the Act[29] because it discriminated unfairly against ECNs in that the only order delivery participants on Nasdaq are ECNs. Bloomberg also opined that the proposed rule change was inconsistent with Nasdaq's obligations under the Act to promote a free and open market and a national market system. In addition, Bloomberg believed that the proposal would violate Section 6(b)(8) of the Act[30] by imposing burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act. Finally, Bloomberg noted that Section 3(f) of the Act[31] requires the Commission to consider whether the proposed rule change would promote competition.[32]

In its comment letter, Citigroup stated its belief that the National Association of Securities Dealers, Inc.'s ("NASD") Alternative Display Facility ("ADF") currently does not provide a viable alternative to the Nasdaq platform. Citigroup cited the ADF's connectivity costs, inability to quote NYSE- and Amex-listed securities, and inability to display sub-penny quotations to four decimal places for sub-$1.00 securities. In addition, Citigroup asserted that the ADF was a more expensive facility for ECNs, because it charged for quotation updates and did not have a general revenue sharing plan. Citigroup also believed that the ADF provided inadequate order protection because it would not provide an aggregate top-of-the-book quotation with protection under Rule 611 of Regulation NMS.[33]

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29 15 U.S.C. 78f(b)(5).

30 15 U.S.C. 78f(b)(8).

31 15 U.S.C. 78c(f).

32 Bloomberg Comment Letter II at 9-11.

33 Citigroup Comment Letter at 2-3.

In support of its claim that the ADF is not a viable alternative to Nasdaq, Citigroup noted that daily volume on the ADF averaged approximately fifteen million shares compared to the total daily volume of approximately 1.7 billion shares for Nasdaq securities.[34] Finally, Citigroup said that the Commission, in response to various ADF-related comments in the Nasdaq exchange application context,[35] indicated that the ADF was not a viable alternative to the Nasdaq Market Center.[36]

In its third comment letter, responding to Nasdaq's initial comment response letter,[37] Bloomberg endorsed the "main thrust" of Citigroup's comment letter, in particular supporting Citigroup's assertion that the ADF was not a viable alternative to Nasdaq, pointing to the ADF's connectivity issues and its lack of capability to provide an aggregate top-of-book quotation under Rule 611 of Regulation NMS.[38] Bloomberg also reiterated its disagreement with Nasdaq's assertion that retaining order delivery would slow down the Nasdaq market.[39] In addition, Bloomberg emphasized that several other ECNs shared their concerns about the proposal.[40]

Bloomberg stated that, contrary to Nasdaq's assertions in its initial comment response letter, the existing platform of the NSX is not a viable venue for multiple participants, particularly in light of its limited capacity. While acknowledging that BATS had moved from

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34 Citigroup Comment Letter at 3.

35 See supra note 5.

36 Citigroup Comment Letter at 3, quoting Exchange Application Order at 57-58 (referring to comments from the Securities Industry Association and Instinet).

37 See infra note 75.

38 Bloomberg Comment Letter III at 1.

39 Bloomberg Comment Letter III at 2.

40 Bloomberg Comment Letter III at 2.

Nasdaq to NSX, Bloomberg pointed out that, notwithstanding that BATS is a very new ECN and has a relatively light share volume, BATS experienced a significant decrease in trading volume following its move to NSX. In addition, Bloomberg argued that, because the current NSX platform is unable to attribute quotes for multiple participants, market participants might be required to build temporary connectivity to each ECN participating in NSX, which would divert the industry's attention and resources at a time when implementation of Regulation NMS and industry consolidation issues were already pushing programming capacity to its limits.[41]

Bloomberg also believed that Nasdaq, in its initial comment response letter, misstated the Commission's duties under the Act. Bloomberg opined that the Act put a special burden on self-regulatory organizations ("SROs") if an SRO such as Nasdaq wished to change an existing rule or system. Bloomberg believed that Nasdaq must demonstrate that such change is lawful, does not unfairly discriminatory among members, and that any resulting burden on members is necessary or appropriate in furtherance of the purposes of the Act, which Bloomberg contrasted with an SRO's own commercial purposes. In addition, Bloomberg believed that whether other national securities exchanges had similar systems should not be relevant to the Commission's analysis.[42]

Bloomberg also posited that the data Nasdaq provided in its initial comment response letter pertaining to order delivery transactions was contextually insufficient. Bloomberg pointed to the speed of Nasdaq's quotation updates as a factor in order failures, and noted that Nasdaq had not provided data regarding the speed of quotation updates during high volume openings and

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41 Bloomberg Comment Letter III at 2-3.

42 Bloomberg Comment Letter III at 4-6.

closings. Bloomberg also suggested that, rather than removing order delivery functionality from its system, Nasdaq should establish rules to mandate faster quotation updates. In addition, Bloomberg proposed that Nasdaq could prevent some ECN outliers from exceeding its 5-second response time rule by mandating a 500-millisecond or even 50-millisecond rule.[43]

Bloomberg also noted that, based on public statements of Nasdaq and the Commission, an order delivery ECN would have reasonably believed that either order delivery functionality would remain on the Nasdaq system indefinitely or an order delivery ban would not occur until the fall of 2006 at the earliest.[44] Bloomberg contended that it was not seeking to slow down Nasdaq's Single Book Proposal, but rather Nasdaq had accelerated the timing of the new system's roll-out. In addition, Bloomberg noted that the roll-out of the Single Book Proposal is not necessary to the commencement of Nasdaq's operation as an exchange and "would visit needless disruption and dislocation not only on the independent ECNs but on the market as a whole" and would "unfairly disadvantage independent ECNs and regional exchange competitors, such as NSX."[45]

Bloomberg also believed that the elimination of order delivery functionality would burden competition for order flow in Nasdaq-listed securities. Bloomberg claimed that Nasdaq acquired INET and Brut "with a view to curtailing competition for order flow in Nasdaq securities" and was now "attempting to perfect its monopoly by crushing the remaining independent ECNs."[46] Finally, Bloomberg believed that Nasdaq, in its initial comment response

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43 Bloomberg Comment Letter III at 6-8.

44 Bloomberg Comment Letter III at 8-9.

45 Bloomberg Comment Letter III at 9-10.

46 Bloomberg Comment Letter III at 10.

letter, misstated the Commission's authority when it said that the Commission lacked the statutory authority to provide a delay. Bloomberg believed that the Commission has clear authority to require Nasdaq to provide an adequate transition period in its proposal, and could request that Nasdaq amend its proposal to build in such a delay.[47]

The remaining ECN commenters each endorsed the positions set forth in the Bloomberg Comment Letter II.[48] Some commenters also expressed their concern not only about short-term market dislocation and disruption,[49] but also regarding the long-term loss of investor choice.[50] In particular, Bloomberg stated that, since Nasdaq's acquisition of the Brut and INET ECNs in the past two years, trading in the Nasdaq market had become more concentrated and less competitive. Bloomberg opined that Nasdaq was driving other ECNs off its system to allow it "to charge monopoly rents for access to its market and for market data."[51] In addition, some of the commenters felt that Nasdaq's proposal represented a for-profit exchange using the regulatory process to eliminate competition.[52]

Bloomberg also noted that it did not believe that requiring Nasdaq to maintain its order delivery functionality would imply an affirmative obligation for other national securities exchanges to provide the same.[53] Finally, Bloomberg and Track requested that if the

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47 Bloomberg Comment Letter III at 10-11.

48 See BATS Comment Letter, Track Comment Letter I, Knight Comment Letter.

49 See BATS Comment Letter, Track Comment Letter I at 1, Bloomberg Comment Letter II at 2.

50 See BATS Comment Letter, Bloomberg Comment Letter II at 2.

51 See Bloomberg Comment Letter II at 2.

52 See BATS Comment Letter, Track Comment Letter I at 1, Bloomberg Comment Letter II at 1, 3.

53 See Bloomberg Comment Letter II at 11.

Commission decided to approve the proposed rule change, more time should be given to the ECNs to find another venue to operate their business.[54] Similarly, the USCC encouraged the Commission to, as a matter of good process, "consider the need for appropriate transition periods" should the proposed rule change be adopted.[55]

In response to Nasdaq's fourth comment letter regarding technical difficulties relating to INET's participation in the NSX,[56] NSX submitted a comment letter to describe its relationship with Nasdaq and INET, in particular noting that NSX's dissemination of quotations for Nasdaq may be slow because of Nasdaq's own internal system delays.[57] NSX also noted that it intended to build a robust, state-of-the-art trading system that should help minimize future problems related to the capacity of, or linkage to, its market.[58]

On June 23, 2006, Bloomberg submitted its fourth comment letter, welcoming the USCC Comment Letter's call for an appropriate transition period, and describing Nasdaq's third and fourth response letters[59] as containing misleading statements and false assertions.[60] Bloomberg believed that Nasdaq's characterization in its third comment letter that the two ECNs operating on NSX (BATS and INET) were cohabitating with little disruption contrasted with Nasdaq's fourth response letter which stated that the NSX platform was experiencing severe capacity

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54 See Bloomberg Comment Letter II at 11 (delay in the effective date); Track Comment Letter I at 2 (phased-in approach).

55 See USCC Comment Letter at 1-2.

56 See infra note 99.

57 See NSX Comment Letter at 1-2.

58 See NSX Comment Letter at 1-2.

59 See infra Nasdaq Response Letter III and Nasdaq Response Letter IV, notes 92 and 99.

60 See Bloomberg Comment Letter IV at 1-2 and 4-5.

overages and delays.[61] In addition, Bloomberg said that Nasdaq's claim in its fourth comment letter that the Commission had ordered INET to cease quoting in NSX by September 1, 2006 was untrue, noting that the Commission merely recognized a Nasdaq representation that it would cease quoting in NSX and the correct date was September 30, 2006.[62] Bloomberg emphasized that the difference between the two dates was crucial, and stated that the "Commission understood that additional time beyond September 30, 2006 might be prudent and necessary."[63]

Bloomberg also reiterated its prior arguments regarding the need for business certainty and that Nasdaq had given the expectation that its Single Book Proposal would be rolled out in December 2006. Bloomberg said that, because of the resulting uncertainty and confusion of Nasdaq's earlier proposed roll-out date, ECNs have had to explore and develop, at substantial cost, a number of competing alternative scenarios; for example, Bloomberg has explored an interim migration to another platform, temporarily participating in Nasdaq while trying to prevent double execution, and ultimately migrating to an exchange platform that offers order delivery and quotation display. Bloomberg stated that the lack of certainty has "impeded sound business planning and threatens to constrict investor choice and the development of sound market alternatives."[64]

Bloomberg also disputed Nasdaq's statement regarding its participation in Nasdaq's Opening and Closing Crosses, stating that it has had to develop special facilities to integrate during such times with Nasdaq and that, during those limited periods, Bloomberg simply

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61 See Bloomberg Comment Letter IV at 2.

62 See Bloomberg Comment Letter IV at 3 (citing Nasdaq Rule 4720).

63 See Bloomberg Comment Letter IV at 3.

64 See Bloomberg Comment Letter IV at 4.

operates as an order-routing system.[65] In addition, Bloomberg also disputed various characterizations by Nasdaq, including its NSX participation, percentage of total Nasdaq trading volume attributable to order delivery executions, and the data Nasdaq presented with regard to Bloomberg's response times in early May 2006.[66] Bloomberg also again suggested that Nasdaq could enforce its 5-second response time rule or even impose a more stringent 50-millisecond rule.[67] Finally, Bloomberg believed that, contrary to Nasdaq's assertions in its response letters, it was proper for the Commission to consider comment letters received after the comment period deadline had expired.[68]

On July 3, 2006, Track submitted a second comment letter to clarify to the Commission that it was still a participant in the Nasdaq Market Center, reiterate its comments submitted previously as part of the ECN Comment Letter, and support the comment letters of Citigroup, USCC, and Bloomberg.[69] Track emphasized that Bloomberg was not the sole party objecting to aspects of the Single Book Proposal, but that it and other ECNs were interested parties as well. Track stated that it continued to execute significant business through Nasdaq's platform. In addition, it noted that only one percent of its volume was on the ADF, which it did not believe was a viable place to conduct its business. Track believed that NSX's trading platform currently under development, which it expected to include order delivery functionality, would be a viable alternative. However, Track noted that the new NSX platform was not scheduled to be ready

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65 See Bloomberg Comment Letter IV at 5.

66 See Bloomberg Comment Letter IV at 5-7.

67 See Bloomberg Comment Letter IV at 7-8.

68 See Bloomberg Comment Letter IV at 8.

69 See Track Comment Letter II at 1.

until September 2006. Adding in two months to ramp up its volume on the new system, Track requested that it be able to continue to operate on Nasdaq's platform until the NSX platform is operational and capable of handling the volumes of business required by the ECNs. Track also noted that it planned to begin testing on the new platform in July 2006.[70] Track stated that its only issue with the Single Book Proposal was Nasdaq's decision to accelerate its roll-out timetable for its integrated system because it provided too brief a period for migration to workable venues, and that "[a]ll other matters with regard to Nasdaq's Exchange status are not at issue with Track ECN."[71]

V. Nasdaq's Response to Comments

In Amendment No. 1, Nasdaq addressed the Bloomberg Comment Letter I and the ECN Comment Letter. Nasdaq revised its statement on burden on competition to state that it operates in an intensely competitive global marketplace where its ability to compete is "based in large part on the quality of its trading systems, the overall quality of its market and its attractiveness to the largest number of investors, as measured by speed, likelihood and cost of executions, as well as spreads, fairness, and transparency."[72] Nasdaq asserted that its Single Book Proposal would have a pro-competitive effect by reducing overall trading costs, increasing price competition, and spurring further initiative and innovation among market centers and market participants. In addition, Nasdaq believed that its discontinuation of the order delivery functionality was pro-competitive, because such functionality harmed its competitiveness vis-à-vis other exchanges and

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70 See Track Comment Letter II at 2.

71 See Track Comment Letter II at 2.

72 See Single Book Proposal at 19596.

reduced the overall quality of its marketplace.

Nasdaq also defended its proposal to require all of its participants to accept automatic execution by eliminating its order delivery functionality. Nasdaq stated that its order delivery functionality is unique among exchanges and that no other exchange offers order delivery to its participants. Nasdaq asserted that such functionality is "expensive, complex, and detrimental to system performance, thereby increasing the cost and complexity of Nasdaq's trading systems and decreasing its performance." Nasdaq also believed that order delivery discourages order flow providers from sending orders to Nasdaq for processing because market participants cannot predict whether their orders will be delivered or automatically executed, thereby hurting Nasdaq's ability to compete with other markets.[73]

In addition, Nasdaq noted that, within its own system, the presence of order delivery negatively impacts the competition between market makers, ECNs/alternative trading systems ("ATSs"), and agency broker-dealers, because market makers and agency broker-dealers (who are required to participate in Nasdaq via automatic execution) view themselves as disadvantaged relative to ECNs and ATSs that can choose to participate either via automatic execution or order delivery. Nasdaq believed that removing the order delivery functionality would level the playing field between its market participants. Finally, Nasdaq noted that its ability to provide the fastest, fairest, and most efficient system possible was particularly important given the Commission's adoption of Regulation NMS.[74]

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73 Id.

74 See Single Book Proposal, supra note 3.

On May 8, 2006, Nasdaq again responded to the comments regarding the proposed rule change.[75] Nasdaq stated that the Single Book Proposal would "benefit investors by offering a faster, fairer, more efficient and more transparent system that executes trades in strict price/time priority; promote competition by allowing Nasdaq to increase efficiency, decrease overall trading costs, and provide better service to market participants; promote the development of the national market system by integrating separate trading systems into a single pool of exchange liquidity for market participants to access; and improve regulation by complying with the Regulation NMS Access and Order Protection Rules to prevent locked and crossed markets and trade throughs."[76] Nasdaq contended that Bloomberg's sole dispute with the Single Book Proposal was Nasdaq's proposal to eliminate the order delivery functionality that is available only to ECNs and available only on Nasdaq.[77]

Nasdaq stated that Bloomberg was unable to identify any requirement in the Act that a national securities exchange offer order delivery functionality, and noted that no other exchange has been required to, or chosen to, offer such functionality. Nasdaq stated that any requirement to offer such functionality should apply equally to all SRO markets.[78] In addition, Nasdaq rejected Bloomberg's claim that it was unfairly discriminating against "independent" ECNs to the advantage of its own ECN facilities (i.e., Brut and INET), because this proposal would

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75 See Letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq to Morris, dated May 8, 2006 ("Nasdaq Response Letter I")

76 Nasdaq Response Letter I at 1.

77 Nasdaq Response Letter I at 2.

78 Nasdaq Response Letter I at 2.

integrate the Brut and INET execution facilities with the Nasdaq Market Center into a single trading platform.[79]

Nasdaq emphasized that its proposal would not exclude ECNs but rather it would welcome them to participate in Nasdaq provided that they accept automatic execution. Nasdaq opined that the ECN commenters' systems were fully automated, and that they had declined to participate in Nasdaq via automatic execution to "isolate orders within [their] own system[s] and to preserve internal executions as much as possible."[80] Nasdaq also noted that several agency brokers participate in Nasdaq, accept automatic executions, and manage their risk of double executions by cancelling their quote or order on Nasdaq before matching an order internally.[81]

Nasdaq stated that Bloomberg could conduct its business elsewhere and that the Act does not require Bloomberg to post its orders in Nasdaq. As an example, Nasdaq noted that other ECNs have elected to move their business to regional exchanges or the ADF. Nasdaq said that Bloomberg's contention was based on the false premise of a Nasdaq monopoly, and that Bloomberg was a privileged Nasdaq participant, as opposed to a "prisoner" of Nasdaq's system.[82]

Nasdaq reiterated its concerns about the delay in executions caused by order delivery. Nasdaq stated that order delivery interactions were more time consuming than automatic execution interactions, and that unlike automatic execution, orders delivered to an ECN could be rejected if the shares had been accessed by an ECN's direct subscribers. Nasdaq also presented

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79 Nasdaq Response Letter I at 2.

80 Nasdaq Response Letter I at 3.

81 Nasdaq Response Letter I at 3, note 6.

82 Nasdaq Response Letter I at 4.

data relating to order delivery during the week of March 13, 2006, which included a so-called "expiration Friday" on March 17th. During that week, Nasdaq stated that: 100 percent of automatic execution orders that Nasdaq attempted to execute actually executed; 14 percent of total orders that Nasdaq delivered to order delivery participants failed to execute and for one order delivery participant the overall failure rate exceeded 25 percent; 55.6 percent of orders delivered to order delivery participants prior to 9:30:15 failed to execute; 27.9 percent of orders delivered to order delivery participants between 9:30:15 and 9:30:30 failed to execute; 12.7 percent of orders delivered to order delivery participants between 9:30:30 to 3:59:30 failed to execute; and prior to 9:30:15, three order delivery participants had mean response times of over four, nine, and twenty seconds per order during that week.[83]

In addition to the time and response issues, Nasdaq stated that it was costly to maintain the order delivery functionality because it demanded "disproportionate system capacity and unique specifications, requirements, and programming not available to or needed by the vast majority of Nasdaq participants...." Nasdaq emphasized that these are costs no other SRO incurs. Nasdaq also believed that ECN response times and rejection rates created strong disincentives for market participants to use Nasdaq's systems because of the uncertainty and reduced speed of an order execution.[84] In addition, Nasdaq believed that time and response issues would be exacerbated under Regulation NMS, and expressed concern again about order

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83 Nasdaq Response Letter I at 5-6.

84 Nasdaq Response Letter I at 6.

delivery making Nasdaq a "slow" market or exposing it to "self-help" declarations by other trading centers.[85]

Finally, Nasdaq objected to Bloomberg's request for a delay in the effective date of an approval. Nasdaq believed that this would simply "delay the time when investors receive the benefits offered by a faster, fairer, more efficient and more transparent system."[86] In addition, Nasdaq noted that BATS was able to shift its order flow to the NSX in a matter of weeks, and that Nasdaq's filing provides Bloomberg with over three months to make the system changes needed for similar migration. Nasdaq also stated that there was no requirement under the Act to "accommodate the business schedule of any individual market participant" as it negotiated "a beneficial arrangement to post quotes in another venue" and that the Commission was directed by Section 19(b) of the Act to "determine promptly whether a rule proposal is consistent with the Act and to approve or reject it accordingly."[87]

On May 26, 2006, Nasdaq submitted to the Commission a second letter, responding to the Citigroup Comment Letter.[88] Nasdaq requested that the Commission disregard Citigroup's comment letter because Nasdaq asserted that it was untimely filed and was an attempt to use the statutory notice and comment period to delay consideration of the Single Book Proposal.[89] Nonetheless, Nasdaq responded to the substantive elements of the letter and disputed the assertions by Citigroup regarding the ADF's viability. In particular, Nasdaq noted that the

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85 Nasdaq Response Letter I at 6.

86 Nasdaq Response Letter I at 6.

87 Nasdaq Response Letter I at 7.

88 See Letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq to Morris, dated May 26, 2006 ("Nasdaq Response Letter II")

89 Nasdaq Response Letter II at 1-2.

predecessor of Citigroup's current OnTrade ECN, NexTrade, had been quoting on the ADF for over three years. Nasdaq also disputed Citigroup's assertion that the ADF's cost of connectivity was an "economic disincentive," instead characterizing it as "a cost of doing business" and stating that Nasdaq's order routing technology supports connectivity to any ADF participant whose quotation is displayed through the ADF in the consolidated quotation.[90] Nasdaq also reiterated that, like Bloomberg, Citigroup failed to mention that scores of agency brokers participate on Nasdaq systems and accept automatic executions, managing their dual liability risks by cancelling their quotations or orders on Nasdaq prior to matching their orders internally. Finally, Nasdaq asserted that Citigroup misstated that there would be no alternative facility for NYSE- and Amex-listed securities and distorted the Commission's statements in the Exchange Application Order, noting that it believed that the passage cited by Citigroup related to the Commission's requirement that there be an alternative facility for non-Nasdaq stocks prior to Nasdaq's operation as an exchange.[91]

On June 8, 2006, Nasdaq submitted to the Commission a third letter, responding to the Bloomberg Comment Letter III.[92] In this letter, Nasdaq reiterated its belief that Bloomberg could participate in Nasdaq via automatic execution, that Bloomberg was technologically capable of quoting in the NASD ADF "in a matter of days," and that Bloomberg did in fact have a number of alternatives to being an order delivery participant in Nasdaq.[93] Nasdaq also disagreed with

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90 Nasdaq Response Letter II at 2.

91 Nasdaq Response Letter II at 2.

92 See Letter from Jeffrey S. Davis, Senior Associate General Counsel, Nasdaq to Morris, dated June 8, 2006 ("Nasdaq Response Letter III")

93 Nasdaq Response Letter III at 2-3, 4-5.

Bloomberg's description of NSX's current operation and pointed out that two ECNs, INET and BATS, operate in that market with little disruption.[94] In addition, Nasdaq reiterated the critical nature of its Single Book Proposal, given the competition it faces both in the United States and abroad. Nasdaq stated that Single Book would be "lightning fast" and produce faster, more certain executions. In addition, Nasdaq stated that the proposal would transform its market into a strict price-time priority venue, promote competition, decrease overall trading costs, provide better service to market participants, and allow Nasdaq to comply with the access and order protection provisions of Regulation NMS.[95]

Nasdaq also stated that Bloomberg has a negative impact on Nasdaq's competitiveness, pointing to the period immediately following the market's opening as an example.[96] Nasdaq noted that, during the first week of May 2006, during the trading period prior to 9:30:15 am, Bloomberg's mean response time to delivered orders was over 5 seconds per order.[97] Finally, Nasdaq disagreed with Bloomberg's contention that eliminating order delivery was discriminatory, stating that it did not see "how requiring all market participants to use identical automatic functionality [could] be considered discriminatory."[98]

On June 9, 2006, Nasdaq submitted to the Commission a fourth letter, describing INET's technological problems in NSX.[99] Nasdaq stated that, on June 8, 2006, senior officers of the

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94 Nasdaq Response Letter III at 3.

95 Nasdaq Response Letter III at 3-4.

96 Nasdaq Response Letter III at 4.

97 Nasdaq Response Letter III at 4.

98 Nasdaq Response Letter III at 4-5.

99 See Letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq to Cox, dated June 9, 2006 ("Nasdaq Response Letter IV")

NSX notified Nasdaq that the NSX was "experiencing severe capacity overages and quotation delays in its core systems…[and]…requested that Nasdaq cause INET to cease sending quotations to the NSX and stated that NSX was considering terminating INET's ability to send quotations to NSX."[100] Nasdaq stated that the possibility of future technology failures was increasing as message traffic has increased significantly across the industry. Nasdaq stated that it was taking all available, prudent steps to avoid future disruptions, and that approval of the Single Book Proposal would enable it to remove all quotations from NSX and avoid such technology failures.[101]

VI. Commission's Findings and Order Granting Accelerated Approval of Amendment Nos. 2 and 3

As discussed fully throughout this approval order, the Commission has carefully reviewed the proposed rule change, as amended, the comment letters, and Nasdaq responses, and finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[102] Specifically, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act[103] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a

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100 Nasdaq Response Letter IV at 1.

101 Nasdaq Response Letter IV at 1-2.

102 15 U.S.C. 78f(b).

103 15 U.S.C. 78f(b)(5).

free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the exchange. The Commission also finds that the proposed rule change, as amended, is consistent with Section 6(b)(8) of the Act[104] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

A. Elimination of Order Delivery Function

Nasdaq's proposal would require that all Nasdaq participants accept automatic executions and would eliminate order delivery processing in the newly integrated system. Nasdaq's primary rationale for this aspect of the proposal is as follows:

- order delivery functionality is expensive, complex, and detrimental to its system and decreases system performance and no other national securities exchange is required to provide this service;
- order delivery functionality hampers Nasdaq's ability to compete by discouraging order flow providers from sending orders to Nasdaq because market participants cannot predict whether their orders will be delivered or automatically executed;
- order delivery functionality negatively impacts competition between market makers, ECNs/ATSs, and agency broker-dealers, because market makers and agency broker-dealers (who are required to participate in Nasdaq via automatic execution) are

104 15 U.S.C. 78f(b)(8).

disadvantaged relative to ECNs and ATSs that can choose to participate either via automatic execution or order delivery;

- Nasdaq's system is completely voluntary and ECNs are not required to quote or participate in Nasdaq; and
- in light of the competition fostered by Regulation NMS, Nasdaq needs to provide the fastest, fairest, and most efficient system.

Nearly all of the commenters opposed the proposed elimination of Nasdaq's order delivery functionality.[105] The commenters suggested that the proposal was inconsistent with Sections 6(b)(5)[106] and 6(b)(8) of the Act[107] in that it unfairly discriminated between brokers or dealers and imposed a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The main assertions by the commenters are as follows:

- the automatic execution requirement would expose ECNs to dual liability risks;
- the automatic execution requirement would force ECNs out of the Nasdaq market and have a negative impact on their customers;
- the costs to move to another facility would be burdensome for ECNs;
- there are no viable alternatives, including the NASD ADF and regional exchanges, to participation in Nasdaq;
- Nasdaq is using its regulatory status to perfect a monopoly over Nasdaq-listed securities; and

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105 See, e.g., Bloomberg Comment Letter II at 9; Knight Comment Letter at 2; Track Comment Letter I at 1.

106 15 U.S.C. 78f(b)(5).

107 15 U.S.C. 78f(b)(8).

- order delivery does not have a negative impact on the performance of Nasdaq's system, nor would it place Nasdaq at any undue risk in light of Regulation NMS.

The Commission finds that this proposal does not unfairly discriminate among market participants, nor does it impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

1. Competition Issues

The Commission believes that the Single Book Proposal is an appropriate initiative by Nasdaq to enhance the quality of its exchange through integrating its three trading platforms into a single unified system, to add efficiency in executions and to increase overall market transparency. The Commission has long held the view that "competition and innovation are essential to the health of the securities markets. Indeed, competition is one of the hallmarks of the national market system."[108] The Commission notes that the notion of competition is inextricably tied with the notion of economic efficiency, and the Act seeks to encourage market behavior that promotes such efficiency, lower costs, and better service in the interest of investors and the general public.[109] Therefore, the Commission believes that the appropriate analysis to determine a proposal's competitive impact is to weigh the proposal's overall benefits and costs to competition based on the particular facts involved, such as examining whether the proposal would promote economically efficient execution of securities and fair competition between and among exchange markets and other market centers, as well as fair competition between the participants of a particular market.

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108 See SuperMontage Order at 8049.

109 15 U.S.C. 78c(f).

The Commission notes that Nasdaq operates in a competitive global exchange marketplace for listings, financial products, and market services and competes in such an environment with other market centers, including national securities exchanges, ECNs, and other alternative trading systems, for the privilege of providing market and listing services to broker-dealers and issuers. Within Nasdaq's systems, ECNs and ATSs compete with market makers and agency broker-dealers for retail and institutional order flow. Thus, the Commission views Nasdaq as an individual market as well as a piece of the larger, overall market structure.

The ECN's opposition to the instant proposal is that it will cause a disruption to their manner of doing business, and such operational changes are potentially burdensome and costly. Under the proposal, ECNs that choose to continue operating in Nasdaq will have to accept automatic executions and internally manage their quotes to prevent dual executions of the same order, while ECNs that opt to use another SRO facility to display their order flow may face reduced connectivity and higher costs. That a proposed rule change to an SRO's trading system requires a market participant to reevaluate its business model, develop new technology, or reprogram its current systems is not something that is unique to Nasdaq and moreover is not something that is unique to ECNs. Invariably, any proposed rule change to a fundamental function of an SRO market (e.g., display, execution, trade-reporting, etc.) will require certain changes by the affected market participants; and more than likely such changes must be effectuated by a technological solution in an increasingly automated national market system.

As stated above, ECNs currently using Nasdaq's order delivery functionality may continue to participate in Nasdaq via automatic execution. Rather than excluding ECNs, Nasdaq is simply requiring ECNs to participate in Nasdaq on an automatic execution basis, as other

participants are currently required to do. According to Bloomberg, order delivery is necessary because unlike market makers, ECNs act as agency brokers and do not carry inventory or act as principal. Without the order delivery functionality, Bloomberg contends that ECNs would be exposed to dual liability.[110] Bloomberg says that ECNs would be involuntarily forced to act as dealers and abandon their current business models.[111] Nasdaq responds that ECNs could participate as Nasdaq automatic execution participants as agency brokers by managing dual liability risks by cancelling their quote/order on Nasdaq before matching the order internally.[112] This risk management objective could be technologically achieved by ECNs giving priority to execution of the publicly displayed order in Nasdaq rather than the order flow that is only internally available on the ECN books to its subscribers.[113] In fact, Nasdaq asserts that agency-brokers on its system currently operate and manage their dual liability risks in that manner. The various ECN comment letters opposing the elimination of Nasdaq's order delivery functionality have not disputed the validity of this claim.

Nasdaq has also stated that its current order delivery functionality is costly to operate and requires disproportionate system capacity, unique specifications, and additional programming. In addition, Nasdaq has emphasized that, though ECNs may provide an automated evaluation and response to orders, the time required to send message traffic back and forth between Nasdaq and ECNs involves delays that do not exist in the case of automatic executions. This potential for delay, as well the possibility that an order could be rejected by an order delivery ECN, gives a

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110 Bloomberg Comment Letter II at 4.

111 See, e.g., Bloomberg Comment Letter II at 4.

112 See Nasdaq Response Letter I at 3, note 6.

113 Nasdaq Response Letter I at 3, note 6.

measure of uncertainty to orders entered on Nasdaq, which may impede Nasdaq's ability to compete with other markets and provide faster executions with increased certainty.[114]

Nasdaq has stated legitimate regulatory and operational reasons for eliminating the order delivery service. For instance, Nasdaq is concerned that order delivery may cause the System to be deemed "slow" under Rule 611 of Regulation NMS. Although it appears that under most operating conditions, order delivery may not pose a significant risk that the System would be a "slow" market or expose it to the election of the "self-help" exception under Rule 611(b)(1) of Regulation NMS, Nasdaq raises legitimate concerns that, during periods of increased market activity or system stress, the order delivery functionality could place its market at risk.

The Commission recognizes ECNs could pose differing levels of risk to the Integrated System and that normally ECNs may, as Bloomberg commented, generally be able to respond within 5-20 milliseconds;[115] however, Nasdaq has valid concerns over the response times of its market participants and the potential for such response times to negatively impact its entire market. Thus, the prospect of a single participant's slow response time affecting the protected quotation status of the entire market under Regulation NMS is a valid consideration in Nasdaq's determination of whether it is best to retain the order delivery functionality.

ECNs also assert that the proposal is unfairly discriminatory and it imposes a burden on competition that is not necessary or appropriate in furtherance of the Act because it would force ECNs to leave the Nasdaq market to operate either in another SRO facility or the NASD ADF. The commenters argue there are no viable alternatives for the ECN business model in the

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114 Nasdaq Response Letter I at 4-6. See also Nasdaq Response Letter III at 3-5.

115 See, e.g., Bloomberg Comment Letter II at 7-8.

marketplace, and thus the Nasdaq order delivery service, which accommodates the ECN business model, must be preserved. The Commission does not share this view.

As an initial matter, the Commission notes that the Act does not require Nasdaq to retain a market structure that supports the business operations of ECNs. Further, ECNs may post their orders in an SRO other than Nasdaq. The Commission believes that ECNs have a variety of options if they determine that, as a result of this proposal, they should forego Nasdaq participation. For example, ECNs may decide to post their liquidity to another SRO. In the past ECNs such as BATS, Brut, Instinet, Island, INET, Archipelago, and Attain have moved some or all of their activities from Nasdaq to other trading venues. Specifically, INET quotes on NSX; more recently, BATS has also moved from Nasdaq to NSX. Archipelago, through ArcaEx, became the equities trading facility of the Pacific Exchange, Inc. Other ECNs, including OnTrade (and its predecessor, NexTrade), quote in the NASD's ADF. Before Brut's purchase by Nasdaq, Brut quoted on the Boston Stock Exchange.

Accordingly, ECNs that do not want to operate under the Nasdaq's Exchange Rules have other options at this time, and other alternatives for ECNs to participate as order delivery systems are emerging. Thus, while ECNs may not view the presently available alternatives to Nasdaq to be as appealing as participating on Nasdaq via order delivery, the Commission nevertheless believes viable alternatives to Nasdaq participation exist for ECNs.

a. Alternatives to Nasdaq

In their comment letters, ECNs have been particularly critical of the capabilities of the NASD ADF and suggested that it does not constitute a true viable alternative to the Nasdaq market because it lacks: (1) an execution facility; (2) adequate order protection and quote

attribution; (3) favorable revenue sharing plans; (4) sub-penny quoting up to four decimal places for securities priced less than $1.00; and (5) connectivity to ECN participants. However, the Commission, on various occasions, has determined that the NASD ADF provides an alternative quotation facility for Nasdaq securities.[116] The NASD ADF does not have all the advantages and liquidity of an active exchange like Nasdaq, and thus may not currently be the optimal facility for an ECN and its particular business model; nonetheless, the NASD ADF facility has the basic requirements of a quotation facility for Nasdaq securities, thus providing market participants a venue other than Nasdaq in which to display their quotes.

The history of ECN participation in Nasdaq is instructive. Nasdaq began as a quotation, and then trading reporting, facility of the NASD, where quotes and trades of securities not listed on an exchange could be displayed. Later, Nasdaq displayed quotes and trades of exchange-listed stocks. Nasdaq satisfied the NASD's obligation to operate a system to collect quotes and trades arising under now Rules 601 and 602 of Regulation NMS.[117]

In 1996, the Commission adopted the Order Handling Rules,[118] enabling ECNs to comply with a requirement to publicly display market maker quotes entered into the ECN by communicating these quotes to an SRO that was willing to display them in the consolidated quote system. The Commission said that if no SRO was willing to accept these quotes, it would take steps to ensure that these ECN quotes were included in the consolidated quote by an SRO.[119]

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116 See, e.g., Securities Exchange Act Release No. 45156 (December 14, 2001), 67 FR 388 (January 3, 2002).

117 17 CFR 242.601-02.

118 Securities Exchange Act Release Nos. 37619A (September 6, 1996), 61 FR 48290 ("Order Handling Rules").

119 Id.

Nasdaq, as the competing market maker quotation system for non-exchange listed stocks operated on behalf of the NASD, chose at that time to accept ECN quotes in its system. Nasdaq accommodated the ECN order delivery preferences at their own displayed size even though market makers in Nasdaq were required (against their wishes) to accept automatic execution at an NASD-imposed 1,000-share automatic execution size.[120]

Nasdaq subsequently eliminated the required 1,000-share automatic execution size, but retained automatic execution for market makers.[121] In SR-NASD-99-53,[122] Nasdaq recast its execution system as the SuperMontage system, accepting orders directly from agency brokers, subject to automatic execution. In response to criticisms raised by ECNs, SuperMontage retained an order delivery functionality for ECNs.

Because of concerns raised about the monopoly position of Nasdaq as the residual quote and trade facility of the NASD, in approving the SuperMontage, the Commission conditioned its operation on the NASD's creation of an alternate display facility that would permit NASD members to operate outside of Nasdaq and still comply with their regulatory obligations under the Order Handling Rules and Regulation ATS.[123] The Commission also required that the NASD ADF be designed to identify through the central processor the identity of the NASD member that is the source of each quote and provide a market neutral linkage to the Nasdaq and other

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120 See Securities Exchange Act Release Nos. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000) (NASD-99-11).

121 See Securities Exchange Act Release Nos. 45998 (May 29, 2002), 67 FR 39759 (June 10, 2002) (NASD-2001-66).

122 See SuperMontage Order, supra note 17.

123 See Order Handling Rules, supra note 118 and Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) ("Regulation ATS").

marketplaces, but not an execution service.[124] Later, in approving a pilot program for the operation of the NASD ADF, the Commission re-stated the purpose first raised in the SuperMontage Order that the "ADF...permits registered market makers and registered ECNs to display their best-priced quotes or customer limit orders...through the NASD. ADF market participants are required to provide other ADF market participants with direct electronic access to their quote....The ADF also serves as a trade reporting and trade comparison facility. The ADF will therefore allow market participants to satisfy their order display and execution access obligations under the Order Handling Rules and Regulation ATS."[125] The D.C. Circuit Court of Appeals later stated that the NASD ADF is an alternative display facility that was created to "provide an alternative outlet in which market participants that did not wish to use SuperMontage could fulfill their order display and trading reporting obligations under SEC regulations."[126]

Subsequently, the NASD and Nasdaq chose to sunder their relationship, and Nasdaq registered as a separate national securities exchange.[127] The NASD satisfies its obligations for Nasdaq securities under Rules 601 and 602 of Regulation NMS through the ADF.

One commenter, Citigroup, suggested that the Commission "recently indicated that ADF is not a viable alternative to the Nasdaq Market Center; referring to comments received in response to the Nasdaq application for registration as an exchange." In this regard, the Commission believes that its response to Nasdaq exchange application comments has been

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124 SuperMontage Order at 8024.

125 See Securities Exchange Act Release No. 46429 (August 29, 2002), 67 FR 56862.

126 Domestic Securities, Inc. v. Securities and Exchange Commission, 333 F.3d 239, 248-249 (D.C. Cir. 2003).

127 See supra note 5.

misconstrued. The Commission did not intend to imply that the ADF is not a viable alternative to the Nasdaq Market Center. Instead, in response to the aforementioned comments the Commission reiterated its general belief, a theme initially voiced in the SuperMontage Order and again in the order approving the operation of the NASD ADF, that it would not be "consistent with the Exchange Act to allow the NASD to separate from the [Nasdaq] facilities by which it satisfies its regulatory obligations without having alternative means to do what the Exchange Act and the rules thereunder require. Accordingly, the Nasdaq Exchange may not begin operating as a national securities exchange and cease to operate as a facility of the NASD until NASD has the means to fulfill its regulatory obligations."[128] In the Exchange Application Order, the Commission clearly articulates the statutory and regulatory obligations the NASD must be able to satisfy prior to Nasdaq commences operation as a national securities exchange.[129] In pertinent part, the NASD must represent to the Commission that control of Nasdaq through the Preferred D Share is no longer necessary because the NASD can fulfill through means other than Nasdaq systems or facilities its obligations with respect to CTA Plan securities under Section 15A(b)(11) of the Act, Rules 602 and 603 of Regulation NMS, and the national market system plans, i.e., the CTA Plan, CQ Plan, Nasdaq UTP Plan, the ITS Plan, and the Order Execution Quality Disclosure Plan, in which the NASD will participate.[130]

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128 See Exchange Application Order at 3564.

129 See Exchange Application Order at 3562-64, 3566. The Commission recently modified the requirements for Nasdaq's operation as an exchange. See Securities Exchange Act Release No. 54085 (June 30, 2006), 71 FR 38910 (July 10, 2006).

130 See Securities Exchange Act Release No. 54085 (June 30, 2006), 71 FR 38910 (July 10, 2006).

Thus, while Citigroup cites to the comparative various operational differences of the NASD ADF versus the Nasdaq Market Center from a business perspective, the only regulatory requirement referenced in its letter is the ability of the NASD to accept quotes in non-Nasdaq listed securities, which is a pre-condition to the separation of Nasdaq from NASD and Nasdaq's Exchange operation that must be achieved by virtue of the NASD's plan participation.

The Commission recognizes that participation in the NASD ADF may require additional connectivity and related development costs for certain market participants. Again, the notion that innovation or change to a market's structure or manner of operation will require the use of technological or developmental resources is neither novel nor unforeseen. In fact, in approving Rule 610 of Regulation NMS (i.e., the Access Rule) the Commission extensively discussed the connectivity requirements for participants in the NASD ADF. The Regulation NMS Order reads, in pertinent part,[131]

> The NASD is not...statutorily required to provide an order execution functionality in the ADF. As a national securities association, the NASD is subject to different regulatory requirements than a national securities exchange....The Exchange Act does not expressly require an association to establish a facility for executing orders against the quotations of its members, although it could choose to do so. The Commission believes that market makers and ECNs should continue to have the option of operating in the OTC market,

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131 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37542 (June 29, 2005).

rather than on an exchange or The NASDAQ Market Center. As noted in the Commission's order approving Nasdaq's SuperMontage trading facility, this ability to operate in the ADF is an important competitive alternative to Nasdaq or exchange affiliation....

The Commission further stated that:

> [R]ule 610(b)(1) requires all trading centers that choose to display quotations in an SRO display-only quotation facility to provide a level and cost of access to such quotations that is substantially equivalent to the level and cost of access to quotations displayed by SRO trading facilities. Rule 610(b) therefore may cause trading centers [e.g., ECNs] that display quotations in the ADF to incur additional costs to enhance the level of access to their quotations and to lower the cost of connectivity for market participants seeking to access their quotations.

Thus, the Commission has contemplated the costs related to linking to and operating in the NASD ADF and who may appropriately bear such costs.

The Commission notes that, in addition to the ADF, other SROs such as NSX may eventually offer ECNs an order delivery quote functionality.[132] NSX, in response to Nasdaq Response Letter IV,[133] stated that it intended to undertake a major trading system initiative to prepare itself for the market structure changes and growth in volume anticipated with the

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132 Bloomberg also questioned the viability of NSX as a potential venue alternative to Nasdaq due primarily to a lack of system capacity. See Bloomberg Comment Letter III at 2-3.

133 See supra note 82.

implementation of Regulation NMS.[134] This NSX statement is in accord with the Commission's belief that efforts to improve the national market system via technological innovations is, and will continue to be, a market-wide phenomenon that will ultimately ensure that ECNs have a variety of viable options not only from a regulatory perspective, but from an operational and business perspective as well.

Accordingly, the Commission continues to encourage the innovation of the NASD ADF, SRO facilities, ECNs, and market participants in general that would enhance participation and interaction between markets and order flow within the national market system. Nonetheless, the Commission also believes that Nasdaq must have the flexibility to rework its structure to permit appropriate responses to the rapidly changing marketplace. Congress noted that the Commission should seek to "enhance competition and to allow economic forces, interacting with a fair regulatory field, to arrive at appropriate variation in practices and services."[135] In the Commission's view, as an exchange in competition with other markets, Nasdaq has the right to seek a more efficient model of doing business. While ECNs may desire certain functionality accommodating their current mode of participating in the Nasdaq market, Nasdaq, like other exchanges and market participants, must be permitted to innovate and adjust to the dynamic nature of today's securities industry, within the requirements of the Act.

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134 Specifically, NSX stated that it intends to implement a new state-of-the-art trading system, "NSX Blade," that would increase its systems capacity ten-fold and "establish a new standard for speed in the securities industry." NSX stated that broker-dealers would be able to connect to its system "through industry-standard FIX protocol or connect through any of the major extranets." Thus, NSX has represented that it intends to address the capacity and linkage concerns which Bloomberg believes make NSX an inadequate venue alternative to the Nasdaq Market Center. See NSX Comment Letter at 2.

135 See S. Rep. No. 94-75, 94th Cong., 1st Sess. 7 (1975) at 8.

The Commission recognizes that ECNs as a group have been among the most innovative market participants in recent years, introducing a number of novel trading tools and strategies. In addition, ECNs have benefited investors by providing cheaper and faster access to valuable liquidity. However, the Commission does not believe that the elimination of Nasdaq's order delivery functionality must or should necessarily have a deleterious impact on ECNs or the national market system as a whole.

b. Nasdaq's Position as SRO

Some of the commenters contended that this proposal is an attempt by Nasdaq to use its position as an SRO and as a for-profit entity to "crush" its ECN competition.[136] Specifically, some commenters aver that Nasdaq's acquisitions of the Brut and INET ECNs set this strategy in motion and this proposal would enable Nasdaq to "perfect its monopoly." Bloomberg, in its second comment letter, asserted that Nasdaq seeks to eliminate the order delivery functionality for independent ECNs "while preserving it for Nasdaq's own ECN facilities," namely Brut and INET, thereby giving its own ECNs a competitive advantage.[137] However, the Commission notes that under this proposal Nasdaq would integrate the Brut and INET execution systems with the Nasdaq Market Center, utilizing the INET platform; only Brut's broker-dealer routing functionality would continue upon the unification of the three trading platforms. Thus, this proposal could not advantage Nasdaq-affiliated ECNs over other ECNs because Nasdaq-affiliated ECNs would not exist. In addition, the Commission notes that Nasdaq's acquisitions of

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136 See, e.g., Track Comment Letter I at 1; and Bloomberg Comment Letter II at 1, 5, 8.

137 Bloomberg Comment Letter II at 1.

Brut and INET were reviewed and approved by the Commission as positive developments in the ever-changing, dynamic market environment.[138]

The Commission agrees with Nasdaq's statement that there is no explicit requirement in the Act for a national securities exchange to offer order delivery participation in their execution systems.[139] The Commission does not believe that Nasdaq must continue to offer order delivery functionality to meet its obligations in the Act and the rules and regulations thereunder. Although the order delivery functionality has been a part of Nasdaq's trading platform, the Commission does not believe Nasdaq is required to retain the functionality going forward, particularly given the legitimate regulatory reasons for its discontinuation provided by Nasdaq including that the functionality could pose significant risks and costs.

In addition, Nasdaq endured significant cost in 2005 to acquire INET[140] and, through the Single Book Proposal, Nasdaq seeks to use the INET platform as the basis for its Integrated System going forward in order to provide a faster and more efficient system with greater capacity. As competition increases both in the United States and globally, and with the Commission's approval of Regulation NMS, nearly all national securities exchanges are in the process of transforming their systems to better compete. Through implementation of its Single Book Proposal, Nasdaq seeks to maximize the advantages of the INET trading platform – faster executions and increased certainty.

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138 See Securities Exchange Act Release Nos. 51326 (March 7, 2005), 70 FR 12521 (March 14, 2005) and 52902 (December 7, 2005), 70 FR 73810 (December 13, 2005).

139 Nasdaq Response Letter at 2.

140 In its third comment response letter, Nasdaq stated that it spent close to $1 billion in 2005 to acquire INET from Reuters. Nasdaq Response Letter III at 3.

As Nasdaq prepares to commence operations as a national securities exchange, the Commission believes that providing order delivery functionality is not required of Nasdaq, as with any other exchange. If another exchange deems such functionality to be advantageous for its operation as an exchange, it may choose to add it. Notwithstanding the valuable contributions that ECNs bring to the national market system in terms of liquidity and innovation, the Commission does not believe that the Act requires the Nasdaq exchange to continue to separately provide functionality to accommodate the particularized business choices of the ECN participants.

2. Claims of Unfair Discrimination

Some of the commenters assert that the elimination of the order delivery functionality in the proposed rule change, as amended, is inconsistent with Section 6(b)(5) of the Act because it would discriminate unfairly against independent ECNs vis-à-vis all other Nasdaq members and it would not promote a free and open market and a national market system.[141] The Commission disagrees. ECNs have been the only Nasdaq participants with the option to use the Nasdaq order delivery service; all other Nasdaq market participants, i.e., market makers, order entry firms, and UTP Exchanges, are currently required to accept automatic executions. Nasdaq has also maintained other features of its market exclusively for the benefit of ECNs (e.g., the ability to charge quote access fees.) While the Commission approved these "ECN-friendly" measures and found them to be consistent with the Act, these same provisions were never imposed upon Nasdaq by the Commission or deemed to be requirements under the Act.

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141 Bloomberg Comment Letter II at 10.

During its development as a quote facility of the NASD, Nasdaq had taken a series of actions to accommodate ECN participation and their particularized business model. In certain respects, ECNs have enjoyed a privileged status in the Nasdaq market compared to agency brokers and market maker participants by virtue of their ability to, amongst other things, accept order delivery instead of automatic execution. The Commission does not believe that, in removing the order delivery functionality, the instant proposal would result in unfair discrimination between customers, issuers, brokers, or dealers. Because Nasdaq has previously accommodated ECNs, changing features such as the order delivery function will necessarily impact ECNs disproportionately. However, the Commission disagrees with the suggestion that it logically follows that such disproportionate impact is per se equivalent to unfair discrimination under the Act. In this case, the Commission believes the proposed rule change is consistent with the Act and it does not unfairly discriminate between ECNs and other Nasdaq market participants. Nasdaq is eliminating a disparate treatment between ECNs and the other Nasdaq market participants by requiring that all participants accept automatic execution to increase the efficiency and competitiveness of the Nasdaq exchange.

3. Automatic Execution Function

The Commission notes that in numerous instances it has approved automatic execution within the national market system in general, and Nasdaq in particular. For instance, in the SuperMontage Order, the Commission affirmed that automatic execution is a reasonable way for Nasdaq to improve market efficiency and provide many benefits to a marketplace, particularly speed and certainty of executions.[142] The SuperMontage Order said that automatic execution

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142 SuperMontage Order at 8049.

also would promote investor confidence by increasing the likelihood that orders of moderate size from large and small investors alike will be filled almost instantaneously, improve the accuracy of Nasdaq's pricing systems, promote the timeliness of trade reporting, and help alleviate locked and crossed markets.[143] Most recently, in approving Rule 611 of Regulation NMS, the Commission clearly enunciated a view that automated markets and automated quotes (i.e., automatic execution functionality), combined with access to such markets and quotes was an important attribute in a national market system.[144]

To this end, Rule 611 of Regulation NMS only protects from trade-throughs automated quotations of automated markets. An automated quotation is a quotation that, among other things, is displayed and is immediately accessible through automatic execution, and that immediately and automatically cancels any unexecuted portion of an order marked as immediate-or-cancel without routing the order elsewhere.[145] In Question 5 of the Division's NMS FAQs, the Division said that an SRO trading facility that displays the quotations of order delivery ECNs can meet the requirements of the definition of an automated quotation only if such quotations are

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143 SuperMontage Order at 8049-50.

144 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

145 Rule 600(b)(3) of Regulation NMS defines an automated quotation to mean a "quotation displayed by a trading center that: (i) permits an incoming order to be marked as immediate-or-cancel; (ii) immediately and automatically executes an order marked as immediate-or-cancel against the displayed quotation up to its full size; (iii) immediately and automatically cancels any unexecuted portion of an order marked as immediate-or-cancel without routing the order elsewhere; (iv) immediately and automatically transmits a response to the sender of an order marked as immediate-or-cancel indicating the action taken with respect to such order; and (v) immediately and automatically displays information that updates the displayed quotation to reflect any change to its material terms. 17 CFR 242.600(b)(3).

closely integrated within the SRO trading facility.[146] In its comment letter, Bloomberg asserted that Nasdaq's interpretation of the response to Question 5 of the Division's NMS FAQs was wrong, in that the Division did "not authorize Nasdaq to drop order delivery without considering the factors the Division cited."[147] The Commission believes that Bloomberg has misinterpreted the Division's response to Question 5. The response does not address an exchange dropping its order delivery functionality. Instead, the response relates to whether a market supporting order delivery could be considered "automated," and if its quote could be "protected" under Regulation NMS. The Division's answer is intended to clarify how a market would comply with Regulation NMS and does not control whether Nasdaq keeps or discards its order delivery functionality.

4. Implementation Date

In Bloomberg Comment Letter III, Bloomberg stated that it and other order delivery ECNs had been led by Nasdaq to believe that the Nasdaq Market Center's order delivery functionality would be available until at least fall of 2006 at the earliest, if not on an ongoing basis.[148] Bloomberg requested that, should the Commission decide to approve the Single Book Proposal, the Commission delay the effective date of the rules to provide ECNs an opportunity to migrate to another venue.[149] The USCC also encouraged the Commission to, as a matter of good process, "consider the need for appropriate transition periods" should the proposed rule change be adopted.[150] Similarly, Track requested a phased-in approach to the rules should they be

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146 NMS FAQs at Question 5.

147 Bloomberg Comment Letter II at 7.

148 Bloomberg Comment Letter III at 8-11.

149 Bloomberg Comment Letter II at 11; see also Bloomberg Comment Letter III at 11.

150 See USCC Comment Letter at 1-2.

adopted.[151] In response to commenter concerns and in order to provide ECNs with adequate time to program their systems for participation in Nasdaq or migration to another venue,[152] Nasdaq has agreed to delay its implementation and roll-out of the Single Book Proposal until August 28, 2006.[153]

In the Commission's approval of Nasdaq's exchange application in January 2006, the Commission emphasized that Nasdaq's approval was based on a set of rules with price/time priority.[154] In addition, the Commission noted in the Exchange Application Order that the two ECNs that Nasdaq had recently acquired – Brut and INET – both applied rules that required their orders to be executed in price/time priority.[155] As discussed above, the Single Book concept of integrating the three Nasdaq Facilities was discussed by the Commission in the Exchange Application Order and the Commission believed that such an integration would be beneficial, though the Commission permitted the three Nasdaq Facilities to operate separately for a temporary period, until September 30, 2006, because the Brut and INET facilities had only been recently acquired by Nasdaq.

The Commission notes that Nasdaq, independent of its exchange application and as a NASD subsidiary at the time, had already proposed to integrate its three facilities by September 30, 2006 in its filing to establish the rules governing the operation of its INET

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151 Track Comment Letter I at 2.

152 See Bloomberg Comment Letter II at 11; Bloomberg Comment Letter III at 11; USCC Comment Letter at 1-2; and Track Comment Letter I at 2.

153 See Amendment No. 3.

154 Exchange Application Order at 3558-59.

155 Exchange Application Order at 3558, note 137. See also Securities Exchange Act Release Nos. 52902 (December 7, 2005), 70 FR 73810 (December 13, 2005) ("INET Order") and 51326 (March 7, 2005), 70 FR 12521 (March 14, 2005) ("Brut Order").

System.[156] In the INET Order the Commission approved Nasdaq's proposed commitment to integrate as of September 30, 2006;[157] however, that date was not mandated by the Commission. In addition, the plain language of the INET Order, NASD Rule 49545(b)(2), and the Exchange Application Order makes clear that September 30, 2006 was the latest date that Nasdaq, pursuant to its commitment, could integrate its trading facilities. Neither the INET Order nor the Exchange Application Order required that integration be delayed until September 30, 2006, or prohibited Nasdaq integrating its systems at an earlier date.

The Commission believes that astute market participants, such as Bloomberg, could have reasonably anticipated the strong possibility of Nasdaq operating on an automatic-execution only basis prior to September 30, 2006, based on: (1) Nasdaq's anticipated operation as an exchange with executions based on price-time priority for all of Nasdaq's order flow, (2) Nasdaq's acquisition of Brut and INET, both of which are automatic-execution facilities, and (3) Regulation NMS where the Commission clearly enunciated a view that automated markets and automated quotes (i.e., automatic execution functionality), combined with access to such markets and quotes was an important attribute in a national market system.

In addition, formal notice of Nasdaq's intention to create an Integrated System based on automatic executions prior to September 30, 2006 was clearly given on February 7, 2006, the day Nasdaq filed the Single Book Proposal with the Commission. At that time, Nasdaq proposed to commence operation of the Integrated System by as early as May 2006. Bloomberg submitted an initial comment letter opposing the proposed rule change dated March 6, 2006, which suggested

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156 See Securities Exchange Act Release No. 52723 (November 2, 2005), 70 FR 67513 (November 7, 2005)("INET Notice").

157 See INET Order at 73811.

that it would take three to six months to complete the systems work required to adapt to a new venue.[158] The Commission understands that BATS has already made and implemented its plans to migrate its liquidity to NSX.[159] In addition, in response to comments for a transitional phase-in period,[160] Nasdaq has proposed to commence its phased-in implementation of the Integrated System based on automatic executions on August 28, 2006;[161] which is almost seven months after the proposal was filed, and nearly six months since Bloomberg's initial comment letter. The Commission believes that order delivery ECNs have had sufficient time to make alternate plans for quoting in the ADF or another SRO.

Section 19(b)(1) of the Act[162] requires a SRO to the file with the Commission "any proposed rule change in, addition to, or deletion from the rules of such self-regulatory organization...accompanied by a concise general statement of the basis and purpose of such proposed rule change. Such proposed rule change must be filed in accordance with the requirements of Rule 19b-4 under the Act.[163] The Commission believes that Nasdaq has filed the Single Book Proposal in accordance with the requirements of the Act and its rules and regulations thereunder.

The Commission believes that Nasdaq has met all of the procedural requirements for the instant proposed rule change and provided the public in general and interested parties in particular

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158 Bloomberg Comment Letter I at 11.

159 See Nasdaq Response Letter II.

160 See Track Comment Letter I at 2; USCC Comment Letter at 1-2; and Bloomberg Comment Letter IV at 1.

161 See Amendment No. 3.

162 15 U.S.C. 78s(b)(1).

163 17 CFR 240.19b-4.

with adequate notice and opportunity to comment under the Act. The Commission believes that the Integrated System will promote competition and bring investors and the national market system benefits through the efficiencies and transparencies brought about through a single liquidity pool with price/time priority. The Commission believes that, given the notice provided by Nasdaq's filings, it is consistent with the Act for Nasdaq to implement the Integrated System as proposed.

B. Operation as a National Securities Exchange

The Commission notes that, under the Single Book Proposal, Nasdaq's trading platform would have an integrated quote/order book operated in accordance with a unified price/time priority execution algorithm. In the Exchange Application Order, the Commission acknowledged that, because of the recent nature of Nasdaq's Brut and INET acquisitions and because of the reliance by participants on the continued availability of those ATSs, it was in the public interest for Brut and INET to be available for a limited period while Nasdaq worked to integrate them with its NMC Facility.[164] The Commission stated that "it is beneficial for orders in the same securities directed to an exchange to interact with each other" and that "[s]uch interaction promotes efficient exchange trading and protects investors by assuring that orders are executed pursuant to a single set of priority rules that are consistently and fairly applied."[165] The Commission permitted the Exchange to operate three separate trading platforms – namely the NMC Facility, Brut Facility, and INET Facility – for a temporary period prior to September 30,

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164 Id at 3559.

165 Id.

2006. This proposed rule change, as amended, would enable Nasdaq to satisfy its Commission-approved commitment to integrate its three trading facilities prior to September 30, 2006.

In addition, Nasdaq's Single Book Proposal will allow the Exchange to program its system to operate in compliance with the Exchange Application Order in additional ways. For example, the Integrated System would not accept reports of transactions occurring outside the Integrated System, would interact with the network processors for the various national market system plans in compliance with Commission rules governing exchanges, and would fulfill Nasdaq's new role as an exchange in the national market system plans, including the national market system plan governing the Intermarket Trading System ("ITS Plan"). In addition, under the Single Book Proposal, Nasdaq itself (rather than its individual members) would be bound by the obligations of the ITS Plan, maintain a single two-sided quotation, and be responsible for trade-through compliance. The Commission notes that the proposed rules change, as amended, cannot be operational until Nasdaq has satisfied all the conditions set forth by the Commission in the Exchange Application Order.[166]

C. Regulation NMS

The Commission believes that the proposed rule change should allow Nasdaq to comply with the requirements of Regulation NMS.[167] In proposed Nasdaq Rule 4613(e), Nasdaq proposes to adopt a rule with regard to locked and crossed markets. The Exchange has also designed its proposed Book Processing[168] and Order Routing[169] rules to comply with the

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166 Exchange Application Order at 3566.

167 See supra note 6.

168 See proposed Nasdaq Rule 4757.

169 See proposed Nasdaq Rule 4758.

requirements of Regulation NMS. These proposed rules include permitting users to designate orders meeting the requirements of Rule 600(b)(30) of Regulation NMS[170] as intermarket sweep orders, which would allow orders so designated to be automatically matched and executed without reference to protected quotations at other trading centers.

In addition, Nasdaq has proposed to implement routing options that its believes are consistent with Rules 610 and 611 of Regulation NMS. Nasdaq also proposed rules intended to ensure its compliance with Rule 612 of Regulation NMS (i.e., accepting sub-penny prices in $0.0001 increments for securities priced less than $1.00 a share and rejecting orders in sub-penny increments for securities priced $1.00 or more per share).[171] The Commission also notes that proposed Nasdaq Rule 4756(c)(4) addresses situations where Nasdaq has reason to believe it is not capable of displaying automated quotations, including adopting policies and procedures for communicating to both its members and other trading centers about such a situation, as well as receiving and responding to notices of other trading centers electing the "self-help" exception under Rule 611(b)(1) of Regulation NMS.

D. Other Rules

The proposed rule change, as amended, would merge five current sets of rules (the 4600, 4700, 4900, 4950, and 5200 Series) into two (the 4600 and 4750 Series), with the proposed 4600 Series governing System participants and the proposed 4750 Series governing the operation of the Integrated System. In addition to reorganizing the rule set, and making changes to the Exchange's rules for exchange and Regulation NMS readiness, the proposed rule change, as

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170 17 CFR 242.600(b)(30).

171 Single Book Proposal at 19592. See also proposed Nasdaq Rule 4613(a)(1)(B).

amended, addresses, among other things, openings and closings, the order display/matching system, order types, time in force designations, anonymity, routing, book processing, adjustment of open orders, and Nasdaq's proposed phase-in plan for the proposed rules.

E. Impact on Efficiency, Competition, and Capital Formation

Section 3(f) of the Act requires that the Commission consider whether Nasdaq's proposal will promote efficiency, competition, and capital formation.[172] As discussed in more detail above, the Commission has carefully considered whether the proposal will promote efficiency, competition and capital formation and has concluded that the Single Book Proposal should encourage competition and should not impede the development of other trading systems or market innovation. The Commission believes that the Single Book Proposal is an appropriate undertaking by Nasdaq to enhance the quality of its market by providing more information to investors, promoting greater efficiency in executions, and increasing overall market transparency. While the Single Book Proposal should provide a central means for accessing liquidity in Nasdaq and non-Nasdaq stocks, it does not represent an exclusive means, nor does it prevent broker-dealers from seeking alternative order routing and execution services. In addition, the Commission believes that the proposal should promote competition and capital formation by providing its market participants with several quote and order management options (e.g., Discretionary Orders, Reserve Orders, Pegged Orders, and Minimum Quantity Order), including order types which will enable market participants to operate in the post-Regulation NMS trading environment, such as Intermarket Sweep Orders, Price to Comply Orders, and Price to Comply Post Orders.

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172 15 U.S.C. 78c(f).

F. Accelerated Approval of Amendment Nos. 2 and 3

As set forth below, the Commission finds good cause to approve Amendment Nos. 2 and 3 to the proposed rule change, as amended, prior to the thirtieth day after the amendments are published for comment in the Federal Register pursuant to Section 19(b)(2) of the Act.

In Amendment No. 2, Nasdaq modifies the proposed rule language to reflect the Commission's extension of certain compliance dates relating to Regulation NMS. Specifically, Nasdaq is modifying proposed rules to reflect that such rules would not become effective until the applicable Regulation NMS implementation date of May 21, 2007. Such rules include Rule 4613(e) (pertaining to locked and crossed markets), Rule 4751(f) (pertaining to order types), and Rule 4755 (pertaining to intermarket sweep orders). The Commission finds good cause to accelerate approval of these changes prior to the thirtieth day after publication in the Federal Register. The Commission believes this is a reasonable approach in light of the extension of Regulation NMS compliance dates and should help to ensure that the appropriate Nasdaq rules are in place at the time that Regulation NMS compliance is required.

In Amendment No. 2, Nasdaq also is making several technical corrections to the proposed rule change, for example, eliminating typographical and underlining errors. These changes are non-substantive and technical in nature and are necessary to clarify the proposal. The Commission finds good cause to accelerate approval of these changes prior to the thirtieth day after publication in the Federal Register because they better clarify Nasdaq's rules, which should assist members' ability to comply with their requirements, and assist investors in understanding their application and scope.

In Amendment No. 3, in response to the comments filed by the U.S. Chamber of Commerce, Bloomberg, and others, Nasdaq proposes to commence a phased-in implementation of the Integrated System on August 28, 2006.[173] In addition, Amendment No. 3 describes Nasdaq's plan to test securities on the System during July and early August 2006 and phase-in the operation of the Integrated System with an initial three-week transition period for Nasdaq-listed stocks, followed by non-Nasdaq-listed stocks.

The Commission finds good cause to accelerate approval of this change prior to the thirtieth day after publication in the Federal Register. The Commission finds that the change in the proposed implementation of the Integrated System to a later date than that originally proposed and published for comment and later than that proposed by Amendment No. 2, as well as the allowance of a testing period and phased-in period, would provide a longer transition period for Nasdaq market participants and other participants in the national market system. The delay until August 28, 2006 and the phase-in period should help to ensure that there is an orderly transition to the Integrated System and provide Nasdaq's market participants, including many of the commenters, opportunity to decide whether to continue participating in Nasdaq, or to elect to move their business elsewhere. The Commission notes that August 28, 2006 represents a period of nearly seven months from the original filing date of this proposed rule change. The Commission also notes that, notwithstanding Nasdaq's proposed August 28, 2006 implementation date, the proposed rules change, as amended, cannot be operational until Nasdaq has satisfied all the conditions set forth by the Commission in the Exchange Application

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173 The Commission notes that Amendment No. 3 replaces the August 14, 2006 implementation date that Nasdaq had proposed in Amendment No. 2.

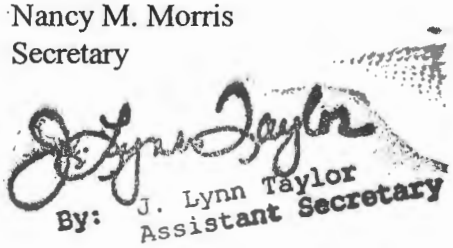
Order.[174] The Commission believes that August 28, 2006 should provide market participants with adequate time to prepare for the Implemented System, and would also permit Nasdaq to meet its commitment to fully integrate its three trading facilities on or before September 30, 2006.

VII. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[175] that the proposed rule change (File No. SR-NASDAQ-2006-001), as amended by Amendment Nos. 1, 2, and 3, be, and hereby is, approved.

By the Commission.

Nancy M. Morris
Secretary



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174 Exchange Application Order at 3566. The Commission recently modified the requirements for Nasdaq's operation as an exchange. See Securities Exchange Act Release No. 54085 (June 30, 2006), 71 FR 38910 (July 10, 2006).

175 15 U.S.C. 78s(b)(2).

Commissioner Glassman dissented as to penalty
Commissioner Atkins Not Participating

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 54148 / July 14, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12366

In the Matter of	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934**
Herzog, Heine, Geduld, LLC,	
Respondent.	

I.

The Securities and Exchange Commission (the "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 (the "Exchange Act") against Herzog, Heine, Geduld, LLC ("Herzog" or "Respondent").

II.

In anticipation of the institution of these proceedings, Herzog 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 Herzog and the subject matter of these proceedings, which Herzog admits, Herzog consents to the issuance of this Order Instituting Administrative Proceedings, Making Findings and Imposing Remedial Sanctions Pursuant to Section 15(b) of the Securities Exchange Act of 1934 (the "Order"), as set forth below.

III.

FINDINGS

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

Respondent Herzog is a registered broker-dealer that, during the period from 1999 through 2000, had its principal place of business in Jersey City, New Jersey. From 1999 through 2000, Herzog was one of the largest Nasdaq market makers based on trading volume.[2]

Summary

During the period from January 1999 through at least June 2000, Herzog failed to provide best execution to customer orders that Herzog received from correspondent broker-dealer firms. Herzog, in its capacity as a market maker, assumed the duty of best execution by making written and oral statements to correspondent broker-dealer firms to the effect that it would provide best execution to orders routed to Herzog for execution.

Best execution generally requires a firm to execute customer orders on the most favorable terms reasonably available under the circumstances. Although Herzog traders were told by their supervisors that they had an obligation to provide best execution for all orders routed to the firm, various traders failed on numerous occasions during the relevant period to provide executions to Herzog's correspondent broker-dealer firms' customer orders on the best terms that were reasonably available for those orders.

Herzog provided to all of its traders access to a proprietary order execution system whose computer software enabled traders to efficiently execute orders, but the functions made available to traders in this order execution system were open to misuse and were in fact misused by various traders, resulting in executions at prices inconsistent with best execution. Herzog was aware that functions of its order execution system, if misused, could lead to execution of customer orders at inferior prices. During the relevant period, however, Herzog did not implement an adequate supervisory system to detect and prevent the resulting executions at prices inconsistent with best execution.

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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.

[2] In June 2000, Merrill Lynch & Co., Inc. ("Merrill") acquired Herzog, Heine, Geduld, Inc. Herzog, however, continued to operate as a separate entity, with its own technical and compliance staff, and without substantial direction from Merrill, until at least early 2001. On August 31, 2001, Herzog, Heine, Geduld, Inc. merged with Herzog, Heine, Geduld, LLC, a Delaware limited liability company, in order to effect a change to its organizational form. The limited liability company assumed all of the assets and liabilities of Herzog, including its broker-dealer registration on file with the National Association of Securities Dealers ("NASD"). In late 2002, Merrill integrated Herzog's operations with those of its own. Herzog subsequently ceased trading operations, but remains registered with the Commission and maintains its broker-dealer registration with the NASD.

A failure to provide best execution to customer orders may violate Section 15(c) of the Exchange Act. In addition, Section 15(b)(4)(D) of the Exchange Act authorizes the Commission to sanction a broker or dealer that willfully violates any provision of the Exchange Act. Herzog is being sanctioned by the Commission for failing to provide best execution of customer orders received from its correspondent broker-dealer firms.

Herzog also failed to preserve email communications related to Herzog's business as such for the period from January 1999 to September 1999. Emails that are related to a broker-dealer's business as such must be preserved for not less than three years under the Commission's rules promulgated under Section 17(a)(1) of the Exchange Act. By failing to preserve the emails, Herzog violated Section 17(a)(1) of the Exchange Act and Exchange Act Rule 17a-4(b)(4).

Herzog Traders' Execution of Orders at Stale Prices and Prices Inconsistent with Best Execution

During the relevant period, January 1999 through at least June 2000, trading volume in Nasdaq stocks was at historically high levels and Herzog was one of the largest Nasdaq market makers. Herzog acted primarily as a wholesale Nasdaq trading firm. That is, it received most of its order flow from correspondent broker-dealer firms that directly received orders from customers. Herzog paid fees or rebates to the correspondent broker-dealer firms, and told the firms orally and in writing that it would execute the correspondent broker-dealer firms' customer orders on the "most favorable terms reasonably available under the circumstances."

Herzog's trading supervisors and the senior Herzog employees to whom they reported were responsible for ensuring that traders employed by Herzog provided best execution to orders routed to Herzog for execution. While supervisory personnel provided instructions concerning the firm's best execution obligation, the firm did not conduct formal training that was designed to ensure that traders had an adequate understanding of that obligation in the context of the functions of the Herzog order execution system. Herzog did not implement a sufficiently robust system of supervision of its traders with respect to fulfilling the firm's duty to provide best execution. For example, Herzog did not provide supervisory and compliance personnel with appropriate reports to permit a comparison between trader executions and contemporaneous bids, offers, and executions in the market.

During the relevant period, the majority of Herzog's orders were received electronically and were executed through Herzog's order execution system.[3] Generally, orders that did not exceed pre-established size limits -- the "bucket" size -- and that were immediately executable (i.e., market orders or other marketable orders) were executed automatically without trader intervention. Trader intervention, or manual execution, was typically

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[3] Herzog also received orders telephonically. These orders were sometimes entered into the Herzog order execution system and thereafter treated as electronic orders. Alternatively, a trader could execute an order by voice (e.g., by telling the customer, "You're done at $25.") and then enter the terms of the execution into the Herzog order execution system for recordkeeping and reporting purposes.

required only when: (1) a marketable order exceeded the bucket size for automated execution; or (2) the automated execution process was turned off or otherwise disabled. When a marketable order exceeded the bucket size for automated execution and the automated execution process was enabled, the portion of the order up to the bucket size was executed automatically, and the unexecuted remainder of the order was sent to the trader with responsibility for trading in the security. It then fell to that trader to manually execute the remainder of the order. When the automated order execution process was turned off or otherwise disabled -- which could have been for one or more securities or for all securities for which Herzog made a market -- entire orders were routed to the responsible trader or traders for manual execution.

This Order addresses orders or remainders of orders that were manually executed by Herzog traders.[4] Herzog traders could manually execute orders using a number of functions of the Herzog order execution system. These functions permitted traders to select an order from among a group of orders displayed on a screen, and then to execute that order against Herzog's own market making account with no, or few, keystrokes and only two clicks of a computer mouse. These functions were located on the "Executable Orders" tab of the Herzog order execution system screen, which was commonly referred to as the "pending screen."

As the name suggests, the pending screen displayed orders that were immediately executable but had not yet been executed. This screen first became a part of the Herzog order execution system in 1998, and was in general use no later than the beginning of the relevant period. Though it underwent changes during its existence, the pending screen remained in use throughout the relevant period. The pending screen displayed customer orders awaiting execution in rows, each order in its own row. Each row showed, among other things, the time the order was received, the side of the order (buy or sell), the order quantity, the security symbol, and, if the order was a limit order, the customer's limit price. In an area below the rows of orders, the screen displayed two graphical buttons that permitted execution of the order, one labeled "Execute QIF," another labeled "Execute." In the next lower portion of the screen were two input fields, labeled "Quantity" and "Price."

In the executions at issue here, the trader's first step in manually executing an order was to select the order from its row by highlighting it with a mouse click. Highlighting the order caused the display of certain market and other information concerning the Nasdaq security in question. Most significant were three price displays related to the highlighted order. First, in the right half of a window that opened below the rows of customer orders and above the graphical "Execute" and "Execute QIF" buttons, the screen displayed the current inside bid and offer prices, that is, the National Best Bid and Offer (the "NBBO"),[5] for the

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[4] Hereinafter, both "orders" and "remainders of orders" are simply called "orders."

[5] The NBBO is the highest bid price and lowest offer price currently available for a security, and is a factor considered in evaluating whether customer orders have received best execution.

highlighted security (labeled "Ins" for "Inside").[6] This display was continuously updated as changes occurred in the inside bid and offer after the order was highlighted. Second, in the left half of the window that opened when the order was highlighted, the screen displayed the inside bid and offer that prevailed at the time the highlighted order was received by Herzog.[7] This price display was labeled "QIF," standing for quote-in-force. Third, highlighting the order caused the "Price" field of the pending screen to display as a default price for the security, static as of the time the order was highlighted, the inside bid if the order was a sell order, or the inside offer if the order was a buy order.[8]

After highlighting an order, depending upon how much time had elapsed since the order was received, Herzog traders could use up to three functions on the pending screen to execute the order.[9] First, if fifteen seconds or less had elapsed since the time the order had been highlighted, the trader could simply click the graphical "Execute" button in the lower portion of the screen.[10] This action immediately executed the highlighted order at the price displayed in the "Price" field, which, as explained above, was the inside bid or offer that prevailed at the time the order had been highlighted. Second, if fifteen seconds or less had elapsed since the highlighted order had been received by Herzog, the trader could click the graphical "Execute QIF" button in the lower portion of the screen.[11] Clicking the "Execute QIF" button immediately executed the order at the inside bid or offer that prevailed at the time the order was received, that is, the "QIF" price. Third, the trader could manually override the default price in the "Price" field. To do so, the trader cleared the price that was automatically displayed in the "Price" field (the inside bid or offer at the time the order was highlighted), typed in an alternate price, and then clicked the "Execute" button (hereinafter, the "price override function").

During the relevant time period, various Herzog traders misused the "Execute QIF" button and price override function to execute customer orders at stale prices that were less advantageous to the customers than the prices that Herzog traders reasonably could have obtained.

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6 The right half of the window also displayed: (1) the number of shares at the best bid and offer; (2) Herzog's quote for the security, including the number of shares at its bid and offer; and (3) Herzog's position in the security and the average cost of that position.

7 The left half of the window also displayed some background information about the order highlighted, such as the originating broker-dealer number and, if the highlighted order was a portion of an order, the original quantity of the order.

8 At the same time, the "Quantity" field displayed the number of shares in the highlighted order.

9 Other methods of order execution were possible, but they are not relevant to this Order.

10 Until October 2000, the "Execute" button functioned for fifteen seconds after an order was highlighted. Thereafter, the "Execute" button functioned for ten seconds (rather than fifteen) after an order was highlighted.

11 Prior to its removal in October 2000, the "Execute QIF" button functioned for fifteen seconds after an order was received by Herzog. However, Herzog system maintenance records indicate that the "Execute QIF" button functioned for thirty seconds (rather than fifteen), or even without a time limitation during portions of 1999.

With respect to the "Execute QIF" button, as discussed above, for up to fifteen seconds, the pending screen simultaneously displayed and enabled for immediate execution both the inside bid (or offer, if the order was to buy) at the time the order was highlighted -- displayed as the default price in the "Price" field -- and the inside bid (or offer) at the time the order was received, displayed as the "QIF" price. Because the inside bid (or offer) was continuously changing according to market forces, the inside bid (or offer) at the time the order was highlighted was sometimes better or worse for the customer than the inside bid (or offer) at the time the order was received. Various Herzog traders on numerous occasions used the "Execute QIF" button to execute orders at stale and inferior inside bids or offers that prevailed when the orders were received, when the inside bids or offers at the time the orders were highlighted were better for customers.

With respect to the price override function, various Herzog traders misused it by manually entering stale prices that were less advantageous to customers than the prices that the traders reasonably could have obtained. For example, on limit orders various Herzog traders cleared default prices that were better for the customer and manually entered inferior customer limit prices.[12] In other instances, various Herzog traders cleared default prices that were better for the customer and manually entered inferior "QIF" prices.[13]

Such misuse of the above-mentioned functions of the Herzog order execution system by various Herzog traders did not provide Herzog's correspondent broker-dealer firms with the best execution of customer orders that was then reasonably available.

Inadequate Preservation of Emails

Upon the initiation of the formal investigation of Herzog's execution practices, the staff, in January 2002, issued a routine subpoena to Herzog that requested relevant communications, including emails, for the period from January 1999 through the date of the subpoena. Herzog, however, was unable to produce any emails for the period from January 1999 through September 1999. Nor could it explain what happened to the emails. The inability to produce the emails hindered the staff's investigation.

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[12] The customer limit price was displayed for the trader in the row of information about the highlighted order.

[13] The inside bid or offer at the time the order was received was displayed as the "QIF" price. Thus, using the price override function, traders could defeat the time limitation on the "Execute QIF" button.

Herzog's Response to OCIE

In responding to an examination of its order executions begun in August 2000 by the Commission's Office of Compliance Inspections and Examinations ("OCIE"), Herzog did not provide complete and timely document production and did not ensure comprehensive and complete responses to requests made by the OCIE examiners. The examiners asked Herzog to respond to both written and oral questions concerning specific order executions. Those questions should have elicited, but did not elicit, a full description of the "Execute QIF" function and other functions of the order execution system employed by the Herzog traders who were responsible for the particular order executions reviewed by OCIE. In addition, OCIE requested a demonstration of the Herzog order execution system, but the demonstration Herzog provided did not include the "Execute QIF" button, which OCIE did not know about at that time and which was relevant to the specific order executions that Herzog knew were of concern to OCIE. OCIE's examination was adversely affected and unnecessarily prolonged by Herzog's failure to provide timely and complete responses to OCIE's requests for information.

In determining the appropriate resolution of this matter, the Commission considered, in addition to the underlying conduct, Herzog's response to the OCIE examination.

Legal Discussion

Failure to Provide Best Execution

A broker-dealer has a legal duty to seek to obtain best execution of customer orders at the most favorable terms reasonably available under the circumstances.[14] A failure to provide best execution may constitute a violation of Section 15(c)(1)(A) of the Exchange Act, which makes it unlawful for any broker or dealer to "effect any transaction in . . . any security by means of any manipulative, deceptive, or other fraudulent device or contrivance."[15] Herzog expressly represented to its correspondent firms that it would provide best execution of customer orders routed to it from the correspondent firms. During the relevant time period, however, various Herzog traders used the "Execute QIF"

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[14] *See, e.g., Newton v. Merrill, Lynch, Pierce, Fenner & Smith*, 135 F.3d 266, 269-70 (3d Cir. 1998) (citing cases). *See also* Regulation NMS, Exchange Act Release No. 51808 (June 9, 2005), 70 Fed. Reg. 37,496, 37,538 (June 29, 2005); *In re Certain Market Making Activities on Nasdaq*, Exchange Act Release No. 40900 (Jan. 11, 1999), 1998 WL 919673 at *5 (settled case). Among the factors to be considered in determining whether best execution has been achieved are "order size, trading characteristics of the security, speed of execution, clearing costs, and the cost and difficulty of executing an order in a particular market." *Newton* at 270 n. 2 (citation omitted). *See also* Payment for Order Flow, Exchange Act Release No. 34902 (Oct. 27, 1994), 59 Fed. Reg. 55,006, 55,008-55,009 (Nov. 2, 1994); Order Execution Obligations, Exchange Act Release No. 37619A (Sept. 6, 1996), 61 Fed. Reg. 48,290, 48,322 (Sept. 12, 1996).

[15] *Cf. Newton*, 135 F.3d at 269 (finding that a failure to provide best execution may be a violation of Section 10(b) of the Exchange Act). *See also In re Knight Securities, L.P.*, Exchange Act Release No. 50867 (Dec. 16, 2004) 2004 WL 2913488 at *8 (settled case); Disclosure of Order Routing and Execution Practices, Exchange Act Release No. 43084 (July 28, 2000), 65 Fed. Reg. 48,406, 48,425 (Aug. 8, 2000) ("False or misleading statements made by market centers to routing firms regarding execution quality, if material and made with the requisite state of mind, may be actionable under antifraud provisions.") (citations omitted).

and price override functions to execute customer orders at prices that were stale and inferior. On numerous occasions they used the "Execute QIF" and price override functions to execute customer orders received from correspondent broker-dealer firms at the price prevailing at the time of receipt of the order even when a superior execution was reasonably available at the inside bid or offer prevailing at the time that the order was highlighted (the Herzog system default price) and did so without regard to order size, trading characteristics of the security, speed of execution, clearing costs, or the cost and difficulty of executing the order in a particular market. By virtue of the foregoing conduct, Herzog failed to provide best execution of customer orders routed to Herzog by its correspondent broker-dealer firms and willfully violated Exchange Act Section 15(c)(1).

Inadequate Preservation of Emails

Section 17(a)(1) of the Exchange Act provides, among other things, that brokers and dealers "shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title." The records required under Section 17(a)(1) and the rules promulgated thereunder are "the basic source documents" of a broker-dealer and are "a keystone of the surveillance of broker[s] and dealers by [Commission] staff and by the securities industry's self-regulatory bodies."[16]

Pursuant to its authority under Section 17(a)(1), the Commission promulgated Rule 17a-4. Rule 17a-4(b)(4) requires a broker-dealer to "preserve for a period of not less than three years, the first two years in an easily accessible place . . . [o]riginals of all communications received and copies of all communications sent . . . by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such."[17] Rule 17a-4 is not by its terms limited to physical documents. The Commission has stated that internal email communications relating to a broker-dealer's "business as such" fall within the purview of Rule 17a-4 and that, for the purposes of Rule 17a-4, "the content of the electronic communication is determinative" as to whether that communication is required to be retained.[18]

The email communications that the staff requested from Herzog were records that the firm was required to preserve under Rule 17a-4. The firm failed to preserve these emails from January 1999 to September 1999. It had no explanation for its failure to preserve these emails. As a result of this conduct, Herzog willfully violated Section 17(a)(1) of the Exchange Act and Rule 17a-4(b)(4).

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16 *In re Deutsche Bank Securities, Inc., et al.*, Exchange Act Release No. 46937 (Dec. 3, 2002) 2002 WL 31687142 at *3 (settled case) (internal quotations and citations omitted).

17 Exchange Act Rule 17a-4(b)(4), 17 C.F.R. § 240.17a-4(b)(4).

18 *See* Reporting Requirements for Brokers or Dealers Under the Securities Exchange Act of 1934, Exchange Act Release No. 38245 (Feb. 5, 1997). 62 Fed. Reg. 6469, 6472 (Feb. 12, 1997).

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions specified in the Offer submitted by Herzog. Accordingly, it is hereby ORDERED that:

A. Respondent is hereby censured pursuant to Section 15(b)(4) of the Exchange Act.

B. IT IS FURTHER ORDERED that Respondent shall, within ten days of the entry of this Order, pay a civil money penalty of $1,500,000 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 U.S. 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 Herzog as the Respondent in these proceedings and the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Gregory G. Faragasso, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549-7553.

By the Commission

Nancy M. Morris
Secretary

By: J. Lynn Taylor
Assistant Secretary

Commissioner Glassman dissented as to penalty
Commissioner Atkins Not Participating

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8722 / July 14, 2006

SECURITIES EXCHANGE ACT OF 1934
Release No. 54149 / July 14, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12366

In the Matter of	**: ORDER UNDER SECTION 27A(b) : OF THE SECURITIES ACT OF 1933 : AND SECTION 21E(b) OF THE**
Herzog, Heine, Geduld, LLC,	**: SECURITIES EXCHANGE ACT OF 1934, : GRANTING WAIVERS OF THE**
Respondent.	**: 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**

Merrill Lynch & Co., Inc. ("Merrill") has submitted a letter, dated June 19, 2006, requesting waivers 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 settlement by Herzog, Heine, Geduld, LLC ("Herzog"), an affiliated entity of Merrill, of an administrative proceeding commenced by the Commission.

On July 14, 2006, pursuant to Herzog's Offer of Settlement, the Commission issued an Order Instituting Administrative Proceedings, Making Findings and Imposing Remedial Sanctions Pursuant to Section 15(b) of the Securities Exchange Act of 1934 against Herzog (the "Order"). Under the Order, the Commission found that Herzog willfully violated Sections 15(c)(1) and 17(a)(1) of the Exchange Act and Exchange Act Rule 17a-4(b)(4) by (1) failing to provide best execution to customer orders received from correspondent broker-dealer firms; and (2) failing to preserve emails related to its business as such. The Order censures Herzog and requires it to pay a civil penalty of $1.5 million.

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 the 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 a judicial or administrative decree or order arising out of a governmental action that (I) prohibits future violations of the

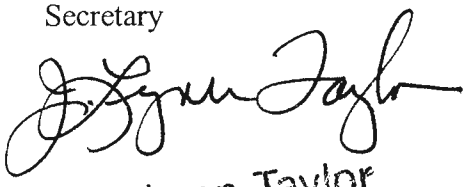
antifraud provisions of the securities laws; (II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws; or (III) determines that the issuer violated the antifraud provisions of the securities laws[.]" Section 27A(b)(1)(A)(ii) of the Securities Act; 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; Section 21E(b) of the Exchange Act.

Based on the representations set forth in Merrill's request, the Commission has determined that, under the circumstances, the request for waivers 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 21E(b) of the Exchange Act, that waivers 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 Merrill and its affiliated companies resulting from the entry of the Order are hereby granted.

By the Commission

Nancy M. Morris
Secretary



By: J. Lynn Taylor
Assistant Secretary

Commissioner Atkins Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8723 / July 17, 2006

SECURITIES EXCHANGE ACT OF 1934
Release No. 54156 / July 17, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12367

In the Matter of

Senior Resources Asset Fund, LLC and Kenneth E. Baum,

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 SECTIONS 15(b)(6) AND 21C 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") against Senior Resources Asset Fund, LLC ("Senior Resources") and pursuant to Section 8A of the Securities Act and Sections 15(b)(6) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Kenneth E. Baum (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers 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, 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 8A of the Securities Act of 1933 and Sections 15(b)(6) and 21C of the Securities Exchange Act of 1934, as set forth below.

III.

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

A. RESPONDENTS

1. Senior Resources Asset Fund, LLC, is a California company located in Dana Point, California. During 2001 and 2002, Senior Resources was in the business of providing financial advice to senior citizens. Senior Resources also issued securities in the form of promissory notes. Senior Resources has never been registered with the Commission, nor has it registered any offerings or class of securities with the Commission.

2. Kenneth E. Baum, age 46, resides in Hemet, California. Baum is the manager and director of Senior Resources. Baum was associated with a registered broker-dealer from 1985 to 1995, but has not been associated with a registered broker-dealer since that time.

B. FACTS

1. From February 2001 until October 2002 Senior Resources issued securities in the form of promissory notes. The Senior Resources promissory notes purported to bear interest at rates ranging from 10% to 15% per year, and to mature two years from the date of issuance.

2. From February 2001 until October 2002, Baum offered the Senior Resources notes to at least twenty-three prospective investors and recommended that they purchase those notes. Baum received transaction-based compensation in connection with his sales of the Senior Resources notes.

3. In addition, from August until November 2000, Baum offered and sold securities issued by Renaissance Asset Fund ("Renaissance"). These securities were also in the form of promissory notes. Baum offered Renaissance securities to at least five investors. Baum also received transaction-based compensation in connection with his sales of Renaissance notes.

4. Baum offered the Senior Resources and Renaissance notes for sale through means and instruments of interstate commerce. Baum caused materials to be mailed to prospective investors and also used telephonic communications to offer Senior Resources and Renaissance promissory notes to prospective investors.

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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.

5. No registration statement was filed with the Commission or was in effect as to the transactions in Senior Resources or Renaissance securities. Moreover, the promissory notes issued by Senior Resources and Renaissance were not exempt from registration.

6. As a result of the conduct described above, Senior Resources violated Sections 5(a) and 5(c) of the Securities Act, and Baum willfully violated Sections 5(a) and 5(c) of the Securities Act and Section 15(a) of the Exchange Act.

7. Respondent Senior Resources has submitted a sworn Statement of Financial Condition dated March 23, 2006 and other evidence and has asserted its inability to pay disgorgement plus prejudgment interest. Respondent Baum has submitted a sworn Statement of Financial Condition dated March 23, 2006 and other evidence and has asserted his inability to pay a civil penalty or disgorgement plus prejudgment interest.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in the Offers of Respondents Senior Resources and Baum.

Accordingly, pursuant to Section 8A of the Securities Act, and Sections 15(b)(6) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Senior Resources and Baum cease and desist from committing or causing any violations and any future violations of Sections 5(a) and 5(c) of the Securities Act and Baum cease and desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act.

B. Baum be, and hereby is barred from association with any broker or dealer, with the right to reapply for association after three (3) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by Baum 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 Baum, 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.

D. Senior Resources shall pay disgorgement of $2,735,000 plus prejudgment interest of $964,203 and Baum shall pay disgorgement of $220,000 plus prejudgment interest of $77,559, but that payment of such amounts is waived based upon Respondents' sworn representations in their Statements of Financial Condition dated March 23, 2006 and other documents submitted to the

Commission. Based upon Baum's sworn representations in his Statement of Financial Condition dated March 23, 2006 and other documents submitted to the Commission, the Commission is not imposing a penalty against Baum.

E. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondents provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement and pre-judgment interest against Respondents and/or the maximum civil penalty allowable under the law against Baum. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondents was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondents may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement and interest and/or the maximum civil penalty allowable under the law should not be ordered; (3) contest the amount of disgorgement and interest or the imposition of the maximum penalty allowable under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Nancy M. Morris
Secretary

By: J. Lynn Taylor
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 241

[Release No. 34-54165; File No. S7-13-06]

Commission Guidance Regarding Client Commission Practices Under Section 28(e) of the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation; solicitation of comment.

SUMMARY: The Securities and Exchange Commission is publishing this interpretive release with respect to the scope of "brokerage and research services" and client commission arrangements under Section 28(e) of the Securities Exchange Act of 1934 ("Exchange Act"). The Commission is soliciting further comment on client commission arrangements under Section 28(e).

DATES: Effective Date: [insert date of publication in the Federal Register].

Other Date: Market participants may continue to rely on the Commission's prior interpretations of Section 28(e) until [insert date 6 months after publication in the Federal Register].

Comment Due Date: Comments should be received on or before [insert date 45 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/interp.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-13-06 on the subject line; or

- Use the Federal eRulemaking Portal (http://www.regulations.gov). Follow the instructions for submitting comments.

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 S7-13-06. 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/ interp.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: Jo Anne Swindler, Assistant Director, at (202) 551-5750; Patrick M. Joyce, Special Counsel, at (202) 551-5758; Stanley C. Macel, IV, Special Counsel, at (202) 551-5755; or Marlon Quintanilla Paz, Special Counsel, at (202) 551-5756, in the Office of Enforcement Liaison and Institutional Trading, Division of Market Regulation, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-6628.

SUPPLEMENTARY INFORMATION:

I. Introduction and Summary

Section 28(e)[1] of the Exchange Act[2] establishes a safe harbor that allows money managers to use client funds to purchase "brokerage and research services" for their managed accounts under certain circumstances without breaching their fiduciary duties to clients. In this release, the Commission is issuing interpretive guidance with respect to the safe harbor, with the particular goal of clarifying the scope of "brokerage and research services" in the light of evolving technologies and industry practices.

Fiduciary principles require money managers to seek the best execution for client trades, and limit money managers from using client assets for their own benefit.[3] Use of client commissions to pay for research and brokerage services presents money managers with significant conflicts of interest, and may give incentives for managers to disregard their best execution obligations when directing orders to obtain client commission services as well as to trade client securities inappropriately in order to earn credits for client commission services.[4] Recognizing the

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1 15 U.S.C. 78bb(e).

2 15 U.S.C. 78a.

3 Money managers include investment advisers, who have a fundamental obligation under the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. 80b-1] and state law to act in the best interest of their clients, SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 189-191 (1963). This includes the obligation to seek "best execution" of clients' transactions under the circumstances of the particular transaction. Exchange Act Release No. 23170 (Apr. 23, 1986), 51 FR 16004, 16011 (Apr. 30, 1986) ("1986 Release"). See also Delaware Management Co., 43 SEC 392, 396 (1967). The fundamental obligation of the adviser to act in the best interest of his client also generally precludes the adviser from using client assets for the adviser's own benefit or the benefit of other clients, at least without client consent. See RESTATEMENT (SECOND) OF TRUSTS § 170 cmt. a, § 216 (1959).

4 For a discussion of managers' conflicts in connection with the safe harbor, see generally Exchange Act Release No. 35375 (Feb. 14, 1995), 60 FR 9750, 9751 (Feb. 21, 1995) ("1995 Rule Proposal") (the Commission took no further action on this proposal). See also Sage Advisory Services LLC, Exchange Act Release No. 44600, 75 SEC Docket 1073 (July 27, 2001) (Commission charged that adviser churned advised account to generate client commission credits to pay personal operating expenses and failed to seek to obtain best execution by causing account to pay commissions twice the rate the same broker charged other customers for comparable services).

value of research in managing client accounts, however, Congress enacted Section 28(e)[5] of the Exchange Act to provide a safe harbor that protects money managers from liability for a breach of fiduciary duty solely on the basis that they paid more than the lowest commission rate in order to receive "brokerage and research services" provided by a broker-dealer, if the managers determined in good faith that the amount of the commission was reasonable in relation to the value of the brokerage and research services received.[6]

As discussed below in Section II, over the past thirty years, the Commission has issued several releases interpreting the Section 28(e) safe harbor. In 1998, the Commission published a report of its Office of Compliance Inspections and Examinations ("OCIE") detailing a staff review of client commission practices at broker-dealers and investment advisers.[7] The Commission also has brought enforcement actions involving purported client commission practices.[8]

To avoid confusion that may arise over the usage of the phrase "soft dollars," in this release, the Commission uses the term "client commission" practices or arrangements to refer to practices under Section 28(e). Similarly, to minimize confusion with the phrase "commission-sharing arrangements" as used in the United Kingdom to refer to unique arrangements in that market place, we refer to arrangements under Section 28(e) as "client commission arrangements" or "Section 28(e) arrangements."

5 15 U.S.C. 78bb(e).

6 See Securities Acts Amendments of 1975, Pub. L. No. 94-29, 89 Stat. 97, 161-62 (1975).

Congressional enactment of Section 28(e) did not alter the money manager's duty to seek best execution. See 1986 Release, 51 FR at 16011. The directors of an investment company have a continuing fiduciary duty to oversee the company's brokerage practices. See Investment Company Act Release No. 11662 (Mar. 4, 1981), 46 FR 16012 (Mar. 10, 1981). In addition, the directors have an obligation in connection with their review of the fund's investment advisory contract to review the adviser's compensation, including any "soft dollar" benefits the adviser may receive from fund brokerage. See 1986 Release, 51 FR at 16010.

7 See Office of Compliance Inspections and Examination, U.S. Securities and Exchange Commission, Inspection Report on the Soft Dollar Practices of Broker-Dealers, Investment Advisers and Mutual Funds 3 (Sept. 22, 1998) ("1998 OCIE Report"), available at http://www.sec.gov/news/studies/softdolr.htm.

8 See, e.g., Dawson-Samberg Capital Management, Inc. and Judith A. Mack, Advisers Act Release No. 1889, 54 SEC 786 (Aug. 3, 2000); Marvin & Palmer Associates, Inc., et al., Advisers Act Release No. 1841, 70 SEC Docket 1643 (Sept. 30, 1999); Fleet Investment Advisors, Inc., Advisers Act Release No. 1821, 70 SEC Docket 1217 (Sept. 9, 1999); Republic New York Sec. Corp. and James Edward Sweeney, Exchange Act Release No. 41036, 53 SEC 1283 (Feb. 10, 1999); SEC v. Sweeney Capital Management, Inc., Litigation Release No. 15664, 66 SEC Docket 1613 (Mar. 10, 1998), 1999 U.S. Dist. LEXIS 22298 (1999) (order granting permanent injunction and other relief); Renaissance Capital Advisers, Inc., Advisers Act Release No. 1688, 66 SEC Docket 408 (Dec. 22, 1997); Oakwood Counselors, Inc., Advisers Act Release No. 1614, 63 SEC Docket 2034 (Feb. 11, 1997); S Squared Technology Corp., Advisers Act Release No.

On October 19, 2005, the Commission issued a proposed interpretive release regarding client commission practices under Section 28(e) ("Proposing Release").[9] We received letters from seventy-one commenters in response to the Proposing Release.[10] More than half of the

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1575, 62 SEC Docket 1446 (Aug. 7, 1996); SEC v. Galleon Capital Mgmt., Litigation Release No. 14315, 57 SEC Docket 2593 (Nov. 1, 1994).

9 Exchange Act Release No. 52635 (Oct. 19, 2005), 70 FR 61700 (Oct. 25, 2005).

10 Seventy-one different commenters submitted seventy-six comment letters. The comment letters are available for inspection in the Commission's Public Reference Room in File No. S7-09-05, or may be viewed at http://www.sec.gov/rules/interp/s70905.shtml. The commenters were: Committee on Federal Regulation of Securities, Business Law Section, American Bar Association ("ABA"); Adams Harkness ("Adams Harkness"); American Bankers Association ("AmBankers"); The Alliance in Support of Independent Research, Nov. 23, 2005 ("ASIR 1"); The Alliance in Support of Independent Research , June 2, 2006 ("ASIR 2"); Axia Advisory Corporation ("Axia"); Bingham McCutcheon LLP, on behalf of Frank Russell Securities, Inc. ("Bingham McCutcheon"); Bloomberg L.P. ("Bloomberg"); BNY Securities Group on behalf of the Bank of New York Company, Inc., Nov. 25, 2005 ("BNY 1"); BNY Securities Group on behalf of the Bank of New York Company, Inc., May 2, 2006 ("BNY 2"); California Public Employees' Retirement System ("CalPERS"); Capital Institutional Services, Inc. ("CAPIS"); Carolina Capital Markets, Inc., Nov. 23, 2005 ("CCM 1"); Carolina Capital Markets, Inc., Nov. 25, 2005 ("CCM 2"); CFA Centre for Financial Market Integrity, CFA Institute ("CFA Institute"); Consumer Federation of America / Fund Democracy (joint letter) ("CFA/FD"); Charles River Brokerage ("Charles River"); C.L. King & Associates, Inc. ("CL King"); Commission Direct, Inc. ("Commission Direct"); Credit Suisse Securities (USA) LLC ("Credit Suisse"); Neal J. Dean ("Dean"); U.S. Department of Labor, Employee Benefits Security Administration ("DOL"); Michael Donovan ("Donovan"); Dow Jones & Company, Inc. ("Dow Jones"); E*Trade Financial Corporation ("E*Trade"); European Association of Independent Research Providers ("EuroIRP"); Eze Castle Software ("Eze Castle"); Fidelity Management and Research Company ("Fidelity"); FinTech Securities ("FinTech"); Tamar Frankel ("Frankel"); William T. George, Oct. 20, 2005 ("George 1"); William T. George, Oct. 28, 2005 ("George 2"); William T. George, Apr. 4, 2006 ("George 3");GovernanceMetrics International ("GMI"); Independent Directors Council ("IDC"); Instinet, LLC ("Instinet"); International Securities Association for Institutional Trade Communications ("ISITC"); The Interstate Group ("Interstate Group"); Investment Adviser Association ("IAA"); Investment Company Institute ("ICI"); Investment Management Association ("IMA"); Investorside Research Association ("Investorside"); International Shareholder Services Inc. ("ISS"); ITG Inc. ("ITG"); J.P. Morgan Securities Inc., Nov. 28, 2005 ("JP Morgan 1"); J.P. Morgan Securities Inc., Mar. 28, 2006 ("JP Morgan 2"); Thomas F. Lamprecht ("Lamprecht"); Mellon Financial Corporation ("Mellon"); Merrill Lynch & Co., Inc. ("Merrill"); Managed Funds Association ("MFA"); Mutual Fund Directors Forum ("MFDF"); Morgan Stanley & Co., Inc. ("Morgan Stanley"); Missouri State Employees' Retirement System ("MOSERS"); Emmett Murphy ("Murphy"); National Compliance Services, Inc. ("NCS"); Bernard Notas ("Notas"); National Society of Compliance Professionals Inc. ("NSCP"); Junius W. Peake, Oct. 21, 2005 ("Peake 1"); Junius W. Peake, Oct. 26, 2005 ("Peake 2"); Rainier Investment Management, Inc. ("Rainier"); The Reserve Funds ("Reserve"); Reuters America LLC ("Reuters"); Riedel Research Group ("Riedel"); Charlotte Roederer ("Roederer"); Sanderson & Stocker, Inc. ("Sanderson & Stocker"); U.S. Senator Charles C. Schumer and U.S. Senator John E. Sununu (joint letter) ("Senators Schumer and Sununu"); Charles Schwab & Co., Inc. ("Schwab"); Seward & Kissel LLP ("Seward & Kissel"); Securities Industry Association ("SIA"); Security Traders Association ("STA"); T. Rowe Price Associates, Inc. ("T. Rowe Price"); UBS Securities LLC ("UBS"); Vandham Securities Corp. ("Vandham"); The Vanguard Group, Inc. ("Vanguard"); Ward & Smith, P.A. on behalf of First Citizens Bank & Trust Company ("Ward & Smith"); West Virginia Investment Management Board ("WVIMB").

commenters supported the Commission's efforts in the Proposing Release to clarify the scope of Section 28(e).[11] Overall, the comments provided useful information regarding industry practices in this area.[12]

After considering the comments received and the Commission's experience with Section 28(e), and upon further examination of changing market conditions, current industry practices, and the purposes underlying Section 28(e), we are issuing this interpretive release on money managers' use of client assets to pay for research and brokerage services under Section 28(e) of the Exchange Act.[13] This release interprets the scope of the safe harbor as follows:

- "Research services" are restricted to "advice," "analyses," and "reports" within the meaning of Section 28(e)(3).
    - Physical items, such as computer hardware, which do not reflect the expression of reasoning or knowledge relating to the subject matter identified in the statute, are outside the safe harbor.
    - Research related to the market for securities, such as trade analytics (including analytics available through order management systems) and advice on market color and execution strategies, are eligible for the safe harbor.
    - Market, financial, economic, and similar data could be eligible for the safe harbor.
    - Mass-marketed publications are not eligible as research under the safe harbor.

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11 ABA; ASIR 1; AmBankers; BNY; Bloomberg; CalPERS; CAPIS; CFA Institute; Charles River; Commission Direct; DOL; Dow Jones; E*Trade; EuroIRP; Eze Castle; Fidelity; FinTech; IDC; ISS; Interstate Group; IAA; ICI; IMA; Investorside; ITG; JP Morgan 1; MFA; Mellon; Merrill; Morgan Stanley; NCS; NSCP; Reuters; Riedel; Roederer; Schwab; SIA; STA; T. Rowe Price; UBS; Vandham; Vanguard.

12 Ten commenters expressed the view that money managers should refrain from using client commissions to obtain brokerage and research or that Congress should repeal Section 28(e). See Axia; CFA/FD (joint letter); Dean; Frankel; MOSERS; MFDF; Peake 2; Reserve; WVIMB.

13 15 U.S.C. 78bb(e). The Commission also is considering whether at a later time to propose requirements for disclosure and recordkeeping of client commission arrangements.

- "Brokerage services" within the safe harbor are those products and services that relate to the execution of the trade from the point at which the money manager communicates with the broker-dealer for the purpose of transmitting an order for execution, through the point at which funds or securities are delivered or credited to the advised account.
- Eligibility of both brokerage and research services for safe harbor protection is governed by the criteria in Section 28(e)(3),[14] consistent with the Commission's 1986 "lawful and appropriate assistance" standard.
- Mixed-use items must be reasonably allocated between eligible and ineligible uses, and the manager must keep adequate books and records concerning allocations so as to enable the manager to make the required good faith determination of the reasonableness of commissions in relation to the value of brokerage and research services.
- In order for the safe harbor to be available to the money manager, the following principles apply:
    - Broker-dealers that are parties to arrangements under Section 28(e) are involved in "effecting" the trade if they execute, clear, or settle the trade, or perform one of four specified functions[15] and allocate the other functions to another broker-dealer.
    - Broker-dealers "provide" the research if they (i) prepare the research, (ii) are financially obligated to pay for the research, or (iii) are not financially obligated to pay but their arrangements have certain attributes.

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14 15 U.S.C. 78bb(e)(3).

15 The four functions are: (1) taking financial responsibility for customer trades; (2) maintaining records relating to customer trades; (3) monitoring and responding to customer comments concerning the trading process; and (4) monitoring trades and settlements. See discussion infra note 176 and accompanying text.

This Release reiterates the statutory requirement that money managers must make a good faith determination that commissions paid are reasonable in relation to the value of the products and services provided by broker-dealers in connection with the managers' responsibilities to the advisory accounts for which the managers exercise investment discretion.

The guidance in this Release shall be effective immediately upon its publication in the Federal Register. Market participants may continue to rely on the Commission's prior interpretations for six months following the publication of this Release in the Federal Register. Nonetheless, the Commission will receive and consider additional comment regarding Section III.I of this Release with respect to client commission arrangements given evolving developments in the industry. Based on any comments received, the Commission may, but need not, supplement the guidance in this Release in the future.

II. "Brokerage and Research Services" under Section 28(e) of the Exchange Act

A. Origins of the Section 28(e) Safe Harbor

In the early 1970's, the Commission studied whether to require unfixing commission rates on national exchanges, which had been fixed by custom and regulation since the founding of the New York Stock Exchange nearly two hundred years earlier.[16] At the same time, the House and Senate began to consider whether to eliminate fixed commission rates legislatively.[17] The Commission adopted Rule 19b-3 under the Exchange Act,[18] which ended fixed commission

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16 See U.S. SECURITIES AND EXCHANGE COMMISSION, Institutional Investor Study Report, H.R. Doc. No. 64, 92d Cong., 1st Sess., Vol. 4, at 2206 (1971). See also U.S. SECURITIES AND EXCHANGE COMMISSION, SPECIAL STUDY OF SECURITIES MARKETS, H.R. Doc. No. 88-95, pt. 2, at 323 (1963) ("Special Study").

17 See generally SENATE COMM. ON BANKING, HOUSING AND URBAN AFFAIRS, SECURITIES INDUSTRY STUDY REPORT OF THE SUBCOMMITTEE ON SECURITIES, S. DOC. NO. 93-13 (1973).

18 17 CFR 240.19b-3. Rule 19b-3 was codified in certain respects by Section 6(e)(1) of the Exchange Act [15 U.S.C. 78f(e)(1)], which was enacted as part of the Securities Acts Amendments of 1975, Pub. L. No. 94-29, 89 Stat. 97, 107-08 (1975). See also Exchange Act Release No. 26180 (Oct. 14, 1988), 53 FR 41205 (Oct. 20, 1988) (rescinding Rule 19b-3).

rates on national securities exchanges effective May 1, 1975.[19] Just one month later, Congress passed legislation unfixing commission rates as part of the Securities Acts Amendments of 1975 ("1975 Amendments").[20]

In the era of fixed rates, when broker-dealers could not compete on the basis of the commissions that they could charge for executing orders, they competed on the basis of services including non-execution services that they could offer.[21] Indeed, broker-dealers had long been accustomed to attracting order execution business from institutional money managers by offering them brokerage functions and research reports to distinguish their services from those of their competitors.[22] As the end of the fixed-rate era drew near, however, money managers and broker-dealers alike questioned how competition over commission rates would disrupt these practices. Institutional money managers expressed concern that, in an environment of competitive commission rates, they would be forced to allocate brokerage solely on the basis of lowest execution costs, or that paying more than the lowest commission rate would be deemed a breach of fiduciary duty, and that useful research might become more difficult to obtain.[23] Broker-dealers, which were accustomed to producing proprietary "Street" research, expressed concern

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19 See Exchange Act Release No. 11203 (Jan. 23, 1975), 40 FR 7394 (Feb. 20, 1975).

20 See Securities Acts Amendments of 1975, Pub. L. No. 94-29, 89 Stat. 97, 107-08 (1975) (enacting Section 6(e)(1) of the Exchange Act [15 U.S.C. 78f(e)(1)]). See generally SENATE COMM. ON BANKING, HOUSING AND URBAN AFFAIRS, SECURITIES ACTS AMENDMENTS OF 1975, S. REP. NO. 94-75, at 69 (1975), reprinted in 1975 U.S.C.C.A.N. 179, 247; HOUSE COMM. ON INTERSTATE AND FOREIGN COMMERCE, SECURITIES REFORM ACT OF 1975, H.R. REP. NO. 94-123 (1975); JOINT EXPLANATORY STATEMENT OF THE COMM. OF CONFERENCE, SECURITIES ACTS AMENDMENTS OF 1975, H.R. CONF. REP. NO. 94-229, at 108 (1975), reprinted in 1975 U.S.C.C.A.N. 321, 338.

21 See Exchange Act Release No. 12251 (Mar. 24, 1976), 41 FR 13678, 13679 (Mar. 31, 1976) ("1976 Release").

22 See Special Study, H.R. Doc. No. 88-95, pt. 2, at 321.

23 See 1995 Rule Proposal, 60 FR at 9750; Report of Investigation in the Matter of Investment Information, Inc. Relating to the Activities of Certain Investment Advisers, Banks, and Broker-Dealers, Exchange Act Release No. 16679, 19 SEC Docket 926, 931 (Mar. 19, 1980) ("III Report"); 1976 Release, 41 FR at 13679.

that they could no longer be compensated in commissions for their work product if orders were routed to broker-dealers that provided execution-only service at lower rates.[24]

In an effort to address the industry's uncertainties about competitive commission rates, Congress included a safe harbor in the 1975 Amendments, codified as Section 28(e) of the Exchange Act.[25] The safe harbor provides generally that a money manager does not breach his fiduciary duties under state or federal law solely on the basis that the money manager has paid brokerage commissions to a broker-dealer for effecting securities transactions in excess of the amount another broker-dealer would have charged, if the money manager determines in good faith that the amount of the commissions paid is reasonable in relation to the value of the brokerage and research services provided by such broker-dealer.

As fiduciaries, money managers are obligated to act in the best interest of their clients, and cannot use client assets (including client commissions) to benefit themselves, absent client consent.[26] Money managers who obtain brokerage and research services with client commissions do not have to purchase those services with their own funds, which creates a conflict of interest for the money managers. Section 28(e) addresses this conflict by permitting money managers to pay higher commissions on behalf of a client than otherwise are available to obtain brokerage and research services, if managers make their good faith determination

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24 Securities Acts Amendments of 1975: Hearings on S. 249 Before the Subcomm. on Securities of the Senate Comm. on Banking, Housing, and Urban Affairs, 94th Cong., 1st Sess. 329-31 (1975) ("S. 249 Hearings") (Combined statement of Baker, Weeks & Co., Inc., Donaldson, Lufkin & Jenrette Sec. Corp., Mitchell, Hutchins Inc., and Oppenheimer & Co.).

25 See Securities Acts Amendments of 1975, Pub. L. No. 94-29, 89 Stat. 97, 161-62 (1975). Section 28(e) [15 U.S.C. 78bb(e)] governs the conduct of all persons who exercise investment discretion with respect to an account, including investment advisers, mutual fund portfolio managers, fiduciaries of bank trust funds, and money managers of pension plans and hedge funds. The scope of Section 28(e) therefore extends to entities that are within the jurisdiction of the Board of Governors of the Federal Reserve, the Office of the Comptroller of the Currency, the Department of Labor, and the Office of Thrift Supervision.

26 See supra note 3.

regarding the reasonableness of commissions paid.[27] Conduct not protected by Section 28(e) may constitute a breach of fiduciary duty as well as a violation of the federal securities laws, particularly the Advisers Act[28] and the Investment Company Act of 1940 ("Investment Company Act"),[29] and the Employee Retirement Income Security Act of 1974 ("ERISA").[30] In particular, money managers of registered investment companies and pension funds subject to ERISA may violate Section 17(e)(1) of the Investment Company Act and ERISA, respectively, unless they satisfy the requirements of the Section 28(e) safe harbor.[31]

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27 The Commission has interpreted Section 28(e) as encompassing client commissions on agency transactions and fees on certain riskless principal transactions that are reported under NASD trade reporting rules. Exchange Act Release No. 45194 (Dec. 27, 2001), 67 FR 6, 7 (Jan. 2, 2002) ("2001 Release"). Managers may not use client funds to obtain brokerage and research services under the safe harbor in connection with fixed income trades that are not executed on an agency basis, principal trades (except for certain riskless principal trades), or other instruments traded net with no explicit commissions.

Further, transactions for which the client has directed the money manager to a particular broker in order to recapture a portion of the commission for that client or to pay expenses of that client such as sub-transfer agent fees, consultants' fees, or administrative services fees generally do not raise the types of conflicts for the money manager that the safe harbor of Section 28(e) was designed to address. See, e.g., 1986 Release, 51 FR at 16011. These types of directed brokerage arrangements typically involve use of a client's commission dollars to obtain services that directly and exclusively benefit the client. See Payment for Investment Company Services with Brokerage Commissions, Securities Act Release No. 7197 (July 21, 1995), 60 FR 38918 (July 28, 1995).

28 15 U.S.C. 80b-1. See 1986 Release, 51 FR at 16008-09 (discussing the principal provisions of the Advisers Act and rules and forms thereunder that impose disclosure and other obligations on investment advisers and related persons).

29 15 U.S.C. 80a-1. See 1986 Release, 51 FR at 16009 (discussing the principal provisions of the Investment Company Act and rules and forms thereunder that impose disclosure and other obligations on investment advisers of registered investment companies and related persons).

30 Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001. See also Statement of Policies Concerning Soft Dollar and Directed Commission Arrangements, ERISA Technical Release No. 86-1, [1986-87 Decisions] Fed. Sec. L. Rep. ¶ 84,009 (May 22, 1986).

31 Section 17(e)(1) of the Investment Company Act [15 U.S.C. 80a-17(e)(1)] generally makes it unlawful for any affiliated person of a registered investment company to receive any compensation for the purchase or sale of any property to or for the investment company when that person is acting as an agent other than in the course of that person's business as a broker-dealer. Essentially, Section 17(e)(1) may be violated if an affiliated person of a registered investment company, such as an adviser, receives compensation for the purchase or sale of property to or from the investment company. Absent the protection of Section 28(e), an investment adviser's receipt of compensation under a client commission arrangement for the purchase or sale of any property, including securities, for or to the investment company may constitute a violation of Section 17(e)(1). See U.S. v. Deutsch, 451 F.2d 98, 110-11 (2d Cir. 1971), cert. denied, 404 U.S. 1019 (1972). If a client commission arrangement is not consistent with Section 28(e), disclosure of the arrangement would not cure any Section 17(e)(1) violation. See 1986 Release, 51 FR at 16010 n.55.

B. Previous Commission Guidance on the Scope of Section 28(e)

The Commission has issued three interpretive releases under Section 28(e) and a report pursuant to Section 21(a) of the Exchange Act that addresses issues associated with Section 28(e).[32] We discuss these below.

1. 1976 Release

In 1976, the Commission issued an interpretive release stating that the safe harbor did not protect "products and services which are readily and customarily available and offered to the general public on a commercial basis."[33] The Commission identified these products and services as examples of excluded items: "newspapers, magazines and periodicals, directories, computer facilities and software, government publications, electronic calculators, quotation equipment, office equipment, airline tickets, office furniture and business supplies."[34]

In that release, the Commission also admonished money managers not to direct broker-dealers to make "give-up" payments, in which the money manager asked the broker-dealer, retained to effect a transaction for the account of a client, to "give up" part of the commission negotiated by the broker-dealer and the money manager to another broker-dealer designated by

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32 See 2001 Release; 1986 Release; 1976 Release; III Report. In addition, the Commission has charged money managers and broker-dealers with violations of the federal securities laws in circumstances in which they did not act within the safe harbor and defrauded investors. See, e.g., Portfolio Advisory Services, LLC, and Cedd L. Moses, Advisers Act Release No. 2038, 77 SEC Docket 2759-31 (June 20, 2002); Dawson-Samberg Capital Management, Inc. and Judith A. Mack, Advisers Act Release No. 1889, 54 SEC 786 (Aug. 3, 2000); Founders Asset Management LLC and Bjorn K. Borgen, Advisers Act Release No. 1879, 54 SEC 762 (June 15, 2000); Marvin & Palmer Associates, Inc., et al., Advisers Act Release No. 1841, 70 SEC Docket 1643 (Sept. 30, 1999); Fleet Investment Advisors, Inc., Advisers Act Release No. 1821, 70 SEC Docket 1217 (Sept. 9, 1999); Republic New York Sec. Corp. and James Edward Sweeney, Exchange Act Release No. 41036, 53 SEC 1283 (Feb. 10, 1999); SEC v. Sweeney Capital Management, Inc., Litigation Release No. 15664, 66 SEC Docket 1613 (Mar. 10, 1998), 1999 U.S. Dist. LEXIS 22298 (1999) (order granting permanent injunction and other relief); Renaissance Capital Advisers, Inc., Advisers Act Release No. 1688, 66 SEC Docket 408 (Dec. 22, 1997); Oakwood Counselors, Inc., Advisers Act Release No. 1614, 63 SEC Docket 2034 (Feb. 11, 1997); S Squared Technology Corp., Advisers Act Release No. 1575, 62 SEC Docket 1446 (Aug. 7, 1996); SEC v. Galleon Capital Mgmt., Litigation Release No. 14315, 57 SEC Docket 2593 (Nov. 1, 1994).

33 1976 Release, 41 FR at 13678.

34 Id.

the money manager for whom the executing or clearing broker is not a normal and legitimate correspondent. The Commission stated that in order to be within the definition of "brokerage and research services" under Section 28(e), "it was intended . . . that a research service paid for in commissions by accounts under management be provided by the particular broker which executed the transactions for those accounts."[35] At the same time, the Commission acknowledged the value of third-party research by stating that, "under appropriate circumstances, [Section 28(e) might] be applicable to situations where a broker provides a money manager with research produced by third parties."[36] The Commission emphasized that the money manager "should be prepared to demonstrate the required good faith determination in connection with the transaction."[37]

2. Report in the Matter of Investment Information, Inc.

In 1980, the Commission issued a report pursuant to Section 21(a) of the Exchange Act following an investigation of Investment Information, Inc.'s ("III") purported client commission arrangements ("III Report").[38] III managed the client commission programs of money managers. Typically, under these arrangements, the money manager directed brokerage transactions to broker-dealers that III designated. The broker-dealers, who provided execution services only, retained half of each commission and remitted the balance to III. III retained a fee (for "services" that III provided to money managers, ostensibly for managing the client commission accounts) and credited a portion of its commission to the money manager's account. The money manager could either recapture the credited amount (i.e., receive cash) for the benefit of his

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35 Id. at 13679.

36 Id.

37 Id.

38 See III Report, 19 SEC Docket at 926.

client or use the credit to purchase research services.[39] The money managers made the arrangements for acquiring the research services directly with the service vendors, and III simply paid the bills for the services as the money managers requested. The executing broker-dealers were unaware of the specific services the money managers acquired from the vendors. III was not a registered broker-dealer, and it did not perform any kind of brokerage function in the securities transactions.

The Commission found that these arrangements did not fall within Section 28(e) of the Exchange Act because the broker-dealers that were "effecting" the transactions "in no significant sense provided the money managers with research services."[40] They only executed the transactions and paid a portion of the commissions to III. The broker-dealers were not aware of the specific services that the managers acquired and did not pay the bills for these services. The Commission concluded that, although Section 28(e) does not require a broker-dealer to produce research services "in-house," the services must nevertheless be "provided by" the broker-dealers. The Commission found that a broker-dealer is not providing research services when it pays obligations the money manager owes to a third party. The Commission indicated that, consistent with Section 28(e), broker-dealers could arrange to have the third-party research provided directly to the money manager, with the payment obligation falling on the broker-dealer.[41]

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39 Applying the 1976 standard, the Commission found that certain services received by some participating money managers were not research services because these services were readily and customarily available and offered to the general public on a commercial basis. These included such items as periodicals, newspapers, quotation equipment, and general computer services. See III Report, 19 SEC Docket at 931 n.17.

40 Id. at 931-32.

41 Id. at 932.

3. 1986 Release

Following a staff examination of client commission practices in 1984-1985, the Commission concluded that the 1976 standard was "difficult to apply and unduly restrictive in some circumstances," particularly as the types of research products and their method of delivery had proliferated and become more complex.[42] The Commission expressed concern that "uncertainty about the standard may have impeded money managers from obtaining, for commission dollars, goods and services" that they believed were important to making investment decisions.[43]

The Commission withdrew the 1976 standard and construed the safe harbor to be available to research services that satisfy the statute's definition of "brokerage and research services" in Section 28(e)(3) and provide "lawful and appropriate assistance to the money manager in the performance of his investment decision-making responsibilities."[44] We concluded that a product or service that was readily and customarily available and offered to the general public on a commercial basis nevertheless could constitute research. The 1986 Release also re-affirmed that, under appropriate circumstances, money managers may use client commissions to obtain third-party research (i.e., research produced by someone other than the executing broker-dealer).[45] The 1986 Release also emphasized the importance of written disclosure of client commission arrangements to clients and reiterated a money manager's duty to seek best execution.

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42 1986 Release, 51 FR at 16005.

43 Id. at 16005-06.

44 Id. at 16006.

45 Id. at 16007.

The 1986 Release also introduced the concept of "mixed use." In many cases, a product or service obtained using client commissions may serve functions that are not related to the investment decision-making process, such as accounting or marketing. Management information services, which may integrate trading, execution, accounting, recordkeeping, and other administrative matters such as measuring the performance of accounts, were noted as an example of a product that may have a mixed use. The Commission indicated that where a product has a mixed use, an investment manager should make a reasonable allocation of the cost of the product according to its use, and should keep adequate books and records concerning the allocations.[46] The Commission also noted that the allocation decision itself poses a conflict of interest for the money manager that should be disclosed to the client. In the 1986 Release, the Commission stated that a money manager may use client commissions pursuant to Section 28(e) to pay for the portion of a service or specific component that assists him in the investment decision-making process, but he cannot use client commissions to pay for that portion of a service that provides him administrative assistance.[47]

The 1986 Release also addressed third-party research. Citing to the III Report, the Commission reaffirmed its view that, "while a broker may under appropriate circumstances arrange to have research materials or services produced by a third party, it is not 'providing' such research services when it pays obligations incurred by the money manager to the third party."[48] In the III Report, the Commission found that the money managers and the research vendors, rather than the broker-dealers, had made all of the arrangements for acquiring the services.[49]

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46 Id. at 16006.

47 Id.

48 Id.

49 Id. at 16007.

4. 2001 Release

Until 2001, the Commission interpreted Section 28(e) to be available only for research and brokerage services obtained in relation to commissions paid to a broker-dealer acting in an "agency" capacity.[50] That interpretation meant that money managers could not rely on the safe harbor for research and brokerage services obtained in relation to fees charged by market makers when they executed transactions in a "principal" capacity. The Commission interpreted the term "commission" in Section 28(e) in this fashion because, in the Commission's view, fees on principal transactions were not quantifiable and fully disclosed in a way that would permit a money manager to determine that the fees were reasonable in relation to the value of research and brokerage services received.[51]

In 2001, the Nasdaq Stock Market asked the Commission to reconsider this interpretation of Section 28(e) to apply also to research and brokerage services obtained in relation to fully and separately disclosed fees on certain riskless principal transactions effected by National Association of Securities Dealers, Inc. ("NASD") members and reported under NASD trade reporting rules.[52] Based on required disclosure of fees under confirmation rules and reporting of the trade under NASD rules, the Commission determined that the money manager could make the necessary determination of the reasonableness of these charges under Section 28(e). The Commission therefore modified its interpretation of "commission" for purposes of the Section 28(e) safe harbor to encompass fees paid for riskless principal transactions in which both legs are

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50 See 2001 Release, 67 FR at 6; 1995 Rule Proposal, 60 FR at 9751 n.10; Investment Company Act Release No. 20472 (Aug. 11, 1994), 59 FR 42187, 42188 n.3 (Aug. 17, 1994).

51 2001 Release, 67 FR at 7.

52 See Letter from Hardwick Simmons, Chief Executive Officer, The Nasdaq Stock Market, Inc. to Harvey L. Pitt, Chairman, U.S. Securities and Exchange Commission (Sept. 7, 2001) (on file with the Commission).

executed at the same price and the transactions are reported under the NASD's trade reporting rules.[53]

C. 1998 Office of Compliance Inspections and Examinations Report

In 1998, after OCIE conducted examinations of approximately 355 broker-dealers, advisers, and funds, the Commission published the staff's report, which described the range of products and services that advisers obtain under their client commission arrangements.[54] The report raised concerns about the nature of products and services that were being treated as "research," the purchase of "mixed-use" items, disclosure by advisers about their client commission arrangements, and recordkeeping.[55] The 1998 OCIE Report made several recommendations for improving commission practices, including that the Commission provide further guidance on the scope of the safe harbor and require better recordkeeping and enhanced disclosure of client commission arrangements and transactions.[56]

D. Report of the NASD's Mutual Fund Task Force

In 2004, the NASD Mutual Fund Task Force, composed of senior executives from mutual fund management companies and broker-dealers, as well as representatives from the academic and legal communities, published observations and recommendations to the Commission concerning client commission practices and portfolio transaction costs.[57] In particular, the NASD Task Force Report recommended that the Section 28(e) safe harbor be retained, but that the interpretation of the scope of research services be narrowed to better tailor it to the types of client commission

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53 2001 Release, 67 FR at 7.

54 See 1998 OCIE Report, at 3.

55 1998 OCIE Report, at 4-5.

56 Id. at 47-52.

57 See NASD, Report of the Mutual Fund Task Force, "Soft Dollars and Portfolio Transaction Costs" (Nov. 11, 2004) ("NASD Task Force Report"), available at http://www.nasd.com/web/groups/rules_regs/documents/rules_regs/nasdw_012356.pdf.

services that principally benefit the adviser's clients rather than the adviser.[58] The NASD Task Force Report recommended that the Commission interpret the safe harbor to protect only brokerage services as described in Section 28(e)(3) and the "intellectual content" of research, but not the means by which such content is provided.[59] The NASD Task Force Report suggested that this approach would exclude magazines, newspapers, and other such publications that are in general circulation to the retail public, and such items as computer hardware, phone lines, and data transmission lines.[60] The NASD Task Force Report emphasized that the safe harbor should encompass third-party research and proprietary research on equal terms, and recommended improved disclosure.[61]

E. United Kingdom Financial Services Authority ("FSA")

On July 22, 2005, the FSA adopted final client commission rules in conjunction with issuing policy statement PS 05/9.[62] The final rules describe "execution" and "research" services and products eligible to be paid for by commissions, and specify a number of "non-permitted"

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58 NASD Task Force Report, at 5.

59 NASD Task Force Report, at 6-7. The Task Force proposed that "intellectual content" be defined as "any investment formula, idea, analysis or strategy that is communicated in writing, orally or electronically and that has been developed, authored, provided or applied by the broker-dealer or third-party research provider (other than magazines, periodicals or other publications in general circulation)." Id. at 7.

60 Specifically, the NASD Task Force indicated that its proposed definition of research services would exclude the following: computer hardware and software, unrelated to any research content or analytical tool; phone lines and data transmission lines; terminals and similar facilities; magazines, newspapers, journals, and on-line news services; portfolio accounting services; proxy voting services unrelated to issuer research; and travel expenses incurred in company visits. NASD Task Force Report, at 7.

61 Regarding disclosure, the NASD Task Force Report recommended, among other things: (a) ensuring that fund boards obtain information about a fund adviser's brokerage allocation practices and client commission services received; (b) mandating enhanced disclosure in fund prospectuses to improve investor awareness; (c) applying disclosure requirements to all types of commissions; and (d) enhancing disclosure to investors about portfolio transaction costs. NASD Task Force Report, at 4. See supra note 13.

62 U.K. Financial Services Authority, Policy Statement 05/9, Bundled Brokerage and Soft Commission Arrangements: Feedback on CP 05/5 and Final Rules (July 2005) ("FSA Final Rules"), available at http://www.fsa.gov.uk/pages/library/policy/policy/2005/05_09.shtml. The rules apply only to equity trades and not to fixed income trades. FSA Final Rules, at Annex, p. 6 (Conduct of Business Sourcebook Rule 7.18.1). The FSA proposed the rules in March 2005. See Consultation Paper 05/5, Bundled Brokerage and Soft Commission Arrangements: Proposed Rules (Mar. 2005) ("FSA Rule Proposal"), available at http://www.fsa.gov.uk/pubs/cp/cp05_05.pdf.

services that must be paid for in hard dollars, such as custody not incidental to execution, computer hardware, telephone lines, and portfolio performance measurement and valuation services.[63] The policy statement also acknowledges that some products and services may be permitted or non-permitted depending on how they are used by the money manager.[64] The rules became effective beginning in January 2006, with a transitional period until June 2006.[65]

With the globalization of the world's financial markets, many U.S. market participants have a significant presence abroad, and in particular in the United Kingdom. To the extent that the Commission's approach to client commissions is compatible with that taken in the United Kingdom., market participants' costs of compliance with multiple regulatory regimes are reduced. Therefore, we have taken the FSA's work into account in developing our position in this release, while recognizing the significant differences in our governing law and rules, such as the fact that the United Kingdom. does not have a statutory provision similar to Section 28(e).[66] This interpretive guidance is generally consistent with the FSA's rules, with a few exceptions.[67]

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63 See FSA Final Rules, at Annex, pp. 8-9 (Conduct of Business Sourcebook Rules 7.18.4 to 7.18.8). See also FSA Rule Proposal, at 63-64.

64 FSA Final Rules, at 5. The rules also set forth the principle that investment managers should inform advisory clients how their commissions are being spent, and indicate that, in evaluating compliance with this principle, the FSA will have regard for the extent to which investment managers adopt the disclosure standards developed by industry associations such as the U.K. Investment Management Association ("IMA"). See FSA Final Rules, at Annex, p. 11 (Conduct of Business Sourcebook Rule 7.18.14). See also Investment Management Association, Pension Fund Disclosure Code, Second Edition (Mar. 2005), available at http://www.investmentuk.org/news/standards/pfdc2.pdf.

65 FSA Final Rules, at 5. Firms were permitted to continue to comply with existing rules until the earlier of the expiration of existing agreements or June 30, 2006.

66 We have also taken note of the views of other regulators. See Ontario Securities Commission, Concept Paper 23-402, Best Execution and Soft Dollar Arrangements (Feb. 8, 2005), available at http://www.osc.gov.on.ca/ Regulation/Rulemaking/Current/Part2/cp_20050204 _23-402_ bestexecution.jsp; Australian Securities and Investments Commission, Press Release 04-181, Soft Dollar Benefits Need Clear Disclosure (June 10, 2004), available at http://www.asic.gov.au/asic/ASIC_PUB.NSF/byid/77D7FCEFB7653EC5CA256EAF0002F6C2?opendocument.

67 The FSA has determined that market data that has not been analyzed or manipulated does not meet the requirements of a research service, but permits managers to justify using client commissions to pay for raw data feeds as execution services. The FSA also has identified subscriptions for publications and seminar

III. Commission's Interpretive Guidance

In light of developments in client commission practices, evolving technologies, marketplace developments, the observations of the staff in examinations of industry participants, and comments received on the Proposing Release, we have revisited our previous guidance as to the meaning of the phrase "brokerage and research services" in Section 28(e). After careful consideration, we are providing a revised interpretation that replaces Sections II and III of the 1986 Release.[68] Specifically, we are providing guidance with respect to: (i) the appropriate framework for analyzing whether a particular service falls within the "brokerage and research services" safe harbor; (ii) the eligibility criteria for "research"; (iii) the eligibility criteria for "brokerage"; and (iv) the appropriate treatment of "mixed-use" items. We also discuss the money manager's statutory requirement to make a good faith determination that the commissions paid are reasonable in relation to the value of the brokerage and research services received. Finally, we are issuing guidance on third-party research and client commission arrangements and are seeking further comment relating to client commission arrangements (Section III.I of this Release).

Section 28(e) applies equally to arrangements involving client commissions paid to full service broker-dealers that provide brokerage and research services directly to money managers, and to third-party research arrangements where the research services and products are developed by third parties and provided by a broker-dealer that participates in effecting the transaction. Today, it remains true that, if the conditions of the safe harbor of Section 28(e) are met, a money manager does not breach his fiduciary duties solely on the basis that he uses client commissions

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fees as "non-permitted" services. FSA Final Rules, at 2.15 and Annex, p. 9 (Conduct of Business Sourcebook Rules 7.18.7, 7.18.8(d), and 7.18.8(e)).

68 Our interpretation does not replace other sections of the 1986 Release.

to pay a broker-dealer more than the lowest available commission rate for a bundle of products and services provided by the broker-dealer (i.e., anything more than "pure execution").

A. Present Environment

In the 1986 Release, the Commission incorporated from the legislative history the phrase "lawful and appropriate assistance" to the money manager in carrying out his investment decision-making responsibilities in developing the Commission standard governing the range of brokerage and research products and services that may be obtained by a money manager within the safe harbor.[69] Since that time, some have construed this standard broadly to apply to services and products that are only remotely connected to the investment decision-making process. In some cases, "administrative" or "overhead" goods and services have been classified as research.[70] In the 1998 OCIE Report, examiners reported that 28% of the money managers and 35% of the broker-dealers that were examined had entered into at least one arrangement that, in the staff's view, was outside of the scope of Section 28(e) and the 1986 Release.[71] In particular, OCIE examiners identified numerous examples of advisers that it believed failed to separate overhead or administrative expenses from those items that provide benefits to clients as brokerage and research services.[72] Examples of non-research items included: chartered financial analyst ("CFA") exam review courses, membership dues and professional licensing fees, office rent, utilities, phone, carpeting, marketing, entertainment, meals, copiers, office supplies, fax

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69 See SENATE COMM. ON BANKING, HOUSING AND URBAN AFFAIRS, SECURITIES ACTS AMENDMENTS OF 1975, S. REP. NO. 94-75, at 71 (1975), reprinted in 1975 U.S.C.C.A.N. 179, 249. See also infra note 82.

70 1998 OCIE Report, at 31.

71 Id. at 22, 31.

72 Id. at 31.

machines, couriers, backup generators, electronic proxy voting services, salaries, and legal and travel expenses.[73]

Client commissions are also used extensively to pay for mechanisms related to the delivery of research or brokerage services. In the 1998 OCIE Report, staff reported that some advisers used client commissions to pay for various peripheral items that support hardware and software, such as the power needed to run the computer and the dedicated telephone line used to receive information into the computer.[74]

The products and services available to money managers have grown more varied and complex. For example, a single software product may perform an array of functions, but only some of the functions are properly "brokerage and research services" under Section 28(e). In the 1998 OCIE Report, staff reported that "the types of products available for purchase with client commissions have greatly expanded since 1986," leaving industry participants to grapple with decisions as to whether these products are "research" or "brokerage" within the safe harbor, or whether these products should be considered part of money managers' overhead expenses to be paid for by managers with their own funds.[75]

The Commission observes that developments in technology have led to difficulties in applying client commission standards that were developed over the past thirty years. In addition, OCIE staff reported that money managers have taken an overbroad view of the products and services that qualify as "brokerage and research services" under the safe harbor.[76] The complexity of products and services creates uncertainty about whether client commissions may

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73 Id. at 31-32.

74 Id. at 34-35.

75 Id. at 49.

76 See id. at 3-4, 31-32.

be used within the safe harbor to purchase all or a portion of particular products and services. This uncertainty may result in the use of client commission dollars to acquire products and services that are outside of the safe harbor, improper allocation of research and non-research mixed-use products and services (as contemplated by the 1986 Release), or inadequate documentation of allocations.[77]

Questions regarding the use of client commissions have led legislators, regulators, fund industry participants, and investors to consider whether some uses of client commissions should be banned, the safe harbor withdrawn, or changes made to the regulatory landscape.[78] As a step to address the present environment and comments received in response to the Proposing Release, the Commission has determined to provide further guidance on the scope of the safe harbor.[79] Further guidance in this area may be particularly important because, under existing law and rules, money managers must disclose client commission arrangements as material information,[80] and may provide more detailed disclosure when they receive products or services that fall outside

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77 See id. at 4-6, 32-33.

78 See, e.g., Mutual Funds Integrity and Fee Transparency Act of 2003, H.R. 2420, 108th Cong. (2003) (This bill would have required, among other things, that the Commission do the following: issue rules requiring mutual funds to disclose their policies and practices regarding the use of client commissions to obtain research, advice, or brokerage activities; issue rules requiring managers to maintain copies of the written contracts with third-party research providers; and conduct a study on the use of client commission arrangements by managers.); Mutual Fund Transparency Act of 2003, S. 1822, 108th Cong. (2003) (This bill would have required, among other things, that the Commission issue a rule to require mutual funds to disclose as fund fees and expenses brokerage commissions paid by the fund and borne by shareholders.). See also Letter from Matthew P. Fink, President, The Investment Company Institute, to William H. Donaldson, Chairman, U.S. Securities and Exchange Commission (Dec. 16, 2003) (urging the Commission to issue interpretative guidance excluding from the Section 28(e) safe harbor: (1) computer hardware and software and other electronic communications facilities used in connection with trading investment decision-making; (2) publications, including books, newspapers, and electronic publications, that are available to the general public; and (3) third-party research services), available at http://www.sec.gov/rules/petitions/petn4-492.htm.

79 In addition to concerns over the scope of the safe harbor under current market conditions, the Commission recognizes that improvements may be necessary in disclosure and documentation of client commission practices. For example, the ability to enforce client commission standards may be hampered by inadequate documentation. The Commission will evaluate whether further action is necessary.

80 See Form ADV, Pt. II, Items 12.B and 13.A. See also Sage Advisory Services LLC, Exchange Act Release No. 44600, 75 SEC Docket 1073 (July 27, 2001).

the scope of the safe harbor. If a money manager incorrectly concludes that a product or service is within the safe harbor, the money manager may provide disclosure that is inadequate. In addition, guidance will assist money managers of registered investment companies and pension funds subject to ERISA in determining whether they are complying with the Investment Company Act and ERISA because using client commissions to pay for products that are outside the safe harbor may violate these laws.

B. Framework for Analyzing the Scope of the "Brokerage and Research Services" under Section 28(e)

The Commission has recognized the need to interpret the scope of the terms "brokerage and research services" in Section 28(e) in light of Congress's intention to provide a limited safe harbor for conduct that otherwise may be a breach of fiduciary duty.[81] In the 1986 Release, the Commission adopted the "lawful and appropriate assistance" standard for "brokerage and research services,"[82] which was intended to supplement the statutory elements of the analysis of whether a money manager's payment for a product or service with client commissions is within the safe harbor. While the 1986 Release focused on the application of the "lawful and appropriate assistance" standard to research, we believe the standard also applies to brokerage services.

Taking into account the legislative history of Section 28(e) and our prior guidance, the analysis of whether a particular product or service falls within the safe harbor should involve

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81 SENATE COMM. ON BANKING, HOUSING AND URBAN AFFAIRS, SECURITIES ACTS AMENDMENTS OF 1975, S. REP. NO. 94-75, at 71 (1975), reprinted in 1975 U.S.C.C.A.N. 179, 249.

82 See 1986 Release, 51 FR at 16006 n.9 (quoting from SENATE COMM. ON BANKING, HOUSING AND URBAN AFFAIRS, SECURITIES ACTS AMENDMENTS OF 1975, S. REP. NO. 94-75, at 71 (1975), reprinted in 1975 U.S.C.C.A.N. 179, 249) (The Report concludes, "Thus, the touchstone for determining when a service is within or without the definition in Section 28(e)(3) is whether it provides lawful and appropriate assistance to the money manager in the carrying out of his responsibilities."). In articulating the "commercial availability" standard for safe-harbor eligibility in the 1976 Release, the Commission also expressly recognized "lawful and appropriate assistance" as the "touchstone" for whether a service is within or without the provision of Section 28(e)(3). 1976 Release, 41 FR at 13679.

three steps.[83] First, the money manager must determine whether the product or service falls within the specific statutory limits of Section 28(e)(3) (i.e., whether it is eligible "research" under Section 28(e)(3)(A) or (B) or eligible "brokerage" under Section 28(e)(3)(C)).[84] Second, the manager must determine whether the eligible product or service actually provides lawful and appropriate assistance in the performance of his investment decision-making responsibilities. Where a product or service has a mixed use, a money manager must make a reasonable allocation of the costs of the product according to its use. Finally, the manager must make a good faith determination that the amount of client commissions paid is reasonable in light of the value of products or services provided by the broker-dealer.[85] We discuss these statutory elements in more detail below.

C. Eligibility Criteria for "Research Services" under Section 28(e)(3)

In response to the Proposing Release, nine comment letters supported the Commission's proposed narrowing of the scope of research under Section 28(e).[86] Three commenters stated

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83 In the Commission's view, the prudent way for a money manager to meet its burden of showing eligibility for the safe harbor is to document fully its client commission arrangements.

84 See 1986 Release, 51 FR at 16006. See also 1976 Release, 41 FR at 13679 ("The term 'brokerage and research services', as used in Section 28(e), is defined in Section 28(e)(3)."). Section 28(e)(3) states that,

> a person provides brokerage and research services insofar as he –
>
> (A) furnishes advice, either directly or through publications or writings, as to the value of securities, the advisability of investing in, purchasing, or selling securities, and the availability of securities or purchasers or sellers of securities;
>
> (B) furnishes analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts; or
>
> (C) effects securities transactions and performs functions incidental thereto (such as clearance, settlement, and custody) or required in connection therewith by rules of the Commission or a self-regulatory organization of which such person is a member or person associated with a member or in which such person is a participant.

15 U.S.C. 78bb(3)(A) - (C).

85 15 U.S.C.78bb(e). See 1986 Release, 51 FR at 16006-07. The Commission also emphasized the money manager's disclosure and other obligations under the federal securities laws, including the duty to seek best execution of his or her client's transactions. Id. at 16007-11.

86 ASIR 1; BNY 1; CFA Institute; FinTech; IMA; MFDF; NCS; T. Rowe Price; Vanguard.

that the Commission's approach did not sufficiently narrow the scope of "research,"[87] while another commenter recommended that the Commission improve clarity by providing extensive lists of research items that are eligible and ineligible for the Section 28(e) safe harbor.[88] Based on the language of the statute and our analysis of the legislative history, and taking into consideration the comments to the Proposing Release regarding the types of products and services paid for and their uses, we believe that the eligibility criteria for "research" under the safe harbor discussed in the Proposing Release and set forth below represents the appropriate interpretation of Section 28(e).

The eligibility criteria that govern "research services" are set forth in Section 28(e)(3) of the Exchange Act:

> For purposes of the safe harbor, a person provides . . . **research services** insofar as he –
>
> > (A) furnishes **advice**, either directly or through publications or writings, as to the value of securities, the advisability of investing in, purchasing, or selling securities, and the availability of securities or purchasers or sellers of securities;
> >
> > (B) furnishes **analyses** and **reports** concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts; . . . .[89]

In determining that a particular product or service falls within the safe harbor, the money manager must conclude that it constitutes "advice," "analyses," or "reports" within the meaning of the statute and that its subject matter falls within the categories specified in Section 28(e)(3)(A) and (B). With respect to the subject matter of potential "research services," we note that the categories expressly listed in Section 28(e)(3)(A) and (B) also subsume other topics

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87 CFA/FD (joint letter); IDC.

88 Notas.

89 15 U.S.C. 78bb(e)(3)(A) - (B) (emphasis added).

related to securities and the financial markets.[90] Thus, for example, a report concerning political factors that are interrelated with economic factors could fall within the scope of the safe harbor. The form (e.g., electronic, paper, or oral discussions) of the research is irrelevant to the analysis of eligibility under the safe harbor.

In evaluating the statutory language, the Commission notes that an important common element among "advice," "analyses," and "reports" is that each reflects substantive content – that is, the expression of reasoning or knowledge.[91] Thus, in determining whether a product or service is eligible as "research" under Section 28(e), the money manager must conclude that it reflects the expression of reasoning or knowledge and relates to the subject matter identified in Section 28(e)(3)(A) or (B). Traditional research reports analyzing the performance of a particular company or stock clearly are eligible under Section 28(e). Discussions with research analysts also fall squarely within the statute because they involve "furnish[ing] advice . . . directly . . . as to the . . . advisability of investing in securities." Thus, they reflect the expression of reasoning or knowledge (i.e., furnishing advice) relating to the statutory subject matter (i.e., the advisability of investing in securities). Meetings with corporate executives to obtain oral reports on the performance of a company are eligible because reasoning or knowledge will be imparted at the meeting (i.e., reports) about the subject matter of Section 28(e) (i.e., concerning issuers). Seminars or conferences may also be eligible under the safe harbor if they truly relate to research, that is, they provide substantive content relating to the subject matter in the statute,

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90 See SENATE COMM. ON BANKING, HOUSING AND URBAN AFFAIRS, SECURITIES ACTS AMENDMENTS OF 1975, S. REP. NO. 94-75, at 71 (1975), reprinted in 1975 U.S.C.C.A.N. 179, 249 ("[T]he reference [in Section 28(e)] to economic factors and trends would subsume political factors which may have economic implications which may in turn have implications in terms of the securities markets as a whole or in terms of the past, present, or future values of individual securities or groups of securities."). See also S. 249 Hearings, at 329, 330 (Combined statement of Baker, Weeks & Co., Inc., Donaldson, Lufkin & Jenrette Sec. Corp., Mitchell, Hutchins Inc., and Oppenheimer & Co.) (Research under Section 28(e) should include "advice and information on industries, economics, world conditions, portfolio strategy and other areas.").

91 The content may be original research or a synthesis, analysis, or compilation of the research of others.

such as issuers, industries, and securities.[92] Software that provides analyses of securities portfolios is eligible under the safe harbor because it reflects the expression of reasoning or knowledge relating to subject matter that is included in Section 28(e)(3)(A) and (B).[93] Corporate governance research (including corporate governance analytics) and corporate governance rating services could be eligible if they reflect the expression of reasoning or knowledge relating to the subject matter of the statute (for example, if they provide reports and analyses about issuers, which can have a bearing on the companies' performance outlook).[94]

As noted above, even if the manager properly concludes that a particular product or service is an "analysis," "advice," or "report" that reflects the expression of reasoning or knowledge, it is eligible research only if the subject matter of the product or service falls within the categories specified in Section 28(e)(3)(A) and (B). Thus, for example, consultants' services may be eligible for the safe harbor if the consultant provides advice with respect to portfolio strategy, but such services are not eligible if the advice relates to the managers' internal management or operations.

1. Mass-Marketed Publications

The Proposing Release sought comment on whether the Commission should provide further guidance regarding mass-marketed publications. More than half of the commenters who

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92 As discussed below, travel and related expenses (e.g., meals and entertainment) associated with arranging trips to meet corporate executives or to attend seminars or conferences are not eligible under the safe harbor. See 1986 Release, 51 FR at 16007. We note that the FSA has identified seminars as "non-permitted" services. See FSA Final Rules, at Annex, p. 9 (Conduct of Business Sourcebook Rule 7.18.8(d)).

93 See SENATE COMM. ON BANKING, HOUSING AND URBAN AFFAIRS, SECURITIES ACTS AMENDMENTS OF 1975, S. REP. NO. 94-75, at 71 (1975), reprinted in 1975 U.S.C.C.A.N. 179, 249 ("computer analyses of securities portfolios would . . . be covered").

94 This paragraph incorporates responses to commenters' requests to clarify the eligibility of the following: discussions with analysts (T. Rowe Price); meetings with corporate executives (Murphy; T. Rowe Price); and corporate governance research, corporate governance research analytics, and corporate governance rating services (GMI; ISS).

discussed this issue indicated that mass-marketed publications were readily distinguishable from traditional research products and should be excluded from the safe harbor on that basis.[95] Other commenters believed that mass-marketed publications should be subjected to the same eligibility criteria as other forms of research.[96]

The congressional hearings on the 1975 Amendments and contemporaneous statements support the view that "research services" intended to be covered by the safe harbor are the types that broker-dealers had historically provided to money managers during the era of fixed commissions – exemplified by research reports produced by Wall Street brokerage firms – rather than newspapers, magazines, and other periodical publications that are in general circulation to the retail public.[97] Accordingly, we believe that Section 28(e) should not protect the money

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95 Bloomberg; CFA/FD; George 2; ICI; IDC; Merrill Lynch; SIA; T. Rowe Price. Two other commenters seemed to believe that certain mass-marketed publications should be included and others excluded. Charles River; ISITC.

96 ABA; CFA Institute; Commission Direct; Dow Jones; Reuters; Seward & Kissel. Commission Direct questioned whether, as a practical matter, managers will pay for mass-marketed publications under Section 28(e), noting that money managers that provide to clients a list of services paid for with commissions "will be very reluctant to identify ubiquitous newspapers or journals."

97 S. 249 Hearings, at 201-205 (Statement of Ray Garrett, Jr., Chairman, U.S. Securities and Exchange Commission). See also S. 249 Hearings, at 330-31 (Combined statement of Baker, Weeks & Co., Inc., Donaldson, Lufkin & Jenrette Sec. Corp., Mitchell, Hutchins Inc., and Oppenheimer & Co.) (legislation is necessary to protect professional fiduciary's access to broker-generated research.); Harvey E. Bines, The Law Of Investment Management 9-56 (1978); Richard L. Teberg and Mary B. Cane, Paying Up For Research, 115 TRUSTS & ESTATES 62 (January 1976) ("[T]he Wall Street Journal or Fortune . . . [and other] services, of course, are clearly not within the congressional purposes of Section 28(e) since they do not relate to the research or execution function."); A. A. Sommer, Jr., A Glance at the Past, a Probe of the Future, Address at the Mid-Continental District of the Securities Industry Association (Mar. 18, 1976) ("There continues to be the problem of how the good research capacity of Wall Street can be compensated and preserved . . . ."); James F. Jorden, Paying Up for Research: A Regulatory and Legislative Analysis, 1975 DUKE L.J. 1103, 1123-24 (1975) ("[A] prudent adviser . . . cannot use brokerage to purchase . . . a subscription to the Wall Street Journal."). Speaking just weeks before the safe harbor legislation was signed into law, Commissioner Sommer stated:

> Already we are being asked questions about what can properly be deemed research for which business may be allocated or commissions paid. . . . [F]rankly I don't think a conscientious, scrupulous professional needs us to tell him that a subscription to The Wall Street Journal or Fortune, or legal or accounting services, or office furniture, is not the "research" which he can lawfully buy with his beneficiary's dollars.

A. A. Sommer, Jr., Have We Learned Anything?, Address at the Investment Company Institute (May 14, 1975), in SECURITIES WEEK, 14 (May 19, 1975).

manager's purchase of publications that are mass-marketed. Mass-marketed publications are those publications that are intended for and marketed to a broad, public audience. Indicia of these mass-marketed publications include, among other things, that they are circulated to a wide audience, intended for and marketed to the public, rather than intended to serve the specialized interests of a small readership, and have low cost. These mass-marketed publications are more appropriately considered as overhead expenses of money managers.[98]

Our conclusion that the safe harbor of Section 28(e) should not include mass-marketed publications does not affect the eligibility of certain other publications that qualify as "research" under the guidance above. Indicia of publications that are not mass-marketed and could be eligible research under the safe harbor include, among other things, that they are marketed to a narrow audience, directed to readers with specialized interests in particular industries, products, or issuers, and have high cost. For example, financial newsletters and other financial and economic publications that are not targeted to a wide, public audience may be eligible research under the safe harbor. Trade magazines and technical journals concerning specific industries (e.g., nano-technology) or product lines (e.g., medical devices) are eligible as research under Section 28(e) if they are marketed to, and intended to serve the interests of a narrow audience (e.g., physicians), rather than the general public.

The method of distribution of a publication does not determine whether it is mass-marketed. Thus, whether a publication is distributed in paper or electronically does not determine the availability of the safe harbor. Moreover, it is the focus of the marketing and not

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[98] The Commission recognizes that mass-marketed publications can play a role in keeping money managers informed about matters relevant to the performance of their responsibilities. It is the Commission's expectation that money managers may market their services and receive advisory fees based on a fundamental level of knowledge about the industry, which could include review of these mass-marketed publications. Nonetheless, money managers should obtain these mass-marketed publications with their own funds, rather than have clients pay for them through commissions.

the availability of the publication that is an important criterion for determining the applicability of the safe harbor. Even if a publication that is marketed to a narrow audience, such as investment professionals, can be accessed over the internet by the general population, this does not alter its eligibility as research under Section 28(e). The purpose of such publications is to reach a small audience and to serve the specialized interests of a narrow group. Accordingly, if these publications otherwise meet the eligibility criteria for research (that is, they contain the expression of reasoning or knowledge related to the statutory subject matter), money managers can use client commissions to pay for them under Section 28(e).

2. Inherently Tangible Products and Services

Products or services that do not reflect the expression of reasoning or knowledge, including products with inherently tangible or physical attributes (such as telephone lines or office furniture), are not eligible as research under the safe harbor. We do not believe that these types of products and services could be said to constitute "advice," "analyses," or "reports" within the meaning of the statute. Applying this guidance, a money manager's operational overhead expenses do not constitute eligible "research services."[99] For example, expenses for travel, entertainment, and meals associated with attending seminars, and travel and related expenses associated with arranging trips to meet corporate executives, analysts, or other individuals who may provide eligible research orally are not eligible under the safe harbor. Similarly, office equipment, office furniture and business supplies, salaries (including research staff), rent, accounting fees and software, website design, e-mail software, internet service, legal expenses, personnel management, marketing, utilities, membership dues (including initial and maintenance fees paid on behalf of the money manager or any of its employees to any

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[99] See 1986 Release, 51 FR at 16006-07.

organization or representative or lobbying group or firm), professional licensing fees, and software to assist with administrative functions such as managing back-office functions, operating systems, word processing, and equipment maintenance and repair services are examples of other overhead items that do not meet the statutory criteria for research set forth in this release and are not eligible under the safe harbor.[100]

Computer hardware, including computer terminals,[101] and computer accessories, while they may assist in the delivery of research, are not eligible "research services" because they do not reflect substantive content related in any way to making decisions about investing.[102] Similarly, the peripherals and delivery mechanisms associated with computer hardware or associated with the oral delivery of research, including telecommunications lines, transatlantic cables, and computer cables, are outside the "research services" safe harbor.[103]

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100 According to the 1998 OCIE Report, advisers used client commissions to pay for many of these items. See notes 70-74 and accompanying text. See also Sage Advisory Services LLC, Exchange Act Release No. 44600, 75 SEC Docket 1073 (July 27, 2001) (adviser improperly used client commission credits to pay for undisclosed non-research business expenses such as legal, accounting, and back-office record keeping services, payments of self-regulatory organization ("SRO") fees, and rent).

101 The Proposing Release asked how investors, money managers, broker-dealers, and others would be affected by the Commission's interpretive guidance that client commissions cannot be used to obtain computer equipment as research under Section 28(e). See Proposing Release, Question 2. Commenters either expressly supported the proposal to exclude computer equipment from the safe harbor (Bloomberg; Commission Direct; E*Trade; IMA; Merrill; Reuters) or indicated that this position would have minimal impact to industry participants (Charles River; George 2). Four commenters sought clarification about whether computer terminals dedicated to the transmission of particular research products are eligible. IMA; Mellon; NCS; STA. For the reasons explained in this Release, we do not believe that any computer terminals are eligible "research" under Section 28(e).

102 In 1986, the Commission suggested that advisers could use client commissions to pay for the portion of the cost of computers that relate to receiving research. See 1986 Release, 51 FR at 16006-07. In light of developments in technology and broad application of the 1986 standard to products and services that are only remotely connected to investment decision-making, as discussed above, we now believe that it is important to clarify that computers fall outside the scope of the safe harbor.

103 As indicated above, the products or services delivered over computer terminals and T-1 lines may be eligible if they satisfy the criteria set forth in this Release.

3. Market Research

Based on the comments we received in response to the Proposing Release, we believe that technology now permits managers to obtain research related to the market for securities from many sources and products, and through many delivery mechanisms, including order management systems ("OMS") and trade analytical software.[104] In many instances, this "market research" is the type of research report and advice historically provided directly by broker-dealers, such as advice on market color and execution strategies. Therefore, we believe that it is appropriate to clarify that "advice," "analyses," and "reports" regarding the market for securities – or "market research" – may be eligible under the safe harbor if they otherwise satisfy the standards for "research." For example, market research that may be eligible under Section 28(e) can include pre-trade and post-trade analytics, software, and other products that depend on market information to generate market research, including research on optimal execution venues and trading strategies.[105] In addition, advice from broker-dealers on order execution, including advice on execution strategies, market color, and the availability of buyers and sellers (and software that provides these types of market research) may be eligible "research" under the safe harbor.

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104 Twenty-one commenters to the Proposing Release indicated that OMS should be eligible under the safe harbor as brokerage or research. AmBankers; ASIR 1; BNY; CAPIS; Charles River; Eze Castle; IAA; ICI; IMA; Interstate; ISITC; ITG; Mellon; Merrill; Morgan Stanley; NSCP; Rainier; SIA; STA; UBS; Ward & Smith. Of these, fourteen commenters proposed that OMS should be eligible either as research services (if the Commission determined that they could not be appropriately analyzed as eligible brokerage) (CAPIS; Eze Castle; IAA; ICI; Interstate; ISITC; ITG; NSCP; Rainier) or as undifferentiated "brokerage and research services" (ASIR 1; BNY 1; Mellon; SIA; Ward & Smith).

105 If these products and services also contain functionality that is not eligible brokerage or research under the safe harbor, or if the products and services are eligible brokerage or research but the money manager does not use them in a way that provides lawful and appropriate assistance in investment decision-making, they may be mixed-use items. See infra note 125.

4. Data

The Proposing Release proposed that data services, including market data, would be eligible under the safe harbor if the data reflected substantive content related to the subject matter categories identified in Section 28(e). Based on the comments received on this issue regarding the content and use of these products, we believe that the analysis regarding data set forth in the Proposing Release is appropriate.[106] In our view, this approach will promote innovation by money managers who use raw data to create their own research analytics, thereby leveling the playing field with those money managers who buy finished research, which incorporates raw data, from others. Additionally, we believe that excluding market data from the safe harbor could become meaningless if it encouraged purveyors of this information to simply add some minimal or inconsequential functionality to the data to bring it within the safe harbor.

Accordingly, with respect to data services – such as those that provide market data or economic data – we believe that such services could fall within the scope of the safe harbor as eligible "reports" provided that they satisfy the subject matter criteria and provide lawful and appropriate assistance in the investment decision-making process. In the 1986 Release, we included market data services within the safe harbor, finding that they serve "a legitimate research function of pricing securities for investment and keeping a manager informed of market developments."[107] Because market data contain aggregations of information on a current basis related to the subject matter identified in the statute, and in light of the history of Section 28(e),

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106 Eight commenters expressed views about market data. ASIR 1; CFA/FD; CFA Institute; IDC; IMA; Reuters; T. Rowe Price. Of these, four commenters advocated that data should be excluded from the safe harbor as overhead. CFA/FD; IDC; T. Rowe Price. An equal number supported the proposal to include market data in the safe harbor as research or as brokerage. ASIR 1; CFA Institute; IMA; Reuters. A ninth commenter, the SIA, implicitly endorsed the inclusion of market data in the safe harbor by describing market data as part of order management systems that should be eligible under Section 28(e).

107 1986 Release, 51 FR at 16006. We believe that, in the 1986 Release, the Commission's indication that quotation equipment may be eligible under the safe harbor was intended to address market data.

we conclude that market data, such as stock quotes, last sale prices, and trading volumes, contain substantive content and constitute "reports concerning . . . securities" within the meaning of Section 28(e)(3)(B),[108] and thus are eligible as "research services" under the safe harbor.[109] Other data are eligible under the safe harbor if they reflect substantive content – that is, the expression of reasoning or knowledge – related to the subject matter identified in the statute. For example, we believe that company financial data and economic data (such as unemployment and inflation rates or gross domestic product figures) are eligible as research under Section 28(e).

5. Proxy Services

The Proposing Release requested information regarding industry practice with respect to proxy services (which include research and voting products and services provided by "proxy service" providers). The commenters that responded to this issue expressed the view that proxy services should qualify under the safe harbor depending on how they are used, and should be subject to the mixed-use criteria.[110] These commenters believe that certain proxy services should qualify as eligible research because they provide information and analysis that money managers consider when they determine the advisability of investing in, or retaining a position in, a security. Some of these commenters went further by suggesting that proxy research services used by managers in deciding how to vote proxies should also be eligible research under the safe harbor.[111] All the commenters on this issue recognize that proxy services may serve administrative or other non-research purposes as well. For example, these services may assist in

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108 15 U.S.C. 78bb(e)(3)(B).

109 We note that the FSA has determined that, "Examples of goods or services that relate to the provision of research that the FSA do not regard as meeting the requirements of [a research service] include price feeds or historical price data that have not been analyzed or manipulated to reach meaningful conclusions." FSA Final Rules, at Annex p. 9 (Conduct of Business Sourcebook Rule 7.18.7).

110 ASIR 1; BNY 1; IAA; ICI; ISS; Mellon; Seward & Kissel.

111 BNY 1; ICI; ISS; Mellon; Seward & Kissel.

receiving ballots, voting, returning ballots, and reporting on the votes cast.

As discussed above, in order for an eligible research product or service to be within Section 28(e), it must provide the money manager with lawful and appropriate assistance in making investment decisions. This standard focuses on how the manager uses eligible research. It is possible that managers could determine after a careful analysis that certain proxy products that contain reports and analyses on issuers, securities, and the advisability of investing in securities may be eligible research that may provide managers with lawful and appropriate assistance in investment decision-making. In contrast, we do not believe that eligible research that assists a manager in deciding how to vote proxy ballots provides the manager lawful and appropriate assistance in making decisions about investments for his clients.

In view of these comments, we believe that proxy services may be treated as mixed-use items, as appropriate.[112] Proxy service providers offer a range of products, some of which may satisfy the standards set forth in this Release for eligible "research" under the safe harbor. For example, reports and analyses on issuers, securities, and the advisability of investing in securities that are transmitted through a proxy service may be within Section 28(e).[113] In contrast, we believe that products or services offered by a proxy service provider that handle the mechanical aspects of voting, such as casting, counting, recording, and reporting votes, are administrative overhead expenses of the manager and are not eligible under Section 28(e).

D. Eligibility Criteria for "Brokerage" under Section 28(e)(3)

We recognize that to the extent that this interpretive release narrows the scope of eligible research under the safe harbor, there is a risk that, without further guidance on brokerage, some

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112 See Section III.F below for a discussion of mixed-use items.

113 Proxy services may also provide corporate governance research and corporate governance rating services. As discussed above, these products and services may be eligible research under Section 28(e) to the extent that they are used for investment decision-making but not in connection with voting.

services and products that were previously classified as research could be inappropriately reclassified as brokerage.[114] In 1998, OCIE staff recommended that the Commission provide further guidance on the scope of the safe harbor concerning the use of items that may facilitate trade execution, based on examiners' reports that

> [t]he technological explosion in the money management industry has been met with an increasing use of soft dollars to purchase state-of-the-art computer and communications systems that may facilitate trade execution. . . . The use of soft dollars to purchase these products may present advisers with questions similar to those surrounding computers purchased for research and analysis, i.e., how should an adviser distinguish between 'brokerage' services and 'overhead' expenses.[115]

For these reasons, we are providing the guidance set forth below to assist money managers in determining whether items are eligible as "brokerage services" under the safe harbor.

The Proposing Release discussed a "temporal" standard to distinguish between brokerage services that are related to the execution of securities transactions, which are eligible as brokerage under the safe harbor, and those that are overhead expenses, which are not. Twenty-seven commenters believe that the safe harbor should include certain products and services as eligible "brokerage."[116] Many of these commenters advocated expanding the temporal standard on the front end to include pre-trade analytics[117] and OMS,[118] and others suggested expanding it

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114 The NASD Task Force Report made a similar observation, and recommended that the Commission "monitor the use of the safe harbor for brokerage services for such inappropriate attempts to maintain the status quo by expanding the brokerage services aspect of the safe harbor." NASD Task Force Report, at 7 n.20.

115 1998 OCIE Report, at 35-36, 50.

116 ABA; ASIR 1; Bloomberg; BNY 1; Charles River; E*Trade; Eze Castle; Fidelity; George 2; ICI; IMA; ISITC; Interstate Group; ITG; Mellon; Merrill; MFA; Morgan Stanley; NSCP; Rainier; Reuters; Seward & Kissel; SIA; STA; T. Rowe Price; UBS; Ward & Smith. Only two commenters stated that the proposed brokerage standard was overbroad. CFA/FD.

117 Bloomberg; E*Trade; George 2; IMA; Interstate Group; ITG; Mellon; MFA; Morgan Stanley; NSCP; Reuters; SIA; STA; UBS. In addition, Fidelity questioned whether the Commission should exclude all pre-trade services.

118 ASIR 1; BNY 1; Charles River; Eze Castle; ICI; IMA; Interstate Group; ISITC; ITG; Mellon; Morgan Stanley; NSCP; Rainier; STA; T. Rowe Price; UBS; Ward & Smith.

on the back end to include long-term custody.[119] We considered these comments and for the reasons discussed below, we do not believe that all of the products and services identified by commenters fit within the proposed temporal standard, which we believe reflects an appropriate interpretation of the scope of "brokerage" services under Section 28(e). As clarified above, we have determined that market research (which includes pre- and post-trade analytics, including trade analytics transmitted through OMS) may be eligible research under the safe harbor. In addition, as explained below, we believe that Section 28(e) covers short-term custody, but not long-term custody. Also as explained, certain functionality provided through OMS may be eligible brokerage or research.

Under Section 28(e)(3)(C) of the Act, a person provides "brokerage . . . services" insofar as he or she:

> effects securities transactions and performs functions incidental thereto (such as clearance, settlement, and custody) or required in connection therewith by rules of the Commission or a self-regulatory organization of which such person is a member or in which such person is a participant.[120]

Section 28(e)(3)(C) describes the brokerage products and services that are eligible under the safe harbor. In addition to activities required to effect securities transactions, Section 28(e)(3)(C) provides that functions "incidental thereto" are also eligible for the safe harbor, as are functions that are required by Commission or SRO rules. Clearance, settlement, and custody services in connection with trades effected by the broker are explicitly identified as eligible incidental brokerage services. Therefore, the following post-trade services relate to functions incidental to executing a transaction and are eligible under the safe harbor as "brokerage

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119 ASIR 1; Merrill; Morgan Stanley; NSCP; SIA; STA. Commenters also suggested that the safe harbor should include the following products and services as eligible brokerage: advice on market color (ABA; BNY 1; ITG; Merrill; Seward & Kissel; SIA; UBS) and indications of interest (ABA; Merrill; SIA; UBS); capital commitment (BNY 1; SIA; UBS); and prime brokerage services (including extending stock loans and margin)(UBS).

120 15 U.S.C. 78bb(e)(3)(C).

services": post-trade matching of trade information; other exchanges of messages among broker-dealers, custodians, and institutions related to the trade; electronic communication of allocation instructions between institutions and broker-dealers; routing settlement instructions to custodian banks and broker-dealers' clearing agents; and short-term custody related to effecting particular transactions in relation to clearance and settlement of the trade. Similarly, comparison services that are required by the Commission or SRO rules are eligible under the safe harbor. For example, in certain circumstances, the use of electronic confirmation and affirmation of institutional trades is required in connection with settlement processing.[121]

1. Temporal Standard

Guided by the statute and legislative history, we believe that Congress intended "brokerage" services under the safe harbor to relate to the execution of securities transactions.[122] In our view, brokerage under Section 28(e) should reflect historical and current industry practices that execution of transactions is a process, and that services related to execution of securities transactions begin when an order is transmitted to a broker-dealer and end at the conclusion of clearance and settlement of the transaction. We believe that this temporal standard is an appropriate way to distinguish between "brokerage services" that are eligible under Section 28(e) and those products and services, such as overhead, that are not eligible. Specifically, for purposes of the safe harbor, we believe that brokerage begins when the money manager

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121 See NASD Rule 11860(a)(5); New York Stock Exchange ("NYSE") Rule 387(a)(5); American Stock Exchange Rule 423(5); Chicago Stock Exchange Article XV, Rule 5; Pacific Exchange Rule 9.12(a)(5); Philadelphia Stock Exchange Rule 274(b).

122 See Securities Acts Amendments of 1974, H.R. 5050, 93d Cong. (1974) (House bill on safe harbor referred to "brokerage services, including . . . research or execution services"); H.R. REP. NO. 93-1476 (1974) (House Committee Report on H.R. 5050 referred to "brokerage" as "research and other services related to the execution of securities transactions"); JOINT EXPLANATORY STATEMENT OF THE COMM. OF CONFERENCE, SECURITIES ACTS AMENDMENTS OF 1975, H.R. CONF. REP. NO. 94-229, at 108 (1975), reprinted in 1975 U.S.C.C.A.N. 321, 338 (House Conference Report on final House bill on Section 28(e) describes the safe harbor as relating to paying more than the lowest available price for "execution and research services").

communicates with the broker-dealer for the purpose of transmitting an order for execution and ends when funds or securities are delivered or credited to the advised account or the account holder's agent. Unlike brokerage, research services include services provided before the communication of an order. Thus, advice provided by a broker or trade analytical software that relates to the subject matter of the statute before an order is transmitted may fall within the research portion of the safe harbor, but not the brokerage portion of the safe harbor.[123]

Under this temporal standard, communications services related to the execution, clearing, and settlement of securities transactions and other functions incidental to effecting securities transactions, i.e., connectivity service between the money manager and the broker-dealer and other relevant parties such as custodians (including dedicated lines between the broker-dealer and the money manager's order management system; lines between the broker-dealer and order management systems operated by a third-party vendor; dedicated lines providing direct dial-up service between the money manager and the trading desk at the broker-dealer; and message services used to transmit orders to broker-dealers for execution) are eligible under Section 28(e)(3)(C). In addition, trading software used to route orders to market centers, software that provides algorithmic trading strategies, and software used to transmit orders to direct market access ("DMA") systems are within the temporal standard and thus are eligible "brokerage" under the safe harbor.[124]

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123 See supra text accompanying notes 104-105 for discussion of market research that may be eligible under Section 28(e).

124 Unlike research, brokerage services can include connectivity services and trading software where they are used to transmit orders to the broker, because this transmission of orders has traditionally been considered a core part of the brokerage service. We believe that mechanisms to deliver research, on the other hand, are separable from the research and the decision-making process.

We understand that OMS may include trading software used to route orders, provide algorithmic trading strategies, or transmit orders to DMA systems or provide connectivity to this software. Accordingly, these aspects of the OMS may be eligible brokerage.

2. Ineligible Overhead

On the other hand, hardware, such as telephones or computer terminals, including those used in connection with OMS and trading software, are not eligible for the safe harbor as "brokerage" because they are not sufficiently related to order execution and fall outside the temporal standard for "brokerage" under the safe harbor. In addition, software functionality used for recordkeeping or administrative purposes, such as managing portfolios, and quantitative analytical software used to test "what if" scenarios related to adjusting portfolios, asset allocation, or for portfolio modeling (whether or not provided through OMS) do not qualify as "brokerage" under the safe harbor because they are not integral to the execution of orders by the broker-dealers, i.e., they fall outside the temporal standard described above. Further, managers may not use client commissions under the safe harbor to meet their compliance responsibilities,[125] such as: (i) performing compliance tests that analyze information over time in order to identify unusual patterns, including for example, an analysis of the quality of brokerage executions (for the purpose of evaluating the manager's fulfillment of its duty of best execution), an analysis of the portfolio turnover rate (to determine whether portfolio managers are overtrading securities), or an analysis of the comparative performance of similarly managed accounts (to detect favoritism, misallocation of investment opportunities, or other breaches of fiduciary responsibilities); (ii) creating trade parameters for compliance with regulatory requirements, prospectus disclosure, or investment objectives; or (iii) stress-testing a portfolio

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[125] For example, to the extent that money managers use trade analytics, including trade analytical software to test "what if" scenarios related to adjusting portfolios, asset allocations, or portfolio modeling, or OMS both for research and to assist in fulfilling contractual obligations to the client or to assess whether they have complied with their own regulatory or fiduciary obligations such as the duty of best execution or for other internal compliance purposes, the trade analytical software or OMS is a mixed-use product, and managers must use their own funds to pay for the allocable portion of the cost of the software or OMS that is not within the safe harbor because it is attributable to purposes outside Section 28(e) such as for internal compliance.

under a variety of market conditions or to monitor style drift. Additionally, trade financing, such as stock lending fees, and capital introduction and margin services are not within the safe harbor because these services are not sufficiently related to order execution.[126] Moreover, error correction trades or related services in connection with errors made by money managers are not related to the initial trade for a client within the meaning of Section 28(e)(3)(C) because they are separate transactions to correct the manager's error, not to benefit the advised account, and thus error correction functions are not eligible "brokerage services" under the safe harbor.[127] The products and services described in this paragraph are properly characterized as "overhead," i.e., part of the manager's cost of doing business, and are ineligible under Section 28(e).

3. Custody

Several commenters asked the Commission to clarify that custody is within the safe harbor,[128] and several of these commenters advocated broadly including long-term custody in Section 28(e), arguing that the statute explicitly references custody without limitation.[129] On its face, the plain language of the statute limits the scope of the safe harbor to custody that is incidental to effecting securities transactions. We believe that short-term custody related to effecting particular transactions and clearance and settlement of those trades fits squarely within the statute because it is tied to processing the trade between the time the order is placed and settlement of the trade. In contrast, long-term custody is provided post-settlement and relates to long-term maintenance of securities positions. Further, we understand that many money

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126 Often, advisory clients pay their own trade financing costs, which provides transparency that is beneficial to investors and does not necessarily implicate Section 28(e).

127 We note that the staff has taken a similar position. See Charles Lerner, Department of Labor, No-Action Letter (Oct. 25, 1988) (Dept. of Labor ("DOL") sought Commission staff advice regarding applicability of Section 28(e) to commission practices discovered by DOL investigators involving ERISA plans).

128 ASIR 1; Merrill; Morgan Stanley; NSCP; Schwab; SIA; STA; UBS.

129 Merrill; Schwab; SIA. In addition, UBS argued that the temporal standard is too narrow because the standard would exclude some important services, such as custody, that take place after settlement.

managers and their clients consider long-term custody to be a direct benefit to the advisory client and custody fees to be client expenses. In fact, advisory clients, rather than money managers, typically enter into contractual arrangements directly with custodians for their services, and many advisory clients pay for their own long-term custody.[130] We believe this is a healthy approach that provides transparency. Common industry practice is that financial firms that do not execute transactions for the client at all (e.g., custodian banks) provide this service, which has no relationship to, and cannot be considered incidental to, effecting securities transactions. Therefore, we believe that custodial services, such as long-term custody and custodial recordkeeping, provided in connection with accounts after clearance and settlement of transactions, are not incidental to effecting securities transactions and are services provided to the adviser's client, for the benefit of the client. As such, payment for a client's long-term custody and custodial recordkeeping with that client's commissions does not implicate Section 28(e).[131]

E. Lawful and Appropriate Assistance

In order for a product or service to be within the safe harbor, eligible research must not only satisfy the specific criteria of the statute, but it also must provide the money manager with lawful and appropriate assistance in making investment decisions. This standard focuses on how the manager uses the eligible research. For example, some money managers appear to be using

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130 See, e.g., Phyllis Feinberg, "Takeaway Game": Some Custody Banks Create 2-Tiered Bidding System For Old, New Clients, PENSIONS AND INVESTMENTS, Dec. 8, 2003, at 1 (discussing services and fees custodial banks charge their clients, such as Indiana State Teachers' Retirement System or the New Mexico Board of Finance). In addition, registered investment companies must disclose the amount of fees and expenses paid in connection with custody of investments. See Form N-1A, Item 23(g)(Registered investment companies must attach custodian agreements and depository contracts concerning the fund's securities and similar investments, including the schedule of remuneration, as an exhibit to the registration statement.); Regulation S-X 210.6-07 (requiring that registered investment companies describe in the statement of operations the total amount of fees and expenses in connection with custody of investments).

131 In some cases, we understand that advisory clients may pay for long-term custodial services through directed brokerage. See discussion of directed brokerage, supra note 27.

client commissions to pay for analyses of account performance that are used for marketing purposes.[132] Although analyses of the performance of accounts are eligible research items because they reflect the expression of reasoning or knowledge regarding subject matter included in Section 28(e)(3)(B), these items when used for marketing purposes are not within the safe harbor because they are not providing lawful and appropriate assistance to the money manager in performing his investment decision-making responsibilities.[133]

As with research, in order to obtain safe harbor protection for products and services that are eligible as brokerage, the money manager must be able to show that the eligible product or service provides him or her lawful and appropriate assistance in carrying out the manager's responsibilities.

F. "Mixed-Use" Items

As discussed above, the 1986 Release introduced the concept of "mixed use."[134] Where a product or service obtained with client commissions has a mixed use, a money manager faces an additional conflict of interest in obtaining that product with client commissions.[135] The 1986 Release stated that where a product has a mixed use, a money manager should make a reasonable allocation of the cost of the product according to its use, and emphasized that the money manager must keep adequate books and records concerning allocations so as to be able to make the required good faith determination.[136] Moreover, the allocation determination itself poses a

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132 See 1998 OCIE Report, at 20.

133 As discussed below in the mixed-use section, if the manager uses account performance analyses for both marketing purposes and investment decision-making, the manager may use client commissions only to pay for the allocable portion of the item attributable to use for investment decision-making under Section 28(e). See infra Section III.F.

134 See 1986 Release, 51 FR at 16007.

135 Id. at 16006-07.

136 Id.

conflict of interest for the money manager that should be disclosed to the client.[137] It appears that, in practice, some managers may have made questionable mixed-use allocations and failed to document the bases for their allocation decisions.[138] Lack of documentation makes it difficult for the manager to make the required good faith showing of the reasonableness of the commissions paid in relation to the value of the portion of the item allocated as brokerage and research under Section 28(e), and also makes it difficult for compliance personnel to ascertain the basis for the allocation.[139] The Proposing Release asked whether the Commission should provide additional guidance on the allocation and documentation of mixed-use items.[140]

Twenty-seven commenters submitted comments that touched upon the concept of mixed use.[141] Most of those commenters endorsed the mixed-use concept by recommending that the Commission consider particular products as mixed-use items.[142] For example, commenters indicated that the following products and services may be mixed-use products: trade analytical

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137 Id. at 16006 n.13.

138 1998 OCIE Report, at 32-34.

139 Id.

140 See Proposing Release, Question 8.

141 AmBankers; Bloomberg; BNY 1; CAPIS; CFA Institute; DOL; E*Trade; IAA; ICI; IMA; Interstate Group; ISITC; ISS; ITG; Mellon; Merrill; MFA; Morgan Stanley; NSCP; Rainier; Schwab; Seward & Kissel; SIA; STA; T. Rowe Price; UBS; Ward & Smith.

142 Bloomberg; BNY 1; CAPIS; CFA Institute; DOL; E*Trade; IAA; ICI; IMA; Interstate Group; ISITC; ISS; ITG; Mellon; Merrill; Rainier; Seward & Kissel; SIA; T. Rowe Price. The remaining eight commenters endorsed the concept of mixed use with little discussion. AmBankers; MFA; Morgan Stanley; NSCP; Schwab; STA; UBS; Ward & Smith.

software (which may sometimes be put to administrative use);[143] proxy voting services;[144] and OMS.[145]

We continue to believe that the "mixed-use" approach is appropriate. In that connection, we reiterate today the Commission's guidance provided in the 1986 Release regarding the mixed-use standard:[146] "The money manager must keep adequate books and records concerning allocations so as to be able to make the required good faith showing."[147] As stated above, the mixed-use approach requires a money manager to make a reasonable allocation of the cost of the product according to its use. For example, an allocable portion of the cost of portfolio performance evaluation services or reports may be eligible as research, but money managers must use their own funds to pay for the allocable portion of such services or reports that is used for marketing purposes.[148]

G. The Money Manager's Good Faith Determination as to Reasonableness Under Section 28(e)

Section 28(e) requires money managers who are seeking to avail themselves of the safe harbor to make a good faith determination that the commissions paid are reasonable in relation to

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143 Bloomberg; E*Trade; IAA; Merrill; SIA.

144 ASIR 1; BNY 1; IAA; ICI; ISS; Mellon; Seward & Kissel.

145 BNY 1; CAPIS; IAA; ICI; IMA; Interstate Group; ISITC; ITG; Mellon; Merrill; Morgan Stanley; Rainier; SIA; T. Rowe Price.

146 As noted above, this interpretation replaces Sections II and III of the 1986 Release.

147 1986 Release, 51 FR at 16006. The Commission may further address the documentation of mixed-use items at a later time.

148 In allocating costs for a particular product or service, a money manager should make a good faith, fact-based analysis of how it and its employees use the product or service. It may be reasonable for the money manager to infer relative costs from relative benefits to the firm or its clients. Relevant factors might include, for example, the amount of time the product or service is used for eligible purposes versus non-eligible purposes, the relative utility (measured by objective metrics) to the firm of the eligible versus non-eligible uses, and the extent to which the product is redundant with other products employed by the firm for the same purpose.

the value of the brokerage and research services received.[149] None of the commenters questioned the good faith determination requirement under the safe harbor. The Commission reaffirms the money manager's essential obligation under Section 28(e) to make this good faith determination. The burden of proof in demonstrating this determination rests on the money manager.[150]

A money manager satisfies Section 28(e) if he or she can demonstrate that the item is eligible under the language of the statute, the manager has used the item in performing investment decision-making responsibilities for accounts over which he exercises investment discretion, and, in good faith, the manager believes that the amount of commissions paid is reasonable in relation to the value of the research or brokerage product or service received, either in terms of the particular transaction or the manager's overall responsibilities for discretionary accounts.[151] Thus, for example, a money manager may purchase an eligible item of research with client commissions if he or she properly uses the information in formulating an investment decision, but another money manager cannot rely on Section 28(e) to acquire the very same item if the manager does not use the item for investment decisions or if the money manager determines that the commissions paid for the item are not reasonable with respect to the value of the research or brokerage received. Similarly, a money manager may not obtain eligible

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149 As we noted in 1986, "[a] money manager should consider the full range and quality of a broker's services in placing brokerage including, among other things, the value of research provided as well as execution capability, commission rate, financial responsibility, and responsiveness to the money manager. . . . [T]he determinative factor is not the lowest possible commission cost but whether the transaction represents the best qualitative execution for the managed account." 1986 Release, 51 FR at 16011. See also supra note 6.

150 See HOUSE COMM. ON INTERSTATE AND FOREIGN COMMERCE, SECURITIES ACTS AMENDMENTS OF 1975, H.R. NO. 94-123, at 95 (1975). The report states that: "It is, of course, expected that money managers paying brokers an amount [of commissions] which is based upon the quality and reliability of the broker's services including the availability and value of research, would stand ready and be required to demonstrate that such expenditures were bona fide." See also 1986 Release, 51 FR at 16006-16007.

151 If the money manager seeks the protection of the safe harbor, he or she should take care to analyze whether products and services provided by a broker-dealer and used in connection with advised accounts satisfy the eligibility and use standards for the safe harbor.

products, such as market data, to camouflage the payment of higher commissions to broker-dealers for ineligible services, such as shelf space or client referrals.[152] In this instance, the money manager could not make the determination, in good faith, that the commission rate was reasonable in relation to the value of the Section 28(e) eligible products because the commission would incorporate a payment to the broker-dealer for the non-Section 28(e) services. Further, if research products or services that are eligible under Section 28(e)(3) have been simply copied, repackaged, or aggregated, the money manager must make a good faith determination that any additional commissions paid in respect of such copying, repackaging, or aggregation services are reasonable. Finally, where a broker-dealer also offers its research for an unbundled price, that price should inform the money manager as to its market value and help the manager make its good faith determination.

H. Third-Party Research

The Proposing Release asked whether the Commission's discussion of third-party research offered sufficient guidance in this area.[153] Regarding third-party research, several commenters expressly endorsed the Commission's view that independent research providers should be accorded equal treatment with proprietary research providers.[154] None of the commenters disputed this point. Accordingly, we reiterate our views on this issue below.

Third-party research arrangements can benefit advised accounts by providing greater breadth and depth of research. First, these arrangements can provide money managers with the ability to choose from a broad array of independent research products and services. Second, the

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152 Rule 12b-1(h) under the Investment Company Act prohibits funds from using brokerage to pay for distribution. See Investment Company Act Release No. 26591 (Sept. 2, 2004), 69 FR 54728 (Sept. 9, 2004).

153 See Proposing Release, Question 5.

154 AmBankers; Bloomberg; BNY 1; Investorside.

manager can use third-party arrangements to obtain specialized research that is particularly beneficial to the advised accounts. We believe that the safe harbor encompasses third-party research and proprietary research on equal terms.

I. Client Commission Arrangements Under Section 28(e)

The Proposing Release asked whether the Commission's discussion of arrangements under Section 28(e) offered sufficient guidance in this area.[155] We received a substantial number of comments on industry practices related to client commission arrangements under Section 28(e).[156] Based on these comments and for the reasons discussed below, we are modifying our interpretation of "provided by" and "effecting" under Section 28(e).[157] In order to determine whether our guidance requires further clarification, we are soliciting additional comment on our revised interpretation of the safe harbor with respect to client commission arrangements under Section 28(e).

Twenty-four commenters addressed arrangements under Section 28(e).[158] Although some commenters supported the Commission's guidance with respect to Section 28(e)

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155 See Proposing Release, Question 5.

156 BNY 1; Bloomberg; CL King; Commission Direct; CAPIS; E*Trade; EuroIRP; Instinet; Interstate Group; IAA; ICI; IMA; JP Morgan 1 and JP Morgan 2; Mellon; Merrill; Morgan Stanley; NSCP; Reuters; Riedel; SIA; STA; T. Rowe Price; UBS; George 1, George 2, and George 3.

157 Section 28(e)(1) states in relevant part:

> No person . . . shall be deemed to have acted unlawfully or to have breached a fiduciary duty . . . solely by reason of his having caused the account to pay a member of an exchange, broker, or dealer an amount of commission for **effecting** a securities transaction in excess of the amount of commission another member of an exchange, broker, or dealer would have charged for effecting that transaction, if such person determined in good faith that such amount of commission was reasonable in relation to the value of the brokerage and research services **provided by such member, broker, or dealer**, viewed in terms of either that particular transaction or his overall responsibilities with respect to the accounts as to which he exercises investment discretion.

15 U.S.C. 78bb(e)(1) (emphasis added).

158 BNY 1; Bloomberg; CL King; Commission Direct; CAPIS; E*Trade; EuroIRP; Instinet; Interstate Group; IAA; ICI; IMA; JP Morgan 1 and JP Morgan 2; Mellon; Merrill; Morgan Stanley; NSCP; Reuters; Riedel; SIA; STA; T. Rowe Price; UBS; George 1, George 2, and George 3.

arrangements,[159] others expressed concern that the proposal (and, in particular, the requirement that introducing broker-dealers must perform certain minimum functions in order to "provide" research under the safe harbor) could have unwarranted and harmful policy consequences, such as reducing independent research and increasing the costs that the clients of money managers pay for brokerage and research.[160] Some of the commenters that objected to the proposed approach on this issue stated that some introducing broker-dealers that facilitate access to valuable research may not satisfy the minimum requirements that the Release would impose, and may have to discontinue operations. They recommended that the Commission eliminate the minimum requirements or modify them so that introducing broker-dealers can more easily satisfy them. In addition, several commenters asked the Commission to consider a broader interpretation of the "provided by" concept under Section 28(e).[161] These commenters argued that Section 28(e) arrangements have become more complex and less transparent than if broker-dealers were permitted to engage in these arrangements unencumbered by the requirement that the broker "effecting" the transaction also must be "providing" the research. Both groups of commenters recommended that the Commission interpret Section 28(e) to allow money managers the maximum flexibility to seek best execution and, separately, obtain good research, by permitting a broker to be responsible for execution and another party to be responsible for providing eligible research.

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159 BNY 1; George 2; Interstate; Reuters.

160 Bloomberg; CAPIS; E*Trade; EuroIRP; ICI; Instinet; IMA; NSCP; JP Morgan 1; Riedel; STA; SIA; Merrill; Morgan Stanley. These commenters noted that investors' costs could increase if introducing broker-dealers must add staff and/or trading desks to fulfill the minimum requirements and raise their fees accordingly. Implicit transaction costs could also increase if these broker-dealers build trade execution capabilities so that they satisfy the four minimum criteria but are inexpert at execution.

161 Commission Direct; EuroIRP; IMA; T. Rowe Price.

In addition, several commenters noted that the United Kingdom's regulatory efforts in this area allow money managers to use client commissions to pay separately for trade execution by the broker-dealer that can provide the best execution and ask the executing broker-dealer to allocate a portion of the commission directly to an independent research provider or allocate a portion of the commission to a pool of "credits" maintained by the broker-dealer and from which the broker-dealer, at the direction of the money manager, may pay independent research providers, without requiring that the executing broker-dealer be legally responsible for the research.[162] As noted above, some commenters believed that Section 28(e) arrangements in the United States reflect a market inefficiency if the manager seeks to use client commissions to pay for research under Section 28(e) and uses this middle-man to access independent research providers.

These comments highlight the considerable variety of arrangements under Section 28(e) that the industry has developed to seek to obtain the benefits that inure to investors from best execution on orders for advised accounts and providing money managers with both third-party and proprietary brokerage and research products and services of value to the advised accounts. Based on the additional information regarding current industry practices provided by these comments and consideration of congressional intent behind Section 28(e), we are revising our interpretation of the safe harbor to address the industry's innovative Section 28(e) arrangements and permit the industry to flexibly structure arrangements that are consistent with the statute and best serve investors. We are soliciting additional comment on client commission arrangements

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[162] Commission Direct; EuroIRP; IMA; JP Morgan 1. In addition, the SIA expressed concern over cross-border harmonization, noting that the Commission's four minimum functions for introducing broker-dealers may impose stricter requirements than those in place in the U.K. with respect to client commission arrangements.

under the safe harbor because of the many variations and complexity of these arrangements. In particular, we solicit comment on whether this guidance is sufficient to address this area.

1. Statutory Linkage Between "Provided by" and "Effecting"

Section 28(e) requires that the broker-dealer providing the research also be involved in effecting the trade.[163] The statutory linkage of the "provided by" and "effecting" elements in Section 28(e) was principally intended to preclude the practice of paying "give-ups."[164] Specifically, when brokerage commissions were fixed before 1975, a "give-up" was a payment to another broker-dealer of a portion of the commission required to be charged by the executing broker-dealer.[165] A principal concern regarding "give-ups" was that managers used them to direct client commissions to broker-dealers in exchange for providing services that benefited the money manager but had no benefit for his clients – such as to reward broker-dealers for distribution or for steering clients to the manager. The broker-dealer receiving the give-up may have had no role in the transaction generating the commission, and it may not even have known where or when the trade was executed. Because the portion of the commission "given up" is a charge on client accounts and because the broker-dealer receiving the "give-up" did nothing in

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163 15 U.S.C. 78bb(e).

164 In enacting Section 28(e), Congress described give-ups as a "regrettable chapter in the history of the securities industry and the limited definition of fiduciary responsibility added to the law by this bill in no way permits its return." JOINT EXPLANATORY STATEMENT OF THE COMM. OF CONFERENCE, SECURITIES ACTS AMENDMENTS OF 1975, H.R. CONF. REP. NO. 94-229, at 108 (1975), reprinted in 1975 U.S.C.C.A.N. 321, 339.

165 Give-ups took several forms, but typically occurred when a mutual fund (or its money manager or underwriter) directed an executing broker-dealer to pay a portion of a commission payment to another broker-dealer that was a member of the same exchange as the executing broker-dealer. The give-up often was payment for other services (that may have been unrelated to the trade) provided to the fund (or its adviser or underwriter) by the give-up recipient. See Division of Market Regulation, U.S. Securities and Exchange Commission, Market 2000: an Examination of Current Equity Market Developments (Jan. 1994), 1994 SEC LEXIS at 32-33 (citing Special Study, H.R. Doc. No. 88-95, pt. 2, at 316-317 and pt. 4, at 213-14). This type of give-up produced a conflict of interest for the adviser "between the interest of fund shareholders in lower commission charges and the interest of mutual fund advisers and underwriters in stimulating the sale of additional shares through directing a split of commission charges." Special Study, H.R. Doc. No. 88-95, pt. 2, at 318.

connection with the securities trade to benefit investors, the Commission found that these arrangements violated the securities laws.[166] In enacting Section 28(e), Congress addressed the issue of give-ups by indicating that the provision did not apply when the money manager made payment to one broker-dealer for the services performed by another broker-dealer.[167] In the 1986 Release, the Commission departed from a strict interpretation of the "provided by" provision when it concluded that payment of a part of a commission to a broker-dealer who is a "normal and legitimate correspondent" of the executing or clearing broker-dealer would not necessarily be a "give-up," outside the protection of Section 28(e).[168] We believe that both the legislative history and the Commission's prior interpretations in this area reflect an effort to safeguard against money managers and broker-dealers using Section 28(e) arrangements as mechanisms for the manager to use client commissions to make concealed payments to a broker-dealer that did not provide any services to benefit the advised accounts.

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166 See, e.g., Provident Management Corp., 44 SEC 442, 445-47 (Dec. 1, 1970) (finding violations of the antifraud provisions of the federal securities laws where unaffiliated broker-dealers who participated with the fund's officers, adviser, and affiliated broker-dealer in a reciprocal arrangement in which fund transactions were placed with unaffiliated broker-dealer in exchange for payment to affiliated broker-dealer of "clearance commissions" on unrelated transactions for which affiliated broker-dealer performed no function).

The Commission has found it a violation of the antifraud provisions of the securities laws to interpose an unnecessary party in a transaction, resulting in payment to the interposed party, and an additional cost to the fiduciary account. See Delaware Management Co., 43 SEC 392 (1967) (interpositioning broker between adviser and market maker caused adviser to pay unnecessary brokerage costs and violated the adviser's duty of best execution).

167 JOINT EXPLANATORY STATEMENT OF THE COMM. OF CONFERENCE, SECURITIES ACTS AMENDMENTS OF 1975, H.R. CONF. REP. NO. 94-229, at 109 (1975), reprinted in 1975 U.S.C.C.A.N. 321, 339. See also 1986 Release, 51 FR at 16007; 1976 Release, 41 FR at 13679.

168 1986 Release, 51 FR at 16007 ("Section 28(e) was not intended to exclude from its coverage the payment of commissions made in good faith to an introducing broker for execution and clearing services performed in whole or in part by the introducing broker's normal and legitimate correspondent."); 1976 Release, 41 FR at 13678-79 (Where "fiduciaries. . . [ask] the broker, retained to effect a transaction for the account of a beneficiary, to "give up" part of the commission negotiated by the broker and the fiduciary to another broker designated by the fiduciary for whom the executing or clearing broker is not a normal and legitimate correspondent[,]. . .[t]he Commission does not believe that Section 28(e) would apply.").

As noted above, the industry has developed many types of Section 28(e) arrangements. Some investment managers today use these arrangements to execute trades with one broker-dealer and obtain research and other services from a different broker-dealer. In some Section 28(e) arrangements, the introducing broker-dealer accepts orders from its customers and then may execute the trade and provide research, while a second broker-dealer clears and settles the transaction. In other arrangements, an introducing broker-dealer facilitates access to research and has little, if any, role in accepting customer orders or in executing, clearing, or settling any portion of the trade. Rather, another broker-dealer (often the clearing broker) executes, clears, and settles the trade, receiving a portion of the commission for its services. In some instances, the introducing broker is unaware of the daily trading activity of its customers because the orders are sent by the money manager directly (and only) to the clearing broker-dealer.[169] In addition, several commenters endorsed arrangements similar to those that have developed in the United Kingdom, in which money managers direct broker-dealers to collect and pool client commissions that may have been generated from orders executed at that broker-dealer, and periodically direct the broker-dealer to pay for research that the money manager has determined is valuable.[170]

As discussed above, the legislative history behind the linkage created between the "provided by" and "effecting" statutory language in Section 28(e) indicates that Congress was concerned that the safe harbor "would be asserted as a shield behind which the give-ups and reciprocal practices which were so notorious during the late 1960's could be reinstituted."[171] Since passage of the safe harbor in the 1970's, specialization and innovation in the financial

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169 The 1986 Release suggested that protection of Section 28(e) would not be lost merely because the money manager by-passed the order desk of the introducing broker and called his orders directly into the clearing broker. 1986 Release, 51 FR at 16007.

170 Commission Direct; EuroIRP; IMA; JP Morgan 1; T. Rowe Price.

171 JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE, SECURITIES ACTS AMENDMENTS OF 1975, H.R. CONF. REP. 94-229, at 108 (1975), reprinted in 1975 U.S.C.C.A.N. 321, 339.

industry have resulted in the functional separation of execution and research. Thus, efficient execution venues provide good, low-cost execution while research providers offer valuable research ideas that can benefit managed accounts. We believe that this separation of functions is beneficial to the money managers' clients, and Section 28(e) arrangements that promote functional allocation of these services are not the same as "give-ups."

2. "Effecting" Transactions

Section 28(e) arrangements typically involve clearing agreements pursuant to SRO rules.[172] These SRO rules require that introducing and clearing firms contractually agree to allocate enumerated functions, but do not mandate how the functions should be divided (i.e., they do not specify the functions that must be done by the introducing broker-dealer or clearing broker-dealer).[173] The Commission has stated that, under Section 28(e), it contemplates that in correspondent relationships, an "introducing broker-dealer would be engaged in securities activities of a more extensive nature than merely the receipt of commissions paid to [them] by other broker-dealers for 'research services' provided to money managers."[174] The Proposing Release identified four minimum criteria that an introducing broker-dealer must satisfy in order to be "effecting" transactions.

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172 See, e.g., NYSE Rule 382, "Carrying Agreements," 2 NYSE Guide ¶ 2382, Rule 382; NASD Rule 3230, "Clearing Agreements"; NASD Rules of Fair Practice, Section 47, Article III; American Stock Exchange Rule 400 (mirrors the provisions of NYSE Rule 382(b)).

173 For example, NYSE Rule 382 specifies that each fully-disclosed clearing agreement between SRO members shall allocate to the respective member the following functions: (i) opening, approving, and monitoring of accounts; (ii) extension of credit; (iii) maintenance of books and records; (iv) receipt and delivery of funds and securities; (v) safeguarding of funds and securities; (vi) confirmations and statements; (vii) acceptance of orders and execution of transactions. NYSE Rule 382(b). Further, the clearing broker must provide annually to the introducing broker-dealer a list of reports to assist the introducing broker to supervise and monitor its customer accounts and to fulfill its responsibilities under the agreement as well as deliver, and retain a copy of, those reports that the introducing broker requests. NYSE Rule 382(e)(1) and (2).

174 1986 Release, 51 FR at 16007, quoting Data Exchange Securities, No-Action Letter (Apr. 20, 1981).

Based on the comments received, which are discussed above, we recognize the benefit to investors of money managers being able to functionally separate trade execution from access to valuable research. At the same time, we believe that the statutory term "effecting" requires that, in order for the money manager to use the safe harbor, a broker-dealer that is "effecting" the trade must perform at least one of four minimum functions and take steps to see that the other functions have been reasonably allocated to one or another of the broker-dealers in the arrangement in a manner that is fully consistent with their obligations under SRO and Commission rules.[175] The four functions are: (1) taking financial responsibility for all customer trades until the clearing broker-dealer has received payment (or securities), i.e., one of the broker-dealers in the arrangement must be at risk for the customer's failure to pay; (2) making and/or maintaining records relating to customer trades required by Commission and SRO rules, including blotters and memoranda of orders; (3) monitoring and responding to customer comments concerning the trading process; and (4) generally monitoring trades and settlements.[176] In addition, of course, a broker-dealer is effecting securities transactions if it is executing, clearing, or settling the trade.

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175 Introducing and clearing brokers still remain subject to all applicable securities laws and regulations and SRO rules. For instance, nothing in this release changes in any way the applicability of anti-money laundering laws and regulations applicable to an introducing broker or a clearing broker. See, e.g., Currency and Foreign Transactions Reporting Act of 1970 ("Bank Secrecy Act"), [31 U.S.C. 5311 et seq.] (as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA Patriot Act"), Pub. L. No. 107-56, sec. 314, 326, 115 Stat. 272); Treasury regulations adopted under the Bank Secrecy Act [31 CFR Part 103]; Exchange Act Rule 17a-8 [17 CFR 240.17a-8]; NYSE Rule 445; NASD Rule 3011. This interpretation also does not alter the introducing broker and the clearing broker's supervisory obligations. See, e.g., Exchange Act Section 15(b)(4)(E) [15 U.S.C. 78o(b)(4)(E)]; NYSE Rules 342 and 405; NASD Rules 3010, 3012, and 3013. This interpretation also does not alter a broker-dealer's best execution obligation to its customers. See, e.g., NASD Rule 2320; NASD Notice to Members 01-22 (Apr. 2001).

176 See 1986 Release, 51 FR at 16007, citing SEI Financial Services Co., No-Action Letter (Dec. 15, 1983), in which the introducing broker in a correspondent relationship performed these functions.

In particular, one of the broker-dealers to the Section 28(e) arrangement must be aware of and monitor daily trading activity of customers even where the money manager sends orders directly to (and only to) the clearing broker.

3. Research Services Must Be "Provided by" the Broker-Dealer

Section 28(e) requires that the broker-dealer receiving commissions for "effecting" transactions must "provide" the brokerage or research services. The Commission has interpreted this to permit money managers to use client commissions to pay for research produced by someone other than the executing broker-dealer, in certain circumstances (referred to as "third-party research").[177] The Commission also has clarified that research provided in third-party arrangements is eligible under Section 28(e) even if the money manager participates in selecting the research services or products that the broker-dealer will provide.[178] In addition, the Commission has stated that the third party also may send the research directly to the broker-dealer's customer.[179] In the Proposing Release, the Commission restated its previous view that the broker-dealer must have the legal obligation to pay for the research in order to be considered "providing" the brokerage and research services under Section 28(e).[180] We continue to believe that a broker-dealer that is legally obligated to pay for research is "providing" research under the safe harbor. In addition, as stated above, based on the legislative history of Section 28(e), the

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177 See 1976 Release, 41 FR at 13679 (Section 28(e) "might, under appropriate circumstances, be applicable to situations where a broker provides a money manager with research produced by third parties"). See also 1986 Release, 51 FR at 16007 ("Although the legislative history of Section 28(e) includes a strong statement that commission dollars may be paid only to the broker-dealer that 'provides' both the execution and research services and that the section does not authorize the resumption of 'give-ups,' it seems unlikely that Congress intended to forbid certain common practices that were then considered permissible and whose elimination would be anti-competitive."); III Report, 19 SEC Docket at 932 (broker need not produce research services "in house").

178 Exchange Act Release No. 17371 (Dec. 12, 1980), 45 FR 83707, 83714 n.54 (Dec. 19, 1980) ("Papilsky Release"). See 1986 Release, 51 FR at 16007. In the Papilsky Release, the Commission addressed Section 28(e) and third-party research in the context of defining "bona fide research" for purposes of NASD rules that relate to obtaining research in a fixed-price offering.

179 Papilsky Release, 45 FR at 83714 n.54. See 1986 Release, 51 FR at 16007.

180 See 1986 Release, 51 FR at 16007; III Report, 19 SEC Docket at 932.

comments received in response to the Proposing Release, and the benefits to investors of flexibility in these arrangements, we are modifying our interpretation of "provided by."[181]

We believe that the safe harbor was not meant to allow money managers to use Section 28(e) arrangements to conceal the payment of client commissions to intermediaries (including broker-dealers) that provide benefits only to the money manager. In particular, we interpret Section 28(e) to be available as a safe harbor for the money manager in situations where broker-dealers use a money manager's client commissions to pay for eligible research and brokerage for which such broker-dealer is not directly obligated to pay if such broker-dealer pays the research preparer directly and takes steps to assure itself that the client commissions that the manager directs it to use to pay for such services are used only for eligible brokerage and research. Accordingly, for purposes of Section 28(e), we believe that the following attributes will help determine whether the broker-dealer that is effecting transactions for the advised accounts has satisfied the "provided by" element, and the Section 28(e) safe harbor is available to a money manager:[182] (i) the broker-dealer pays the research preparer directly; (ii) the broker-dealer reviews the description of the services to be paid for with client commissions under the safe harbor for red flags that indicate the services are not within Section 28(e) and agrees with the money manager to use client commissions only to pay for those items that reasonably fall within the safe harbor;[183] and (iii) the broker-dealer develops and maintains procedures so that research payments are documented and paid for promptly.[184]

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181 As noted above, this Release replaces Sections II and III of the 1986 Release, which include the "provided by" interpretation. See text accompanying note 68.

182 In Section 28(e) arrangements involving multiple broker-dealers, at least one of the broker-dealers (but not necessarily all) must satisfy the requirements for "effecting" transactions and "providing" research.

183 In all Section 28(e) arrangements, including those in which the broker-dealer is legally obligated to pay for the research, the broker-dealer may be subject to liability for aiding and abetting violations by money managers where the broker-dealer pays for services that are not within Section 28(e). See e.g., Portfolio Advisory Services, LLC, and Cedd L. Moses, Advisers Act Release No. 2038, 77 SEC Docket 2759-31

4. Legal Obligations of Parties to Section 28(e) Arrangements

The Proposing Release stated that parties to arrangements under Section 28(e) must determine whether they are contributing to a violation of law, including whether the involvement of other parties is appropriate.[185] Commenters expressed concern that this statement imposed heightened responsibility on money managers and broker-dealers.[186] To clarify, the Commission intends only to remind parties to Section 28(e) arrangements that, under existing law, money managers may be subject to liability under federal securities laws, ERISA, and state law, and broker-dealers may be subject to liability if they aid and abet another person's violation of a provision of the securities laws.[187] For example, if a broker-dealer knows that a money manager

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(June 20, 2002); Dawson-Samberg Capital Management, Inc. and Judith A. Mack, Advisers Act Release No. 1889, 54 SEC 786 (Aug. 3, 2000); Founders Asset Management LLC and Bjorn K. Borgen, Advisers Act Release No. 1879, 54 SEC 762 (June 15, 2000); Marvin & Palmer Associates, Inc., et al., Advisers Act Release No. 1841, 70 SEC Docket 1643 (Sept. 30, 1999); Republic New York Sec. Corp. and James Edward Sweeney, Exchange Act Release No. 41036, 53 SEC 1283 (Feb. 10, 1999); SEC v. Sweeney Capital Management, Inc., Litigation Release No. 15664, 66 SEC Docket 1613 (Mar. 10, 1998), 1999 U.S. Dist. LEXIS 22298 (1999) (order granting permanent injunction and other relief); Renaissance Capital Advisers, Inc., Advisers Act Release No. 1688, 66 SEC Docket 408 (Dec. 22, 1997); Oakwood Counselors, Inc., Advisers Act Release No. 1614, 63 SEC Docket 2034 (Feb. 11, 1997); SEC v. Galleon Capital Mgmt., Litigation Release No. 14315, 57 SEC Docket 2593 (Nov. 1, 1994).

184 A broker-dealer would need to satisfy the "effecting" and "provided by" elements of Section 28(e) only where the money manager seeks to operate within the safe harbor. If the money manager is operating in part outside of the safe harbor, the broker-dealer would need to satisfy the "effecting" and "provided by" elements only with respect to the portion of the money manager's business for which the manager seeks to operate within the safe harbor.

Prompt payment is relevant to the determination of whether the broker-dealer has "provided" research because it assures that the research and the payment are linked, thereby preserving the statutory language requiring that the broker-dealer that "effects" the transactions for the advised accounts "provides" the research.

185 Exchange Act Release No. 52635 (Oct. 19, 2005), 70 FR 61700 (Oct. 25, 2005).

186 BNY 1; IAA; ICI; Mellon; NSCP; T.Rowe Price.

187 See, e.g., supra, notes 28-31 and accompanying text; Exchange Act § 15(b)(4)(iv)(E) and Advisers Act § 203(e)(6); III Report, 19 SEC Docket at 933 (Where brokers and money managers were aware that an intermediary was providing research to money managers in exchange for directing brokerage to the intermediary's designated brokers, but brokers had limited participation in providing the research, "those involved should have realized that the arrangement was not permitted by Section 28(e). . . .[B]rokers should have been alerted to the possibility of conduct which contravened applicable fiduciary principles and the federal securities laws."). See also Exchange Act Release No. 11629 (Sept. 3, 1975), ("A broker which causes or assists an institution to violate a duty to the investor may be aiding and abetting a fraudulent or deceptive act or practice."); 1976 Release, 41 FR at 13679 ("[N]or may money managers,

has represented to its clients that he will operate solely within Section 28(e),[188] and the adviser asks the broker-dealer to pay for office furniture and computer terminals, which under this release are not eligible under the safe harbor, the broker-dealer may risk aiding and abetting liability.

IV. Request for Comments

The Commission will consider further comment on evolving developments in connection with industry practices with respect to client commission arrangements under the safe harbor identified in Section III.I of this Release to evaluate whether additional guidance might be appropriate in the future. Based on any comments received, the Commission may, but need not, supplement the guidance in this Release in the future.

V. Implementation

The Proposing Release asked whether the Commission should allow market participants some period of time to implement the interpretation, and requested examples of potential implementation issues.[189] Fifteen commenters requested that the Commission establish a grace period for industry participants to implement the Commission's interpretative guidance of between three months[190] to at least one year.[191] Several commenters urged the Commission to

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under the authority of Section 28(e), direct brokers employed by them to make 'give up' payments. . . . [B]rokers should recognize that their compliance with any direction or suggestion by a fiduciary which would appear to involve a violation of the fiduciary's duty to its beneficiaries could implicate them in a course of conduct violating the anti-fraud provisions of the federal securities laws.").

188 Advisers that are not required to operate within the safe harbor may voluntarily choose to do so, and may represent to their clients that they do so. However, if an adviser that represents to its clients that he will operate within Section 28(e) and fails to do so, the representation is false and the conduct may be a violation of Section 206 of the Advisers Act and Section 10(b) of the Exchange Act and Rule 10b-5. Advisers to mutual funds and ERISA plans must operate within the safe harbor with respect to those clients because of Section 17(e) of the Investment Company Act or ERISA. See supra notes 30-31 and accompanying text.

189 Proposing Release, Question 10.

190 T. Rowe Price.

issue the interpretation without any phase-in period.[192] Several of these commenters suggested that the Commission should delay the effectiveness of its final interpretive guidance in order to allow existing annual contracts among money managers and broker-dealers to expire[193] or to review their arrangements in light of the Commission's final interpretation[194]; others indicated that an implementation period is important to accommodate significant operational changes in the industry, including any changes necessitated in the agreements among money managers and broker dealers.[195]

Since participants have relied on the Commission's prior interpretations, the Commission believes that they should be entitled to continue to rely on them for a period of time. We believe that, considering the views expressed in the comment letters, an appropriate period for market participants to continue to rely on the Commission's prior interpretations is six months. The interpretation set forth in this Release is effective immediately upon its publication in the Federal Register, on [insert date of publication in the Federal Register]. Market participants may continue to rely on the Commission's prior interpretations for six months following the publication of this Release in the Federal Register, that is, until [insert date 6 months after publication in the Federal Register].

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191 CAPIS; IAA; IMA; Mellon; Merrill; NSCP; Seward & Kissel; SIA; UBS. Three commenters recommended six months. BNY 1; George 2; ITG. Two commenters suggested that the Commission provide the industry an unspecified "reasonable" period of time within which to comply with the Commission's interpretation. Charles River; E*Trade.

192 Investorside; Reuters.

193 CAPIS; IAA; Mellon; Merrill; NSCP; Seward & Kissel.

194 BNY 1; ITG.

195 SIA; UBS.

List of Subjects in 17 CFR Part 241

Securities.

Amendments to the Code of Federal Regulations

For the reasons set out in the preamble, the Commission is amending Title 17, chapter II of the Code of Federal Regulations as set forth below:

PART 241 – INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

Part 241 is amended by adding Release No. 34-54165 and the release date of July 18, 2006 to the list of interpretive releases.

By the Commission.

Nancy M. Morris
Secretary

Dated: July 18, 2006

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 202

[Release Nos. 33-8724; 34-54168]

Amendments to the Informal and Other Procedures; Public Company Accounting Oversight Board Budget Approval Process

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("SEC" or "Commission") is amending its Informal and Other Procedures to add a rule that facilitates Commission review and approval of the budget and accounting support fee for the Public Company Accounting Oversight Board ("PCAOB" or "Board"), which is required by the Sarbanes-Oxley Act of 2002.

DATES: Effective Date: [Insert date **30** days after publication in the Federal Register]. Transition Dates: The PCAOB must comply with the timetable in § 202.11(c) and utilize a comprehensive strategic plan with respect to its budget and budget and justification no later than its budget submissions for 2008; provided however that the PCAOB and Commission shall use their best efforts to substantially comply with the timetable in § 202.11(c) for the PCAOB budget submission for 2007. This transition provision does not constitute a waiver of the requirement in section 109(b) of the Sarbanes-Oxley Act of 2002 that the PCAOB adopt a budget not less than one month prior to the commencement of its 2007 fiscal year.

FOR FURTHER INFORMATION CONTACT: Robert E. Burns, Chief Counsel, or Melanie S. Jacobsen, Senior Special Counsel, at (202) 551-5300, Office of the Chief

Accountant, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

The Commission is amending its Informal and Other Procedures[1] to add new Rule 11 related to the Commission's review and approval of the PCAOB budget and accounting support fee.

I. Background

The Sarbanes-Oxley Act of 2002 (the "Act") established the PCAOB to oversee the audits of public companies that are subject to the securities laws, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports. While the PCAOB is a private, nonprofit corporation,[2] it operates under the statutory oversight and enforcement authority of the Commission.[3]

In particular, the funding and budgeting functions of the PCAOB are subject to the express statutory requirement of approval by the Commission. Pursuant to Section 109 of the Act, the Commission is required to approve the PCAOB budget for each fiscal year and the annual accounting support fee that supports the PCAOB's operations.[4]

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1 17 CFR 202, et seq.

2 Sections 101(a) and (b) of the Act; 15 U.S.C. 7211(a) and (b).

3 The Act vests the Commission with oversight duties and responsibilities, including the duties to appoint the members of the PCAOB, approve PCAOB rules and professional standards for them to take effect, and act as an appellate authority for PCAOB enforcement actions and disputes regarding inspection reports. The Commission also, among other things, may amend existing PCAOB rules, assign additional tasks to the PCAOB as appropriate, oversee the PCAOB's exercise of certain assigned powers and duties, and limit the PCAOB's activities and remove PCAOB members. See sections 101, 104, 105, 107, and 109 of the Act; 15 U.S.C. 7211, 7214, 7215, 7217 and 7219.

4 Section 109(b) of the Act, 15 U.S.C. 7219(b), which states, in part:

> The Board ... shall ... establish a budget for each fiscal year, which shall be reviewed and approved according to ... [its] internal procedures not less than 1 month prior to the commencement of the fiscal year to which the budget pertains.... The budget shall be subject to approval of the Commission....

Section 109(c)(1) of the Act, 15 U.S.C. 7219(c)(1), which states, in part:

> The budget of the Board (reduced by any registration or annual fees received under section 102(e) for the year preceding the year for which the budget is being computed) ... shall be payable from annual accounting support fees, in accordance with subsections (d) .... Accounting support fees and other receipts of the Board ... shall not be considered public monies of the United States.

Section 109(d)(1) of the Act, 15 U.S.C. 7219(d)(1), which states, in part:

> The Board shall establish, with the approval of the Commission, a reasonable annual accounting support fee (or a formula for the computation thereof), as may be necessary or appropriate to establish and maintain the Board.

Section 109(d)(2) of the Act, 15 U.S.C. 7219(d)(2), which states, in part:

> The rules of the Board ... shall provide for the equitable allocation, assessment, and collection by the Board ... of the fee established ... among issuers, in accordance with subsection (g), allowing for differentiation among classes of issuers, as appropriate.

Section 109(g) of the Act, 15 U.S.C. 7219(g), which states, in part:

> Any amount due from issuers (or a particular class of issuers) under this section to fund the budget of the Board ... shall be allocated among and payable by each issuer (or each issuer in a particular class, as applicable) in an amount equal to the total of such amount, multiplied by a fraction –
> (1) the numerator of which is the average monthly equity market capitalization of the issuer for the 12-month period immediately preceding the beginning of the fiscal year to which such budget relates; and
> (2) the denominator of which is the average monthly equity market capitalization of all such issuers for such 12-month period.

PCAOB Rule 7100, approved by the Commission in Release No. 34-48278 (August 1, 2003), provides a formula for computation of the annual accounting support fee. It states, in part: "The Board shall calculate an accounting support fee each year. The accounting support fee shall equal the budget of the Board, as approved by the Commission, less the sum of all registration fees and annual fees received during the preceding calendar year from public accounting firms, pursuant to section 102(f) of the Act ...."

PCAOB Rule 7101, approved by the Commission in Release No. 34-48278 (August 1, 2003), identifies four classes of issuers and provides for the allocation of the support fee among those issuers.

This statutory allocation of responsibility to the PCAOB, to formulate budgets and accounting support fees in the first instance,[5] and to the Commission, to review and approve them,[6] is designed to assure effective governmental oversight of the budgetary process of the PCAOB. It contemplates a procedure through which (1) an annual determination may be made each year of the appropriate level of PCAOB revenues and expenditures; (2) budget priorities may be established; and (3) information may be furnished in a timely manner to the Commission, and thence to the Congress, the executive branch, and the public, in a manner that will assist the PCAOB in discharging its duties.

The early experience of the PCAOB and the Commission with adoption and approval of annual budgets has revealed the need for a more formal procedure, in particular to establish a clear timetable for each successive step in a more organized budget process. Both the PCAOB and the Commission have expressed a desire to better organize and routinize the annual budget making function. The goal of the new procedures is to improve the timeliness and transparency of the budget process and

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5 See section 109(b) of the Act, supra, and section 101(f) of the Act, 15 U.S.C. 7211(f), which states, in part:

> … the Board shall have the power, subject to section 107 – …
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> (4) to appoint such employees, accountants, attorneys, and other agents as may be necessary or appropriate, and to determine their qualifications, define their duties, and fix their salaries and other compensation (at a level that is comparable to private sector regulatory, accounting, technical, supervisory, or other staff or management positions)….

See also sections 101(c)(7) of the Act, 15 U.S.C. 7211(c)(7).

6 To perform this budget oversight and approval function, the Commission, among other things, assesses the PCAOB's funding priorities and competing demands for PCAOB resources. In addition, the Commission considers whether the PCAOB's administrative and financial management are appropriate, whether improved coordinating mechanisms should be developed, and whether unnecessary burdens are placed on the public.

thereby promote high quality decision making. This rule is designed to establish such a process.

II. Discussion

The budget process described below is designed to codify a thorough and deliberative process for both the PCAOB's preparation and the Commission's review of PCAOB budgets. While it is recognized that circumstances might occur that lead the Commission and PCAOB to agree to vary the process from time to time, the Commission expects that it and the PCAOB will follow the practices in the rule to the fullest extent practicable. The Commission also may waive any of the requirements set forth in this rule if circumstances warrant.[7]

References to the "PCAOB" in either this release or the rule are not intended to require a vote or other official action by the members of the Board. Rather, the Commission expects that actions under the rule will be performed as authorized in the Act and the PCAOB's bylaws.[8]

A. Timetable

The rule contains a timetable that is designed to allow for a more meaningful dialogue between the PCAOB and the Commission regarding the content of each budget. The events and dates set forth in the timetable refer to the year immediately preceding the budget year.[9]

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7 In addition, the Commission and PCAOB may assess whether changes to the rule are appropriate after the completion of one or more budget cycles.

8 The PCAOB's bylaws are available on the PCAOB web site: http://www.pcaobus.org/.

9 The PCAOB has a calendar-year fiscal year. If the PCAOB changes its fiscal year to end on a date other than December 31, the Commission would interpret the timetable so that the dates would be adjusted accordingly. For example, the narrative discussion of the PCAOB's program issues and

The first item in the timetable calls for the PCAOB, by March 15th, to provide the Commission with a narrative description of its program issues and outlook for the budget year. This narrative is to contain a discussion of the significant factors that the PCAOB anticipates may impact its resource needs in the budget year. The second step is for the Commission, after consideration of the PCAOB narrative, to provide the PCAOB with budgetary guidance and economic assumptions by April 30th. The nature and extent of guidance and assumptions may vary from year to year and may include general information about the securities markets, the accounting profession, and other factors impacting the range of budget resources that, in the opinion of the Commission, are needed by the PCAOB to carry out its statutory responsibilities.

The timetable calls for the PCAOB to provide the Commission each fiscal year with a preliminary budget for the next fiscal year, and with a justification for that preliminary budget, on or before the end of July. The new rule states that the budget and budget justification should include, among other things, a detailed budget plan, analyses of the PCAOB's programs and what the PCAOB expects to accomplish in the coming budget year, and a discussion of how the performance of the programs detailed in the budget will lead to both the accomplishment of the PCAOB's long-term strategic goals and the fulfillment of the PCAOB's duties and responsibilities under the Act.

The timetable allows three months following the submission of the preliminary budget and budget justification, August through October, for the Commission to analyze the PCAOB's background materials and the documentation for its budget, and for the Commission and the PCAOB to discuss the PCAOB's programs, assumptions, projected

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outlook for a fiscal year would be due on or before the fifteenth day of the third month of the preceding PCAOB fiscal year.

expenditures and receipts, and other information in or relevant to the preliminary budget and the budget justification. By the end of this three month period, the timetable calls for the Commission to "passback" the budget to the PCAOB with suggested revisions and the Commission's preliminary views on the budget.

As required by section 109 of the Act, the timetable provides for the PCAOB to approve its final budget before the end of the next month, which would be November 30. As a result of the thorough process preceding the PCAOB's approval, the PCAOB should be in a position to submit its final budget to the Commission immediately after the PCAOB approves it. This should permit the Commission, which would be familiar with the budget based on the review of the preliminary budget and the budget justification and communications with the PCAOB, to vote whether to approve the PCAOB budget and the accounting support fee on or before December 23rd of each year.

In the course of reviewing prior PCAOB budgets, SEC Commissioners and staff have met with PCAOB Board members and staff to discuss matters related to the budget and the Commission understands that PCAOB Board members and staff will continue to make themselves available for such meetings. In addition, to the extent determined appropriate, the Commission may ask the PCAOB to participate in meetings of the Commission to discuss matters related to the budget and the PCAOB has expressed its willingness, if requested by the Commission, to participate in such meetings.

B. Contents of the Budget and Budget Justification

As noted above, the rule provides for the preliminary budget, the budget submitted for Commission approval, and the accompanying budget justifications to include comprehensive explanations of the PCAOB's budget plan, past and projected

performance, and strategic goals. Under the rule, the budget justification includes a "performance budget" for the budget year, which, among other things, details what the PCAOB plans to accomplish, organized by strategic goal, and a description of the resources, means and strategies needed to accomplish those targets. The performance budget also would contain the performance targets for the current year and the previous year[10] and describe the resources, means and strategies needed to accomplish those targets.

To facilitate analyses of the PCAOB's progress in meeting its goals and any trends in its performance and financial operations, the rule provides for each budget to include, among other information, projected, and to the extent available actual, expenditures and receipts for the budget year, the current year and the previous year (for a total of three years).[11] The new rule also states that the budget will include beginning-of-year and end-of-year headcounts for each program area. In addition, to facilitate the Commission's analysis and approval of the budget, the rule indicates that the Commission expects the budget and budget justification either to be consistent with or to explain any deviations from the guidance and economic assumptions previously provided by the Commission.

The new rule allows the PCAOB to include in its budget and accounting support fee amounts that are necessary to build a reserve not to exceed the obligations expected to

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[10] For example, if the budget year is 2009, the current year (in which the 2009 budget is being prepared) would be 2008, and the previous year would be 2007. The Commission also recognizes that, until the PCAOB publishes a comprehensive strategic plan, an increased number of performance targets may be described in more qualitative than quantitative terms.

[11] Projected and actual expenditures include salary, benefits, relocation and similar benefits. The Commission will review such expenses to assess whether they are consistent with statutory criteria.

be incurred during the first five months immediately following the budget year, in order to provide that the delays in the billing and collection of the accounting support fee that are inherent in the statute, and significant unforeseen events, should not threaten the liquidity of the organization. The funds in that reserve, however, may be used only in accordance with the budget for that following fiscal year or a supplemental budget, as approved by the Commission.

If the Commission has not approved a budget for a PCAOB fiscal year before the beginning of that fiscal year, the rule provides that the PCAOB may spend funds from its reserve and continue to incur obligations as if the last PCAOB budget approved by the Commission were continuing in effect for the new fiscal year.

C. Commission-Approved Budgets

The statutory requirement that the Commission approve the PCAOB budget, contained in section 109 of the Act, is consistent with the general oversight responsibility with which the Commission is charged in section 107. These responsibilities for the budget and operations of the PCAOB require the ability to promote changes in the PCAOB budget when the Commission believes those changes are necessary or appropriate. The rule makes clear, therefore, that while the Commission may not directly change the budget, it may make its approval of a budget conditional on changes to amounts and other aspects of the budget. The PCAOB, in turn, will have the opportunity to consider the proposed changes and to vote again for final approval with or without the changes. To prevent the possibility of missed deadlines, if differences have not been resolved by December 23 then the terms of the most recent conditional approval would become the final budget.

The budget approval requirement is also made more meaningful by limiting the PCAOB's ability to incur expenses and obligations to the general terms of the Commission-approved budget. The rule makes clear that the PCAOB may not spend in a budget year more than the overall expenditure amount specified in the Commission-approved budget and may not transfer more than $1,000,000 into or out of any program area without prior Commission approval of a supplemental budget. The rule also makes clear that, once a budget is approved by the Commission, the PCAOB cannot use its resources in a manner that is not fairly implied from the approved budget. For example, without Commission approval, the PCAOB may not create a new program to perform functions that are not included in that budget, or eliminate a program that is described in that budget.

D. Supplemental Budgets

The new rule provides procedures for the PCAOB to seek Commission approval either to spend amounts in excess of, or contrary to, the spending limitations set forth in the rule. In these cases, the new rule provides for the PCAOB to submit a supplemental budget to the Commission.[12] The supplemental budget is to describe, among other things, the events or circumstances necessitating the supplemental budget request, why the request should not or can not be postponed until the next regular annual budget process, and the proposed source for the funds, including any offsets to be made in other programs and activities.

E. Records

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[12] If there is an urgent need for the PCAOB to obtain approval of a supplemental budget, the Commission may act by duty officer or other means to expedite the approval process.

Under section 107(a) of the Act,[13] the Commission may adopt rules requiring the PCAOB to make, keep, and furnish to the Commission such records and reports as the Commission prescribes as necessary or appropriate in the public interest.[14] In addition, all records of the PCAOB are subject to reasonable examinations by the representatives of the Commission as the Commission deems necessary or appropriate in the public interest, or the protection of investors, or otherwise in furtherance of the purposes of the Act.[15] Pursuant to this authority, as well as the authority inherent in its duty to approve the PCAOB budget, the new rule requires that the PCAOB maintain, and make available to the Commission upon request, a strategic plan and other records in reasonable detail that support each budget and budget justification.

In addition, the rule requires that the PCAOB prepare a report of its spending and staffing levels for each quarter, comparing those levels to the levels in the Commission approved budget. Within 30 business days after the end of the quarter, the PCAOB is required to provide a copy of that report to the Commission.

F. Publication of Budget

Under the new rule, the interchange between the Commission and the PCAOB on budget matters would begin with the PCAOB providing a narrative description of its program issues and outlook in March and conclude with the Commission vote in December. After the PCAOB provides the Commission with a description of program issues and outlook, the Commission and PCAOB together will discuss ideas and consider

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13 15 U.S.C. 7217(a), which provides that sections 17(a)(1) and 17(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78q(a)(1) and 78q(b)(1), shall apply to the PCAOB as fully as if the PCAOB were a "registered securities association."

14 Section 17(a)(1) of the Exchange Act, 15 U.S.C. 78q(a)(1).

15 Section 17(b)(1) of the Exchange Act, 15 U.S.C. 78q(b)(1).

initial recommendations and proposals before the PCAOB approves its final budget in November. During these initial discussions, neither organization will publish the PCAOB's budget, budget justification, supplemental budget, or any underlying materials not otherwise intended for public distribution, until the time the budget is approved by the PCAOB and submitted to the Commission for approval.[16] Once the PCAOB submits its budget to the Commission, the rule provides for public disclosure, subject to any applicable exemption under the Freedom of Information Act,[17] of the PCAOB budget and budget justification, including the PCAOB's "performance budget" for the budget year.

G. Definitions

The rule defines certain terms that may arise in the discussion of budget matters. The definitions are generally consistent with Office of Management and Budget guidelines but have been adapted to apply to a private organization with the character and functions of the PCAOB.[18]

III. Administrative Procedure Act, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commission finds, in accordance with Section 533(b)(3)(A) of the Administrative Procedure Act ("APA"),[19] that this revision relates solely to agency

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16 This limitation does not restrict individual PCAOB members from generally commenting on their individual views of the funding requirements of the organization or the status of the Board's deliberations, either before or after the PCAOB adopts its budget.

17 Certain exemptions under the Freedom of Information Act ("FOIA"), including the exemption for confidential financial information, may apply to some of the information provided to the Commission.

18 See generally, Office of Management and Budget Circular No. A-11, at ¶20.3 (June 2005).

19 5 U.S.C. 553(b)(3)(A).

organization, procedure or practice. It is, therefore, not subject to the provisions of the APA requiring notice and opportunity for public comment. The Regulatory Flexibility Act,[20] therefore, does not apply. Similarly, because these rules relate to "agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties," the Commission is not soliciting comments for purposes of the Small Business Regulatory Enforcement Fairness Act.[21] The rules do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.[22]

IV. Costs and Benefits of the Amendments

Taken as a whole, the Commission's rules of practice, such as Informal and Other Procedures, create governmental review and remedial processes. That is, they are procedural and administrative in nature. The benefits are the familiar benefits of due process: notice, opportunity to be heard, efficiency, and fairness. These benefits are particularly applicable to the current amendments because the timetable, procedural steps, and materials that are to be made available for Commission review should provide for a more meaningful dialogue between the Commission and the PCAOB and enhance the efficiency and fairness of the budget approval process. In addition, the PCAOB should benefit by beginning each fiscal year with an approved budget, rather than operating for the first few months of the year without such a budget.

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20 5 U.S.C. 601 et seq.

21 5 U.S.C. 804(3)(C).

22 44 U.S.C. 3501 et seq.

In general, the costs of the procedures in the Commission's rules of practice, including Informal and other Procedures, fall largely on the Commission. In this instance, the Act already requires the PCAOB each year to prepare and submit a budget to the Commission for approval. While we anticipate that in the coming years the PCAOB will devote more resources to the preparation of its budget, many of the cost increases in this area are inherent in the maturing nature of the organization and are not attributed solely to the adoption of the amendments. The implementation of a more detailed budget process and the preparation of the materials that would be submitted under the amendments, including quarterly updates on spending and staffing levels, are fundamental to the effective management of a mature organization. Further, conducting the budget preparation process over the period set forth in the new rule should make it a more efficient and effective process.

As noted, the amendments set forth in this release relate to internal agency management, increase the efficiency of the Commission's approval process, and promote timely and meaningful communications between the Commission and the PCAOB.

V. Effect on Efficiency, Competition and Capital Formation

Section 2(b) of the Securities Act of 1933[23] and Section 3(f) of the Exchange Act[24] require us, when engaging in rulemaking that requires us to consider or determine whether an act is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of

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[23] 15 U.S.C. 77b(b).

[24] 15 U.S.C. 78c(f).

the Exchange Act[25] prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The amendments are intended to facilitate the Commission's process for approving the PCAOB budget. The amendments increase the efficiency of the Commission's approval process. The rule applies only to the PCAOB, which is an organization established by Congress in the Act, and therefore the Commission does not expect the rule to have an anti-competitive effect. Since there will be an increase in efficiency, there will not be any adverse impacts on capital formation.

VI. Statutory Basis and Text of Amendments

These amendments to the Informal and Other Procedures are being adopted pursuant to statutory authority granted to the Commission, including Section 19(a) of the Securities Act of 1933, Sections 17 and 23(a) of the Securities Exchange Act of 1934 and Sections 3(a) and 101 through 109 of the Sarbanes-Oxley Act of 2002.

List of Subjects

17 CFR Part 202

Administrative practice and procedure, Securities.

Text of the Amendment

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

PART 202 – INFORMAL AND OTHER PROCEDURES

1. The general authority citation for part 202 is revised to read as follows:

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[25] 15 U.S.C. 78w(a)(2).

Authority: 15 U.S.C. 77s, 77t, 78d-1, 78u, 78w, 78ll(d), 79r, 79t, 77sss, 77uuu, 80a-37, 80a-41, 80b-9, 80b-11, 7202 and 7211 et seq., unless otherwise noted.

* * * * *

2. Add §202.11 to read as follows:

§ 202.11 Public Company Accounting Oversight Board budget approval process.

(a) Purpose. These procedures are established in connection with consideration and approval of the budget and the accounting support fee for the Public Company Accounting Oversight Board (PCAOB). Actions attributed to the PCAOB in this section shall be performed as authorized by the Sarbanes-Oxley Act of 2002 and the PCAOB's bylaws.

(b) Definitions. For the purposes of this section, the following definitions shall apply:

(1) Budget category means a grouping of similar expenditures within the PCAOB's budget. Budget categories shall include, among others: personnel, training, recruiting and relocation expenses, information technology, consulting and professional fees, travel, administrative expenses, lease costs and related expenses, and capital improvements of facilities.

(2) Budget justification means the justification for each annual budget, prepared in concise and specific terms, covering all of the PCAOB's programs and activities, and including, among other things as may be requested by the Commission:

(i) A performance budget for the budget year;

(ii) An analysis of the PCAOB's budget, including a tabular presentation that identifies the budgetary resources required for each program area (with a breakout of resources by budget category); a description of the budgetary resources identified in the budget in the context of the PCAOB's programs and activities; and an explanation of the analysis used to determine the resources needed to accomplish each program and strategic goal that demonstrates that reasonable opportunities for making more efficient and effective use of resources have been explored;

(iii) A description of the relationship between the results or outcomes the PCAOB expects to achieve (as discussed in the PCAOB's strategic plan) and the resources requested in the budget;

(iv) Assumptions underlying the calculation of the working capital reserve as permitted in paragraph (d)(3) of this section and assumptions underlying PCAOB estimates, including work years, program outputs, base compensation levels and proposed compensation increases, and costs of inputs such as materials or contract costs;

(v) A discussion of any models used to develop PCAOB estimates;

(vi) Detailed funding levels for education, training, and travel of the PCAOB workforce;

(vii) Information sufficient for the Commission to assess current and proposed capital projects and information technology projects; and

(viii) A statement that the PCAOB has considered relative costs and benefits in formulating the programs, projects and activities described in the budget.

(3) Budget year means the PCAOB fiscal year that is the subject of the budget prepared and submitted by the PCAOB to the Commission for approval.

(4) Current year means the PCAOB fiscal year that precedes the budget year, and is the year in which the PCAOB prepares the budget.

(5) Performance budget means a budget that presents what the PCAOB proposes to accomplish in the budget year and what resources these proposals will require, and that serves as the primary basis for the justification of the budget submitted to the Commission for approval. The performance budget includes:

(i) A description of what the PCAOB plans to accomplish, organized by strategic goal;

(ii) Background on what the PCAOB has accomplished, organized by strategic goal;

(iii) Analyses of the strategies the PCAOB uses to influence strategic outcomes, including whether those strategies could be improved and, if so, how they could be improved;

(iv) Analyses of the programs that contribute to each goal and their relative roles and effectiveness;

(v) Performance targets for the budget year and the current year and how the PCAOB expects to achieve those targets, as well as actual performance levels achieved in the year immediately preceding the current year;

(vi) The budgetary resources the PCAOB is requesting to achieve those targets;

(vii) Descriptions of the operations, processes, staff skills, information and other technologies, human resources, capital assets, and other resources to be used in achieving the PCAOB's performance goals; and

(viii) Descriptions of the programs, policies, and management, regulatory, and other initiatives and approaches to be used in achieving the PCAOB's performance goals.

(6) Preliminary budget means the draft budget submitted for initial consideration by the Commission, which shall be a complete or substantially complete budget for the budget year, and which is accompanied by a budget justification.

(7) Program area means the array of the budgeted amounts and other budget-related data according to the major purpose served, such as registration, inspection, standard-setting, enforcement, and administration.

(8) Receipts means collections that result from issuers' payments of accounting support fees; public accounting firms' payment of registration fees and fees associated with annual reports; interest income; and other sources of revenue.

(9) Strategic plan means the PCAOB's overarching plan for accomplishing its strategic goals, including forecasts for the current and four following years; estimates of the effect that reasonably foreseeable changes impacting the auditing profession and securities markets could have on program levels; and a discussion of the impact that program levels and changes in methods of program delivery, including advances in technology, could have on program operations and administration.

(10) Supplemental budget means a budget or amendment thereto submitted to the Commission for approval subsequent to Commission approval of the budget for the budget year, when:

(i) There is a need for additional funds in a program area;

(ii) Resources are to be applied in a manner not fairly implied in the Commission-approved budget and budget justification, such as when programs are

created to perform functions that are not, or to perform functions in a way that is not, fairly implied from the Commission-approved budget and budget justification; or

(iii) Programs described in the Commission-approved budget and budget justification are to be eliminated.

(c) Timetable. The timetable for preparation and submission of the annual budget is as follows:

Date	Event
On or before March 15	PCAOB provides a narrative of its program issues and outlook for the budget year
On or before April 30	Commission provides economic assumptions and general budgetary guidance to the PCAOB
On or before July 31	PCAOB submits preliminary budget and budget justification for Commission review
August – October	Consultation between Commission and PCAOB; Commission staff conducts review of PCAOB preliminary budget, budget justification and related information

On or before October 31	Commission passback of budget to the PCAOB with proposed revisions
On or before November 30	PCAOB adopts budget and submits it, along with the budget justification, to the Commission
On or before December 23	Commission votes on the PCAOB budget

(d) Contents of budget. (1) To facilitate Commission review and approval, each budget (including each preliminary budget and budget submitted for Commission approval) shall:

(i) Be accompanied by a budget justification.

(ii) Include information for the budget year, the current year, and the year immediately preceding the current year, regarding actual or projected spending by program area, receipts, debt, and employment levels.

(iii) Be consistent with, or explain any deviations from, the economic assumptions and budgetary guidance provided by the Commission.

(iv) Include statements of PCAOB programs, initiatives and strategies for the budget year.

(v) Earmark each amount for a specific budget category within a program area.

(vi) Include planned beginning-of-year and end-of-year headcounts for each program area.

(2) Each budget submitted for Commission approval shall be consistent with the preliminary budget and any revisions proposed by the Commission when the budget was passed from the Commission back to the PCAOB or explain any changes from the preliminary budget and/or such proposed revisions.

(3) In addition to amounts needed to fund disbursements during the budget year, a budget may reflect receipts in amounts needed to fund expected disbursements during a period not to exceed the first five months of the fiscal year immediately following the budget year (the working capital reserve), provided such amounts shall be disbursed only as specified in the following year's budget or in a supplemental budget approved by the Commission.

(4) In approving the budget the Commission may not change the amounts earmarked for programs, program areas, or activities, or any other aspects of the budget; provided, that if the budget is conditionally rather than finally approved, then the Commission may transmit to the Board such proposed changes as are consistent with the preliminary budget and any revisions previously proposed by the Commission when it passed the budget back to the PCAOB. No proposed reduction or increase may be greater than that included in the preliminary budget and any revisions previously proposed by the Commission when it passed the budget back to the PCAOB.

(5) In the event the budget is conditionally approved by the Commission, the PCAOB shall have the opportunity to consider the changes proposed by the Commission and to vote again for final approval of the budget as amended. If this iterative process

has not resolved differences between the Commission and the PCAOB by December 23, then the terms of the most recent conditional approval shall become final, and the budget shall be deemed finally approved.

(e) Limitation on spending. (1) The PCAOB shall not spend in a budget year more than the amount specified in the Commission-approved PCAOB budget for that year, regardless of the source of the funds, unless such expenses have been approved by the Commission through a supplemental budget request.

(2) Funds may be disbursed by the PCAOB only in accordance with the Commission approved budget, provided however, during the budget year the PCAOB may transfer amounts totaling not more than $1,000,000 into or out of each program area without prior Commission approval. Further, the PCAOB shall not:

(i) Apply its resources in a manner not fairly implied in the Commission-approved budget and budget justification, such as to create programs to perform functions that are not, or to perform functions in a way that is not, fairly implied from the Commission-approved budget and budget justification, or

(ii) Eliminate programs described in the Commission-approved budget and budget justification.

(3) In the event that the Commission has not approved a budget for a PCAOB fiscal year before the beginning of that fiscal year, the PCAOB may spend funds from the reserve and continue to incur obligations as if the PCAOB budget or supplemental budget most recently approved by the Commission were continuing in effect for that fiscal year.

(f) Supplemental budget. (1) The PCAOB may submit to the Commission a request for approval of a supplemental budget subsequent to Commission approval of the

budget for the budget year in order to spend any amounts in excess of, or contrary to, the limitations described in paragraphs (e)(1) and (e)(2) of this section.

(2) To facilitate Commission review and approval, a supplemental budget shall include:

(i) Detailed information regarding the impact of the supplemental budget on each affected program area, including costs by cost category, project or activity;

(ii) A statement regarding how the supplemental budget facilitates the strategic and policy goals of the PCAOB;

(iii) Information indicating why the amount was not included in the budget for the current year, including a description of any subsequent and unforeseen events or circumstances necessitating the supplemental budget request;

(iv) Information indicating why the request should not or can not be postponed until the next regular annual budget process; and

(v) The proposed source for the funds, including any offsets to be made elsewhere in the PCAOB's programs and activities.

(g) Maintenance of records; reports. (1) The PCAOB shall maintain, and make available to the Commission or Commission staff upon request, a strategic plan and records in reasonable detail that support each preliminary budget, budget, budget justification, supplemental budget and other report or communication in compliance with this section, including past and projected receipts, outlays, obligations, and employment levels.

(2) The PCAOB is required to maintain and, within 30 business days after the end of each fiscal quarter, to furnish to the Commission a report of its spending and

staffing levels for the quarter just ended, comparing those levels to the levels in the Commission approved budget.

(h) Publication of budget. (1) Following submission of the PCAOB-approved budget to the Commission, such budget and budget justification, subject to any applicable exemption under the Freedom of Information Act, shall be made available to the public. Neither the Commission nor the PCAOB shall publish a preliminary budget, budget, budget justification, or any underlying materials in connection therewith, until such time as the budget is approved by the PCAOB and submitted to the Commission for its approval.

(2) Supplemental budgets shall be made public, following approval by the PCAOB and submission to the Commission, in the same manner as described in paragraph (h)(1) of this section.

(3) The Commission-approved budget shall be made available to the public at the time of such approval.

(i) Waivers of rule provisions. The Commission, in its discretion, may waive compliance with any provision of this §202.11.

By the Commission.

Nancy M. Morris

Nancy Morris
Secretary

July 18, 2006

Commissioners Glassman and Campos Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 54172 / July 19, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2460 / July 19, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12369

In the Matter of **L. MICHAEL HART,** **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 L. Michael Hart ("Hart" 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 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:

Respondent

1. Hart, 58, is a resident of Fort Pierce, Florida. He was Endocare, Inc.'s director of sales for the Southeastern region throughout the relevant period and was an employee of Endocare from July 1, 1999 to June 3, 2004. Prior to joining Endocare in 1999, Hart had almost twenty years of sales and/or managerial experience in the healthcare industry. His experience ranged from selling disposable healthcare products and healthcare software to managing pharmacies and sales associates.

Relevant Entity

2. Endocare, Inc. is a Delaware corporation, with its principal place of business in Irvine, California. Endocare's common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and was listed on the Nasdaq Stock Market until January 16, 2003, when it was delisted for Endocare's failure to file its periodic reports with the Commission. Endocare's common stock currently trades in the Pink Sheets.

Background

3. The conduct described in this order concerns the reporting of false financial information and other misleading disclosures caused by an Endocare regional sales manager in Endocare's reports filed with the Commission for fiscal years 2001 and 2002. Endocare develops and distributes medical devices for use in the treatment of various types of cancers and urological ailments. Endocare generates most of its revenue from the sale of its cryocare surgical system (known as a "box") and disposable probes that are used with the box in the treatment. Throughout 2001 and 2002, Endocare engaged in improper revenue recognition practices and improperly understated or delayed the recognition of expenses to inflate earnings. These actions resulted in Endocare's filing of financial statements that overstated revenue by at least 16% for fiscal year 2001, 17% for the first quarter of 2002, and 33% for the second quarter of 2002. Additionally, Endocare's financial statements understated its pre-tax loss for 2001 by at least 20%, and falsely reported profits for the first two quarters of 2002, rather than substantial losses.

4. Endocare improperly recognized revenue on box sales involving various contingent terms. These transactions included improper bill-and-hold sales in which product was shipped to an Endocare-controlled storage facility until the equipment could be resold or until it generated sufficient revenues to support payment, and side letters that included indeterminate payment terms, continuing obligations, or certain guarantees regarding minimum procedures. As Endocare's Southeast regional sales director during the relevant time, Hart was involved in negotiating and executing several of these side letters with customers.

Side Letters

5. In September 2001, Hart was involved in negotiating a box sale to a physician in Gainesville, Florida that contained an undisclosed side letter. Specifically, Hart and Endocare's chief executive officer ("CEO") contacted the physician and requested that he take delivery of a box for $250,000 pending the ultimate sale to the physician's associate, who was interested in forming a physician partnership to purchase a box. This contingency was not included on the purchase order. The box was shipped to Endocare's storage facility in Florida, where it remained through October 2002. Endocare recognized revenue on the box for the quarter ended September 30, 2001, which was improper given the contingency.

6. In December 2001, Hart executed a side letter with a physician in Celebration, Florida regarding a box purchase. Endocare's CEO initiated the negotiations with the physician and then directed Hart to send the physician a purchase order and side-letter agreement. Hart's side letter to the physician stated that the physician was purchasing the unit on behalf of a physician-owned company and that the company was still in the process of formation. The side letter also stated that Endocare would assist in the formation and resale of the box into existing targeted or future partnerships and that when the company was formed, the physician could transfer some or all ownership of the box to the company. The contingency was not included on the purchase order. Endocare recognized revenue on the box for the quarter ended December 31, 2001, which was improper given the contingency.

7. In March 2002, Hart provided a side letter to the representative/managing partner of a South Florida venture partnership that memorialized their discussions regarding the sale of a box for $250,000. The side letter stated that the box being sold to the partnership's representative was intended for another physician and that Endocare would pay this representative a $25,000 commission upon the resale of the unit. Endocare then shipped the box to the Endocare storage facility in Florida. Hart did not include the contingency on the purchase order. Endocare recognized revenue on the box for the quarter ended March 31, 2002, which was improper given the contingency.

8. In June 2002, Hart negotiated the sale of a box to a partnership that included five limited partners and one general partner, in a transaction that included a side letter committing Endocare to help resell the box. The purchase order was only signed by the limited partner physicians, not representatives of the general partner in the venture. The partnership agreement included a clause whereby the physicians were able to sell back their interest in the partnership to the general partner in the event the venture failed. Hart knew about the physicians' option to withdraw from the partnership. Endocare recognized revenue on the box for the quarter ended June 30, 2002, which was improper given the contingency.

Legal Discussion

9. Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act, such as Endocare, to file with the Commission accurate annual and quarterly reports. An issuer violates these

provisions if it files a report that contains materially false or misleading information. SEC v. Falstaff Brewing Corp., 629 F.2d 62, 72 (D.C. Cir. 1980); SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1165 (D.C. Cir. 1978). Rule 12b-20 under the Exchange Act similarly requires that these reports contain any material information necessary to make the required statements made in the reports not misleading. Moreover, Regulation S-X requires that financial statements filed with the Commission pursuant to Section 13(a) of the Exchange Act be prepared in accordance with Generally Accepted Accounting Principles. Otherwise, such financial statements shall be presumed inaccurate.

10. Section 13(b)(2)(A) of the Exchange Act requires reporting companies 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 . . . of the issuer."

11. Section 21C of the Exchange Act provides that the Commission may order any person who is or was a cause of a violation of any provision of the Exchange Act, due to an act or omission the person knew or should have known would contribute to the violation, to cease and desist from committing or causing such violations.

12. Hart caused Endocare's violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder by providing undisclosed side letters to customers that contained contingent terms that Endocare would help resell the equipment. Hart's failure to include the contingent terms in the purchase orders caused Endocare to improperly recognize revenue and file misleading reports.

Undertakings

13. Respondent has undertaken to cooperate fully with the Commission and its staff in connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party. In particular, Respondent agrees to: (i) make himself available for interviews and appearances at such times and places as the staff requests upon reasonable notice; (ii) accept service and promptly respond to 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 Respondent's attorney in this matter as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives 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 Respondent's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consent to personal jurisdiction over Respondent in any United States District Court for purposes of enforcing any such subpoena.

14. In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

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

Accordingly, it is hereby ORDERED that:

Respondent cease and desist 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.

By the Commission.

Nancy M. Morris
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 54187 / July 20, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2462 / July 20, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-9303

In the Matter of Richard J. Lajoie, Jr.	: 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 April 30, 1997, Richard J. Lajoie, Jr. ("Lajoie") was suspended from appearing or practicing as an accountant before the Commission as a result of settled public administrative proceedings instituted by the Commission against Lajoie pursuant to Rule 102(e) of the Commission's Rules of Practice.[1] Lajoie consented to the entry of the April 30, 1997 order, and imposition of the remedial sanctions set forth therein, without admitting or denying the findings of the order but for the Commission's finding that a Final Judgment and Permanent Injunction and Other Equitable Relief had been previously entered against him.

From 1987 until November 1994, Lajoie served as controller for Structural Dynamics Research Corporation ("SDRC"), an Ohio corporation with its principal place of business in Milford, Ohio. During this time, SDRC inflated revenue and earnings by recognizing both premature and fictitious revenue. The Commission alleged that Lajoie knew or was reckless in not knowing that SDRC improperly recognized certain material amounts of revenue. In addition, Lajoie allegedly omitted to state certain material information to SDRC's auditors. Finally, the Commission alleged that by such conduct, Lajoie violated the antifraud and certain other provisions of the federal securities laws.

[1] *See* Accounting and Auditing Enforcement Release No. 910, dated April 30, 1997. Lajoie was permitted, pursuant to the order, to apply for reinstatement after five years upon making certain showings.

This order is issued in response to Lajoie's application for reinstatement to practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission.

In his capacity as a preparer or reviewer, or a person responsible for the preparation or review of financial statements required to be filed with the Commission, Lajoie attests that he will 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. Lajoie 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, Lajoie'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.

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 Lajoie, it appears that he has complied with the terms of the April 30, 1997 order suspending him from practice 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 Lajoie, 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,

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[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 Richard J. Lajoie, Jr. 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

By: J. Lynn Taylor
Assistant Secretary

Commissioner Atkins Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 54188 / July 21, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12370

In the Matter of **CYBERCARE, 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 CyberCare, Inc. ("CyberCare" 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. CyberCare, a Florida corporation based in Boynton Beach, Florida, is a technology assisted health management company. The common stock of CyberCare has been registered under Section 12(g) of the Exchange Act since October 1992. CyberCare's stock was quoted on the NASDAQ from at least April 2000 until August 2002 when it was delisted. The stock is currently quoted on the Pink Sheets, LLC.

B. CyberCare 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-KSB since April 15, 2002 or quarterly reports on Form 10-QSB since November 20, 2002.

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

By: J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2536 / July 21, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12371

In the Matter of

JUSTIN HUSCHER,

Respondent.

ORDER INSTITUTING 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 Justin Huscher ("Huscher" 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.2 below, which are admitted, Respondent consents to the entry of this Order Instituting 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.

III.

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

1. At all relevant times, Huscher was a person associated with Madison Dearborn Partners, LLC and Madison Dearborn Partners, Inc. (collectively, "MDP"), which acted as unregistered investment advisers under the Advisers Act. Huscher was a managing director of MDP, as well as an investor in limited partnership funds managed by MDP. In August 2004, Huscher resigned from MDP. Huscher, 52 years old, is a resident of Chicago, Illinois.

2. On June 28, 2006, a final judgment was entered by consent against Huscher, permanently enjoining him from future violations of 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. Justin Huscher, Civil Action Number 06C-3397, in the United States District Court for the Northern District of Illinois.

3. The Commission's complaint alleged that Huscher engaged in insider trading based on material, nonpublic information he obtained by virtue of his position as a managing director at MDP. The complaint alleged that Huscher learned that an investor consortium (of which MDP was previously a member) had reached an agreement to acquire UniSource Energy Corporation ("UniSource") prior to the public announcement of the acquisition. The complaint alleged that, in violation of the fiduciary and other similar duties of trust and confidence he owed to UniSource and MDP, among others, Huscher purchased 8,000 shares of UniSource common stock at prices ranging from $19.45 to $19.55 per share. The complaint alleged that, following the announcement of the acquisition of UniSource, UniSource stock traded at a high of $24.90 per share before closing at $24.49, up $5.09 per share, or approximately 26%. Lastly, the complaint alleged that, as a result of his misappropriation of material, nonpublic information, Huscher obtained unrealized profits of $54,692.25.

IV.

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

Accordingly, it is hereby ORDERED:

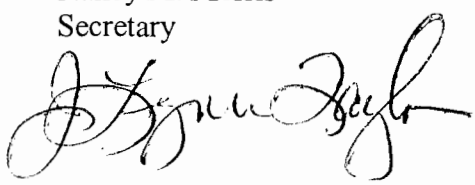
Pursuant to Section 203(f) of the Advisers Act, that Respondent Huscher be, and hereby is barred from association with any investment adviser, with the right to reapply for association after four years to the appropriate self-regulatory organization, or if there is none, to the Commission;

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



By: J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 54197 / July 24, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2463 / July 24, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12374

In the Matter of **Weston L. Smith, CPA** **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 Weston L. Smith ("Respondent" or "Smith") pursuant to Rules 102(e)(2) and 102(e)(3)(i) of the Commission's Rules of Practice.[1]

[1] Rule 102(e)(2) provides, in relevant part, that:

Any . . . person who has been convicted of a felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission.

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

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 Sections III, 3 and III, 5 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. Smith, age 44, is and has been a certified public accountant licensed to practice in the State of Alabama. Smith was an officer in the Reimbursement Department of HealthSouth Corporation ("HealthSouth") from 1987 through March 2000. Smith was the Controller of HealthSouth from March 2000 to August 2001 and was Chief Financial Officer of HealthSouth from August 2001 to August 2002.

2. HealthSouth was, at all relevant times, a Delaware corporation with its principal place of business in Birmingham, Alabama. HealthSouth was in the business of, among other things, providing outpatient diagnosis and surgery. At all relevant times, HealthSouth's common stock was registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and traded on the New York Stock Exchange.

3. On March 31, 2003, the Commission filed a complaint against Smith in SEC v. Weston L. Smith, et al., (Civil Action No. CV-03-C-0720-S, amended to CV-03-CO-0720-S). On July 14, 2006, 2006, the court entered an order permanently enjoining Smith, by consent, from future violations of Section 17(a) of the Securities Act of 1933 and Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5 and 13b2-1 thereunder, and from aiding and abetting violations of Sections 10(b), 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.

4. The Commission's complaint alleged, among other things, that Smith and other senior officers of HealthSouth, engaged in a fraudulent scheme which resulted in HealthSouth filing materially false and misleading financial statements in the company's annual reports on Forms 10-K and periodic reports on Forms 10-Q from 1997 through 2002. Among other

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the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

things, the complaint alleged that Smith directed other HealthSouth employees to make entries on the company's books which fraudulently overstated income and reflected fictitious assets in amounts which matched generally the fraudulent overstatements of income. The complaint alleged that the fraudulent entries were designed to avoid detection by HealthSouth's independent auditors.

5. On September 23, 2005, a judgment of conviction was entered against Smith in United States v. Smith, CR-03-PT-0126-S, in the United States District Court for the Northern District of Alabama, finding him guilty of one count of conspiracy to commit wire fraud and securities fraud, one count of filing false reports with the Commission and one count of filing a false certification of financial information with the Commission.

6. As a result of this conviction, Smith was sentenced to 27 months incarceration followed by one year of supervised release, and was ordered to forfeit $1.5 million.

IV.

In view of the foregoing, the Commission finds that Smith has been convicted of a felony within the meaning of Rule 102(e)(2) of the Commission's Rules of Practice. The Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent Smith's Offer.

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

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

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioners Glassman and Campos Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 54193 / July 24, 2006

INVESTMENT ADVISERS ACT OF 1940
Release No. 2537 / July 24, 2006

INVESTMENT COMPANY ACT OF 1940
Release No. 27424 / July 24, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12372

In the Matter of **Waddell & Reed, Inc., Waddell & Reed Investment Management Company, and Waddell & Reed Services Company,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 15(b) AND 17A(c) OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940 AND SECTIONS 9(b) AND 9(f) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The United States Securities and Exchange Commission (the "Commission") deems it appropriate and in the public interest that administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 17A(c) of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act") against Waddell & Reed, Inc. ("W&R"), Waddell & Reed

Investment Management Company ("W&R Investment Management"), and Waddell & Reed Services Company ("W&R Services") (collectively "Respondents").

II.

In anticipation of the institution of these proceedings, the Respondents have submitted an Offer of Settlement (the "Offer") that 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 those findings pertaining to the jurisdiction of the Commission over the Respondents and the subject matter of these proceedings, which are admitted, the Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 17A(c) of the Securities Exchange Act of 1934, Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) of the Investment Company Act of 1940, 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 Respondents' Offer, the Commission finds that:

OVERVIEW

1. Pursuant to written agreements, the Respondents permitted a number of individuals and entities (the "Market Timers" or "Timers") to market time certain funds in the Waddell & Reed mutual fund complex ("Waddell & Reed funds"), subject to certain limitations on the number, amount and frequency of trades, from at least as early as 1995 through 2003 ("Timing Agreements"). Beginning in December 1998 and continuing through the fall of 2003, W&R Services and/or W&R collected a total of $3.6 million in asset-based fees from three of these Timers (the "Fee Paying Timers") pursuant to Timing Agreements with those entities. During the relevant period, Respondents had internal procedures designed to prevent or limit market timing, and the Waddell & Reed funds had prospectus disclosures that fostered the impression that the funds discouraged timing. Nevertheless, Respondents permitted the Fee Paying Timers to time certain Waddell & Reed funds, and they permitted Timers, including the Fee Paying Timers, to time in the Waddell & Reed Advisors International Growth Fund (the "International Fund"), even though they knew that the Timers were harming that fund by diluting other investors' returns.

2. Market timing includes (a) frequent buying and selling of shares of the same mutual fund or (b) buying or selling mutual fund shares in order to exploit inefficiencies in mutual fund pricing. Market timing, while not illegal per se, can harm other mutual fund shareholders, because it can dilute the value of their shares if the market timer is exploiting pricing inefficiencies. Market timing can also disrupt the management of the mutual fund's investment portfolio, and frequent buying and selling of shares by market timers can cause the targeted mutual fund to incur costs it would not incur in the absence of the market timing.

3. The Timing Agreements benefited the Respondents financially. In addition to asset-based advisory fees that W&R Investment Management earned, W&R and/or W&R Services also received asset-based fees from the Fee Paying Timers under the Timing Agreements. Because the timing that the Respondents permitted in return for those financial benefits potentially could (and at times did) harm the funds, W&R Investment Management had a conflict of interest. It failed to disclose adequately the facts underlying that conflict to the board of directors of the mutual funds or the shareholders of the mutual funds, thereby breaching its fiduciary duty to the mutual funds.

RESPONDENTS

4. **W&R,** a Delaware corporation headquartered in Overland Park, Kansas, is a subsidiary of Waddell & Reed Financial, Inc. W&R has been dually registered with the Commission as a broker-dealer and investment adviser since 1982. During the pertinent period, W&R acted primarily as the national distributor and underwriter for shares of Waddell & Reed funds. Currently, W&R distributes the Waddell & Reed Advisors Funds, a group of the Waddell & Reed funds.

5. **W&R Investment Management**, a Kansas corporation headquartered in Overland Park, Kansas, has been registered with the Commission as an investment adviser since January 1992. During the pertinent period, W&R Investment Management, which is a subsidiary of W&R, provided investment management and advisory services to the Waddell & Reed funds, and currently it provides such services to the Waddell & Reed Advisors funds.

6. **W&R Services**, a Missouri corporation headquartered in Overland Park, Kansas, has been registered with the Commission as a transfer agent since August 1992. W&R Services, which is a subsidiary of W&R, provides transfer agent and other services to affiliated Waddell & Reed funds.

FACTS

Market Timing Agreements

7. From as early as 1995, Respondents were aware that shareholders were timing the Waddell & Reed funds, and they entered into Timing Agreements with a number of Timers. Beginning in early 2001, the Timing Agreements were executed and administered by W&R Services (and in one instance by W&R).

8. The Timing Agreements initially allowed the Timers 24 "round trip" exchanges (exchanges in and out of a fund) per fund, per year. In 1998, W&R Investment Management reduced the permitted number of round trip exchanges to 12 per fund, per year.[1]

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[1] One Timer was allowed 30 round trips per fund, per year.

9. W&R Investment Management also had a policy limiting aggregate assets invested in the funds by Timers to no more than 1% of the fund complex's equity assets, and no more than 2% of the assets in any one fund. Frequently, however, Timer assets exceeded 2% of the assets in one or more funds.

10. Under the Timing Agreements, Respondents permitted market timing in funds that had assets in excess of $300 million. One of the most frequently and successfully timed funds was the International Fund, which was the fund complex's largest international fund.

11. Collectively, the timing activity by the Market Timers diluted returns to other investors in the affected Waddell & Reed funds, particularly the International Fund.

Respondents' Efforts to Control Timing Activity

12. Initially, W&R Investment Management personnel handled any monitoring of timing in the Waddell & Reed funds. Beginning in late 2000 or early 2001, however, W&R Services undertook most of the fund complex's limited efforts to monitor timing activity. Although W&R Services initially did not have any systematic means to detect timing or frequent exchanges, W&R Services personnel sometimes noticed unusual activity and followed up to determine whether the accounts were timing the funds.[2]

13. Beginning in mid-2001, W&R Services personnel systematically tracked known Timer accounts with monthly, and later daily, schedules reflecting Timer assets, timing capacity in individual funds, and timing capacity in the complex as a whole, and with monthly schedules that counted each Timer's round trips.

14. W&R Investment Management, and later W&R Services, generally enforced the round trip limits in the written Timing Agreements once the agreements were executed. In some instances, however, the Respondents failed to obtain written agreements from known Timers for extended periods. For example, in March 2000, the Respondents identified eleven Market Timer accounts that had not executed Timing Agreements, and they allowed six of the accounts to exceed the 12 round trip limit until they finally obtained written Timing Agreements from them in March 2002.

15. In an effort to eliminate or further limit timing in the Waddell & Reed funds, beginning at least as early as 2002, W&R Services regularly monitored and policed market timing and frequent trading in the funds through third-party platforms, and took steps to stop such trading when it was identified, including barring shareholders from the funds. At the same time it was policing market timing and frequent trading by certain accounts, W&R Services allowed certain known Market Timers, including the Fee Paying Timers, to time the funds.

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[2] W&R Services and W&R defined Market Timers as shareholders who frequently moved all, or substantially all of their investments between money market funds and non-money market funds, and who typically executed a round trip at least once a month.

16. In May 2003, Respondents, in an effort to discourage timing, sought and obtained approval from the board of directors for all of the W&R complex international funds to assess a 2% redemption fee for redemptions or exchanges within 30 days of purchase.

Three Timers Paid Fees to W&R Services and W&R

17. Beginning in December 1998 and continuing through 2003, three Timers paid a total of $3.6 million in fees to W&R Services and/or W&R pursuant to Timing Agreements with those entities. The Timing Agreements required the Fee Paying Timers to pay W&R or W&R Services a fee ranging from 25 to 100 basis points on the timing assets, purportedly as payment for services.[3] None of the fees were paid to the timed funds. In aggregate, the Fee Paying Timers netted $8.2 million in profits from their trading in Waddell & Reed funds under the Timing Agreements.

The Largest Fee Paying Timer

18. The largest Fee Paying Timer ("Timer 1"), which was an investment adviser, had a Timing Agreement relating to the Waddell & Reed funds from at least as early as 1995. In the fall of 1998, W&R Investment Management notified Timers with which it had Timing Agreements that round trips would be limited to 12 per fund, per year, and that this limitation also applied to the money market fund. Timer 1 proposed an alternative arrangement, which allowed unlimited round trips in the money market fund and 12 round trips per fund, per year in the other funds, and offered to pay a 1% fee based on the assets its clients held at the Waddell & Reed fund family "to defray possible fund expenses."

19. Subsequently, Timer 1 entered into a "Supplemental Services Agreement" with W&R Services, in which it agreed that its clients would pay W&R Services a 1% annual fee, and W&R Services agreed to fax confirmations to Timer 1; assign a non-exclusive, designated individual to process Timer 1's transactions; and provide Timer 1 with an annual consolidated report showing the holdings and value of its clients' accounts. Concurrently, W&R Investment Management agreed to allow Timer 1's clients 12 round trips per year, per fund, and excluded the money market fund from this limit.

20. Between December 1998 and September 2003, the aggregate value of investments in the Waddell & Reed fund complex by clients of the Timer 1 ranged from $51.5 million to $85 million. During that period, clients of Timer 1 netted $12.5 million in timing profits. Timer 1 timed 13 funds at various times, trading profitably in five funds, including the International Fund.

21. Pursuant to the Supplemental Services Agreement, clients of Timer 1 paid approximately $3.46 million in fees in total to W&R Services from 1999 through 2003.

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[3] Respondents, however, provided few services to the Fee Paying Timers that they did not provide to other shareholders, and the cost of the minimal additional services was far less than the amount of fees the Fee Paying Timers paid.

The Second Fee Paying Timer

22. In February 2001 and November 2002, W&R Services entered into Timing Agreements with a second investment adviser ("Timer 2") that allowed the Timer to make up to 30 round trips per fund, per year in its client accounts.

23. Timer 2 approached the fund complex, asked for timing capacity, and agreed to pay W&R Services an annual fee of 25 basis points on its assets at Waddell & Reed funds. Timer 2 paid a total of $139,000 in fees pursuant to its Timing Agreements.

24. At times during 2001 and 2002, the aggregate amount of assets being timed by Timer 2's clients pursuant to the Timing Agreements rose as high as $35 million in five Waddell & Reed funds, and Timer 2's clients timed approximately $3 million in the International Fund in 2002 and 2003.

25. Timer 2's clients experienced net losses of $6.36 million from timing in the Waddell & Reed funds overall. In the International Fund, however, clients of Timer 2 made approximately $700,000 in net profits.

The Broker-Dealer Fee Paying Timer

26. In May 2002, W&R entered into a "selling agreement" with a broker-dealer ("Timer 3"), under the terms of which the broker-dealer paid a 25 basis point fee on assets invested in the fund complex. Under the "selling agreement," W&R allowed Timer 3's customers 12 round trips per year in the International Fund and a money market fund.[4] In contrast, during this period, W&R Services policed frequent trading in the Waddell & Reed funds through other broker-dealers and took steps to stop investors from timing through broker-dealers other than Timer 3.

27. During June through November 2002, Timer 3's customers timed approximately $20-$22 million in the International Fund, until W&R notified Timer 3 in late 2002 that it could no longer time the International Fund.

28. During February through April 2003, W&R and W&R Services allowed Timer 3 to time four other Waddell & Reed Advisors funds, until its customers withdrew their assets from the Waddell & Reed fund complex in April 2003.

29. Timer 3's customers made approximately $2.03 million in profits from their timing trades in Waddell & Reed Advisors funds, $1.5 million of which resulted from trades in the International Fund.

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[4] During negotiations leading up to the agreement, Timer 3 asked for additional round trips and offered W&R incentives, including sticky assets (*i.e.*, long-term investments) and separate managed accounts, but Respondents declined.

30. Timer 3 paid W&R Services $35,000 in fees in total under the "selling agreement."

Timers Harmed the International Fund

31. In 2001, a W&R Services employee began watching for large exchanges between the International Fund and a money market fund because, among other things, he was concerned that large, frequent exchanges in the fund harmed it through dilution.

32. The employee monitored large exchange activity in the fund. In late June 2001, he prepared a schedule showing that, from April 2001 through mid-June 2001, certain known Timers had made almost $600,000 from trading in the International Fund, while the fund's net asset value ("NAV") fluctuated, but ultimately experienced a net decline of $0.24 per share. Through October 2001, the employee continued to monitor large exchange activity in the fund, and he shared with his superiors his analyses, which showed millions in profits for the Timers while the fund's NAV per share continued to decline.

33. Despite the employee's warnings, Respondents allowed known Timers, including Fee Paying Timers, to time in the International Fund through the fall of 2002. Respondents allowed three Timers, who were identified as such by March 2000, to make over 40 round trips in the International Fund in 2001.[5]

34. After learning that Timers were profiting in the International Fund, W&R and W&R Services entered into additional Timing Agreements. In fact, in May 2002, W&R entered into an agreement allowing customers of Timer 3 to time between the International Fund and a money market fund.

35. In early October 2002, when Timers, including Timer 3, had approximately $40 million in the International Fund and briefly raised Timer assets to over 5% of the fund's assets, Respondents decided to prohibit timing activity in the complex's international funds. Thereafter, the International Fund was closed to Timers, other than Timer 2, which was allowed to continue timing in the fund through September 2003.

36. From March 2001 through September 2003, known Timers, including Fee Paying Timers, netted approximately $11.7 million from timing in the International Fund.

Respondents Failed to Disclose Fees Paid by Timers or Harmful Timing in the International Fund to the Fund Board or Shareholders

37. Before October 2001, the registration statements and prospectuses for the Waddell & Reed funds did not contain any disclosures relating to market timing. Beginning in October

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[5] W&R Investment Management testified that they believed that timing could be accretive or dilutive to the funds and that the timing parameters it put into place would limit disruption to fund portfolio managers.

2001, the SAI for the Waddell & Reed funds, which is incorporated in the fund prospectuses and included in the registration statements, disclosed that "[t]he Fund may limit activity deemed to be market timing by restricting the amount of exchanges permitted by a shareholder."

38. During the pertinent period, W&R marketed the Waddell & Reed Advisors Funds almost exclusively through the W&R sales force, although it was seeking to increase distribution of other Waddell & Reed funds through third party platforms. Marketing materials for the Waddell & Reed funds, available on the company website, identify one of the firm's basic concepts as looking for investment results with a long-term perspective. The International Fund prospectus specifically states that the fund is "designed for investors seeking long-term appreciation of capital" through investment in securities issued by foreign companies.

39. None of the Waddell & Reed fund registration statements or fund prospectuses disclosed that Respondents allowed three Fee Paying Timers access to the funds in return for fees paid to W&R and W&R Services, or that Respondents allowed the Fee Paying Timers, as well as other known Timers, to time the International Fund even though the adviser and its affiliates had been notified that Timers were harming the fund through dilution.

40. Respondents did not fully disclose to the fund board of directors the facts and circumstances of the Timing Agreements with Timer 1, and did not disclose to the board the other two arrangements with Fee Paying Timers.

41. During two board meetings in late 1998 and 1999, Respondents mentioned that W&R Services might receive, or was receiving, fees under an arrangement with Timer 1. The Respondents failed to disclose fully, however, the underlying facts and circumstances of the arrangement, including that the arrangement benefited Respondents but could harm other fund shareholders, and that the Timing Agreement with Timer 1 specifically permitted more than 12 round trips in the money market fund, while Timing Agreements with other, non-fee paying Timers did not include such a provision. In subsequent board meetings, Respondents completely failed to disclose the other two fee paying arrangements. Thus, Respondents failed to disclose adequately fee paying arrangements that created conflicts of interest. W&R Investment Management therefore breached its fiduciary duty to the fund boards of directors and the funds that the Fee paying Timers timed, and defrauded shareholders of those funds.

42. Respondents did not disclose to the International Fund's board of directors that they allowed the Fee Paying Timers, as well as other known Timers, to time the fund even though they had been notified that Timers were harming the fund through dilution of other investors' returns. W&R Investment Management therefore breached its fiduciary duty to the International Fund board of directors and shareholders, and defrauded shareholders of that fund.

43. During a May 2003 board meeting, at which the Waddell & Reed funds boards adopted a redemption fee for the Waddell & Reed international funds, Respondents described the negative impact of Market Timers on the international funds, principally through dilution, and told the board that all redemption fees would be paid to the funds, not to Respondents. The Respondents failed to disclose, however, that, from mid-2001 through October 2002, they had

allowed known Timers, including the Fee Paying Timers, to time the International Fund even though they had been notified that the Timers were harming the fund through dilution. The Respondents also failed to disclose to the fund board that W&R Services and W&R already were receiving fees from three Fee Paying Timers, two of whom were timing the International Fund. They also failed to disclose that they would continue to allow Timer 2 to time the International Fund.

VIOLATIONS

44. As a result of the conduct described in Section III. above, W&R Investment Management willfully violated Sections 206(1) and 206(2) of the Advisers Act in that, while acting as an investment adviser, it employed devices, schemes, or artifices to defraud clients or prospective clients, and engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon clients or prospective clients. Specifically, W&R Investment Management allowed Fee Paying Timers to time certain Waddell & Reed funds in a manner that it knew or had reason to believe would be harmful to shareholders in exchange for fees paid to W&R Services and W&R, and it allowed the Fee Paying Timers to time the International Fund despite having been notified that Timers were harming the fund through dilution. These actions created a conflict of interest that W&R Investment Management knowingly or recklessly failed to disclose to the board of directors and shareholders of the funds.

45. As a result of the conduct described in Section III. above, W&R and W&R Services willfully aided and abetted and caused W&R Investment Management's violations of Sections 206(1) and 206(2). W&R and W&R Services knowingly and substantially assisted W&R Investment Management's violations by negotiating Timing Agreements, from which they financially benefited, that caused W&R Investment Management to breach its fiduciary duty to the funds' board and defraud the funds' shareholders.

46. As a result of the conduct described above, Respondents, each an affiliated person of the timed Waddell & Reed funds, willfully violated Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder, in that, while acting as a principal, each of them participated in and effected transactions in connection with joint arrangements in which the funds were participants, without filing an application with the Commission and obtaining a Commission order approving the transactions. Specifically, W&R and W&R Services received fees from three Timers in return for timing capacity in the Waddell & Reed funds, and W&R Investment Management permitted the timing which financially benefited its affiliates.

UNDERTAKINGS

47. Compliance and Ethics Oversight Structure. Each Respondent has undertaken to maintain its own compliance and ethics oversight infrastructure having the following characteristics:

a. Each Respondent shall maintain a Code of Ethics Oversight Committee having responsibility for all matters relating to issues arising under that Respondent's Code of Ethics. The Code of Ethics Oversight Committee

shall be comprised of senior executives of the Respondent's operating businesses. Each Respondent shall hold at least quarterly meetings of the Code of Ethics Oversight Committee to review violations of the Code of Ethics, as well as to consider policy matters relating to the Code of Ethics. Each Respondent shall report on issues arising under the Code of Ethics, including all violations thereof, to the Audit Committee of the Directors of the Waddell & Reed funds with such frequency as the Audit Committee may instruct, and in any event at least quarterly, provided however that any material violation shall be reported promptly.

b. Each Respondent shall establish an Internal Compliance Controls Committee to be chaired by that Respondent's Chief Compliance Officer,[6] which Committee shall have as its members senior executives of that Respondent's operating businesses. Notice of all meetings of the Internal Compliance Controls Committee shall be given to the independent compliance officer of the Waddell & Reed funds, who shall be invited to attend and participate in such meetings. The Internal Compliance Controls Committee shall review compliance issues throughout the business of the Respondent, endeavor to develop solutions to those issues as they may arise from time to time, and oversee implementation of those solutions. The Internal Compliance Controls Committee shall provide reports on internal compliance matters to the Audit Committee of the directors of the Waddell & Reed funds with such frequency as the independent directors of such funds may instruct, and in any event at least quarterly. Each Respondent shall also provide to its respective Audit Committee (or the board of directors if that Respondent's board does not have an Audit Committee) the same reports of the Code of Ethics Oversight Committee and the Internal Compliance Controls Committee that it provides to the Audit Committee of the Waddell & Reed funds.

c. Each Respondent shall require that its Chief Compliance Officer or a member of his or her staff shall review compliance with the policies and procedures established to address compliance issues under the Securities Act, Exchange Act, Investment Advisers Act and Investment Company Act and that any violations be reported to the Internal Compliance Controls Committee.

d. Each Respondent shall require its Chief Compliance Officer to report to the independent directors of the Waddell & Reed funds any breach of fiduciary duty and/or the federal securities laws of which he or she becomes aware in the course of carrying out his or her duties, with such

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[6] Insofar as the Order refers to the Chief Compliance Officer, if the relevant entity does not have such an officer, the ethics officer for the entity, as described in paragraph 47(e) below, may fulfill the responsibilities of the Chief Compliance Officer specified in paragraph 47 of this Order.

frequency as the independent directors may instruct, and in any event at least quarterly, provided however that any material breach (i.e., any breach that would be important, qualitatively or quantitatively, to a reasonable director) shall be reported promptly.

e. Each Respondent shall establish an ethics officer to whom the Respondent's employees may convey concerns about the Respondent's business matters that they believe implicate matters of ethics, conflicts of interest or questionable practices. Each Respondent shall establish procedures to investigate matters brought to the attention of the ethics officer, and these procedures shall be presented for review and approval by the independent directors of the Waddell & Reed funds. Each Respondent shall also review matters brought to the attention of its ethics officer, along with any resolution of such matters, with the independent directors of the Waddell & Reed funds with such frequency as the independent directors of such funds may instruct.

48. Independent Compliance Consultants.

a. Respondent W&R Investment Management shall retain, within 30 days of the date of entry of the Order, the services of an Independent Compliance Consultant ("the Adviser Consultant") not unacceptable to the staff of the Commission and a majority of the independent directors of the Waddell & Reed Advisors funds. The Adviser Consultant's compensation and expenses shall be borne exclusively by W&R Investment Management or its affiliates. W&R Investment Management shall require that the Adviser Consultant shall conduct a comprehensive review of W&R Investment Management's supervisory, compliance, and other policies and procedures designed to prevent and detect breaches of fiduciary duty, breaches of the Code of Ethics and federal securities law violations by W&R Investment Management and its employees. This review shall include, but shall not be limited to, a review of W&R Investment Management's market timing controls across all areas of its business, a review of the pricing practices of the Waddell & Reed funds that may make those funds vulnerable to market timing, a review of the Waddell & Reed funds' utilization of short term trading fees and other controls for deterring excessive short term trading, and a review of W&R Investment Management's policies and procedures concerning conflicts of interest, including conflicts arising from advisory services to multiple clients. W&R Investment Management shall cooperate fully with the Adviser Consultant and shall provide the Adviser Consultant with access to its files, books, records, and personnel as reasonably requested for the review.

b. Respondent W&R shall retain, within 30 days of the date of entry of the Order, the services of an Independent Compliance Consultant ("the

Distributor Consultant") not unacceptable to the staff of the Commission and a majority of the independent directors of the Waddell & Reed Advisors Funds. The Distributor Consultant's compensation and expenses shall be borne exclusively by W&R or its affiliates. W&R shall require that the Distributor Consultant shall conduct a comprehensive review of W&R's mutual fund sales practices, supervisory, compliance, and other policies and procedures designed to prevent and detect breaches of fiduciary duty, breaches of the Code of Ethics and federal securities law violations by W&R and its employees. W&R shall cooperate fully with the Distributor Consultant and shall provide the Distributor Consultant with access to its files, books, records, and personnel as reasonably requested for the review.

c. Respondent W&R Services shall retain, within 30 days of the date of entry of the Order, the services of an Independent Compliance Consultant ("the Transfer Agent Consultant") not unacceptable to the staff of the Commission and a majority of the independent directors of the funds serviced by W&R Services. The Transfer Agent Consultant's compensation and expenses shall be borne exclusively by W&R Services or its affiliates. W&R Services shall require that the Transfer Agent Consultant shall conduct a comprehensive review of W&R Services' supervisory, compliance, and other policies and procedures designed to prevent and detect breaches of fiduciary duty, breaches of the Code of Ethics and federal securities law violations by W&R Services and its employees. W&R Services shall cooperate fully with the Transfer Agent Consultant and shall provide the Transfer Agent Consultant with access to its files, books, records, and personnel as reasonably requested for the review.

d. Respondents shall require that, at the conclusion of the review by the Adviser Consultant, the Distributor Consultant, and the Transfer Agent Consultant (collectively referred to as the Independent Compliance Consultants), which in no event shall be more than 120 days after the date of entry of the Order, the Independent Compliance Consultants shall submit a Report to the Respondents, the directors of the Waddell & Reed funds, and the staff of the Commission. Respondents shall require that the Adviser Consultant's Report address the issues described in subparagraph 48a. of these undertakings, the Distributor Consultant's Report address the issues described in subparagraph 48b. of these undertakings, and the Transfer Agent Consultant's Report address the issues described in subparagraph 48c. of these undertakings. Respondents shall require that each report include a description of the review performed, the conclusions reached, the respective Independent Compliance Consultant's recommendations for changes in or improvements to policies and procedures of Respondents and the pertinent Waddell & Reed funds, and a

procedure for implementing the recommended changes in or improvements to Respondents' policies and procedures.

e. Respondents shall adopt all recommendations with respect to Respondents contained in the Report of the Independent Compliance Consultants; provided, however, that within 150 days after the date of entry of the Order, Respondents shall in writing advise the Independent Compliance Consultants, the directors of the Waddell & Reed funds and the staff of the Commission of any recommendations that it considers to be unnecessary or inappropriate. With respect to any recommendation that Respondents consider unnecessary or inappropriate, Respondents 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.

f. As to any recommendation with respect to Respondents' policies and procedures on which Respondents and the Independent Compliance Consultants 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 Respondents and the Independent Compliance Consultants are unable to agree on an alternative proposal, Respondents will abide by the determinations of the Independent Compliance Consultants.

g. Respondents (i) shall not have the authority to terminate the Independent Compliance Consultants, without the prior written approval of the majority of independent directors and the staff of the Commission; (ii) shall compensate the Independent Compliance Consultants, and persons engaged to assist the Independent Compliance Consultants, for services rendered pursuant to the Order at their reasonable and customary rates; and, (iii) shall not be in and shall not have an attorney-client relationship with the Independent Compliance Consultants and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Independent Compliance Consultants from transmitting any information, reports, or documents to the directors or the Commission.

h. Respondents shall require that the Independent Compliance Consultants, for the period of the engagement and for a period of two years from completion of the engagement, shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondents, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Respondents shall require that any firm with which the Independent Compliance Consultants are affiliated in performance of their duties under the Order shall not, without prior written consent of the independent directors and the staff of the Commission, enter into any employment, consultant, attorney-client,

auditing or other professional relationship with Respondents, or any of their 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. Notwithstanding the statements above in this subparagraph, the Independent Compliance Consultant may enter into simultaneous agreements with the three Respondents to fulfill the responsibilities described in the undertakings in paragraphs 48 and 49.

49. Compliance Review. Within two years, but in no event earlier than one year, after the completion of the Independent Compliance Consultant process referenced in paragraph 48 of these undertakings, Respondents shall undergo a compliance review by a third party, who is not an interested person, as defined in the Investment Company Act, of Respondents. At the conclusion of the review, Respondents shall require that the third party issue a report of its findings and recommendations concerning Respondents' supervisory, compliance, and other policies and procedures designed to prevent and detect breaches of fiduciary duty, breaches of the Code of Ethics and federal securities law violations by Respondents and their employees in connection with their duties and activities on behalf of and related to the Waddell & Reed funds. Each such report shall be promptly delivered to Respondents' Internal Compliance Controls Committee and to the Audit Committee of the board of directors of each Waddell & Reed fund.

50. Independent Distribution Consultant. Respondents shall retain, within 30 days of the date of entry of the Order, the services of an Independent Distribution Consultant not unacceptable to the staff of the Commission and the independent directors of the Waddell & Reed funds. The Independent Distribution Consultant's compensation and expenses shall be borne exclusively by Respondents. Respondents shall cooperate fully with the Independent Distribution Consultant and shall provide the Independent Distribution Consultant with access to its files, books, records, and personnel as reasonably requested for the review. Respondents shall require that the Independent Distribution Consultant develop a Distribution Plan for the distribution of all of the disgorgement and penalty ordered in Paragraph IV.H.1. of the Order, and any interest or earnings thereon, according to a methodology developed in consultation with Respondents and acceptable to the staff of the Commission and the independent directors of the Waddell & Reed funds. The Distribution Plan shall provide for investors to receive, from the monies available for distribution pursuant to Paragraph IV.H.1 of the Order, in order of priority, (i) their proportionate share of losses suffered by the fund due to market timing by the Fee Paying Timers, and (ii) a proportionate share of advisory fees paid by funds that suffered such losses during the period of such market timing.

a. Respondents shall require that the Independent Distribution Consultant submit a Distribution Plan to Respondents and the staff of the Commission no more than 100 days after the date of entry of the Order.

b. The Distribution Plan developed by the Independent Distribution Consultant shall be binding unless, within 130 days after the date of entry of the Order, Respondents or the staff of the Commission advises, in writing, the Independent Distribution Consultant of any determination or

calculation from the Distribution Plan that it considers to be inappropriate and states in writing the reasons for considering such determination or calculation inappropriate.

c. With respect to any determination or calculation with which Respondents or the staff of the Commission do not agree, such parties shall attempt in good faith to reach an agreement within 160 days of the date of entry of the Order. In the event that Respondents and the staff of the Commission are unable to agree on an alternative determination or calculation, the determinations and calculations of the Independent Distribution Consultant shall be binding.

d. Within 175 days of the date of entry of the Order, Respondents shall require that the Independent Distribution Consultant submit the Distribution Plan for the administration and distribution of disgorgement and penalty funds pursuant to Rule 1101 [17 C.F.R. § 201.1101] of the Commission's Rules Regarding Fair Fund and Disgorgement Plans. Following a Commission order approving a final plan of disgorgement, as provided in Rule 1104 [17 C.F.R. § 201.1104] of the Commission's Rules Regarding Fair Fund and Disgorgement Plans, Respondents shall require that the Independent Distribution Consultant, with Respondents, take all necessary and appropriate steps to administer the final plan for distribution of disgorgement and penalty funds.

e. Respondents shall require that the Independent Distribution Consultant, for the period of the engagement and for a period of two years from completion of the engagement, not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondents, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Respondents shall require that any firm with which the Independent Distribution Consultant is affiliated in performance of his or her duties under the Order not, without prior written consent of a majority of the independent directors and the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondents, or any of their 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.

51. Certification. No later than twenty-four months after the date of entry of the Order, the chief executive officer of each of the Respondents shall certify to the Commission in writing that the respective Respondent has fully adopted and complied in all material respects with the undertakings set forth in paragraphs 47 through 52 and with the recommendations of the Independent Compliance Consultants or, in the event of material non-adoption or non-compliance, shall describe such material non-adoption and non-compliance.

52. Recordkeeping. Respondents shall preserve for a period not less than six years from the end of the fiscal year last used, the first two years in an easily accessible place, any record of Respondents' compliance with the undertakings set forth in paragraphs 47 through 52.

53. Deadlines. 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 in the public interest and for the protection of investors to impose the sanctions agreed to in Respondents' Offer. Accordingly, it is hereby ORDERED, effective immediately, that:

A. Pursuant to Section 203(e) of the Advisers Act, W&R Investment Management is hereby censured.

B. Pursuant to Section 15(b)(4) of the Exchange Act, W&R is hereby censured.

C. Pursuant to Section 17A(c)(3) of the Exchange Act, W&R Services is hereby censured.

D. Pursuant to Section 203(k) of the Advisers Act and Section 9(f) of the Investment Company Act, W&R Investment Management shall cease and desist from committing or causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act and Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder.

E. Pursuant to Section 203(k) of the Advisers Act and Section 9(f) of the Investment Company Act, W&R shall cease and desist from committing or causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act and Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder.

F. Pursuant to Section 203(k) of the Advisers Act and Section 9(f) of the Investment Company Act, W&R Services shall cease and desist from committing or causing any violations and any future violations of Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder and from causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act.

G. Respondents shall comply with the undertakings set forth in Paragraphs 47 through 52 above.

H. Disgorgement and Civil Money Penalties

1. Respondents shall pay, within 20 days of the entry of this Order, on a joint and several basis, $40 million in disgorgement plus a civil money penalty of $10 million, for a total payment of $50 million.

a. Such payment shall be: (a) made by wire transfer, 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) wired, 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 22131; and (d) submitted under cover letter that identifies W&R Investment Management, W&R, and W&R Services as Respondents in these proceedings, a copy of which cover letter, wire transfer instruction, money order or check shall be sent to Rose Romero, District Administrator, Securities and Exchange Commission, Fort Worth District Office, 801 Cherry Street, 19th Floor, Fort Worth, Texas 76102.

b. There shall be, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund established for the funds described in Section IV.H.1. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that they shall not, after offset or reduction in any Related Investor Action based on Respondents' payment of disgorgement in this action, further benefit by offset or reduction of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

I. Other Obligations and Requirements. Nothing in this Order shall relieve Respondents or any Waddell & Reed fund of any other applicable legal obligation or requirement, including any rule adopted by the Commission subsequent to this 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

July 25, 2006

In the Matter of **Solomon Alliance Group, 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 Solomon Alliance Group, Inc. because it has not filed any periodic reports since the period ended September 30, 2001.

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 securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on July 25, 2006, through 11:59 p.m. EDT on August 7, 2006.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Document 36 of 49

Commissioners Glassman and Campos Not Participating

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 54207 / July 25, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2465 / July 25, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12376

In the Matter of **ROLLIN M. DICK, CPA** **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 Rollin M. Dick ("Respondent" or "Dick") 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.

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.4 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. Dick, age 74, is and has been a certified public accountant licensed to practice in the State of Indiana. From 1986 to April 2000, Dick was Chief Financial Officer and Executive Vice President of Conseco, Inc. ("Conseco"). From June 1998 to April 2000, Dick was Chief Financial Officer for Conseco Finance Corporation ("Conseco Finance"), f/k/a Green Tree Financial Corporation, a wholly owned subsidiary of Conseco during this period.

2. At all relevant times, Conseco was a financial services holding company, incorporated in Indiana, with its principal place of business in Carmel, Indiana. Conseco's business consisted of two segments: (i) insurance and fee-based businesses (such as mutual funds), and (ii) finance operations. Conseco's finance operations were conducted through Conseco Finance, with Conseco including Conseco Finance's financial results in its consolidated financial statements. Conseco's common stock was registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and traded on the New York Stock Exchange.

3. At all relevant times, Conseco Finance was a Delaware corporation with its principal place of business in Saint Paul, Minnesota. Conseco Finance was a diversified financial services company with operations that originated, purchased, sold and serviced consumer and commercial loans throughout the United States. At all relevant times, certain of Conseco Finance's securities were registered with the Commission pursuant to Section 12(b) of the Exchange Act.

4. On March 10, 2004, the Commission filed a complaint against Dick and co-defendant James S. Adams in Securities and Exchange Commission v. Rollin M. Dick and James S. Adams, Case No. 1:04-CV-0457 SEB-VSS in the United States District Court for the Southern District of Indiana. On August 30, 2005, the Commission filed an amended complaint against Dick and Adams in this action. On July 3, 2006, the court entered a Final Judgment permanently enjoining Dick, by consent, from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) and 13(b)(5) of the Exchange Act and Exchange Act Rules 10b-5, 13b2-1 and 13b2-2, and from aiding and abetting violations of Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Exchange Act Rules 10b-5, 12b-20 and 13a-13. The Judgment also ordered

Dick to pay $110,000 as a civil money penalty, and barred Dick for a period of five years following the date of entry of the Final Judgment, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to section 15(d) of the Exchange Act.

5. The Commission's amended complaint alleged, among other things, that from March 1999 through February 2000, Conseco and Conseco Finance made false and misleading statements about their earnings in filings made with the Commission and in public statements announcing their earnings, overstating their financial results by hundreds of millions of dollars. The complaint alleged that this massive overstatement occurred primarily because Dick and Adams conducted a fraudulent scheme to avoid huge write-downs of certain assets held by Conseco Finance known as interest-only securities, and corresponding charges to earnings, through the use of improper accounting techniques in violation of United States Generally Accepted Accounting Principles. The complaint also alleged that Dick and Adams made a variety of improper and unsupported "top-side" adjustments to Conseco Finance's books and records at the end of the first three quarters of 1999 to further inflate Conseco and Conseco Finance's earnings for these quarters in order to meet Wall Street's analysts' consensus earnings targets. Further, the complaint alleged that Conseco and Conseco Finance, under Dick and Adams' direction, failed to maintain a system of internal accounting controls sufficient to prevent these and other material misstatements in their financial statements, and that Dick and Adams were responsible for and took advantage of this failure to maintain adequate controls. Finally, the complaint alleged that Dick and Adams made misrepresentations to Conseco and Conseco Finance's auditors in management representation letters.

IV.

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

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

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

B. After five years from the date of this order, Respondent 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 Respondent'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) Respondent, 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) Respondent, 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 the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision

(c) Respondent 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) Respondent acknowledges his responsibility, as long as Respondent 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 Respondent 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 Respondent'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

Commissioners Glassman and Campos Not Participating

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 54208 / July 25, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2466 / July 25, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12377

In the Matter of **JAMES S. ADAMS, CPA** **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 James S. Adams ("Respondent" or "Adams") 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.

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.4 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. Adams, age 46, is and has been a certified public accountant licensed to practice in the State of Indiana. From 1996 to September 2002, Adams was Chief Accounting Officer, Treasurer, and Senior Vice President of Conseco, Inc. ("Conseco"). From June 1998 to July 2002, Adams was Chief Accounting Officer for Conseco Finance Corporation ("Conseco Finance"), f/k/a Green Tree Financial Corporation, a wholly owned subsidiary of Conseco during this period.

2. At all relevant times, Conseco was a financial services holding company, incorporated in Indiana, with its principal place of business in Carmel, Indiana. Conseco's business consisted of two segments: (i) insurance and fee-based businesses (such as mutual funds), and (ii) finance operations. Conseco's finance operations were conducted through Conseco Finance, with Conseco including Conseco Finance's financial results in its consolidated financial statements. Conseco's common stock was registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and traded on the New York Stock Exchange.

3. At all relevant times, Conseco Finance was a Delaware corporation with its principal place of business in Saint Paul, Minnesota. Conseco Finance was a diversified financial services company with operations that originated, purchased, sold and serviced consumer and commercial loans throughout the United States. At all relevant times, certain of Conseco Finance's securities were registered with the Commission pursuant to Section 12(b) of the Exchange Act.

4. On March 10, 2004, the Commission filed a complaint against Adams and co-defendant Rollin M. Dick in Securities and Exchange Commission v. Rollin M. Dick and James S. Adams, Case No. 1:04-CV-0457 SEB-VSS in the United States District Court for the Southern District of Indiana. On August 30, 2005, the Commission filed an amended complaint against Adams and Dick in this action. On July 3, 2006, the court entered a Final Judgment permanently enjoining Adams, by consent, from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) and 13(b)(5) of the Exchange Act and Exchange Act Rules 10b-5, 13b2-1 and 13b2-

2, and from aiding and abetting violations of Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Exchange Act Rules 10b-5, 12b-20 and 13a-13. The Judgment also ordered Adams to pay $90,000 as a civil money penalty, and barred Adams for a period of five years following the date of entry of the Final Judgment, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to section 15(d) of the Exchange Act.

5. The Commission's amended complaint alleged, among other things, that from March 1999 through February 2000, Conseco and Conseco Finance made false and misleading statements about their earnings in filings made with the Commission and in public statements announcing their earnings, overstating their financial results by hundreds of millions of dollars. The complaint alleged that this massive overstatement occurred primarily because Dick and Adams conducted a fraudulent scheme to avoid huge write-downs of certain assets held by Conseco Finance known as interest-only securities, and corresponding charges to earnings, through the use of improper accounting techniques in violation of United States Generally Accepted Accounting Principles. The complaint also alleged that Dick and Adams made a variety of improper and unsupported "top-side" adjustments to Conseco Finance's books and records at the end of the first three quarters of 1999 to further inflate Conseco and Conseco Finance's earnings for these quarters in order to meet Wall Street's analysts' consensus earnings targets. Further, the complaint alleged that Conseco and Conseco Finance, under Dick and Adams' direction, failed to maintain a system of internal accounting controls sufficient to prevent these and other material misstatements in their financial statements, and that Dick and Adams were responsible for and took advantage of this failure to maintain adequate controls. Finally, the complaint alleged that Dick and Adams made misrepresentations to Conseco and Conseco Finance's auditors in management representation letters.

IV.

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

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

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

B. After five years from the date of this order, Respondent 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 Respondent'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) Respondent, 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) Respondent, 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 the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision

(c) Respondent 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) Respondent acknowledges his responsibility, as long as Respondent 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 Respondent 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 Respondent'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
July 25, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12375

In the Matter of **Hancock Holdings, Inc.,** **Image World Media, Inc.,** **Irving Capital Corp.,** **Madison Holdings, Inc.,** **Orion Technologies, Inc.,** **Parc Capital Corp., and** **Solomon Alliance Group, Inc.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE 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 administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Hancock Holdings, Inc. ("Hancock") (CIK No. 1098970) is a void Delaware shell corporation located in Washington, D.C. with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). During June 2000, Hancock changed its name to Transaction Verification Systems, Inc. with the Delaware Secretary of State, although as of July 17, 2006, the company had not yet changed its name in the Commission's records. Hancock is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended December 31, 1999, which reported assets of $701. On February 22, 2000, Hancock became a wholly-owned subsidiary of proposed co-respondent Orion Technologies, Inc.

2. Image World Media, Inc. (CIK No. 1089124) is a noncompliant Colorado shell corporation located in Singapore with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2001, which reported assets of $1,666 and a net loss of $14,981 for the prior nine months. Image World's stock (symbol "IWMI") is traded on the over-the-counter markets.

3. Irving Capital Corp. (CIK No. 1111747) is a void Delaware shell corporation located in Las Vegas, Nevada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB for the period ended March 31, 2001, which reported assets of $545. The company's stock is not publicly traded.

4. Madison Holdings, Inc. (CIK No. 1098966), a void Delaware shell corporation with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g), is a wholly-owned subsidiary of proposed co-respondent Solomon Alliance Group, Inc. The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended December 31, 1999, which reported assets of $701. The company's stock is not publicly traded.

5. Orion Technologies, Inc. (CIK No. 1047174) is a defaulted Nevada corporation located in Washington, D.C. with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). On February 22, 2000, the company acquired all of the issued and outstanding capital stock of proposed co-respondent Hancock Holdings, Inc. Orion is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2001, which reported a net loss of $1,171,426 for the prior nine months. Orion's stock (symbol "ORTG") is traded on the over-the-counter markets.

6. Parc Capital Corp. (CIK No. 1100189) is a void Delaware shell corporation located in New York, New York with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended December 31, 2001, which reported assets of $370. The company's stock is not publicly traded.

7. Solomon Alliance Group, Inc. (CIK No. 1054730) is a dissolved Arizona corporation located in Alpharetta, Georgia with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). On March 16, 2000, Solomon acquired all of the issued and outstanding stock of proposed co-respondent Madison Holdings, Inc. The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2001, which reported a net loss of $776,008 for the prior nine months. Solomon's stock (symbol "SAGE") was quoted on the Pink Sheets on an unsolicited

basis by two market makers as of July 17, 2006 and had an average daily trading volume of 9,699 shares during the year ended July 17, 2006.

B. DELINQUENT PERIODIC FILINGS

8. This case concerns seven companies with classes of securities registered with the Commission that are delinquent in their periodic reports with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1). All of the companies are or were affiliated, directly or indirectly, with two promoters. Hancock, Image World, Irving Capital, Madison, and Parc Capital were formed or acquired by the two promoters. Orion and Solomon participated in reverse merger transactions involving the purchase of shell companies of which the two promoters were beneficial owners and through which the promoters acquired direct or indirect stakes in the acquiring companies.

9. Each of the respondents either failed to cure their delinquencies after being sent delinquency letters by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a current address on file with the Commission as required by Commission rules, did not receive such letters.

10. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers with classes of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports (Forms 10-K or 10-KSB), and Rule 13a-13 requires issuers to file quarterly reports (Forms 10-Q or 10-QSB).

11. As a result of their failure to file required periodic filings, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors to institute public administrative proceedings to determine:

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

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 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 Answers to the allegations contained in this Order within ten (10) 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 Answers, 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, by certified or express mail, or by any other means permitted by the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision not 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 [17 C.F.R. § 201.360(a)(2)].

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

Attachment

Appendix 1

Chart of Delinquent Filings

In the Matter of Hancock Holdings, Inc., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Hancock Holdings, Inc.					
	10-QSB	03/31/00	05/15/00	Not filed	74
	10-QSB	06/30/00	08/14/00	Not filed	71
	10-KSB	09/30/00	12/29/00	Not filed	67
	10-QSB	12/31/00	02/14/01	Not filed	65
	10-QSB	03/31/01	05/15/01	Not filed	62
	10-QSB	06/30/01	08/14/01	Not filed	59
	10-KSB	09/30/01	12/31/01	Not filed	55
	10-QSB	12/31/01	02/14/02	Not filed	53
	10-QSB	03/31/02	05/15/02	Not filed	50
	10-QSB	06/30/02	08/14/02	Not filed	47
	10-KSB	09/30/02	12/30/02	Not filed	43
	10-QSB	12/31/02	02/14/03	Not filed	41
	10-QSB	03/31/03	05/15/03	Not filed	38
	10-QSB	06/30/03	08/14/03	Not filed	35
	10-KSB	09/30/03	12/29/03	Not filed	31
	10-QSB	12/31/03	02/17/04	Not filed	29
	10-QSB	03/31/04	05/17/04	Not filed	26
	10-QSB	06/30/04	08/16/04	Not filed	23
	10-KSB	09/30/04	12/29/04	Not filed	19
	10-QSB	12/31/04	02/14/05	Not filed	17
	10-QSB	03/31/05	05/16/05	Not filed	14
	10-QSB	06/30/05	08/15/05	Not filed	11
	10-KSB	09/30/05	12/29/05	Not filed	7
	10-QSB	12/31/05	02/14/06	Not filed	5
	10-QSB	03/31/06	05/15/06	Not filed	2

Total Filings Delinquent 25

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Image World Media, Inc.					
	10-KSB	12/31/01	04/01/02	Not filed	51
	10-QSB	03/31/02	05/15/02	Not filed	50
	10-QSB	06/30/02	08/14/02	Not filed	47
	10-QSB	09/30/02	11/14/02	Not filed	44
	10-KSB	12/31/02	03/31/03	Not filed	40
	10-QSB	03/31/03	05/15/03	Not filed	38
	10-QSB	06/30/03	08/14/03	Not filed	35
	10-QSB	09/30/03	11/14/03	Not filed	32
	10-KSB	12/31/03	03/30/04	Not filed	28
	10-QSB	03/31/04	05/17/04	Not filed	26
	10-QSB	06/30/04	08/16/04	Not filed	23
	10-QSB	09/30/04	11/15/04	Not filed	20
	10-KSB	12/31/04	03/31/05	Not filed	16
	10-QSB	03/31/05	05/15/05	Not filed	14
	10-QSB	06/30/05	08/14/05	Not filed	11
	10-QSB	09/30/05	11/14/05	Not filed	8
	10-KSB	12/31/05	03/31/05	Not filed	16
	10-QSB	03/31/06	05/15/06	Not filed	2
Total Filings Delinquent	18				
Irving Capital Corp.					
	10-KSB	03/31/01	06/29/01	Not filed	61
	10-QSB	06/30/01	08/14/01	Not filed	59
	10-QSB	09/30/01	11/14/01	Not filed	56
	10-QSB	12/31/01	02/14/02	Not filed	53
	10-KSB	03/31/02	07/01/02	Not filed	48
	10-QSB	06/30/02	08/14/02	Not filed	47
	10-QSB	09/30/02	11/14/02	Not filed	44
	10-QSB	12/31/02	02/14/03	Not filed	41
	10-KSB	03/31/03	06/30/03	Not filed	37
	10-QSB	06/30/03	08/14/03	Not filed	35
	10-QSB	09/30/03	11/14/03	Not filed	32
	10-QSB	12/31/03	02/17/04	Not filed	29
	10-KSB	03/31/04	06/29/04	Not filed	25
	10-QSB	06/30/04	08/16/04	Not filed	23
	10-QSB	09/30/04	11/15/04	Not filed	20
	10-QSB	12/31/04	02/14/05	Not filed	17

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Irving Capital Corp. (continued)	*10-KSB*	03/31/05	06/29/05	Not filed	13
	10-QSB	06/30/05	08/15/05	Not filed	11
	10-QSB	09/30/05	11/14/05	Not filed	8
	10-QSB	12/31/05	02/14/06	Not filed	5
	10-QSB	03/31/06	05/15/06	Not filed	2
Total Filings Delinquent	21				
Madison Holdings, Inc.					
	10-QSB	03/31/00	05/15/00	Not filed	74
	10-QSB	06/30/00	08/14/00	Not filed	71
	10-KSB	09/30/00	12/29/00	Not filed	67
	10-QSB	12/31/00	02/14/01	Not filed	65
	10-QSB	03/31/01	05/15/01	Not filed	62
	10-QSB	06/30/01	08/14/01	Not filed	59
	10-KSB	09/30/01	12/31/01	Not filed	55
	10-QSB	12/31/01	02/14/02	Not filed	53
	10-QSB	03/31/02	05/15/02	Not filed	50
	10-QSB	06/30/02	08/14/02	Not filed	47
	10-KSB	09/30/02	12/30/02	Not filed	43
	10-QSB	12/31/02	02/14/03	Not filed	41
	10-QSB	03/31/03	05/15/03	Not filed	38
	10-QSB	06/30/03	08/14/03	Not filed	35
	10-KSB	09/30/03	12/29/03	Not filed	31
	10-QSB	12/31/03	02/17/04	Not filed	29
	10-QSB	03/31/04	05/17/04	Not filed	26
	10-QSB	06/30/04	08/16/04	Not filed	23
	10-KSB	09/30/04	12/29/04	Not filed	19
	10-QSB	12/31/04	02/14/05	Not filed	17
	10-QSB	03/31/05	05/16/05	Not filed	14
	10-QSB	06/30/05	08/15/05	Not filed	11
	10-KSB	09/30/05	12/29/05	Not filed	7
	10-QSB	12/31/05	02/14/06	Not filed	5
	10-QSB	03/31/06	05/15/06	Not filed	2
Total Filings Delinquent	25				

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Orion Technologies, Inc.					
	10-KSB	12/31/01	04/01/02	Not filed	51
	10-QSB	03/31/02	05/15/02	Not filed	50
	10-QSB	06/30/02	08/14/02	Not filed	47
	10-QSB	09/30/02	11/14/02	Not filed	44
	10-KSB	12/31/02	03/31/03	Not filed	40
	10-QSB	03/31/03	05/15/03	Not filed	38
	10-QSB	06/30/03	08/14/03	Not filed	35
	10-QSB	09/30/03	11/14/03	Not filed	32
	10-KSB	12/31/03	03/30/04	Not filed	28
	10-QSB	03/31/04	05/17/04	Not filed	26
	10-QSB	06/30/04	08/16/04	Not filed	23
	10-QSB	09/30/04	11/15/04	Not filed	20
	10-KSB	12/31/04	03/31/05	Not filed	16
	10-QSB	03/31/05	05/15/05	Not filed	14
	10-QSB	06/30/05	08/14/05	Not filed	11
	10-QSB	09/30/05	11/14/05	Not filed	8
	10-KSB	12/31/05	03/31/05	Not filed	16
	10-QSB	03/31/06	05/15/06	Not filed	2
Total Filings Delinquent	18				
Parc Capital Corp.					
	10-QSB	03/31/02	05/15/02	Not filed	50
	10-QSB	06/30/02	08/14/02	Not filed	47
	10-KSB	09/30/02	12/30/02	Not filed	43
	10-QSB	12/31/02	02/14/03	Not filed	41
	10-QSB	03/31/03	05/15/03	Not filed	38
	10-QSB	06/30/03	08/14/03	Not filed	35
	10-KSB	09/30/03	12/29/03	Not filed	31
	10-QSB	12/31/03	02/17/04	Not filed	29
	10-QSB	03/31/04	05/17/04	Not filed	26
	10-QSB	06/30/04	08/16/04	Not filed	23
	10-KSB	09/30/04	12/29/04	Not filed	19
	10-QSB	12/31/04	02/14/05	Not filed	17

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Parc Capital Corp. (continued)	*10-QSB*	03/31/05	05/16/05	Not filed	14
	10-QSB	06/30/05	08/15/05	Not filed	11
	10-KSB	09/30/05	12/29/05	Not filed	7
	10-QSB	12/31/05	02/14/06	Not filed	5
	10-QSB	03/31/06	05/15/06	Not filed	2
Total Filings Delinquent	17				
Solomon Alliance Group, Inc.	*10-KSB*	12/31/01	04/01/02	Not filed	51
	10-QSB	03/31/02	05/15/02	Not filed	50
	10-QSB	06/30/02	08/14/02	Not filed	47
	10-QSB	09/30/02	11/14/02	Not filed	44
	10-KSB	12/31/02	03/31/03	Not filed	40
	10-QSB	03/31/03	05/15/03	Not filed	38
	10-QSB	06/30/03	08/14/03	Not filed	35
	10-QSB	09/30/03	11/14/03	Not filed	32
	10-KSB	12/31/03	03/30/04	Not filed	28
	10-QSB	03/31/04	05/17/04	Not filed	26
	10-QSB	06/30/04	08/16/04	Not filed	23
	10-QSB	09/30/04	11/15/04	Not filed	20
	10-KSB	12/31/04	03/31/05	Not filed	16
	10-QSB	03/31/05	05/16/05	Not filed	14
	10-QSB	06/30/05	08/15/05	Not filed	11
	10-QSB	09/30/05	11/14/05	Not filed	8
	10-KSB	12/31/05	03/31/06	Not filed	4
	10-QSB	03/31/06	05/15/06	Not filed	2
Total Filings Delinquent	18				

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2538 / July 26, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12383

In the Matter of **Michael L. Hershey,** **Respondent.**	**ORDER INSTITUTING 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 Michael L. Hershey ("Hershey" 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.2 below, which are admitted, Respondent consents to the entry of this Order Instituting 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.

III.

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

1. Hershey was the founder, president, and 90% owner of Landis Associates, LLC ("Landis"), an investment adviser registered with the Commission, and also was president and chairman of the board of the Henlopen Fund, an investment company registered with the Commission. Landis served as investment adviser to the Henlopen Fund, as well as to a number of individual client accounts. Hershey, 67 years old, is a resident of Tierra Verde, Florida.

2. On July 19, 2006, a final judgment was entered by consent against Respondent, permanently enjoining him from future violations of Sections 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Exchange Act, and Rule 10b-5, thereunder, Sections 206(1) and 206(2) of the Advisers Act, and Section 204 of the Advisers Act, and Rules 204-2(a)(3) and (7), thereunder, in the civil action entitled Securities and Exchange Commission v. Michael L. Hershey, et al., Civil Action Number 04-CV-2742, in the United States District Court for the Eastern District of Pennsylvania (the "Civil Action").

3. The Commission's Complaint alleged that, between 1998 and 2001, Hershey, acting directly and through Landis, misused client funds and breached his fiduciary duty to one of his individual clients by using his full discretion over the investments of that client to authorize investments in Tremont Medical, Inc. ("Tremont Medical"), an apparently now-defunct company for which Hershey served as a member of its Board of Directors. Hershey continued these investments, the Complaint alleged, even though it became clear that this client's funds were Tremont Medical's only source of capital. Specifically, the Complaint alleged that Hershey authorized undocumented, uncollateralized, and interest-free cash advances of $8.1 million from his client's funds, which were falsely characterized on transaction documentation and account statements as purchases of common stock in Tremont Medical, Inc. As a result, the Complaint alleged, the client's account was overvalued by more than $30 million, as statements for the account falsely represented ownership of approximately 9.9 million shares of Tremont Medical stock, when, in fact, the client account held only 1.9 million shares of Tremont Medical stock, all of which was worthless. Finally, the Complaint asserted that because Hershey liquidated many of this client's other investments in order to make these cash advances to Tremont Medical, by the time the client account was closed, in June 2001, that account had lost 70% of its value and the client had lost all of the funds invested in Tremont Medical.

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 203(f) of the Advisers Act, that Respondent be and hereby is barred from association with any investment adviser.

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
July 26, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12381

In the Matter of	
Go Online Networks Corp., Integrated Communication Networks, Inc., Keystone Energy Services, Inc., Scottsdale Technologies, Inc., Sienna Broadcasting Corp., and Triton Network Systems, Inc.,	**ORDER INSTITUTING PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**
Respondents.	

I.

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

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Go Online Networks Corp. (CIK No. 1056617) is a forfeited Delaware corporation located in Chatsworth, California with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Go Online is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2004. As of June 2, 2006, the company's common stock (symbol "GONT") was quoted on the Pink Sheets, had fourteen market makers, and was eligible for the piggyback exemption of Exchange Act Rule 15c2-11(f)(3).

2. Integrated Communication Networks, Inc. (CIK No. 1098300) is a revoked Nevada corporation located in Aliso Viejo, California with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g).

Integrated is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2000, which reported that the company had doubts about its ability to continue as a going concern and had a working capital deficiency of $5.2 million. As of June 2, 2006, the company's common stock (symbol "ICNW") was quoted on the Pink Sheets, had four market makers, and was eligible for the piggyback exemption of Exchange Act Rule 15c2-11(f)(3).

3. Keystone Energy Services, Inc. (CIK No. 1053243) is an inactive Minnesota corporation located in Los Angeles, California with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Keystone is delinquent in its periodic filings with the Commission, having filed no periodic reports since it filed a Form 10-SB registration statement on December 3, 1999, which reported that the company had an operating loss of $1.3 million for fiscal year 1999. As of June 2, 2006, the company's common stock (symbol "KESE") was quoted on the Pink Sheets, had eight market makers, and was eligible for the piggyback exemption of Exchange Act Rule 15c2-11(f)(3).

4. Scottsdale Technologies, Inc. (CIK No. 1046303) is a void Delaware corporation located in Scottsdale, Arizona with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Scottsdale is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on December 11, 1997, which reported that the company had zero revenues, total assets of $500, and a net loss of $4,067 for the six months ending March 31, 1997. As of June 2, 2006, the company's common stock (symbol "SDNI") was quoted on the Pink Sheets, had six market makers, and was eligible for the piggyback exemption of Exchange Act Rule 15c2-11(f)(3).

5. Sienna Broadcasting Corp. (n/k/a Contemporary Solutions, Inc.) (CIK No. 849354) is a Nevada corporation located in Las Vegas, Nevada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Sienna is delinquent in its periodic filings with the Commission, having not filed a periodic report since it filed a Form 10-QSB for the period ended September 30, 2002. It has also failed to change its name in the Commission's records to its new name, Contemporary Solutions, Inc., as required. As of June 29, 2006, the company's common stock (symbol "CPSL") was quoted on the Pink Sheets, had six market makers, and was eligible for the piggyback exemption of Exchange Act Rule 15c2-11(f)(3).

6. Triton Network Systems, Inc. (CIK No. 1050250) is a dissolved Delaware corporation located in Dallas, Texas with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Triton is delinquent in its periodic filings with the Commission, having not filed a periodic report since it filed a Form 10-Q for the period ended March 31, 2002, which reported that a net loss from operations of $19 million for the prior three months, and the company's dissolution on January 31, 2002. As of June 2, 2006, the company's common stock (symbol "TNSIZ") was quoted on the Pink Sheets, had eight market makers, and was eligible for the piggyback exemption of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

7. As discussed in more detail above, all of the respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission, did not receive such letters.

8. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports (Forms 10-K or 10-KSB), and Rule 13a-13 requires issuers to file quarterly reports (Forms 10-Q or 10-QSB).

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

III.

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 administrative proceedings be instituted to determine:

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

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY 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 HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, 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 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 Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS 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 [17 C.F.R. § 201.360(a)(2)].

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

Attachment

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Appendix 1

Chart of Delinquent Filings
Go Online Networks Corp., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Go Online Networks Corp.					
	10-KSB	12/31/04	02/14/05	Not filed	17
	10-QSB	03/31/05	05/16/05	Not filed	14
	10-QSB	06/30/05	08/15/05	Not filed	11
	10-QSB	09/30/05	11/14/05	Not filed	8
	10-KSB	12/31/05	02/14/06	Not filed	5
	10-QSB	03/31/06	05/15/06	Not filed	2
Total Filings Delinquent	6				
Integrated Communication Networks, Inc.					
	10-K	12/31/00	04/02/01	Not filed	63
	10-Q	03/31/01	05/15/01	Not filed	62
	10-Q	06/30/01	08/14/01	Not filed	59
	10-Q	09/30/01	11/14/01	Not filed	56
	10-K	12/31/01	04/01/02	Not filed	51
	10-Q	03/31/02	05/15/02	Not filed	50
	10-Q	06/30/02	08/14/02	Not filed	47
	10-Q	09/30/02	11/14/02	Not filed	44
	10-K	12/31/02	03/31/03	Not filed	40
	10-Q	03/31/03	05/15/03	Not filed	38
	10-Q	06/30/03	08/14/03	Not filed	35
	10-Q	09/30/03	11/14/03	Not filed	32
	10-K	12/31/03	03/30/04	Not filed	28
	10-Q	03/31/04	05/17/04	Not filed	26
	10-Q	06/30/04	08/16/04	Not filed	23
	10-Q	09/30/04	11/15/04	Not filed	20
	10-K	12/31/04	03/31/05	Not filed	16
	10-Q	03/31/05	05/16/05	Not filed	14
	10-Q	06/30/05	08/15/05	Not filed	11
	10-Q	09/30/05	11/14/05	Not filed	8

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Integrated Communication Networks, Inc.	*10-K*	12/31/05	03/31/06	Not filed	4
	10-Q	03/31/06	05/15/06	Not filed	2
Total Filings Delinquent	22				
Keystone Energy Services, Inc.	*10-QSB*	12/31/99	02/14/00	Not filed	77
	10-QSB	03/31/00	05/15/00	Not filed	74
	10-QSB	06/30/00	08/14/00	Not filed	71
	10-KSB	09/30/00	12/29/00	Not filed	67
	10-QSB	12/31/00	02/14/01	Not filed	65
	10-QSB	03/31/01	05/15/01	Not filed	62
	10-QSB	06/30/01	08/14/01	Not filed	59
	10-KSB	09/30/01	12/31/01	Not filed	55
	10-QSB	12/31/01	02/14/02	Not filed	53
	10-QSB	03/31/02	05/15/02	Not filed	50
	10-QSB	06/30/02	08/14/02	Not filed	47
	10-KSB	09/30/02	12/30/02	Not filed	43
	10-QSB	12/31/02	02/14/03	Not filed	41
	10-QSB	03/31/03	05/15/03	Not filed	38
	10-QSB	06/30/03	08/14/03	Not filed	35
	10-KSB	09/30/03	12/29/03	Not filed	31
	10-QSB	12/31/03	02/16/04	Not filed	29
	10-QSB	03/31/04	05/17/04	Not filed	26
	10-QSB	06/30/04	08/16/04	Not filed	23
	10-KSB	09/30/04	12/29/04	Not filed	19
	10-QSB	12/31/04	02/14/05	Not filed	17
	10-QSB	03/31/05	05/16/05	Not filed	14
	10-QSB	06/30/05	08/15/05	Not filed	11
	10-KSB	09/30/05	12/29/05	Not filed	7
	10-QSB	12/31/05	02/14/06	Not filed	5
	10-QSB	03/31/06	05/15/06	Not filed	2
Total Filings Delinquent	26				

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Scottsdale Technologies, Inc.					
	10-QSB	06/30/97	08/14/97	Not filed	107
	10-KSB	09/30/97	12/29/97	Not filed	103
	10-QSB	12/31/97	02/16/98	Not filed	101
	10-QSB	03/31/98	05/15/98	Not filed	98
	10-QSB	06/30/98	08/14/98	Not filed	95
	10-KSB	09/30/98	12/29/98	Not filed	91
	10-QSB	12/31/98	02/14/99	Not filed	89
	10-QSB	03/31/99	05/17/99	Not filed	86
	10-QSB	06/30/99	08/16/99	Not filed	83
	10-KSB	09/30/99	12/29/99	Not filed	79
	10-QSB	12/31/99	02/14/00	Not filed	77
	10-QSB	03/31/00	05/15/00	Not filed	74
	10-QSB	06/30/00	08/14/00	Not filed	71
	10-KSB	09/30/00	12/29/00	Not filed	67
	10-QSB	12/31/00	02/14/01	Not filed	65
	10-QSB	03/31/01	05/15/01	Not filed	62
	10-QSB	06/30/01	08/14/01	Not filed	59
	10-KSB	09/30/01	12/31/01	Not filed	55
	10-QSB	12/31/01	02/14/02	Not filed	53
	10-QSB	03/31/02	05/15/02	Not filed	50
	10-QSB	06/30/02	08/14/02	Not filed	47
	10-KSB	09/30/02	12/30/02	Not filed	43
	10-QSB	12/31/02	02/14/03	Not filed	41
	10-QSB	03/31/03	05/15/03	Not filed	38
	10-QSB	06/30/03	08/14/03	Not filed	35
	10-KSB	09/30/03	12/29/03	Not filed	31
	10-QSB	12/31/03	02/16/04	Not filed	29
	10-QSB	03/31/04	05/17/04	Not filed	26
	10-QSB	06/30/04	08/16/04	Not filed	23
	10-KSB	09/30/04	12/29/04	Not filed	19
	10-QSB	12/31/04	02/14/05	Not filed	17
	10-QSB	03/31/05	05/16/05	Not filed	14
	10-QSB	06/30/05	08/15/05	Not filed	11
	10-KSB	09/30/05	12/29/05	Not filed	7
	10-QSB	12/31/05	02/14/06	Not filed	5

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Scottsdale Technologies, Inc.					
	10-QSB	03/31/06	05/15/06	Not filed	2
	10-QSB	03/31/06	05/15/06	Not filed	2
Total Filings Delinquent	36				
Sienna Broadcasting Corp.					
	10-KSB	12/31/02	03/31/03	Not filed	40
	10-QSB	03/31/03	05/15/03	Not filed	38
	10-QSB	06/30/03	08/14/03	Not filed	35
	10-QSB	09/30/03	11/14/03	Not filed	32
	10-KSB	12/31/03	03/30/04	Not filed	28
	10-QSB	03/31/04	05/17/04	Not filed	26
	10-QSB	06/30/04	08/16/04	Not filed	23
	10-QSB	09/30/04	11/15/04	Not filed	20
	10-KSB	12/31/04	03/31/05	Not filed	16
	10-QSB	03/31/05	05/16/05	Not filed	14
	10-QSB	06/30/05	08/15/05	Not filed	11
	10-QSB	09/30/05	11/14/05	Not filed	8
	10-KSB	12/31/05	03/31/06	Not filed	4
	10-QSB	03/31/06	05/15/06	Not filed	2
Total Filings Delinquent	13				
Triton Network Systems, Inc.					
	10-Q	06/30/02	08/14/02	Not filed	47
	10-Q	09/30/02	11/14/02	Not filed	44
	10-K	12/31/02	03/31/03	Not filed	40
	10-Q	03/31/03	05/15/03	Not filed	38
	10-Q	06/30/03	08/14/03	Not filed	35
	10-Q	09/30/03	11/14/03	Not filed	32
	10-K	12/31/03	03/30/04	Not filed	28
	10-Q	03/31/04	05/17/04	Not filed	26
	10-Q	06/30/04	08/16/04	Not filed	23
	10-Q	09/30/04	11/15/04	Not filed	20
	10-K	12/31/04	03/31/05	Not filed	16
	10-Q	03/31/05	05/16/05	Not filed	14

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Triton Network Systems, Inc.					
	10-Q	06/30/05	08/15/05	Not filed	11
	10-Q	09/30/05	11/14/05	Not filed	8
	10-K	12/31/05	03/31/06	Not filed	4
	10-Q	03/31/06	05/15/06	Not filed	2
Total Filings Delinquent	16				

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

July 26, 2006

IN THE MATTER OF **Andover Apparel Group, Inc.,** **Applied Computer Technology, Inc.,** **Country World Casinos, Inc.** **Digital Transmission Systems, Inc.,** **EWRX Internet Systems, Inc.,** **Go Online Networks Corp.,** **Integrated Communication Networks, Inc.** **Keystone Energy Services, Inc.,** **Microbest, Inc.,** **Midway Airlines Corp.** **Mobilemedia Corp.** **Neometrix Technology Group, Inc.,** **Photran Corp.,** **Scottsdale Technologies, Inc.,** **Sienna Broadcasting Corp.,** **Triton Network Systems, Inc., and** **Western Pacific Airlines, 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 Andover Apparel Group, Inc. because it has not filed any periodic reports since the period ended November 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Applied Computer Technology, Inc. (n/k/a Amigula, Inc.) because it has not filed any periodic reports since the period ended June 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Country World Casinos, Inc. because it has not filed any periodic reports since the period ended March 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Digital Transmission Systems, Inc. because it has not filed any periodic reports since the period ended March 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of EWRX Internet Systems, Inc. (n/k/a iMusic International, Inc.) because it has not filed any periodic reports since the period ended September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Go Online Networks Corp. because it has not filed any periodic reports since the period ended September 30, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Integrated Communication Networks, Inc. because it has not filed any periodic reports since the period ended September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Keystone Energy Services, Inc. because it has not filed any periodic reports since December 3, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Microbest, Inc. because it has not filed any periodic reports since the period ended September 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Midway Airlines Corp. because it has not filed any periodic reports since the period ended June 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Mobilemedia Corp. because it has not filed any periodic reports since the period ended September 30, 1996.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Neometrix Technology Group, Inc. because it has not filed any periodic reports since the period ended July 31, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Photran Corp. because it has not filed any periodic reports since the period ended September 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Scottsdale Technologies, Inc. because it has not filed any periodic reports since December 11, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Sienna Broadcasting Corp. (n/k/a Contemporary Solutions, Inc.) because it has not filed any periodic reports since September 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Triton Network Systems, Inc. because it has not filed any periodic reports since the period ended March 31, 2002.

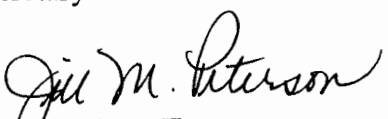
It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Western Pacific Airlines, Inc. because it has not filed any periodic reports since the period ended September 30, 1997.

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 companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed companies, including trading in the debt securities of Country World Casinos, Inc., Midway Airlines Corp., and Mobilemedia Corp., is suspended for the period from 9:30 a.m. EDT on July 26, 2006, through 11:59 p.m. EDT on August 8, 2006.

By the Commission.

Nancy M. Morris
Secretary



By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
July 26, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12379

In the Matter of	:	
Andover Apparel Group, Inc., Applied Computer Technology, Inc., Country World Casinos, Inc., EWRX Internet Systems, Inc., Mobilemedia Corp., and Photran Corp.	:	**ORDER INSTITUTING PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**
Respondents.	:	

I.

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

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Andover Apparel Group, Inc. (f/k/a Andover Togs, Inc.) (CIK No. 793029) is a void Delaware corporation located in New York, New York with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Andover is delinquent in its periodic filings with the Commission, having not filed a periodic report since it filed a Form 10-K for the period ended November 30, 1998, which reported net losses of $1.2 million. As of June 2, 2006, the company's common stock (symbol "ATOQ") was quoted on the Pink Sheets, had three market makers, and was eligible for the piggyback exemption of Exchange Act Rule 15c2-11(f)(3).

2. Applied Computer Technology, Inc. (n/k/a Amigula, Inc.) (CIK No. 946244) is a Colorado corporation located in Toronto, Ontario, Canada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Applied Computer is delinquent in its periodic filings with the Commission,

having not filed a periodic report since it filed a Form 10-QSB for the period ended June 30, 1998, which reported a net loss from operations of $1.6 million for the prior six months. It has also failed to change its name in the Commission's records to its new name, Amigula, Inc., as required. As of June 2, 2006, the company's common stock (symbol "AMJL") was quoted on the Pink Sheets, had seven market makers, and was eligible for the piggyback exemption of Exchange Act Rule 15c2-11(f)(3).

3. Country World Casinos, Inc. (CIK No. 713443) is a revoked Nevada corporation located in Bala Cynwyd, Pennsylvania with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Country World is delinquent in its periodic filings with the Commission, having not filed a periodic report since it filed a Form 10-QSB for the period ended March 31, 2001, which reported that the company had generated no revenues from operations since its inception, and continued to incur losses of $200,000 per month, with a working capital deficit of over $16 million. As of June 2, 2006, the company's common stock (symbol "CWRC") was traded on the over-the-counter markets.

4. EWRX Internet Systems, Inc. (n/k/a iMusic International, Inc.) (CIK No. 1088949) is a delinquent Nevada corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). EWRX is delinquent in its periodic filings with the Commission, having not filed a periodic report since it filed a Form 10-QSB for the period ending September 30, 2000, which reported a cumulated net loss since inception of $5.1 million. It has also failed to change its name in the Commission's records to its new name, iMusic International, Inc., as required. As of June 30, 2006, the company's common stock (symbol "IMSC") was quoted on the Pink Sheets, had three market makers, and was eligible for the piggyback exemption of Exchange Act Rule 15c2-11(f)(3).

5. Mobilemedia Corp. (CIK No. 912091) is a dissolved Delaware corporation located in Fort Lee, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Mobilemedia is delinquent in its periodic filings with the Commission, having not filed a periodic report since it filed a Form 10-Q for the period ending September 30, 1996, which reported a loss of $188 million for the previous nine months. On January 30, 1997, Mobilemedia filed a Chapter 11 bankruptcy proceeding in the U.S. Bankruptcy Court for the District of Delaware that was terminated on February 12, 2001. The company's stock does not publicly trade.

6. Photran Corp. (CIK No. 894906) is an inactive Minnesota corporation located in Lakeville, Minnesota with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Photran is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 1998, which reported a net loss of $3.3 million for the prior three months. As of June 2, 2006, the company's common stock (symbol "PHTA") was quoted on the Pink Sheets, had two market makers, and was eligible for the piggyback exemption of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

7. As discussed in more detail above, all of the respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

8. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports (Forms 10-K or 10-KSB), and Rule 13a-13 requires issuers to file quarterly reports (Forms 10-Q or 10-QSB).

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

III.

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 administrative proceedings be instituted to determine:

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

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY 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 HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, 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 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 Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS 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 [17 C.F.R. § 201.360(a)(2)].

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

Attachment

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendix 1

Chart of Delinquent Filings
Andover Apparel Group, Inc., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Andover Apparel Group, Inc.					
	10-Q	02/28/99	04/14/99	Not filed	87
	10-Q	05/31/99	07/15/99	Not filed	84
	10-Q	08/31/99	10/15/99	Not filed	81
	10-K	11/30/99	02/28/00	Not filed	77
	10-Q	02/29/00	04/14/00	Not filed	75
	10-Q	05/31/00	07/17/00	Not filed	72
	10-Q	08/31/00	10/16/00	Not filed	69
	10-K	11/30/00	02/28/01	Not filed	65
	10-Q	02/28/01	04/16/01	Not filed	63
	10-Q	05/31/01	07/16/01	Not filed	60
	10-Q	08/31/01	10/15/01	Not filed	57
	10-K	11/30/01	02/28/02	Not filed	53
	10-Q	02/28/02	04/15/02	Not filed	51
	10-Q	05/31/02	07/15/02	Not filed	48
	10-Q	08/31/02	10/15/02	Not filed	45
	10-K	11/30/02	02/28/03	Not filed	41
	10-Q	02/28/03	04/14/03	Not filed	39
	10-Q	05/31/03	07/15/03	Not filed	36
	10-Q	08/31/03	10/15/03	Not filed	33
	10-K	11/30/03	03/01/04	Not filed	28
	10-Q	02/29/04	04/14/04	Not filed	27
	10-Q	05/31/04	07/15/04	Not filed	24
	10-Q	08/31/04	10/15/04	Not filed	21
	10-K	11/30/04	02/28/05	Not filed	17
	10-Q	02/28/05	04/14/05	Not filed	15
	10-Q	05/31/05	07/15/05	Not filed	12
	10-Q	08/31/05	10/17/05	Not filed	9
	10-K	11/30/05	02/28/06	Not filed	5
	10-Q	02/28/06	04/14/06	Not filed	3
	10-Q	05/31/06	07/17/06	Not filed	0

Total Filings Delinquent 30

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Applied Computer Technology, Inc.					
	10-Q	09/30/98	11/16/98	Not filed	92
	10-K	12/31/98	03/31/99	Not filed	88
	10-Q	03/31/99	05/17/99	Not filed	86
	10-Q	06/30/99	08/16/99	Not filed	83
	10-Q	09/30/99	11/15/99	Not filed	80
	10-K	12/31/99	03/30/00	Not filed	76
	10-Q	03/31/00	05/15/00	Not filed	74
	10-Q	06/30/00	08/14/00	Not filed	71
	10-Q	09/30/00	11/14/00	Not filed	68
	10-K	12/31/00	04/02/01	Not filed	63
	10-Q	03/31/01	05/15/01	Not filed	62
	10-Q	06/30/01	08/14/01	Not filed	59
	10-Q	09/30/01	11/14/01	Not filed	56
	10-K	12/31/01	04/01/02	Not filed	51
	10-Q	03/31/02	05/15/02	Not filed	50
	10-Q	06/30/02	08/14/02	Not filed	47
	10-Q	09/30/02	11/14/02	Not filed	44
	10-K	12/31/02	03/31/03	Not filed	40
	10-Q	03/31/03	05/15/03	Not filed	38
	10-Q	06/30/03	08/14/03	Not filed	35
	10-Q	09/30/03	11/14/03	Not filed	32
	10-K	12/31/03	03/30/04	Not filed	28
	10-Q	03/31/04	05/17/04	Not filed	26
	10-Q	06/30/04	08/16/04	Not filed	23
	10-Q	09/30/04	11/15/04	Not filed	20
	10-K	12/31/04	03/31/05	Not filed	16
	10-Q	03/31/05	05/16/05	Not filed	14
	10-Q	06/30/05	08/15/05	Not filed	11
	10-Q	09/30/05	11/14/05	Not filed	8
	10-K	12/31/05	03/31/06	Not filed	4
	10-Q	03/31/06	05/15/06	Not filed	2

Total Filings Delinquent 31

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Country World Casinos, Inc.					
	10-KSB	06/30/01	09/28/01	Not filed	58
	10-QSB	09/30/01	11/14/01	Not filed	56
	10-QSB	12/31/01	02/14/02	Not filed	53
	10-QSB	03/31/02	05/15/02	Not filed	50
	10-KSB	06/30/02	09/30/02	Not filed	46
	10-QSB	09/30/02	11/14/02	Not filed	44
	10-QSB	12/31/02	02/14/03	Not filed	41
	10-QSB	03/31/03	05/15/03	Not filed	38
	10-KSB	06/30/03	09/29/03	Not filed	34
	10-QSB	09/30/03	11/14/03	Not filed	32
	10-QSB	12/31/03	02/17/04	Not filed	29
	10-QSB	03/31/04	05/17/04	Not filed	26
	10-KSB	06/30/04	09/28/04	Not filed	22
	10-QSB	09/30/04	11/15/04	Not filed	20
	10-QSB	12/31/04	02/14/05	Not filed	17
	10-QSB	03/31/05	05/16/05	Not filed	14
	10-KSB	06/30/05	09/28/05	Not filed	10
	10-QSB	09/30/05	11/14/05	Not filed	8
	10-QSB	12/31/05	02/14/06	Not filed	5
	10-QSB	03/31/06	05/15/06	Not filed	2
Total Filings Delinquent	20				
EWRX Internet Systems, Inc.					
	10-KSB	12/31/00	04/02/01	Not filed	63
	10-QSB	03/31/01	05/15/01	Not filed	62
	10-QSB	06/30/01	08/14/01	Not filed	59
	10-QSB	09/30/01	11/14/01	Not filed	56
	10-KSB	12/31/01	04/01/02	Not filed	51
	10-QSB	03/31/02	05/15/02	Not filed	50
	10-QSB	06/30/02	08/14/02	Not filed	47
	10-QSB	09/30/02	11/14/02	Not filed	44
	10-KSB	12/31/02	03/31/03	Not filed	40
	10-QSB	03/31/03	05/15/03	Not filed	38
	10-QSB	06/30/03	08/14/03	Not filed	35
	10-QSB	09/30/03	11/14/03	Not filed	32

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
EWRX Internet Systems, Inc.					
	10-KSB	12/31/03	03/30/04	Not filed	28
	10-QSB	03/31/04	05/17/04	Not filed	26
	10-QSB	06/30/04	08/16/04	Not filed	23
	10-QSB	09/30/04	11/15/04	Not filed	20
	10-KSB	12/31/04	03/31/05	Not filed	16
	10-QSB	03/31/05	05/16/05	Not filed	14
	10-QSB	06/30/05	08/15/05	Not filed	11
	10-QSB	09/30/05	11/14/05	Not filed	8
	10-KSB	12/31/05	03/31/06	Not filed	4
	10-QSB	03/31/06	05/15/06	Not filed	2
Total Filings Delinquent	22				
Mobilemedia Corp.					
	10-K	12/31/01	04/01/02	Not filed	51
	10-Q	03/31/02	05/15/02	Not filed	50
	10-Q	06/30/02	08/14/02	Not filed	47
	10-Q	09/30/02	11/14/02	Not filed	44
	10-K	12/31/02	03/31/03	Not filed	40
	10-Q	03/31/03	05/15/03	Not filed	38
	10-Q	06/30/03	08/14/03	Not filed	35
	10-Q	09/30/03	11/14/03	Not filed	32
	10-K	12/31/03	03/30/04	Not filed	28
	10-Q	03/31/04	05/17/04	Not filed	26
	10-Q	06/30/04	08/16/04	Not filed	23
	10-Q	09/30/04	11/15/04	Not filed	20
	10-K	12/31/04	03/31/05	Not filed	16
	10-Q	03/31/05	05/16/05	Not filed	14
	10-Q	06/30/05	08/15/05	Not filed	11
	10-Q	09/30/05	11/14/05	Not filed	8
	10-K	12/31/05	03/31/06	Not filed	4
	10-Q	03/31/06	05/15/06	Not filed	2
Total Filings Delinquent	18				

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Photran Corp.					
	10-QSB	06/30/02	08/14/02	Not filed	47
	10-QSB	09/30/02	11/14/02	Not filed	44
	10-KSB	12/31/02	03/31/03	Not filed	40
	10-QSB	03/31/03	05/15/03	Not filed	38
	10-QSB	06/30/03	08/14/03	Not filed	35
	10-QSB	09/30/03	11/14/03	Not filed	32
	10-KSB	12/31/03	03/30/04	Not filed	28
	10-QSB	03/31/04	05/17/04	Not filed	26
	10-QSB	06/30/04	08/16/04	Not filed	23
	10-QSB	09/30/04	11/15/04	Not filed	20
	10-KSB	12/31/04	03/31/05	Not filed	16
	10-QSB	03/31/05	05/16/05	Not filed	14
	10-QSB	06/30/05	08/15/05	Not filed	11
	10-QSB	09/30/05	11/14/05	Not filed	8
	10-KSB	12/31/05	03/31/06	Not filed	4
	10-QSB	03/31/06	05/15/06	Not filed	2

Total Filings Delinquent 16

Commissioners Glassman and Campos Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 54235 / July 28, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12160

In the Matter of **JEFFREY G. NUNEZ,** **Respondent.**	**ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS**

I.

On January 25, 2006, the Securities and Exchange Commission (the "Commission") instituted public administrative proceedings against Jeffrey G. Nunez ("Respondent") pursuant to Section 15(b) of the Securities Exchange Act of 1934 (the "Exchange Act").

II.

In response to the institution of these administrative 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, which are admitted, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions (the "Order"), as set forth below.

III.

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

1. Respondent was a registered representative of Providential Securities, Inc. (Providential) from November 10, 1999 through September 15, 2000. At the time of Respondent's employment, Providential was a broker-dealer registered with the Commission. Respondent, 46 years old, is a resident of Austin, Texas.

2. On January 9, 2006, a final judgment was entered by default against Respondent in *Securities and Exchange Commission v. Morgan Cooper, et al.*, Civil Action Number 1:05CV0207, U.S. District Court for the District of Columbia. That final judgment permanently enjoined him from future violations of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act").

3. The Commission's Complaint alleged that, during the Spring and Summer of 2000, Respondent participated in an unregistered distribution of securities in violation of Sections 5(a) and 5(c) of the Securities Act. The distribution occurred in connection with a reverse merger of a privately-held company into an existing publicly-held shell and the subsequent sale of hundreds of thousands of shares of the company to the public in transactions that were not registered with the Commission as Section 5 of the Securities Act requires. Respondent attended meetings where fundraising for the public company was discussed and at which he learned about the reverse merger and the plan to distribute the shares to the public. Respondent then acted as the securities broker for a brokerage account used as a depository for many of the shares that he, in turn, sold to several of his customers in unregistered transactions.

4. Respondent undertakes to provide the Commission, within ten days after the end of his six-month suspension period described below, an affidavit that he has fully complied with the sanction imposed in paragraph IV.A, below.

IV.

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

Accordingly, it is hereby ORDERED:

A. Pursuant to Section 15(b)(6) of the Exchange Act that Respondent Jeffrey G. Nunez be, and hereby is, suspended from association with any broker or dealer for a period of six months, effective on the second Monday following entry of the Order.

B. Respondent shall comply with the undertaking enumerated in Section III.4 above.

By the Commission

Nancy M. Morris
Secretary

By: J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
July 26, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12380

In the Matter of	
Digital Transmission Systems, Inc., Microbest, Inc., Midway Airlines Corp., Neometrix Technology Group, Inc., and Western Pacific Airlines, Inc.,	**ORDER INSTITUTING PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**
Respondents.	

I.

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

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Digital Transmission Systems, Inc. (CIK No. 1005179) is a void Delaware corporation located in Duluth, Georgia with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Digital Transmission is delinquent in its periodic filings with the Commission, having not filed a periodic report since it filed a Form 10-Q for the period ended March 31, 2002, which reported that the company had a loss from continuing operations of over $1.1 million for the previous nine months. As of June 2, 2006, the company's common stock (symbol "DTSX") was quoted on the Pink Sheets, had five market makers, and was eligible for the piggyback exemption of Exchange Act Rule 15c2-11(f)(3).

2. Microbest, Inc. (CIK No. 1098560) is an inactive Minnesota corporation located in West Palm Beach, Florida with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Microbest is delinquent in its

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periodic filings with the Commission, having not filed a periodic report since it filed a Form 10-QSB for the period ended September 30, 2002, which reported that the company had a net loss of $2.4 million for the previous 33 months, and had not generated sufficient revenues to cover its expenses since its inception. As of June 2, 2006, the company's common stock (symbol "MBST") was quoted on the Pink Sheets, had five market makers, and was eligible for the piggyback exemption of Exchange Act Rule 15c2-11(f)(3).

3. Midway Airlines Corp. (CIK No. 946323) is a void Delaware corporation located in Morrisville, North Carolina with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Midway is delinquent in its periodic filings with the Commission, having not filed a periodic report since it filed a Form 10-Q for the period ended June 30, 2001, which reported that the company had a net loss of $7 million for the previous 3 months. On August 13, 2001, Midway filed a Chapter 11 bankruptcy petition in the U.S. Bankruptcy Court for the Eastern District of North Carolina, which was converted to a Chapter 7 proceeding on October 30, 2003, and has now been terminated. As of June 2, 2006, the company's common stock (symbol "MDWYQ") was traded on the over-the-counter markets.

4. Neometrix Technology Group, Inc. (CIK No. 1059137) is a void Delaware corporation located in Lutz, Florida with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Neometrix is delinquent in its periodic filings with the Commission, having not filed a periodic report since it filed a Form 10-QSB for the period ended July 31, 2004, which reported that the company had a net loss from operations of $1.6 million for the prior nine months. As of June 2, 2006, the company's common stock (symbol "NMTX") was quoted on the Pink Sheets, had six market makers, and was eligible for the piggyback exemption of Exchange Act Rule 15c2-11(f)(3).

5. Western Pacific Airlines, Inc. (CIK No. 930239) is an forfeited Delaware corporation located in Colorado Springs, Colorado with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Western Pacific is delinquent in its periodic filings with the Commission, having not filed a periodic report since it filed a Form 10-Q for the period ending September 30, 1997, which reported a net loss of $35 million for the previous six months. The company filed a Chapter 11 bankruptcy petition on October 5, 1997, that was converted to a Chapter 7 proceeding on July 6, 1998. As of June 2, 2006, the company's common stock (symbol "WPACQ") was quoted on the Pink Sheets, had three market makers, and was eligible for the piggyback exemption of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

6. As discussed in more detail above, all of the respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or,

through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

7. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports (Forms 10-K or 10-KSB), and Rule 13a-13 requires issuers to file quarterly reports (Forms 10-Q or 10-QSB).

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

III.

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 administrative proceedings be instituted to determine:

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

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke, the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY 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 HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, 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 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 Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS 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 [17 C.F.R. § 201.360(a)(2)].

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

Attachment

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Appendix 1

Chart of Delinquent Filings
Digital Transmission Systems, Inc., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Digital Transmission Systems, Inc.					
	10-K	06/30/02	09/30/02	Not filed	46
	10-Q	09/30/02	11/14/02	Not filed	44
	10-Q	12/31/02	02/14/03	Not filed	41
	10-Q	03/31/03	05/15/03	Not filed	38
	10-K	06/30/03	09/29/03	Not filed	34
	10-Q	09/30/03	11/14/03	Not filed	32
	10-Q	12/31/03	02/17/04	Not filed	29
	10-Q	03/31/04	05/17/04	Not filed	26
	10-K	06/30/04	09/28/04	Not filed	22
	10-Q	09/30/04	11/15/04	Not filed	20
	10-Q	12/31/04	02/14/05	Not filed	17
	10-Q	03/31/05	05/16/05	Not filed	14
	10-K	06/30/05	09/28/05	Not filed	10
	10-Q	09/30/05	11/14/05	Not filed	8
	10-Q	12/31/05	02/14/06	Not filed	5
	10-Q	03/31/06	05/15/06	Not filed	2
Total Filings Delinquent	15				
Microbest, Inc.					
	10-KSB	12/31/02	03/31/03	Not filed	40
	10-QSB	03/31/03	05/15/03	Not filed	38
	10-QSB	06/30/03	08/14/03	Not filed	35
	10-QSB	09/30/03	11/14/03	Not filed	32
	10-KSB	12/31/03	03/30/04	Not filed	28
	10-QSB	03/31/04	05/17/04	Not filed	26
	10-QSB	06/30/04	08/16/04	Not filed	23
	10-QSB	09/30/04	11/15/04	Not filed	20
	10-KSB	12/31/04	03/31/05	Not filed	16
	10-QSB	03/31/05	05/16/05	Not filed	14
	10-QSB	06/30/05	08/15/05	Not filed	11

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Microbest, Inc.	*10-QSB*	09/30/05	11/14/05	Not filed	8
	10-KSB	12/31/05	03/31/06	Not filed	4
	10-QSB	03/31/06	05/15/06	Not filed	2
Total Filings Delinquent	14				
Midway Airlines Corp.	*10-Q*	09/30/01	11/14/01	Not filed	56
	10-K	12/31/01	04/01/02	Not filed	51
	10-Q	03/31/02	05/15/02	Not filed	50
	10-Q	06/30/02	08/14/02	Not filed	47
	10-Q	09/30/02	11/14/02	Not filed	44
	10-K	12/31/02	03/31/03	Not filed	40
	10-Q	03/31/03	05/15/03	Not filed	38
	10-Q	06/30/03	08/14/03	Not filed	35
	10-Q	09/30/03	11/14/03	Not filed	32
	10-K	12/31/03	03/30/04	Not filed	28
	10-Q	03/31/04	05/17/04	Not filed	26
	10-Q	06/30/04	08/16/04	Not filed	23
	10-Q	09/30/04	11/15/04	Not filed	20
	10-K	12/31/04	03/31/05	Not filed	16
	10-Q	03/31/05	05/16/05	Not filed	14
	10-Q	06/30/05	08/15/05	Not filed	11
	10-Q	09/30/05	11/14/05	Not filed	8
	10-K	12/31/05	03/31/06	Not filed	4
	10-Q	03/31/06	05/15/06	Not filed	2
Total Filings Delinquent	19				
Neometrix Technology Group, Inc.	*10-KSB*	10/31/04	01/31/05	Not filed	18
	10-QSB	01/31/05	03/17/05	Not filed	16
	10-QSB	04/30/05	06/14/05	Not filed	13
	10-QSB	07/31/05	09/14/05	Not filed	10
	10-KSB	10/31/05	01/30/06	Not filed	6
	10-QSB	01/31/06	03/17/06	Not filed	4
Total Filings Delinquent	6				

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Western Pacific Airlines, Inc.					
	10-K	12/31/97	03/31/98	Not filed	100
	10-Q	03/31/98	05/15/98	Not filed	98
	10-Q	06/30/98	08/14/98	Not filed	95
	10-Q	09/30/98	11/16/98	Not filed	92
	10-K	12/31/98	02/15/99	Not filed	89
	10-Q	03/31/99	05/17/99	Not filed	86
	10-Q	06/30/99	08/16/99	Not filed	83
	10-Q	09/30/99	11/15/99	Not filed	80
	10-K	12/31/99	02/14/00	Not filed	77
	10-Q	03/31/00	05/15/00	Not filed	74
	10-Q	06/30/00	08/14/00	Not filed	71
	10-Q	09/30/00	11/14/00	Not filed	68
	10-K	12/31/00	02/14/01	Not filed	65
	10-Q	03/31/01	05/15/01	Not filed	62
	10-Q	06/30/01	08/14/01	Not filed	59
	10-Q	09/30/01	11/14/01	Not filed	56
	10-K	12/31/01	02/14/02	Not filed	53
	10-Q	03/31/02	05/15/02	Not filed	50
	10-Q	06/30/02	08/14/02	Not filed	47
	10-Q	09/30/02	11/14/02	Not filed	44
	10-K	12/31/02	02/14/03	Not filed	41
	10-Q	03/31/03	05/15/03	Not filed	38
	10-Q	06/30/03	08/14/03	Not filed	35
	10-Q	09/30/03	11/14/03	Not filed	32
	10-K	12/31/03	02/16/04	Not filed	29
	10-Q	03/31/04	05/17/04	Not filed	26
	10-Q	06/30/04	08/16/04	Not filed	23
	10-Q	09/30/04	11/15/04	Not filed	20
	10-K	12/31/04	02/14/05	Not filed	17
	10-Q	03/31/05	05/16/05	Not filed	14
	10-Q	06/30/05	08/15/05	Not filed	11
	10-Q	09/30/05	11/14/05	Not filed	8
	10-K	12/31/05	02/14/06	Not filed	5
	10-Q	03/31/06	05/15/06	Not filed	2

Total Filings Delinquent 34

Commissioners Glassman and Campos Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 54234 / July 28, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2468 / July 28, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12385

In the Matter of **Eric A. McAfee,** **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 Eric A. McAfee ("McAfee" 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 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[1] that:

Summary

1. These proceedings involve violations of the anti-fraud provisions of the federal securities laws from mid-2003 through early 2004 by a publicly-traded oil and gas field services company then known as Verdisys, Inc. ("Verdisys"). At that time, McAfee was the controlling shareholder and a director of Verdisys. McAfee, and others, caused Verdisys to make inaccurate disclosures regarding its revenues and expenses.[2]

Respondent

2. McAfee, 42, of Saratoga, California, was Verdisys' CEO for five months from November 2002 to March 2003 (before it became publicly held in mid-2003), and a Verdisys director from late 2000 until his resignation in March 2004. McAfee was and remains Verdisys' largest shareholder, owning approximately 28% of Verdisys' outstanding common stock, 2.8% directly and 25.6% beneficially through two venture capital firms and through family holdings.

Other Relevant Entity

3. Verdisys, a California corporation with corporate headquarters in Houston, Texas, is primarily engaged in reworking existing oil and gas wells to renew or enhance production. Verdisys also provides broadband satellite links for the remote control of oil and gas wells and related infrastructure. Verdisys filed periodic and other reports with the SEC pursuant to Section 15(d) of the Exchange Act, and at all times relevant herein, its common stock (or the stock of a corporate predecessor) was quoted on the NASD's OTC BB.[3]

Background

4. In late 2000, McAfee purchased a controlling interest in a privately-held corporate predecessor of Verdisys, then based in Fresno, California, which had attempted to establish an Internet-based exchange for the purchase and sale of agri-business goods and services. McAfee signed a consulting agreement to provide the company with fundraising services, and assumed a position on its board.

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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.

[2] *See SEC v. Blast Energy Services, Inc. (fka Verdisys, Inc.), et al*, Civ. Action No. 4:06-CV-02441 (U.S. Dist. Ct., Southern District of Texas) (filed July 24, 2006), regarding injunctive proceedings against Verdisys and others for, *inter alia*, making inaccurate disclosures regarding drilling work, expenses and revenues.

[3] References herein to Verdisys (the corporate name at the time of the violations discussed herein) shall mean and include Verdisys' predecessors and successors, including the privately-held corporate predecessor named Verdisys, Inc., and Reconstruction Data Group, Inc., a California corporation that had ceased business operations but which was still quoted on the OTC BB on May 2, 2003, when its pending reverse merger with the privately-held Verdisys was announced. The merger became effective July 18, 2003, at which time shares in the privately-held corporation were exchanged for shares in Reconstruction Data, Inc., which was renamed Verdisys. In June 2005, Verdisys changed its name to Blast Energy Services, Inc.

5. In January 2002, the company refocused its operations on providing satellite services to rural markets, including energy companies. In November 2002, the directors of the privately-held company, by then re-named Verdisys, installed McAfee as the CEO to revamp operations. McAfee narrowed Verdisys' activities to the business of oil and gas field services. In the Spring of 2003, the headquarters of the company was moved to Houston, Texas and a new CEO was installed in March 2003. In the Spring of 2003, in a transaction arranged by McAfee, then a director of the company, Verdisys issued two million shares of stock, purportedly as consideration for software represented to monitor conditions within oil and gas well bores. At that time, McAfee also negotiated Verdisys' acquisition of a license to use patented lateral drilling technology.[4] McAfee then negotiated Verdisys' reverse merger with a dormant, publicly traded shell company.

Misleading Disclosures Regarding Compensation Expense

6. On September 29, 2003, Verdisys filed a Form 8-K/A to announce the completion of its reverse merger, and included financial statements for the surviving entity. A footnote to the financial statements advised that in April 2003, Verdisys issued two million shares of common stock, valued at $1 million, ostensibly to acquire software, but that the software had been deemed not useful, and Verdisys was therefore recording an impairment expense of $1 million.

7. McAfee had convinced the Verdisys board to purchase the software by claiming it would allow the remote monitoring of oil and gas wells, which would complement Verdisys' sales of broadband satellite links to oil and gas companies. McAfee controlled the company selling the software, and he knew that the software only screened job applications and resumes of health care executives and did not monitor conditions in oil and gas wells. McAfee did not tell the company's directors that the transaction compensated a stock promoter, who received half of the two million shares.[5] As a result, McAfee caused Verdisys, essentially a start-up company, to not disclose that it had issued one million shares and incurred a compensation expense of $500,000, to retain the promoter, before it could claim significant assets, revenues or business operations.

Misleading Disclosures Regarding Revenues

8. Verdisys delayed the filing of its quarterly report for the quarter ended September 30, 2003 (the "3Q Form 10-QSB"), after its auditor raised revenue recognition issues concerning a material $1.5 million receivable related to the company's largest drilling contract. While the filing was in abeyance, McAfee caused Verdisys to issue an earnings release predicting the company would soon report record earnings.

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[4] As described by Verdisys in periodic reports filed with the SEC, the technology pumped drilling fluids at high pressure through flexible hydraulic hoses and out a high-pressure nozzle, cutting new lateral channels from an original vertical well bore, to enhance the flow from previously tapped reservoirs of oil and gas or to reach new reservoirs.

[5] McAfee beneficially received 230,000 restricted shares, and the other shareholders of the software corporation received the remaining 770,000 shares.

9. McAfee participated in efforts to justify recognition of the $1.5 million receivable. On November 19, 2003, to meet the filing deadline and avoid any drop in the company's stock price, McAfee ordered Verdisys' accounting staff to file the 3Q Form 10-QSB, even though the auditor had yet to review the financial statements found in the filing. The 3Q Form 10-QSB filed as a result claimed Verdisys had earned total current period revenues of $2.09 million, including the questioned $1.5 million receivable. The 3Q Form 10-QSB did not disclose that McAfee's attempts to confirm recognition of the $1.5 million receivable involved a buy-out agreement, by which Verdisys would assume substantial liabilities and forego collecting upon the $1.5 million receivable to purchase the drilling project from which the receivable arose.

10. On December 3, 2003, after the auditor completed his review, Verdisys filed an amended 3Q Form 10-QSB. Verdisys still claimed approximately $2 million in revenues, but, as its auditor advised, it classified only the $500,000 actually paid as current period revenues. The remaining $1.5 million supposedly owed upon the receivable was re-classified as deferred revenues, because of collection and contract contingency issues.[6]

Violations

11. As a result of the conduct described above, McAfee caused Verdisys to violate 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.

IV.

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

Accordingly, it is hereby ORDERED that Respondent McAfee cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

By the Commission.

Nancy M. Morris
Secretary

By: J. Lynn Taylor
Assistant Secretary

[6] Verdisys later determined it could not substantiate the delivery of any drilling services in the second and third quarters of 2003, and made disclosures and quarterly restatements that eliminated all unearned revenues, including the $1.5 million in deferred revenues.

SECURITIES AND EXCHANGE COMMISSION
Release No. 34-54240

July 31, 2006

In the Matter of the Application of
The Nasdaq Stock Market, Inc. and The NASDAQ Stock Market LLC
For Section 12(b) Registration On Behalf Of Certain Issuers

I. Introduction

On January 13, 2006, the Commission approved the application of the Nasdaq Stock Market, Inc. ("Nasdaq") to register one of its subsidiaries, The NASDAQ Stock Market LLC ("Nasdaq Exchange"), as a national securities exchange.[1] Currently, companies listed on Nasdaq have one or more classes of equity securities registered under Section 12(g)[2] of the Securities Exchange Act of 1934 ("Exchange Act"),[3] registered under Section 12(b) of the Exchange Act[4] for listing on another national securities exchange, or exempt from registration pursuant to Section 12(g)(2)(B) or 12(g)(2)(G) of the Exchange Act[5] or Rule 12g3-2(b) promulgated under the Exchange Act[6] as permitted under NASD Rules 4310 and 4320. Under Section 12(a) of the Exchange Act,[7] brokers and dealers are prohibited from effecting transactions in a security on a national securities exchange unless it has been registered under Section 12(b) of the Exchange Act.

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1 See Release No. 34-53128 (January 13, 2006) [71 FR 3550].

2 15 U.S.C. 78l(g).

3 15 U.S.C. 78a et seq.

4 15 U.S.C. 78l(b).

5 15 U.S.C. 78l(g)(2)(B) or 78l(g)(2)(G).

6 17 CFR 240.12g3-2(b).

7 15 U.S.C. 78l(a).

Accordingly, absent relief, Nasdaq's transition to the Nasdaq Exchange would require each of the companies currently listing securities on either the Nasdaq Global Market or Nasdaq Capital Market to individually register their Nasdaq-listed securities under Section 12(b) of the Exchange Act before the Nasdaq Exchange commences operations. This process would require each affected company to file a registration statement with the Commission or other appropriate regulatory agency.[8] The Nasdaq Exchange would then be required to certify to the Commission and other regulators that, with respect to each registration statement, the company's securities are approved for listing and registration on the Nasdaq Exchange.[9] The registration would become effective 30 days after the Commission's receipt of certification from the Nasdaq Exchange or within such shorter period of time as the Commission may determine.[10]

On behalf of its listed companies, Nasdaq and the Nasdaq Exchange have asked for relief with respect to this registration process, asserting that it would place an unnecessary cost and administrative burden on the listed companies, investors, the agencies that regulate the listed companies, and Nasdaq and the Nasdaq Exchange, and would not be in the public interest. With respect to the vast majority of its listed securities, Nasdaq and the Nasdaq Exchange assert that information that would be elicited by registration has already been required to be publicly disclosed. Since the vast majority of Nasdaq-listed companies already have registered their securities under

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8 Section 12(i) of the Exchange Act requires filings relating to certain financial institutions to be made with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision. 15 U.S.C. 78l(i).

9 See Section 12(d) of the Exchange Act [15 U.S.C. 78l(d)].

10 Id.

Section 12 of the Exchange Act[11] or have been required to file detailed public information with the Commission,[12] the resulting duplicative disclosure would not significantly benefit the marketplace or investors.

To ameliorate the cost and administrative burden resulting from the filing of individual Exchange Act registration statements that would otherwise be required, Nasdaq and the Nasdaq Exchange have submitted a letter, dated July 31, 2006, on behalf of certain Nasdaq-listed issuers (the "Issuers") to the Commission requesting that this letter serve as the single application for registration with respect to the listed securities of these Issuers, as well as the Nasdaq Exchange's certification of such application (the "Nasdaq Application").[13] Nasdaq and the Nasdaq Exchange have made a similar request of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision.[14] The Nasdaq Application is provided as an attachment to this Order.

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11 These companies have filed registration statements pursuant to Section 12(g) or, in a limited number of cases, Section 12(b) of the Exchange Act. A separate Section 12(b) registration statement is required with respect to each national securities exchange on which a particular class of security is listed. Accordingly, a new registration statement on 12(b) will be required by the time the Nasdaq Exchange becomes operational, even as to those Nasdaq-listed companies that have previously filed 12(b) registration statements.

12 Those Nasdaq-listed companies which have registered under the Investment Company Act of 1940 (the "1940 Act") have filed registration statements with the Commission under the 1940 Act and have been required to make periodic filings under the 1940 Act identical in form to those required of investment companies that have registered their securities under Section 12(b) of the Exchange Act. These investment companies are exempt from registration under Section 12(g)(2)(B) of the Exchange Act.

13 See Letter from Edward S. Knight to Nancy M. Morris (July 31, 2006). For certain of its listed issuers whose securities are not currently required to be registered under the Exchange Act, Nasdaq and the Nasdaq Exchange have requested additional time for these securities to become registered under Section 12(b). That portion of the request is being addressed in a separate Order by the Commission. See Exchange Act Release No. 34-54241 (July 31, 2006).

14 We understand these agencies will consider the request for relief with respect to the companies they oversee pursuant to Section 12(i) of the Exchange Act. We further understand that the Comptroller of the Currency does not currently oversee any affected company pursuant to Section 12(i) of the Exchange Act.

II. Statutory Standards

Section 12(a) of the Exchange Act makes it unlawful for an exchange member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective with respect to that security on the exchange in accordance with the provisions of Section 12 and the rules and regulations promulgated under Section 12. Exchange Act Section 12(b) and related rules prescribe the form and content of the application that may be used to register a security on a national exchange. However, Section 12(c)[15] permits the Commission to require alternative information in lieu of the informational requirements of Section 12(b) if, in the judgment of the Commission, some or all of the information required under Section 12(b) is "inapplicable to any specified class or classes of issuers" and the substitute information is of comparable character as the Commission may deem applicable to such class of issuers.

Section 12(d) provides that the registration of a security under the Exchange Act becomes effective 30 days after the Commission's receipt of certification from the national securities exchange that the security has been approved for listing and registration on the exchange, or within such shorter period of time as the Commission may determine.

III. Discussion of NASD Rule 4130 and Opt-out Process

To provide notice of its plan to seek the requested relief on behalf of the Issuers and to assure sufficient authority for Nasdaq and the Nasdaq Exchange to submit the Nasdaq Application to the Commission, the NASD proposed a new rule specifically permitting Nasdaq and the Nasdaq Exchange to take the contemplated action. The

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[15] 15 U.S.C. 78l(c).

Commission approved this rule on April 6, 2006.[16] NASD Rule 4130 explicitly authorizes Nasdaq and the Nasdaq Exchange, in connection with Nasdaq's transition to a national securities exchange, to file an application with the Commission and the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision to register each Issuer's listed securities under Section 12(b) of the Exchange Act and request any appropriate regulatory relief from the provisions of Section 12, unless the Issuer informs Nasdaq, pursuant to procedures set forth by Nasdaq, that it does not want to be included in this process.[17]

Accordingly, prior to filing the Nasdaq Application, Nasdaq provided notice of its intention to seek the requested relief.[18] In addition to general notice through the proposed rule filing, Nasdaq notified each Issuer, individually, of its plans to submit the request and allowed any Issuer that did not wish its securities to be included in the request to opt-out of the process.[19] At the expiration of the notice period, no Issuers had elected to opt-out of the requested relief.[20]

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16 See Release No. 34-53606 (April 6, 2006) [71 FR 18790].

17 The text of Rule 4130 reads as follows:

> In connection with The Nasdaq Exchange commencing operations as a national securities exchange, each issuer authorizes Nasdaq and the Nasdaq Exchange to file an application to register under Section 12(b) of the Exchange Act any class of the issuer's securities that is listed on Nasdaq on the day immediately preceding the day the Nasdaq Exchange commences such operations; provided, however, that this provision shall not be applicable to any security that the issuer informs Nasdaq, pursuant to procedures set forth by Nasdaq, should not be so registered. The application to register under Section 12(b) of the Exchange Act will be filed with the Commission or, for those securities subject to Section 12(i) of the Exchange Act, with the appropriate banking regulator specified in Section 12(i). The authorization in this paragraph includes allowing Nasdaq and the Nasdaq Exchange to request any appropriate regulatory relief from the provisions of Section 12.

18 See Nasdaq Application at 3 and Release No. 34-53362 (February 24, 2006) [71 FR 10734].

19 See Nasdaq Application at 3. Notice was provided through a May 15, 2006 bulletin to Issuers and a May 17, 2006 press release requesting Issuers notify Nasdaq by May 30, 2006 if they did not wish to participate. The result of an Issuer choosing to opt-out is that the Issuer's securities will

IV. Findings

Pursuant to Section 12(c) of the Exchange Act, in the judgment of the Commission, based on the Nasdaq Application for Section 12(b) registration and the representations made therein and in light of the recent registration of the Nasdaq Exchange, the Commission will consider the Nasdaq Application in lieu of the information otherwise required under Section 12(b) of the Exchange Act. In reaching its determination, the Commission considered the following:

(i) In recognition of the unique circumstances discussed above in Section I and in the Nasdaq Application, particularly the fact that the information to be elicited by registration under Section 12 of the Exchange Act or, in the case of investment companies registered under the 1940 Act, its substantial equivalent, already has been required to be made public by the Issuers, it is the judgment of the Commission that the Nasdaq Application is sufficient for purposes of registration of the securities listed in Exhibit A to the Nasdaq Application (the "Issuer Securities");[21]

(ii) Nasdaq and the Nasdaq Exchange have represented to the Commission in the Nasdaq Application that, as of the date of this Order:

a. They have conducted the opt-out process as described, particularly with respect to notice of the Nasdaq Application to all Issuers, generally, pursuant to NASD Rule 4130 and a press release and, specifically, to each Issuer through the opt-out option,

b. That authorization has not been withheld by any Issuer with respect to any of the Issuer Securities, and

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be ineligible to be listed and traded on the Nasdaq Exchange as of its operational date; such Issuer would instead trade on the pink sheets or OTC Bulletin Board unless it files an individual Section 12(b) registration statement on Form 8-A or Form 10, as applicable, in connection with listing on the Nasdaq Exchange or another national securities exchange, and such registration statement subsequently becomes effective.

20 See Exhibit B to the Nasdaq Application.

21 According to the Nasdaq Application, the Issuer Securities represent securities: (i) that are listed on Nasdaq immediately preceding the date that the Nasdaq Exchange begins operations; (ii) that are currently either registered under Section 12(b) or 12(g) of the Exchange Act or exempt from Section 12(g) registration pursuant to Section 12(g)(2)(B) or 12(g)(2)(G) of the Exchange Act or Exchange Act Rule 12g3-2(b); and (iii) that have not been requested by the issuer to be opted-out of the Nasdaq Application pursuant to the procedures established by Nasdaq as a result of NASD Rule 4130.

c. The Issuer Securities listed in Exhibit A to the Nasdaq Application accurately reflect the securities that are to be the subject of its request;

(iii) The Nasdaq Exchange has certified to the Commission in the Nasdaq Application that, as of the date of this Order, all of the Issuer Securities have been approved by the Nasdaq Exchange for listing and registration in accordance with the requirements of Section 12(d) of the Exchange Act; and

(iv) In accordance with Section 12(d) and Rule 12d1-2(a)[22] of the Exchange Act, Nasdaq and the Nasdaq Exchange have requested in writing the acceleration of the effective date of the Nasdaq Application for Section 12(b) registration of the Issuer Securities on the date of this Order.

V. Conclusion

The Commission, having reviewed the Nasdaq Application for Section 12(b) registration of the Issuer Securities and in reliance on the representations and certifications made by Nasdaq and the Nasdaq Exchange in the Nasdaq Application, has concluded that it is appropriate, in the public interest and consistent with the protection of investors, to approve the Nasdaq Application and grant the request by Nasdaq and the Nasdaq Exchange for registration of the Issuer Securities under Section 12(b).

The Commission recognizes that the use of its authority under Section 12(c) of the Exchange Act to consider information other than that prescribed by Section 12(b) for purposes of Section 12 registration is a variation on the customary registration process. As noted, however, the Commission believes the special circumstances of Nasdaq's transition to a national securities exchange and the existing public disclosure requirements applicable to the Issuer Securities constitute a unique situation meriting the application of Section 12(c).

With respect to the findings and conclusions in this Order, it is also to be expressly understood that the Commission has not made, and this Order does not

[22] 17 CFR 240.12d1-2(a).

constitute, any determination regarding the Issuers' compliance with the listing standards of the Nasdaq Exchange or of any other exchange, securities association or facility on which the Issuers' securities trade, or any Commission rule or regulation, other than the Section 12(b) registration requirements as they relate to Nasdaq's transition to a national securities exchange. In addition, the Commission has not made, and this Order does not constitute, any determination regarding the regulation or oversight of Nasdaq or the Nasdaq Exchange with respect to the Issuer Securities, other than the Section 12(b) registration requirements as they relate to Nasdaq's transition to a national securities exchange.

Accordingly, IT IS ORDERED that the Nasdaq Application for Section 12(b) registration of the Issuer Securities, made by Nasdaq and the Nasdaq Exchange on behalf of the Issuers pursuant to NASD Rule 4130, be, and hereby is, granted, effective as of July 31, 2006.

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

Nancy M. Morris
Secretary

NASDAQ®
THE NASDAQ STOCK MARKET
ONE LIBERTY PLAZA, 50TH FLOOR
NEW YORK, NY 10006

July 31, 2006

Nancy M. Morris, Esq.
Secretary
US Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Request for Relief from § 12 of the Securities Exchange Act of 1934

Dear Ms. Morris:

On January 13, 2006, the Securities and Exchange Commission ("SEC" or "Commission") approved the application of The NASDAQ Stock Market LLC ("Nasdaq Exchange"), a subsidiary of The Nasdaq Stock Market, Inc. ("Nasdaq"), to register under Section 6 of the Securities Exchange Act of 1934 ("Act" or "Exchange Act") as a national securities exchange.[1] Nasdaq's transition of its listing and trading activities to the Nasdaq Exchange will further Congress's instruction to promote "fair competition . . . between exchange markets."[2] Absent the relief requested herein, however, Nasdaq's transition to a national securities exchange would require approximately 3,200 Nasdaq Global Market[3] and Capital Market issuers with securities registered pursuant to the Act, or exempt from registration under Section 12(g) of the Act,[4] to file registration statements[5] to register those securities under Section 12(b) of the Act.[6]

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1 Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (the "Exchange Approval Order").

2 Exchange Act Section 11A(a)(1)(C)(ii).

3 Effective July 1, 2006, Nasdaq renamed the Nasdaq National Market as the Nasdaq Global Market and created a new segment within the Global Market called the Global Select Market. References to the Nasdaq Global Market include those securities listed on the Nasdaq Global Market and the Nasdaq Global Select Market. See Securities Exchange Act Release No. 54071 (June 29, 2006), 71 FR 38922 (July 10, 2006) (SR-NASD-2006-068); Securities Exchange Act Release No. 53799 (May 12, 2006), 71 FR 29195 (May 19, 2006) (SR-NASDAQ-2006-007).

4 15 U.S.C. 78l(g).

5 Most of these registration statements would be filed with the Commission. However, Section 12(i) of the Act requires filings relating to certain financial institutions to be made with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision (collectively, the "Banking Regulators"). 15 U.S.C. 78l(i). Separate requests have been sent to the Banking Regulators seeking similar relief for the companies registered with them.

Engaging in what would essentially be a re-registration process for the vast majority of these 3,200 issuers would create a serious disruption in the trading of securities on The Nasdaq Stock Market. As explained below, the confusion and inevitable administrative delay that would accompany such a process for issuers registered with the Commission would achieve no material public benefit and would place an unnecessary burden on issuers, investors, Nasdaq, the Nasdaq Exchange, and the Commission. The Commission can prevent this potential disruption by granting the relief requested in this letter. Specifically, Nasdaq and the Nasdaq Exchange request that this letter serve as: (1) the registration statement under Section 12(b) for all classes of listed securities of Nasdaq Capital Market and Nasdaq Global Market issuers registered with the Commission under Sections 12(b) and 12(g), as well as those listed securities exempt from registration under Section 12(g)(2)(B) of the Act[7]; and (2) the Nasdaq Exchange's certification pursuant to Section 12(d) of the Act[8] that these securities are approved for listing and registration concurrent with the start of operations of the Nasdaq Exchange. Nasdaq and the Nasdaq Exchange also request that the Commission issue an exemption from registration applicable to issuers that are now exempt from the registration requirements of Section 12(g) pursuant to Section 12(g)(2)(G) of the Act[9] and Exchange Act Rule 12g3-2(b)[10] to allow these companies three years from the date the Nasdaq Exchange begins operations to become registered under Section 12(b). NASD Rule 4130 specifically permits Nasdaq to act on behalf of its issuers in this regard.[11]

I. Background

Nasdaq presently is a facility of the National Association of Securities Dealers, Inc. ("NASD"), a registered securities association, and thus is subject to Section 15A of the Act. On March 15, 2001, Nasdaq filed an application under Section 6 of the Act for registration as a national securities exchange ("Form 1") with the Commission. On August 15, 2005, and September 23, 2005, Nasdaq submitted Amendments 4 and 5, respectively, to its Form 1. In Amendments 4 and 5 Nasdaq proposed, among other things, a new corporate structure whereby Nasdaq would become a holding company with the Nasdaq Exchange as one of its subsidiaries. The Commission published notice

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6 15 U.S.C. 78l(b).

7 15 U.S.C. 78l(g)(2)(B).

8 15 U.S.C. 78l(d).

9 15 U.S.C. 78l(g)(2)(G).

10 17 CFR 240.12g3-2(b).

11 Rule 4130 permits Nasdaq to act on behalf of its issuers to request registration of their listed securities under Section 12(b), or seek appropriate regulatory relief from Section 12(b), in connection with the transition to the Nasdaq Exchange. See Securities Exchange Act Release No. 53606 (April 6, 2006), 71 FR 18790 (April 12, 2006) (approving SR-NASD-2006-28); Securities Exchange Act Release No. 53262 (February 24, 2006), 71 FR 10734 (March 2, 2006) (providing notice of SR-NASD-2006-28).

of Amendments 4 and 5 on October 11, 2005.[12] On January 13, 2006, the Nasdaq Exchange submitted Amendment 6 to the Form 1 and the Commission approved the Nasdaq Exchange's application for registration as a national securities exchange.[13] On June 30, 2006, the Commission modified the approval order so that the Nasdaq Exchange could begin operations in a phased manner, with operations related to trading in Nasdaq-listed securities beginning before operations related to trading in securities listed on other national securities exchanges.[14] The Nasdaq Exchange has satisfied the conditions expressed in the amended approval order with respect to Nasdaq-listed securities and expects to begin operations as a national securities exchange for those securities on August 1, 2006.

Upon operation of the Nasdaq Exchange, issuers listed and traded on Nasdaq will instead be listed and traded on the Nasdaq Exchange.[15] Under current NASD rules, a security is eligible for listing on Nasdaq if it is registered under the Exchange Act under either Section 12(g) or Section 12(b).[16] In addition, three categories of securities exempt from registration under Section 12(g) are also eligible for listing on Nasdaq. First, a security issued by an investment company registered under the Investment Company Act of 1940 (the "1940 Act") is exempt from registration under Section 12(g)(2)(B) of the Act, but is eligible for listing on Nasdaq.17 Second, a security issued by an insurance company and exempt from registration under Section 12(g) pursuant to Section 12(g)(2)(G) is also eligible for listing.[18] Finally, the securities of certain foreign issuers are eligible for inclusion in Nasdaq even though they are exempt from registration pursuant to Rule 12g3-2(b) under the Exchange Act.[19] Once the Nasdaq Exchange begins operations, issuers will need instead to have been registered under Section 12(b) so that brokers and dealers may effect transactions in these securities on the Nasdaq Exchange consistent with Section 12(a) of the Act.[20]

In contemplation of this request, Nasdaq has adopted Rule 4130, which specifically permits Nasdaq to act on behalf of its issuers to request registration of their

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12 Securities Exchange Act Release No. 52559 (October 4, 2005), 70 FR 59097 (October 11, 2005).

13 Exchange Approval Order, supra note 1.

14 Securities Exchange Act Release No. 54085 (June 30, 2006), 71 FR 38910 (July 10, 2006).

15 This includes securities listed on the Nasdaq Capital Market and the Nasdaq Global Market. Note that the NASD has modified its Plan of Allocation and Delegation of Functions by NASD to Subsidiaries and certain NASD rules to reflect NASD's direct authority for the activities related to the OTC Bulletin Board, rather than the prior delegation of such authority to Nasdaq. As such, this application does not address the OTC Bulletin Board and securities quoted on the OTC Bulletin Board will not be listed on the Nasdaq Exchange.

16 NASD Rules 4310(a)(1) and (2) and 4320(a).

17 NASD Rule 4310(a)(4).

18 NASD Rule 4310(a)(3)

19 NASD Rule 4320(c).

20 15 U.S.C. 78l(a).

listed securities under Section 12(b), or seek appropriate regulatory relief from Section 12(b), in connection with the transition to the Nasdaq Exchange.[21] In proposing this rule change, Nasdaq noted that it anticipated making the requests contained herein and the process by which it would provide notice to each issuer and would allow any issuer that does not wish to register under Section 12(b) the ability to opt-out of Nasdaq's request.[22] Nasdaq provided that notice by issuing a bulletin to issuers[23] on May 15, 2006, and by issuing a press release[24] on May 17, 2006.

As of July 31, 2006, Nasdaq lists 2,776 securities on the Global Market (including 1,254 securities on the Nasdaq Global Select Market) and 580 securities on the Capital Market.[25] These securities can be categorized as follows: 3,257 securities are registered with the Commission under Section 12(g); 40 securities are also listed on a national securities exchange and are registered with the Commission under Section 12(b); 17 investment company issuers' securities are exempt from registration under Section 12(g)(2)(B); four insurance company issuers' securities are exempt from Section 12(g) registration under Section 12(g)(2)(G); nine foreign private issuers' securities are exempt from Section 12(g) registration under Rule 12g3-2(b); and 29 bank and savings association issuers' securities are registered under Section 12(g) with other regulatory agencies pursuant to Section 12(i).[26]

II. Basis for Relief Sought and Anticipated Benefits

A. Securities Already Registered under Section 12(g) and 12(b

Absent relief, the issuers of approximately 3,297 Nasdaq Global Market and Capital Market securities that are registered with the Commission under Sections 12(g) and 12(b) will be required to file a registration statement to register their securities under Section 12(b) on the Nasdaq Exchange once Nasdaq begins operating as a national securities exchange. Nasdaq believes that under the circumstances, this registration process would be confusing and would place an unnecessary cost and administrative

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21 Securities Exchange Act Release No. 53606, supra note 11.

22 Securities Exchange Act Release No. 53262, supra note 11.

23 See "Impact of NASDAQ Exchange Registration on Listed Companies" available at: http://www.nasdaq.com/about/Exchange_Bulletin_051506.pdf.

24 See "NASDAQ Notifies Listed Companies About Transition To Exchange Status" available at: http://www.nasdaq.com/newsroom/news/pr2006/ne_section06_066.stm

25 Some issuers list more than one security on Nasdaq.

26 To assist the Commission with this request, we have attached lists of those securities registered with the Commission or exempt from registration. Exhibit A contains a list of those securities already registered with the Commission under Sections 12(b) or 12(g) and those securities exempt from registration under Rule 12(g)(2)(B), that have not opted out from this request as provided for in Rule 4130. Exhibit B contains a list of those securities that have opted out from this request. Exhibit C contains a list of those securities that are exempt from registration under Section 12(g) pursuant to Section 12(g)(2)(G) or Rule 12g3-2(b).

burden on Nasdaq, the Nasdaq Exchange, the Commission, and issuers and would not be in the public interest. Specifically, each of those issuers would be required to file with the Commission and with the Nasdaq Exchange a new Exchange Act registration statement describing the securities to be registered along with all necessary exhibits. The Nasdaq Exchange would then be required to certify to the Commission that each issuer's securities are approved for listing and registration. This process would have to be coordinated to minimize disruptions to trading in issuer securities, with the real possibility of some securities experiencing trading gaps during the transition. Such a daunting and time-sensitive task—which creates no significant identifiable benefit to the public—creates the unnecessary risk of administrative errors by the issuers, the Nasdaq Exchange, or the Commission that could inadvertently delay or otherwise adversely impact the registration and trading of securities on the new exchange. The public interest is served by having exchanges run smoothly and efficiently, and the requested relief would achieve that purpose.

The additional registration process would not result in any significant benefit to the marketplace or investors because they would not receive any additional information regarding the security. Each Nasdaq Global Market and Capital Market issuer in this category has already filed an Exchange Act registration statement with the Commission to register the class of securities under Section 12 of the Act. Those issuers with securities registered under Section 12(g) were required to file a registration statement that contained "such information and documents as the Commission may specify comparable to that which is required in an application to register a security pursuant to [Section 12(b)]."[27]

There are also no relevant differences in the regulatory requirements for securities registered under Sections 12(b) and 12(g) that would negatively impact investors. For example, issuers with securities registered under Section 12(g) must, like issuers with securities registered under Section 12(b), file periodic and other reports with the Commission under Section 13 of the Act, comply with the proxy requirements under Section 14 of the Act, and adhere to the requirements of the Williams Act. Because securities registered under Section 12(b) and Section 12(g) are already treated in a nearly identical fashion, requiring Nasdaq issuers to re-register their securities would not result in any material benefit to the marketplace or investors.

The Commission would be acting well within its authority in granting the relief requested. Congress has provided specific authorization under Section 12(c) of the Act,[28] which allows the submission of different information than that required under Section 12(b).

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[27] Section 12(g)(1) of the Act, 15 U.S.C. 78l(g)(1).

[28] 15 U.S.C. 78l(c).

Accordingly, Nasdaq and the Nasdaq Exchange request that this letter serve as: (i) the registration statement under Section 12(b) for all classes of listed securities of Nasdaq Global Market and Capital Market issuers registered with the Commission under Sections 12(b) and 12(g) and included in Exhibit A; and (ii) the Nasdaq Exchange's certification pursuant to Section 12(d) of the Act that these securities are approved for listing and registration, concurrent with the start of operations of the Nasdaq Exchange. Nasdaq and the Nasdaq Exchange further request that the Commission accelerate the effective date of this application for Section 12(b) registration to July 31, 2006.

This action would be in the public's interest and consistent with the protection of investors because it would prevent the imposition of a significant administrative burden on issuers, the Commission, and others without weakening any of the protections afforded to investors under the federal securities laws.[29]

B. Securities Exempt From Registration Under Section 12(g)(2)(B)

Nasdaq currently lists 17 investment companies whose securities are exempted from Section 12(g) registration pursuant to Section 12(g)(2)(B) of the Act. No purpose would be served by requiring these issuers to file registration statements under Section 12(b) because these companies already are and would remain subject to registration and reporting requirements under the 1940 Act rather than Section 13 of the Act.[30] The Commission's rules clearly contemplate that disclosure under the 1940 Act satisfies the disclosure required by the Exchange Act. In particular, each registered investment company has filed a registration statement with the Commission under the 1940 Act and has been required to make periodic filings under the 1940 Act identical in form to those required of investment companies that have registered their securities under Section 12(b) of the Act.[31]

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[29] This reclassification would apply only to those issuers listed on Nasdaq when it becomes a national securities exchange and not to issuers approved for listing on Nasdaq afterwards. Such later-listed issuers would be required to file a registration statement with the Commission to register their securities under Section 12(b) and Nasdaq would be required separately to certify such registration statements. In addition, this reclassification would not apply to the securities of any issuer that has opted-out of such treatment, pursuant to NASD Rule 4130. See SR-NASD-2006-28.

[30] Registered investment companies file annual and semiannual reports on Forms N-CSR and N-SAR, rather than on Forms 10-K and 10-Q, even if registered under the Exchange Act. See General Instruction A. to Form N-CSR, General Instruction A. to Form 10-K, and Exchange Act Rules 13a-11(b) and 13a-13(b). Registered investment companies are also subject to proxy regulation under Rule 20a-1 of the 1940 Act. See also Item 22 of Schedule 14A.

[31] Under Exchange Act Rule 12g-2, the Commission already has made provision for these companies to be deemed registered under the Exchange Act without the need for a filing. That relief is automatic upon the termination of the issuer's registration under the 1940 Act. Given that relief, it would make no sense to impose a filing requirement when the investment company has maintained, rather than terminated, its registration under the 1940 Act.

As such, Nasdaq and the Nasdaq Exchange request that these issuers be treated in the same manner as issuers with securities registered under Sections 12(b) or 12(g) of the Act and that this letter serve as: (i) the registration statement under Section 12(b) for all classes of listed securities of Nasdaq Global Market and Capital Market issuers exempt from Section 12(g) registration pursuant to Section 12(g)(2)(B) and included in Exhibit A; and (ii) the Nasdaq Exchange's certification pursuant to Section 12(d) of the Act that these securities are approved for listing and registration, concurrent with the start of operations of the Nasdaq Exchange. Nasdaq and the Nasdaq Exchange further request that the Commission accelerate the effective date of this application for Section 12(b) registration to July 31, 2006.

This action would be in the public's interest and consistent with the protection of investors because it would prevent the imposition of a significant administrative burden on issuers, the Commission, and others without weakening any of the protections afforded to investors under the federal securities laws.[32]

C. Other Securities Exempt from Registration under Section 12(g)

As described above, Nasdaq lists 13 securities—out of more than 3,300—that are otherwise exempt from registration under Section 12(g). The Nasdaq Exchange will operate in all relevant, material respects just as Nasdaq operates today.[33] In fact, while as early as 1983 the Commission recognized that "trading on [Nasdaq] is substantially the same as trading on an exchange,"[34] the Commission has nonetheless permitted securities of these exempt issuers to trade on Nasdaq.

Section 36 of the Act[35] grants the Commission broad authority to make exemptions to any part of the Act when "such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." Granting a temporary continuation of an exemption from registration is "necessary or appropriate in the public interest" and is "consistent with the protection of investors." This exemption for a transitional period would provide issuers that have traded on Nasdaq without incident for many years with sufficient time to undertake Exchange Act registration requirements and to make an orderly transition to the Nasdaq Exchange and therefore is in the public interest. The Commission has used its authority in the past to resolve administrative hurdles for complex transactions and to relieve unnecessary administrative

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32 As noted in footnote 29, supra, this reclassification would apply only to those issuers listed on Nasdaq when it becomes a national securities exchange that have not opted-out of such treatment pursuant to NASD Rule 4130.

33 The primary difference in market structure that Nasdaq contemplates is the establishment of a holding company structure under which Nasdaq would own the Nasdaq Exchange, which would execute quotes and orders in accordance with a strict price-time priority algorithm.

34 Securities Act Release No. 6493 (October 14, 1983) ("Rule 12g3-2(b) Amendments").

35 15 U.S.C. 78mm.

burdens. Finally, given that these securities have traded on Nasdaq pursuant to an exemption for an extended period of time, the continuation of a similar exemption for a limited time should not raise any new concerns regarding the protection of investors.

Forcing Section 12(g) exempt issuers to immediately register would be inequitable and wholly unrelated to any act or failure to act by these issuers. In the absence of exemptive relief, each of the Section 12(g) exempt issuers would be required to prepare and file a registration statement on Form 10 or 20-F. Foreign issuers would also have to restate or reconcile their financial statements to U.S. generally accepted accounting principles ("U.S. GAAP"). But it is Nasdaq's becoming an exchange rather than any affirmative act by these exempt issuers that would trigger the imposition of this registration requirement. Companies that list on the Nasdaq Exchange after it begins operations could be required to meet all the registration requirements applicable to an exchange listing without disrupting an existing market in those securities. But for those companies already listed, requiring immediate registration is potentially disruptive and unfair. The mere fact of Nasdaq's conversion to an exchange should not adversely impact these companies or their investors.

Thus, Nasdaq and the Nasdaq Exchange request that the Commission temporarily continue the exemption from registration for the following classes of Nasdaq-listed issuers. In connection with this request, the Nasdaq Exchange represents that it will continue to monitor these companies in the same manner Nasdaq does, to assure compliance with all applicable listing requirements.

1. Insurance Companies

The Commission need not immediately impose registration requirements on the four insurance companies listed on Nasdaq but exempt from Section 12(g) registration.[36] These issuers have not taken any action on their own to trigger a registration requirement and the additional reporting requirements required by such registration. In fact, if the Commission determines not to temporarily continue these companies' exemptions and they choose to delist rather than register, investors would be harmed by the potential loss of a liquid trading market. As such, Nasdaq requests that the Commission grant an exemption for the securities of these insurance companies (identified on Exhibit C) from the requirements of Sections 12(a) and 12(b) with respect to the trading of these securities on the Nasdaq Exchange for a three-year period from the date the Nasdaq Exchange begins to operate as an exchange, provided these companies continue to comply with the requirements of Section 12(g)(2)(G) of the Act and the applicable requirements for continued listing on the Nasdaq Exchange. This transitional exemption will permit these issuers to complete the registration process without undue burden.

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[36] Pursuant to Section 12(g)(2)(G) of the Act, these issuers generally must file an annual statement with the Commissioner of Insurance of their domiciliary state and must be subject to regulation by their domiciliary state of proxies, consents, or authorizations.

2. Foreign Private Issuers

There are nine foreign issuers that trade on The Nasdaq Capital Market pursuant to the "grandfathering" exemption of Rule 12g3-2(b).[37] This exemption originated in 1983, when the Commission first required foreign private issuers whose securities were trading on Nasdaq to be registered. Prior to that time, a foreign private issuer whose securities were not trading on a national securities exchange was exempt from registration where the foreign issuer did not voluntarily enter the United States markets by, for example, conducting a public offering or listing on an exchange. In 1983 the Commission amended Rule 12g3-2(b) to deny the exemption to non-U.S. issuers that voluntarily listed on Nasdaq. In order not to disrupt the trading of these issuers, however, the Commission grandfathered in all non-Canadian foreign issuers, allowing those companies to continue to trade on Nasdaq without registration under the Exchange Act.[38] In doing so, the Commission heeded the concerns of commenters that many foreign issuers would withdraw from Nasdaq, rather than register, leaving the pink sheets as the only source of trading information related to these companies and resulting in increased price spreads, a decrease in information, price quotes not carried in newspapers, less liquid markets and fewer institutions in the market, absence of NASD surveillance, and delays in execution of transfers.[39]

The same considerations that compelled that treatment of foreign issuers in 1983 are relevant to the relief requested today. These issuers have not acted to jeopardize their ability to trade on Nasdaq or Rule 12g3-2(b) exempt status. If forced to immediately register their securities, a significant number of these issuers may delist rather than register, thereby relegating the U.S. investors in those foreign issuers to potentially less liquid and transparent markets.

For these reasons, the Nasdaq Exchange's registration as an exchange should not force these companies to immediately register or delist.[40] Nasdaq and the Nasdaq Exchange therefore request that the Commission grant an exemption for those securities included in Exhibit C that are exempt from Section 12(g) registration under Rule 12g3-2(b) from the requirements of Sections 12(a) and 12(b) with respect to the trading of these securities on the Nasdaq Exchange for a three-year period from the date the Nasdaq Exchange begins to operate as an exchange, provided the issuers continue to comply with

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37 These issuers are not eligible for listing on the Nasdaq Global Market, nor are they subject to the Global Market listing requirements.

38 Exchange Act Rule 12g3-2(b). The exemption is maintained by submitting the issuer's home country reports to the Commission.

39 Rule 12g3-2(b) Amendments, supra note 34. These factors, according to one estimate, would cause prices to drop 20 percent. Id.

40 One exempt foreign issuer, Nissan Motor Co., Ltd., submitted a comment letter to the Commission in connection with Nasdaq's application to become an exchange, requesting that the Rule 12g3-2(b) grandfathering be allowed to continue indefinitely, or, in the alternative, that a reasonable transition period be allowed. See footnote 208 to the Exchange Approval Order, supra, note 1.

the requirements of Rule 12g3-2(b) and the applicable requirements for continued listing on the Nasdaq Exchange. This transitional exemption will permit these issuers to complete the registration process without undue burden.[41]

III. Conclusion

The relief requested above is in the public interest because it will ensure the continued smooth operation of this market immediately from the time the Nasdaq Exchange begins operations as an exchange and avoid confusion and a number of potentially disruptive administrative hurdles. The relief is necessary and appropriate to avoid the disruption that could occur if members, brokers, and dealers were prohibited from effecting transactions in Nasdaq securities due to the lack of an effective registration once the Nasdaq Exchange begins operating as a registered exchange.

The Commission has specific authority provided by Section 12(c) to effect the relief requested with respect to those securities already registered under Section 12(b) or 12(g) and those securities exempt from Section 12(g) registration pursuant to Section 12(g)(2)(B). Further, the Commission has general exemptive authority pursuant to Section 36 of the Act and Rule 0-12 thereunder, in pertinent part, to exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. The unique facts surrounding Nasdaq's transition to a national securities exchange provide ample justification for the Commission to exercise its authority under Section 36 under the circumstances described in this letter.

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[41] Nasdaq notes that the proposed three-year period is consistent with the time-line the Commission has set forth to eliminate the requirement for foreign private issuers to reconcile financial statements prepared according to International Financial Reporting Standards to US GAAP. See SEC Press Release 2006-17, available at: http://www.sec.gov/news/press/2006-17.htm.

If you have any questions concerning the foregoing you may contact the undersigned at (301) 978-8480, Arnold Golub at (301) 978-8075 or John Yetter at (301) 978-8497.

Sincerely yours,

Edward S. Knight

Edward S. Knight

Exhibit A: List of securities whose registration will be transferred to Section 12(b)

Exhibit B: List of securities of issuers that have elected to opt-out of requested relief

Exhibit C: List of securities exempt from Section 12(g) registration under Section 12(g)(2)(G) and Rule 12g3-2(b)

Exhibit A: List of Securities whose Regi[redacted]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
SWAT	A4S Security, Inc. Common Stock	Common Stock	NCM	12(b)	0001216199	001-32566
SWATW	A4S Security, Inc. Warrant Exp. 7/18/2010	Warrant	NCM	12(b)	0001216199	001-32566
ABLE	Able Energy, Inc. Common Stock	Common Stock	NCM	12(b)	0001065728	001-15035
ACSEF	ACS Motion Control Ltd. Common Stock	Ordinary Shares	NCM	12(b)	0001038144	001-14662
ADST	AdStar, Inc. Common Stock	Common Stock	NCM	12(b)	0001091599	001-15363
AFG	American Financial Group, Inc. Common Stock	Common Stock	NGS	12(b)	0001042046	001-13653
APCC	American Power Conversion Corporation Common Stock	Common Stock	NGS	12(b)	0000835910	001-12432
APA	Apache Corporation Common Stock	Common Stock	NGS	12(b)	0000006769	001-04300
BOSC	B.O.S. Better Online Solutions Common Stock	Ordinary Shares	NGM	12(b)	0001005516	001-14184
BARI	Bancorp Rhode Island, Inc. Common Stock	Common Stock	NGS	12(b)	0001109525	001-16101
BFLY	Bluefly, Inc. Common Stock	Common Stock	NCM	12(b)	0001030896	001-14498
CSPLF	Canada Southern Petroleum Ltd. Common Stock	Common Stock	NCM	12(b)	0000016804	001-03793
CME	Chicago Mercantile Exchange Holdings Cl A	Common Stock	NGS	12(b)	0001156375	001-31553
COHT	Cohesant Technologies Inc. Common Stock	Common Stock	NCM	12(b)	0000928420	001-13484
NYNY	Empire Resorts, Inc. Common Stock	Common Stock	NCM	12(b)	0000906780	001-12522
ENDP	Endo Pharmaceuticals Holdings Inc. Common Stock	Common Stock	NGS	12(b)	0001100962	001-15989
ESCL	Escala Group, Inc. Common Stock	Common Stock	NGS	12(b)	0000895516	001-11988
EWEB	Euroweb International Corp. Common Stock	Common Stock	NCM	12(b)	0000905428	001-12000
GORX	GeoPharma, Inc. Common Stock	Common Stock	NCM	12(b)	0001098315	001-16185
HMY	Harmony Gold Mining Co. Ltd. American Depositary Shares	American Depositary Shares	NGS	12(b)	0001023514	001-31545
HPQ	Hewlett-Packard Company Common Stock	Common Stock	NGS	12(b)	0000047217	001-04423
IDSY	I.D. Systems, Inc. Common Stock	Common Stock	NGM	12(b)	0000049615	001-15087
IDNX	Identix Incorporated Common Stock	Common Stock	NGM	12(b)	0000735780	001-09641
INTG	Intergroup Corporation (The) Common Stock	Common Stock	NGM	12(b)	0000069422	001-10324
IRSN	Irvine Sensors Corporation Common Stock	Common Stock	NCM	12(b)	0000357108	001-08402
IVN	Ivanhoe Mines Ltd Ordinary Shares	Common Stock	NGM	12(b)	0001158041	000-50473
MPET	Magellan Petroleum Corporation Common Stock	Common Stock	NCM	12(b)	0000061398	001-05507
OXPS	optionsXpress Holdings, Inc. Common Stock	Common Stock	NGS	12(b)	0001299688	001-32419
PESI	Perma-Fix Environmental Services, Inc. Common Stock	Common Stock	NCM	12(b)	0000891532	001-11596
POLXF	Polydex Pharmaceuticals Limited Common Stock	Common Stock	NCM	12(b)	0000317158	001-08366
PCIS	Precis Inc. Common Stock	Common Stock	NCM	12(b)	0001017440	001-15667
QNTA	Quanta Capital Holdings Ltd. Common Stock	Common Stock	NGM	12(b)	0001264242	001-32138
SVNT	Savient Pharmaceuticals Inc Common Stock	Common Stock	NGM	12(b)	0000722104	000-15313
SORC	Source Interlink Companies, Inc. Common Stock	Common Stock	NGS	12(b)	0000943605	001-13437
SCFSP	Sovereign Bancorp, Inc. - Seacoast Financial Services Corporation Cumulative Trust Preferred Securities	Other Securities	NGM	12(b)	0000811830	001-16581
SSYS	Stratasys, Inc. Common Stock	Common Stock	NGS	12(b)	0000915735	001-13400
TISA	Top Image Systems, Ltd. Ordinary Shares	Ordinary Shares	NCM	12(b)	0001021991	001-14552
PANL	Universal Display Corporation Common Stock	Common Stock	NGM	12(b)	0001005284	001-12031
WAG	Walgreen Company Common Stock	Common Stock	NGS	12(b)	0000104207	001-00604
WSTM	Workstream Inc. Common Stock	Common Stock	NCM	12(b)	0001095266	001-15503
ARDI	@Road, Inc. Common Stock	Common Stock	NGM	12(g)	0001109537	000-31511

Exhibit A: List of Securities whose Regi[redacted]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
CTAC	1-800 Contacts, Inc. Common Stock	Common Stock	NGM	12(g)	0001050122	000-23633
FLWS	1-800 FLOWERS.COM, Inc. Common Stock	Common Stock	NGS	12(g)	0001084869	000-26841
FCCY	1st Constitution Bancorp (NJ) Common Stock	Common Stock	NGM	12(g)	0001141807	000-32891
FIFG	1st Independence Financial Group, Inc. Common Stock	Common Stock	NGM	12(g)	0000946738	000-26570
SRCEO	1st Source Corporation 1st Source Capital Trust II - Floating Rate Cumulative Trust Preferred Securities	Other Securities	NGS	12(g)	0000034782	000-06233
SRCE	1st Source Corporation Common Stock	Common Stock	NGS	12(g)	0000034782	000-06233
TCHC	21st Century Holding Company Common Stock	Common Stock	NGM	12(g)	0001069996	000-25001
TCHCZ	21st Century Holding Company Redeemable Warrants 09/30/07	Warrant	NGM	12(g)	0001069996	000-25001
TCHCW	21st Century Holding Company Warrants 07/31/2006	Warrant	NGM	12(g)	0001069996	000-25001
TFSM	24/7 Real Media, Inc. Common Stock	Common Stock	NGM	12(g)	0001062195	000-29768
COMS	3Com Corporation Common Stock	Common Stock	NGS	12(g)	0000738076	000-12867
TDSC	3D Systems Corporation Common Stock	Common Stock	NGM	12(g)	0000910638	000-22250
JOBS	51job, Inc. American Depositary Shares	American Depositary Shares	NGS	12(g)	0001295484	000-50841
EGHT	8x8 Inc Common Stock	Common Stock	NCM	12(g)	0001023731	000-21783
TACX	A Consulting Team, Inc. (The) Common Stock	Common Stock	NCM	12(g)	0001040792	000-22945
SHLM	A. Schulman, Inc. Common Stock	Common Stock	NGS	12(g)	0000087565	000-07459
ACMR	A.C. Moore Arts & Crafts, Inc. Common Stock	Common Stock	NGS	12(g)	0001042809	000-23157
ADAM	A.D.A.M. Inc. Common Stock	Common Stock	NCM	12(g)	0000863650	000-26962
ASVI	A.S.V., Inc. Common Stock	Common Stock	NGS	12(g)	0000926763	000-25620
AAON	AAON, Inc. Common Stock	Common Stock	NGS	12(g)	0000824142	000-18953
ASTM	Aastrom Biosciences, Inc. Common Stock	Common Stock	NCM	12(g)	0000887359	000-22025
VOLV	AB Volvo Class B American Depositary Receipts	American Depositary Shares	NGS	12(g)	0000753762	000-12828
ABIX	Abatix Corp. Common Stock	Common Stock	NCM	12(g)	0000845779	001-10194
ABAX	ABAXIS, Inc. Common Stock	Common Stock	NGS	12(g)	0000881890	000-19720
ABER	Aber Diamond Corporation Common Stock	Common Stock	NCM	12(g)	0000841071	000-17227
AANB	Abigail Adams National Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0000356809	000-10971
ABBC	Abington Community Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0001292898	000-51077
ABMD	ABIOMED, Inc. Common Stock	Common Stock	NGM	12(g)	0000815094	000-20584
ABBI	Abraxis BioScience, Inc. Common stock	Common Stock	NGS	12(g)	0001141399	000-33407
ABXA	ABX Air, Inc. Common Stock	Common Stock	NGM	12(g)	0000894081	000-50368
ACTG	Acacia Research Corporation (Acacia Tech) Common Stock	Common Stock	NGM	12(g)	0000934549	000-26068
CBMX	Acacia Research Corporation (CombiMatrix) Common Stock	Common Stock	NGM	12(g)	0000934549	000-26068
ACAD	ACADIA Pharmaceuticals Inc. Common Stock	Common Stock	NGM	12(g)	0001070494	000-50768
ACAM	Acambis plc American Depositary Shares	American Depositary Shares	NGM	12(g)	0001073965	000-30126
ACCL	Accelrys, Inc. Common Stock	Common Stock	NGM	12(g)	0001002388	000-27188
ABPI	Accentia Biopharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0001310094	000-51383
AIXD	Access Integrated Technologies, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0001173204	000-51910
ANCX	Access National Corporation Common Stock	Common Stock	NGM	12(g)	0001176316	000-49929
LEND	Accredited Home Lenders Holding Co. Common Stock	Common Stock	NGS	12(g)	0001174735	000-50179
AACE	Ace Cash Express, Inc. Common Stock	Common Stock	NGS	12(g)	0000849116	000-20774
ACEC	ACE*COMM Corporation Common Stock	Common Stock	NCM	12(g)	0001017526	000-21059

Exhibit A: List of Securities whose Regi[redacted]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
ACGY	Acergy S.A. American Depositary Shares	American Depositary Shares	NGS	12(g)	0000898685	000-21742
ACET	Aceto Corporation Common Stock	Common Stock	NGS	12(g)	0000002034	000-04217
ACME	ACME Communications, Inc. Common Stock	Common Stock	NGM	12(g)	0001092013	000-27105
ACOR	Acorda Therapeutics, Inc. Common Stock	Common Stock	NGM	12(g)	0001008848	000-50513
ACTL	Actel Corporation Common Stock	Common Stock	NGM	12(g)	0000907687	000-21970
APII	Action Products International, Inc. Common Stock	Common Stock	NCM	12(g)	0000747435	000-13118
ACTS	Actions Semiconductor Co., Ltd. American Depositary Shares	American Depositary Shares	NGM	12(g)	0001342068	000-51604
ACPW	Active Power, Inc. Common Stock	Common Stock	NGM	12(g)	0001044435	000-30939
ACTI	ActivIdentity Corporation Common Stock	Common Stock	NGM	12(g)	0001183941	000-50223
ATVI	Activision, Inc. Common Stock	Common Stock	NGS	12(g)	0000718877	000-12699
ACTU	Actuate Corporation Common Stock	Common Stock	NGM	12(g)	0001062478	000-24607
ACUS	Acusphere, Inc. Common Stock	Common Stock	NGM	12(g)	0001115143	000-50405
ACXM	Acxiom Corporation Common Stock	Common Stock	NGS	12(g)	0000733269	000-13163
ADES	ADA-ES, Inc. Common Stock	Common Stock	NCM	12(g)	0001223112	000-50216
ARXT	Adams Respiratory Therapeutics, Inc. Commom Stock	Common Stock	NGS	12(g)	0001319439	000-51445
ADPT	Adaptec, Inc. Common Stock	Common Stock	NGM	12(g)	0000709804	000-15071
ADCT	ADC Telecommunications, Inc. Common Stock	Common Stock	NGS	12(g)	0000061478	000-01424
ADEX	ADE Corporation Common Stock	Common Stock	NGM	12(g)	0000884498	000-26714
ADEP	Adept Technology, Inc. Common Stock	Common Stock	NGM	12(g)	0000865415	000-27122
ADZA	Adeza Biomedical Corporation Common Stock	Common Stock	NGS	12(g)	0000902482	000-20703
ADBE	Adobe Systems Incorporated Common Stock	Common Stock	NGS	12(g)	0000796343	000-15175
ADLR	Adolor Corporation Common Stock	Common Stock	NGM	12(g)	0001076167	000-26929
ADTN	ADTRAN, Inc. Common Stock	Common Stock	NGS	12(g)	0000926282	000-24612
AATI	Advanced Analogic Technologies, Incorporated Common Stock	Common Stock	NGS	12(g)	0001104042	000-51349
ADIC	Advanced Digital Information Corporation Common Stock	Common Stock	NGS	12(g)	0000770403	000-21103
AEIS	Advanced Energy Industries, Inc. Common Stock	Common Stock	NGM	12(g)	0000927003	000-26966
AERT	Advanced Environmental Recycling Technologies, Inc. Class A Common Stock	Common Stock	NCM	12(g)	0000849706	001-10367
ADLS	Advanced Life Sciences Holdings, Inc. Common Stock	Common Stock	NGM	12(g)	0001322734	000-51436
AMAG	Advanced Magnetics, Inc. Common Stock	Common Stock	NGM	12(g)	0000792977	000-14732
AVNC	Advancis Pharmaceutical Corporation Common Stock	Common Stock	NGM	12(g)	0001161924	000-50414
ADVNA	ADVANTA Corp. Class A Common Stock	Common Stock	NGS	12(g)	0000096638	000-14120
ADVNB	ADVANTA Corp. Class B Common Non Voting	Common Stock	NGS	12(g)	0000096638	000-14120
ADVS	Advent Software, Inc. Common Stock	Common Stock	NGS	12(g)	0001002225	000-26994
ABCO	Advisory Board Company (The) Common Stock	Common Stock	NGS	12(g)	0001157377	000-33283
AEHR	Aehr Test Systems Common Stock	Common Stock	NGM	12(g)	0001040470	000-22893
AEPI	AEP Industries Inc. Common Stock	Common Stock	NGM	12(g)	0000785787	000-14450
ARXX	Aeroflex Incorporated Common Stock	Common Stock	NGS	12(g)	0000002601	000-02324
AEZS	AEterna Zentaris, Inc. Common Stock	Common Stock	NGM	12(g)	0001113423	000-30752
AETH	Aether Holdings, Inc. Common Stock	Common Stock	NGM	12(g)	0001093434	000-27707
ATRM	Aetrium Incorporated Common Stock	Common Stock	NGM	12(g)	0000908598	000-22166
AFCE	AFC Enterprises, Inc. Common Stock	Common Stock	NGM	12(g)	0001041379	000-32369

Exhibit A: List of Securities whose Regi[redacted]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
AFFM	Affirmative Insurance Holdings, Inc. Common Stock	Common Stock	NGS	12(g)	0001282543	000-50795
AFFX	Affymetrix, Inc. Common Stock	Common Stock	NGS	12(g)	0000913077	000-28218
ATAC	Aftermarket Technology Corp. Common Stock	Common Stock	NGS	12(g)	0000933405	000-21803
AGIL	Agile Software Corporation Common Stock	Common Stock	NGM	12(g)	0001088653	000-27071
AGYS	Agilysys, Inc. Common Stock	Common Stock	NGS	12(g)	0000078749	000-05734
AEMLW	Agnico-Eagle Mines Limited Warrant	Warrant	NGM	12(g)	0000002809	001-13422
GLOV	AHPC Holdings, Inc. Common Stock	Common Stock	NCM	12(g)	0000837038	000-17458
AIRM	Air Methods Corporation Common Stock	Common Stock	NGS	12(g)	0000816159	000-16079
AIRT	Air T, Inc. Common Stock	Common Stock	NCM	12(g)	0000353184	000-11720
AIRN	Airspan Networks Inc. Common Stock	Common Stock	NGM	12(g)	0001105542	000-31031
AIXG	Aixtron Aktiengesellschaft American Depository Shares	American Depositary Shares	NCM	12(g)	0001089496	000-51196
AKAM	Akamai Technologies, Inc. Common Stock	Common Stock	NGS	12(g)	0001086222	000-27275
AKSY	Aksys, Ltd. Common Stock	Common Stock	NCM	12(g)	0000902600	000-28290
TRMD	Aktieselskabet Dampskibsselskabet Torm American Depositary Shares	American Depositary Shares	NGS	12(g)	0001168351	000-49650
AKZOY	Akzo Nobel N.V. American Depositary Shares	American Depositary Shares	NGS	12(g)	0000003124	000-17444
ALAB	Alabama National BanCorporation Common Stock	Common Stock	NGS	12(g)	0000926966	000-25160
ALDN	Aladdin Knowledge Systems Limited Ordinary Shares	Ordinary Shares	NGM	12(g)	0000911364	000-22456
ALAN	Alanco Technologies Inc. Common Stock	Common Stock	NCM	12(g)	0000098618	000-09347
ALSK	Alaska Communications Systems Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001089511	000-28167
AMRI	Albany Molecular Research, Inc. Common Stock	Common Stock	NGM	12(g)	0001065087	000-25323
AWGI	Alderwoods Group Inc Common Stock	Common Stock	NGS	12(g)	0000927914	000-33277
AWGIW	Alderwoods Group Inc Warrant	Warrant	NGS	12(g)	0000927914	000-33277
ALDA	Aldila, Inc. Common Stock	Common Stock	NGM	12(g)	0000902272	000-21872
ALEX	Alexander & Baldwin, Inc. Common Stock	Common Stock	NGS	12(g)	0000003453	000-00565
ALXN	Alexion Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0000899866	000-27756
ALXA	Alexza Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0001344413	000-51820
ALFA	Alfa Corporation Common Stock	Common Stock	NGS	12(g)	0000743532	000-11773
ACEL	Alfacell Corporation Common Stock	Common Stock	NCM	12(g)	0000708717	000-11088
ALCO	Alico, Inc. Common Stock	Common Stock	NGS	12(g)	0000003545	000-00261
ALGN	Align Technology, Inc. Common Stock	Common Stock	NGM	12(g)	0001097149	000-32259
ALKS	Alkermes, Inc. Common Stock	Common Stock	NGS	12(g)	0000874663	001-14131
SEMI	All American Semiconductor, Inc. Common Stock	Common Stock	NGM	12(g)	0000818074	000-16207
ABVA	Alliance Bankshares Corporation Common Stock	Common Stock	NCM	12(g)	0001181001	000-49976
AFOP	Alliance Fiber Optic Products, Inc. Common Stock	Common Stock	NCM	12(g)	0001122342	000-31857
ALNC	Alliance Financial Corporation Common Stock	Common Stock	NGM	12(g)	0000796317	000-15366
AHGP	Alliance Holdings GP, L.P. Common Units Representing Limited Partner Interest	Limited Partnership	NGS	12(g)	0001344980	000-51952
ARLP	Alliance Resource Partners, L.P. Common Units representing Limited Partners Interests	Limited Partnership	NGS	12(g)	0001086600	000-26823
ALSC	Alliance Semiconductor Corporation Common Stock	Common Stock	NGM	12(g)	0000913293	000-22594
AHCI	Allied Healthcare International Inc. Common Stock	Common Stock	NGS	12(g)	0000890634	000-11570

Exhibit A: List of Securities whose Reg[redacted]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
AHPI	Allied Healthcare Products, Inc. Common Stock	Common Stock	NGM	12(g)	0000874710	000-19266
AMOT	Allied Motion Technologies, Inc.	Common Stock	NCM	12(g)	0000046129	000-04041
ALLI	Allion Healthcare, Inc. Common Stock	Common Stock	NGM	12(g)	0000847935	000-17821
ALTH	Allos Therapeutics, Inc. Common Stock	Common Stock	NGM	12(g)	0001097264	000-29815
ALOY	Alloy, Inc. Common Stock	Common Stock	NGM	12(g)	0001080359	000-26023
MDRX	Allscripts Healthcare Solutions Inc Common Stock	Common Stock	NGS	12(g)	0001124804	000-26537
AFAM	Almost Family Inc Common Stock	Common Stock	NCM	12(g)	0000799231	001-09848
ALNY	Alnylam Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0001178670	000-50743
ATEC	Alphatec Holdings, Inc. Common Stock	Common Stock	NGM	12(g)	0001350653	000-52024
ALTI	Altair Nanotechnologies, Inc. Common Stock	Common Stock	NCM	12(g)	0001016546	001-12497
ALTR	Altera Corporation Common Stock	Common Stock	NGM	12(g)	0000768251	000-16617
ATGN	AltiGen Communications, Inc. Common Stock	Common Stock	NCM	12(g)	0001003607	000-27427
ATRS	Altiris, Inc. Common Stock	Common Stock	NGS	12(g)	0001139650	000-49793
APSA	Alto Palermo S.A. American Depositary Shares	American Depositary Shares	NGM	12(g)	0001128173	000-30982
ALTU	Altus Pharmaceuticals Inc. Common Stock	Common Stock	NGM	12(g)	0001340744	000-51711
ALVR	Alvarion Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0001108332	000-30628
AMRN	Amarin Corporation PLC American Depositary Shares	American Depositary Shares	NCM	12(g)	0000897448	000-21392
AMZN	Amazon.com, Inc. Common Stock	Common Stock	NGS	12(g)	0001018724	000-22513
EPAX	Ambassadors Group, Inc. Common Stock	Common Stock	NGS	12(g)	0001162315	000-33347
AMIE	Ambassadors International, Inc. Common Stock	Common Stock	NGM	12(g)	0000946842	000-26420
AMCP	AmCOMP Incorporated Common Stock	Common Stock	NGM	12(g)	0001009667	000-51767
AMCRP	Amcor Limited 7 1/4% Perpetual Redeemable Income Debt Exchangeable for Stock (PRIDES)	Other Securities	NCM	12(g)	0000869428	000-18893
AMCR	Amcor Limited American Depositary Shares	American Depositary Shares	NGS	12(g)	0000869428	000-18893
AMFI	Amcore Financial, Inc. Common Stock	Common Stock	NGS	12(g)	0000714756	000-13393
AMED	Amedisys Inc Common Stock	Common Stock	NGS	12(g)	0000896262	000-24260
AMEN	AMEN Properties Inc Common Stock	Common Stock	NCM	12(g)	0001037599	000-22847
UHAL	Amerco Common Stock	Common Stock	NGS	12(g)	0000004457	001-11255
ASBI	Ameriana Bancorp Common Stock	Common Stock	NGM	12(g)	0000855574	000-18392
APRO	America First Apartment Investors, Inc.	Common Stock	NGM	12(g)	0001175167	000-20737
ATAXZ	America First Tax Exempt Investors, L.P. Beneficial Unit Certificates (BUCs) representing Limited Partnership Interests	Limited Partnership	NGM	12(g)	0001059142	000-24843
AMOV	America Movil, S.A. de C.V. Class A American Depositary Shares	American Depositary Shares	NGS	12(g)	0001129137	005-61257
ASGR	America Service Group Inc. Common Stock	Common Stock	NGS	12(g)	0000877476	000-19673
AATK	American Access Technologies, Inc. Common Stock	Common Stock	NCM	12(g)	0001043186	000-24575
ABNJ	American Bancorp of New Jersey, Inc. Common Stock	Common Stock	NGM	12(g)	0001330039	000-51500
AMBK	American Bank Inc Common Stock	Common Stock	NCM	12(g)	0001163747	000-31246
ABMC	American Bio Medica Corp. Common Stock	Common Stock	NCM	12(g)	0000896747	000-28666
ABMCW	American Bio Medica Corp. warrant	Warrant	NCM	12(g)	0000896747	000-28666
ACAS	American Capital Strategies, Ltd. Common Stock	Common Stock	NGS	12(g)	0000817473	814-00149
AMCE	American Claims Evaluation, Inc. Common Stock	Common Stock	NCM	12(g)	0000774517	000-14807
ACLI	American Commercial Lines Inc Common Stock New	Common Stock	NGS	12(g)	0001324479	000-51562

Exhibit A: List of Securities whose Registration will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
ACBA	American Community Bancshares Common Stock	Common Stock	NCM	12(g)	0001106980	000-30517
ADPI	American Dental Partners, Inc. Common Stock	Common Stock	NGS	12(g)	0001028087	000-23363
AEOS	American Eagle Outfitters, Inc. Common Stock	Common Stock	NGS	12(g)	0000919012	000-23760
ECOL	American Ecology Corporation Common Stock	Common Stock	NGM	12(g)	0000742126	000-11688
AMIC	American Independence Corp.	Common Stock	NGM	12(g)	0000097196	001-5270
AMAC	American Medical Alert Corp. Common Stock	Common Stock	NCM	12(g)	0000700721	001-08635
AMMD	American Medical Systems Holdings, Inc. Common Stock	Common Stock	NGS	12(g)	0001114200	000-30733
AMGIW	American Mold Guard, Inc. Class A Warrant	Warrant	NCM	12(g)	0001344708	001-32862
AMGIZ	American Mold Guard, Inc. Class B Warrant	Warrant	NCM	12(g)	0001344708	001-32862
AMGI	American Mold Guard, Inc. Common Stock	Common Stock	NCM	12(g)	0001344708	001-32862
AMNB	American National Bankshares, Inc. Common Stock	Common Stock	NGS	12(g)	0000741516	000-12820
APFC	American Pacific Corporation Common Stock	Common Stock	NGM	12(g)	0000350832	000-21046
ACAP	American Physicians Capital, Inc. Common Stock	Common Stock	NGM	12(g)	0001118148	000-32057
AMPH	American Physicians Service Group, Inc. Common Stock	Common Stock	NCM	12(g)	0000724024	000-11453
ARII	American Railcar Industries, Inc. Common Stock	Common Stock	NGS	12(g)	0001344596	000-51728
AMRB	American River Bankshares Common Stock	Common Stock	NGS	12(g)	0001108236	000-31525
ASEI	American Science and Engineering, Inc. Common Stock	Common Stock	NGM	12(g)	0000005768	000-50967
AMSWA	American Software, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0000713425	000-12456
AMSC	American Superconductor Corporation Common Stock	Common Stock	NGM	12(g)	0000880807	000-19672
ATCO	American Technology Corporation Common Stock	Common Stock	NCM	12(g)	0000924383	000-24248
AMWD	American Woodmark Corporation Common Stock	Common Stock	NGS	12(g)	0000794619	000-14798
AWBC	AmericanWest Bancorporation Common Stock	Common Stock	NGS	12(g)	0000726990	000-18561
CRMT	America's Car-Mart Inc Common Stock	Common Stock	NGS	12(g)	0000799850	000-14939
AMAB	AmericasBank Corp. Common Stock	Common Stock	NCM	12(g)	0001040491	000-22925
ARGN	Amerigon Incorporated Common Stock	Common Stock	NCM	12(g)	0000903129	000-21810
ABCB	Ameris Bancorp Common Stock	Common Stock	NGS	12(g)	0000351569	000-16181
AMSF	AMERISAFE, Inc. Common Stock	Common Stock	NGS	12(g)	0001018979	000-51520
ASRVP	AmeriServ Financial Inc. AmeriServ Financial Trust I - 8.45% Beneficial Unsecured Securities, Series A	Other Securities	NGM	12(g)	0000707605	000-11204
ASRV	AmeriServ Financial Inc. Common Stock	Common Stock	NGM	12(g)	0000707605	000-11204
ASCA	Ameristar Casinos, Inc. Common Stock	Common Stock	NGS	12(g)	0000912145	000-22494
AMTCP	Ameritrans Capital Corporation 9.375% Participating Preferred Stock	Preferred Stock	NCM	12(g)	0001064015	000-22153
AMTC	Ameritrans Capital Corporation Common Stock	Common Stock	NCM	12(g)	0001064015	000-22153
AMTCW	Ameritrans Capital Corporation Warrant	Warrant	NCM	12(g)	0001064015	000-22153
AMTY	Amerityre Corporation Common Stock	Common Stock	NCM	12(g)	0000945828	000-50053
ATLO	Ames National Corporation Common Stock	Common Stock	NCM	12(g)	0001132651	000-32637
AMGN	Amgen Inc. Common Stock	Common Stock	NGS	12(g)	0000318154	000-12477
AMCS	AMICAS, Inc. Common Stock	Common Stock	NGM	12(g)	0001028584	001-12799
AMIS	AMIS Holdings, Inc. Common Stock	Common Stock	NGS	12(g)	0001161963	000-50397
AMKR	Amkor Technology, Inc. Common Stock	Common Stock	NGS	12(g)	0001047127	000-29472
AMPL	Ampal-American Israel Corporation Common Stock	Common Stock	NGM	12(g)	0000731859	000-00538

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
AMPX	Ampex Corporation Class A Common Stock	Common Stock	NGM	12(g)	0000887433	000-20292
AMSG	Amsurg Corp. Common Stock	Common Stock	NGS	12(g)	0000895930	000-22217
ASYS	Amtech Systems, Inc. Common Stock	Common Stock	NGM	12(g)	0000720500	000-11412
AMLN	Amylin Pharmaceuticals, Inc. Common Stock	Common Stock	NGS	12(g)	0000881464	000-19700
ANAD	ANADIGICS, Inc. Common Stock	Common Stock	NGM	12(g)	0000940332	000-25662
ANDS	Anadys Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0001128495	000-50632
ALOG	Analogic Corporation Common Stock	Common Stock	NGS	12(g)	0000006284	000-06715
ANLY	Analysts International Corporation Common Stock	Common Stock	NGM	12(g)	0000006292	000-04090
ANLT	Analytical Surveys, Inc. Common Stock	Common Stock	NCM	12(g)	0000753048	000-13111
ANEN	Anaren Inc.	Common Stock	NGM	12(g)	0000006314	000-06620
ABCW	Anchor BanCorp Wisconsin Inc. Common Stock	Common Stock	NGS	12(g)	0000885322	000-20006
ANDE	Andersons, Inc. (The) Common Stock	Common Stock	NGS	12(g)	0000821026	000-20557
ANDW	Andrew Corporation Common Stock	Common Stock	NGS	12(g)	0000317093	001-14617
ADRX	Andrx Group Common Stock	Common Stock	NGS	12(g)	0001123337	000-31475
ANSV	Anesiva, Inc. Common Stock	Common Stock	NGM	12(g)	0001131517	000-50573
ANGN	Angeion Corporation Common Stock	Common Stock	NCM	12(g)	0000815093	000-17019
ANGO	AngioDynamics, Inc. Common Stock	Common Stock	NGS	12(g)	0001275187	000-50761
ANPI	Angiotech Pharmaceuticals, Inc. Common Shares	Common Stock	NGS	12(g)	0001096481	000-30334
ANIK	Anika Therapeutics Inc. Common Stock	Common Stock	NGS	12(g)	0000898437	000-21326
ANNB	Annapolis Bancorp Inc. Common Stock	Common Stock	NCM	12(g)	0001041429	000-22961
ANST	Ansoft Corporation Common Stock	Common Stock	NGS	12(g)	0000849433	000-27874
ANSW	Answers Corporation Common Stock	Common Stock	NGM	12(g)	0001283073	000-51467
ANSR	answerthink inc. Common Stock	Common Stock	NGM	12(g)	0001057379	000-24343
ANSS	ANSYS, Inc. Common Stock	Common Stock	NGS	12(g)	0001013462	000-20853
AGEN	Antigenics Inc. Common Stock	Common Stock	NGM	12(g)	0001098972	000-29089
APPA	AP Pharma, Inc. Common Stock	Common Stock	NGM	12(g)	0000818033	000-16109
APAT	APA Enterprises, Inc. Common Stock	Common Stock	NGM	12(g)	0000796505	000-16106
APAC	APAC Customer Services, Inc. Common Stock	Common Stock	NGM	12(g)	0000949297	000-26786
APAGF	APCO Argentina Inc. Ordinary Shares	Ordinary Shares	NCM	12(g)	0000311471	000-08933
APOG	Apogee Enterprises, Inc. Common Stock	Common Stock	NGS	12(g)	0000006845	000-06365
APOL	Apollo Group, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0000929887	000-25232
AINV	Apollo Investment Corporation Common Stock	Common Stock	NGS	12(g)	0001278752	000-50578
APAB	Appalachian Bancshares, Inc. (GA) Common Stock	Common Stock	NGM	12(g)	0001019883	000-21383
AAPL	Apple Computer, Inc. Common Stock	Common Stock	NGS	12(g)	0000320193	000-10030
APPB	Applebee's International, Inc. Common Stock	Common Stock	NGS	12(g)	0000853665	000-17962
ARCI	Appliance Recycling Centers of America, Inc. Common Stock	Common Stock	NCM	12(g)	0000862861	000-19621
ADSX	Applied Digital Solutions, Inc. Common Stock	Common Stock	NCM	12(g)	0000924642	000-26020
AINN	Applied Innovation Inc. Common Stock	Common Stock	NGM	12(g)	0000798399	000-21352
AMAT	Applied Materials, Inc. Common Stock	Common Stock	NGS	12(g)	0000006951	000-06920
AMCC	Applied Micro Circuits Corporation Common Stock	Common Stock	NGS	12(g)	0000711065	000-23193
APSG	Applied Signal Technology, Inc. Common Stock	Common Stock	NGS	12(g)	0000741696	000-21236
APLX	Applix, Inc. Common Stock	Common Stock	NCM	12(g)	0000932112	000-25040

Exhibit A: List of Securities whose Regi[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
APTM	Aptimus Inc Common Stock	Common Stock	NGM	12(g)	0001087277	000-28968
AQNT	aQuantive Inc. Common Stock	Common Stock	NGS	12(g)	0001071806	000-29361
ARDM	Aradigm Corporation Common Stock	Common Stock	NCM	12(g)	0001013238	000-28402
ARBX	Arbinet-thexchange, Inc. Common Stock	Common Stock	NGM	12(g)	0001136655	000-51063
ARCAF	Arcadis NV New York Registry Shares	American Depositary Shares	NGS	12(g)	0000913596	000-22628
ACGL	Arch Capital Group Ltd. Common Stock	Common Stock	NGS	12(g)	0000947484	000-26456
ACAT	Arctic Cat Inc. Common Stock	Common Stock	NGS	12(g)	0000719866	000-18607
ARDNA	Arden Group, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0000225051	000-09904
ARNA	Arena Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0001080709	000-31161
ARCC	Ares Capital Corporation Common Stock	Common Stock	NGS	12(g)	0001287750	000-50697
STST	ARGON ST, Inc. Common Stock	Common Stock	NGS	12(g)	0000026537	000-08193
AGII	Argonaut Group, Inc. Common Stock	Common Stock	NGS	12(g)	0000800082	000-14950
ARIA	ARIAD Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0000884731	000-21696
ARBA	Ariba, Inc. Common Stock	Common Stock	NGM	12(g)	0001084755	000-26299
RAMS	Aries Maritime Transport Limited Common Shares	Common Stock	NGM	12(g)	0001322587	000-51339
ARKR	Ark Restaurants Corp. Common Stock	Common Stock	NGM	12(g)	0000779544	000-14030
ABFS	Arkansas Best Corporation Common Stock	Common Stock	NGS	12(g)	0000894405	000-19969
ARMHY	ARM Holdings, plc American Depositary Shares	American Depositary Shares	NGS	12(g)	0001057997	000-29644
ARTX	Arotech Corporation Common Stock	Common Stock	NGM	12(g)	0000916529	000-23336
ARQL	ArQule, Inc. Common Stock	Common Stock	NGM	12(g)	0001019695	000-21429
ARRY	Array BioPharma Inc. Common Stock	Common Stock	NGM	12(g)	0001100412	000-31979
ARRS	Arris Group Inc Common Stock	Common Stock	NGS	12(g)	0001141107	000-31254
AROW	Arrow Financial Corporation Common Stock	Common Stock	NGS	12(g)	0000717538	000-12507
ARRO	Arrow International, Inc. Common Stock	Common Stock	NGS	12(g)	0000886046	000-20212
ARWR	Arrowhead Research Corporation Common Stock	Common Stock	NCM	12(g)	0000879407	000-21898
ARTG	Art Technology Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001086195	000-26679
ARTNA	Artesian Resources Corporation Class A Common Stock	Common Stock	NGM	12(g)	0000863110	000-18516
ARTC	ArthroCare Corporation Common Stock	Common Stock	NGS	12(g)	0001005010	000-27422
ARTW	Art's-Way Manufacturing Co., Inc. Common Stock	Common Stock	NCM	12(g)	0000007623	000-05131
ASTT	ASAT Holdings Limited American Depositary Shares	American Depositary Shares	NCM	12(g)	0001102384	000-30842
ASTIU	Ascent Solar Technologies, Inc. Unit	Unit	NCM	12(g)	0001350102	001-32919
ASTSF	ASE Test, Limited Ordinary Shares	Ordinary Shares	NGS	12(g)	0001014838	000-28522
ASHW	Ashworth, Inc. Common Stock	Common Stock	NGM	12(g)	0000820774	000-18553
ASIA	AsiaInfo Holdings, Inc. Common Stock	Common Stock	NGM	12(g)	0001100969	001-15713
ASMI	ASM International N.V. Common Stock	American Depositary Shares	NGS	12(g)	0000351483	000-13355
ASML	ASML Holding N.V. New York Registry Shares	American Depositary Shares	NGS	12(g)	0000937966	000-25566
ASPM	Aspect Medical Systems, Inc. Common Stock	Common Stock	NGM	12(g)	0000886235	000-24663
AZPN	Aspen Technology, Inc. Common Stock	Common Stock	NGM	12(g)	0000929940	000-24786
ASPV	Aspreva Pharmaceuticals Corporation Common Stock	Common Stock	NGS	12(g)	0001314026	000-51169
AACC	Asset Acceptance Capital Corp. COMMON STOCK	Common Stock	NGS	12(g)	0001264707	000-50552
ASBC	Associated Banc-Corp Common Stock	Common Stock	NGS	12(g)	0000007789	000-05519
ASFI	Asta Funding, Inc. Common Stock	Common Stock	NGS	12(g)	0001001258	000-26906

Exhibit A: List of Securities whose Regis[redacted]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issuer Market Segment	Registration Type	CIK	SEC File #
ATEA	Astea International, Inc. Common Stock	Common Stock	NCM	12(g)	0000945989	000-26330
ASTE	Astec Industries, Inc. Common Stock	Common Stock	NGS	12(g)	0000792987	000-14714
ALOT	Astro-Med, Inc. Common Stock	Common Stock	NGM	12(g)	0000008146	000-13200
ATRO	Astronics Corporation Common Stock	Common Stock	NGM	12(g)	0000008063	000-07087
ASYT	Asyst Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0000909326	000-22430
ATAR	Atari, Inc. Common Stock	Common Stock	NGM	12(g)	0001002607	000-27338
AGIX	AtheroGenics, Inc. Common Stock	Common Stock	NGM	12(g)	0001107601	000-31261
ATHR	Atheros Communications, Inc. Common Stock	Common Stock	NGS	12(g)	0001140486	000-50534
ATYT	ATI Technologies Inc. Common Stock	Common Stock	NGS	12(g)	0001065331	000-29872
AAME	Atlantic American Corporation Common Stock	Common Stock	NGM	12(g)	0000008177	000-03722
ATBC	Atlantic BancGroup, Inc. Common Stock	Common Stock	NCM	12(g)	0001087790	001-15061
ACFC	Atlantic Coast Federal Corporation Common Stock	Common Stock	NGM	12(g)	0001284077	000-50962
ATNI	Atlantic Tele-Network, Inc. Common Stock	Common Stock	NGM	12(g)	0000879585	000-19551
ATPL	Atlantis Plastics, Inc. Common Stock	Common Stock	NGM	12(g)	0000811828	000-51182
AAWW	Atlas Air Worldwide Holdings NEW Common Stock	Common Stock	NGS	12(g)	0001135185	000-25732
ATLS	Atlas America, Inc. Common Stock	Common Stock	NGS	12(g)	0001279228	001-32169
APCFY	Atlas South Sea Pearl Limited American Depositary Shares	American Depositary Shares	NCM	12(g)	0001011974	000-28186
ATML	Atmel Corporation Common Stock	Common Stock	NGS	12(g)	0000872448	000-19032
ATMI	ATMI Inc. Common Stock	Common Stock	NGS	12(g)	0001041577	000-30130
ATPG	ATP Oil & Gas Corporation Common Stock	Common Stock	NGS	12(g)	0001123647	000-32261
ATRC	AtriCure, Inc. Common Stock	Common Stock	NGM	12(g)	0001323885	000-51470
ATRI	ATRION Corporation Common Stock	Common Stock	NGM	12(g)	0000701288	000-10763
ATSI	ATS Medical, Inc. Common Stock	Common Stock	NGM	12(g)	0000824068	000-18602
ATTU	Attunity Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0000893821	000-20892
AUBN	Auburn National Bancorporation, Inc. Common Stock	Common Stock	NCM	12(g)	0000750574	000-26486
ADBL	Audible, Inc. New Common Stock	Common Stock	NGM	12(g)	0001077926	000-26529
AUDC	AudioCodes Ltd. Common Stock	Ordinary Shares	NGM	12(g)	0001086434	000-30070
VOXX	Audiovox Corporation Class A Common Stock	Common Stock	NGM	12(g)	0000807707	000-28839
ADAT	Authentidate Holding Corp. Common Stock	Common Stock	NGM	12(g)	0000885074	000-20190
ABTL	Autobytel Inc. Common Stock	Common Stock	NGM	12(g)	0001023364	000-22239
ADSK	Autodesk, Inc. Common Stock	Common Stock	NGS	12(g)	0000769397	000-14338
AUXL	Auxilium Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0001182129	000-50855
AVRX	Avalon Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0001162192	001-32629
AVNX	Avanex Corporation Common Stock	Common Stock	NGM	12(g)	0001056794	000-29175
AVNR	AVANIR Pharmaceuticals Class A Common Stock	Common Stock	NGM	12(g)	0000858803	001-15803
AVAN	Avant Immunotherapeutics, Inc. Common Stock	Common Stock	NGM	12(g)	0000744218	000-15006
AVTR	Avatar Holdings Inc. Common Stock	Common Stock	NGS	12(g)	0000039677	000-7616
AVII	AVI BioPharma, Inc. Common Stock	Common Stock	NGM	12(g)	0000873303	000-22613
AVCI	Avici Systems Inc. Common Stock	Common Stock	NGM	12(g)	0001094895	000-30865
AVID	Avid Technology, Inc. Common Stock	Common Stock	NGS	12(g)	0000896841	000-21174
AVGN	Avigen, Inc. Common Stock	Common Stock	NGM	12(g)	0000932903	000-28272
AVSR	Avistar Communications Corporation Common Stock	Common Stock	NCM	12(g)	0001111632	000-31121

Exhibit A: List of Securities whose Reg[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
AVZA	Avlza Technology, Inc. Ccommon Stock	Common Stock	NGM	12(g)	0001311396	000-51642
AVCT	Avocent Corporation Common Stock	Common Stock	NGS	12(g)	0001109808	000-30575
AWRE	Aware, Inc. Common Stock	Common Stock	NGM	12(g)	0001015739	000-21129
AXCA	Axcan Pharma Inc. Common Shares	Common Stock	NGS	12(g)	0001116094	000-30860
ACLS	Axcelis Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0001113232	000-30941
AXYX	Axonyx, Inc. Common Stock	Common Stock	NCM	12(g)	0001070698	000-25571
AXYS	Axsys Technologies, Inc. Common Stock	Common Stock	NGS	12(g)	0000206030	000-16182
AXTI	AXT Inc Common Stock	Common Stock	NGM	12(g)	0001051627	000-24085
POSH	BabyUniverse, Inc. Common Stock	Common Stock	NCM	12(g)	0001325118	000-51850
BYBI	Back Yard Burgers, Inc. Common Stock	Common Stock	NCM	12(g)	0000901495	001-12104
BWEB	BackWeb Technologies Ltd. Ordinary Shares	Ordinary Shares	NCM	12(g)	0001082064	000-26241
BIDU	Baidu.com, Inc. ADS	American Depositary Shares	NGM	12(g)	0001329099	000-51469
BKRS	Bakers Footwear Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001171032	000-50563
BWINA	Baldwin & Lyons, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0000009346	000-05534
BWINB	Baldwin & Lyons, Inc. Class B Common Stock	Common Stock	NGM	12(g)	0000009346	000-05534
BLDP	Ballard Power Systems, Inc. Common Shares	Common Stock	NGM	12(g)	0000933777	000-25270
BANFP	BancFirst Corporation - BFC Capital Trust II Cumulative Trust Preferred Securities	Other Securities	NGS	12(g)	0000760498	000-14384
BANF	BancFirst Corporation Common Stock	Common Stock	NGS	12(g)	0000760498	000-14384
BOFL	Bancshares of Florida, Inc. Common Stock	Common Stock	NGM	12(g)	0001082368	000-50091
BTFG	BancTrust Financial Group, Inc. Common Stock	Common Stock	NGS	12(g)	0000783739	000-15423
BKMU	Bank Mutual Corporation Common Stock	Common Stock	NGS	12(g)	0001123270	000-31207
BOCH	Bank of Commerce Holdings (CA) Common Stock	Common Stock	NGM	12(g)	0000702513	000-25135
GRAN	Bank of Granite Corporation Common Stock	Common Stock	NGS	12(g)	0000810689	000-15956
BKSC	Bank of South Carolina Corp. Common Stock	Common Stock	NCM	12(g)	0001007273	000-27702
OZRK	Bank of the Ozarks Common Stock	Common Stock	NGS	12(g)	0001038205	000-22759
BKWW	Bank of Wilmington Corporation (NC) Common Stock	Common Stock	NCM	12(g)	0001334872	000-51513
BBXT	BankAtlantic Bancorp, Inc. BankAtlantic Bancorp, Inc - BBC Capital Trust II 8.50% Trust Preferred Securities	Other Securities	NGM	12(g)	0000921768	001-13133
BFIN	BankFinancial Corporation Common Stock	Common Stock	NGM	12(g)	0001303942	000-51331
RATE	Bankrate Inc Common Stock	Common Stock	NGS	12(g)	0001080866	000-25681
BKUNA	BankUnited Financial Corporation Class A Common Stock	Common Stock	NGS	12(g)	0000894490	000-21850
BANR	Banner Corporation Common Stock	Common Stock	NGS	12(g)	0000946673	000-26584
BBSI	Barrett Business Services, Inc. Common Stock	Common Stock	NGS	12(g)	0000902791	000-21886
BTRX	Barrier Therapeutics, Inc. Common Stock	Common Stock	NGM	12(g)	0001173657	000-50680
BWTR	Basin Water, Inc. Common Stock	Common Stock	NGM	12(g)	0001352045	000-51991
BSET	Bassett Furniture Industries, Incorporated Common Stock	Common Stock	NGS	12(g)	0000010329	000-00209
BAYN	Bay National Corporation Common Stock	Common Stock	NCM	12(g)	0001089787	000-51765
BCBP	BCB Bancorp, Inc. (NJ) Common Stock	Common Stock	NGM	12(g)	0001228454	000-50275
BCSB	BCSB Bankcorp, Inc. Common Stock	Common Stock	NGM	12(g)	0001052101	000-24589
BEAV	BE Aerospace, Inc. Common Stock	Common Stock	NGS	12(g)	0000861361	000-18348
BESI	BE Semiconductor Industries NV New York Registry Shares	American Depositary Shares	NGM	12(g)	0001003196	000-27298

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
BEAS	BEA Systems, Inc. Common Stock	Common Stock	NGS	12(g)	0001031798	000-22369
BFNB	Beach First National Bancshares Inc Common Stock	Common Stock	NGM	12(g)	0000949228	000-22503
BCON	Beacon Power Corporation Common Stock	Common Stock	NCM	12(g)	0001103345	000-31973
BECN	Beacon Roofing Supply, Inc. Common Stock	Common Stock	NGS	12(g)	0001124941	000-50924
BBGI	Beasley Broadcast Group, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0001099160	000-29253
BEBE	bebe stores, inc. Common Stock	Common Stock	NGS	12(g)	0001059272	000-24395
BBBY	Bed Bath & Beyond Inc. Common Stock	Common Stock	NGS	12(g)	0000886158	000-20214
BELFA	Bel Fuse Inc. Class A Common Stock	Common Stock	NGS	12(g)	0000729580	000-11676
BELFB	Bel Fuse Inc. Class B Common Stock	Common Stock	NGS	12(g)	0000729580	000-11676
BELM	Bell Microproducts Inc. Common Stock	Common Stock	NGM	12(g)	0000900708	000-21528
BNHNA	Benihana Inc. Class A Common Stock	Common Stock	NGM	12(g)	0000935226	000-26396
BNHN	Benihana Inc. Common Stock	Common Stock	NGM	12(g)	0000935226	000-26396
BFBC	Benjamin Franklin Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0001302176	000-51194
BERK	Berkshire Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0000759718	000-13649
BHLB	Berkshire Hills Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0001108134	000-51584
BHBC	Beverly Hills Bancorp Inc. Common Stock	Common Stock	NGS	12(g)	0001024321	000-21845
BGFV	Big 5 Sporting Goods Corporation Common Stock	Common Stock	NGS	12(g)	0001156388	000-49850
BDOG	Big Dog Holding, Inc. Common Stock	Common Stock	NGM	12(g)	0001019439	000-22963
BASI	Bioanalytical Systems, Inc. Common Stock	Common Stock	NGM	12(g)	0000720154	000-23357
BCRX	BioCryst Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0000882796	000-23186
BDSIW	BioDelivery Sciences International, Inc. Class A Warrant	Warrant	NCM	12(g)	0001103021	001-31361
BDSI	BioDelivery Sciences International, Inc. Common Stock	Common Stock	NCM	12(g)	0001103021	001-31361
BIVN	Bioenvision, Inc. Common Stock	Common Stock	NGM	12(g)	0001028205	000-24875
BIIB	Biogen Idec Inc Common Stock	Common Stock	NGS	12(g)	0000875045	000-19311
BITI	Bio-Imaging Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0000822418	000-50512
BJCT	Bioject Medical Technologies Inc. Common Stock	Common Stock	NCM	12(g)	0000810084	000-15360
BLTI	BioLase Technology, Inc. Common Stock	Common Stock	NGM	12(g)	0000811240	000-19627
BMRN	BioMarin Pharmaceutical Inc. Common Stock	Common Stock	NGM	12(g)	0001048477	000-26727
BMET	Biomet, Inc. Common Stock	Common Stock	NGS	12(g)	0000351346	000-12515
BMTI	BioMimetic Therapeutics, Inc. Common Stock	Common Stock	NGM	12(g)	0001138400	000-51934
BIOM	Biomira Inc. Common Shares	Common Stock	NGM	12(g)	0000877984	000-19451
BPRG	BioProgress plc American Depositary Shares representing 10 Ordinary Shares	American Depositary Shares	NGM	12(g)	0001210959	000-50994
BPUR	Biopure Corporation Class A Common Stock	Common Stock	NGM	12(g)	0000815508	001-15167
BRLI	Bio-Reference Laboratories, Inc. Common Stock	Common Stock	NGS	12(g)	0000792641	000-15266
BIOS	BioScrip, Inc. Common Stock	Common Stock	NGM	12(g)	0001014739	000-28740
BSTE	Biosite, Inc. Common Stock	Common Stock	NGS	12(g)	0000834306	000-21873
BSMD	BioSphere Medical, Inc. Common Stock	Common Stock	NGM	12(g)	0000919015	000-23678
BIOV	BioVeris Corporation Common Stock	Common Stock	NGM	12(g)	0001264899	000-50583
BDMS	Birner Dental Management Services, Inc. Common Stock	Common Stock	NCM	12(g)	0000948072	000-23367
BITS	Bitstream Inc. Common Stock	Common Stock	NCM	12(g)	0000818813	000-21541
BJRI	BJ's Restaurants, Inc. Common Stock	Common Stock	NGS	12(g)	0001013488	000-21423

Exhibit A: List of Securities whose Regi[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue [illegible]	Issue Market Segment	Registration [illegible]	SEC [illegible]	SEC [illegible]
BBOX	Black Box Corporation Common Stock	Common Stock	NGS	12(g)	0000849547	000-18706
BLKB	Blackbaud, Inc. Common Stock	Common Stock	NGS	12(g)	0001280058	000-50600
BBBB	Blackboard Inc. Common Stock	Common Stock	NGS	12(g)	0001106942	000-50784
BCSI	Blue Coat Systems Inc Common Stock	Common Stock	NGM	12(g)	0001095600	000-28139
BDCO	Blue Dolphin Energy Company Common Stock	Common Stock	NCM	12(g)	0000793306	000-15905
BLUE	Blue Holdings, Inc. Common Stock	Common Stock	NCM	12(g)	0001139683	000-33297
NILE	Blue Nile, Inc. Common Stock	Common Stock	NGS	12(g)	0001091171	000-50763
BRBI	Blue River Bancshares, Inc. Common Stock	Common Stock	NCM	12(g)	0001055870	000-24501
BPHX	BluePhoenix Solutions, Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0001029581	000-29082
BNCN	BNC Bancorp (NC) Common Stock	Common Stock	NCM	12(g)	0001210227	000-50128
BNCC	Bnccorp, Inc. Common Stock	Common Stock	NGM	12(g)	0000945434	000-26290
BOBE	Bob Evans Farms, Inc. Common Stock	Common Stock	NGS	12(g)	0000033769	000-01667
BSXT	BOE Financial Services of Virginia Inc. Common Stock	Common Stock	NCM	12(g)	0001109848	000-31711
BOFI	Bofl Holding, Inc. Common Stock	Common Stock	NGM	12(g)	0001299709	000-51201
BOKF	BOK Financial Corporation Common Stock	Common Stock	NGS	12(g)	0000875357	000-19341
BNSO	Bonso Electronics International, Inc. Common Stock	Common Stock	NGM	12(g)	0000846546	000-17601
BONT	Bon-Ton Stores, Inc. (The) Common Stock	Common Stock	NGS	12(g)	0000878079	000-19517
BKHM	Bookham Inc Common Stock	Common Stock	NGM	12(g)	0001110647	000-30684
BAMM	Books-A-Million, Inc. Common Stock	Common Stock	NGS	12(g)	0000891919	000-20664
BORL	Borland Software Corporation Common Stock	Common Stock	NGM	12(g)	0000853273	000-16096
BCGI	Boston Communications Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001012887	000-28432
BLSI	Boston Life Sciences, Inc. Common Stock	Common Stock	NCM	12(g)	0000094784	000-06533
BPFH	Boston Private Financial Holdings, Inc. Common Stock	Common Stock	NGS	12(g)	0000821127	000-17089
EPAY	Bottomline Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0001073349	000-25259
BBNK	Bridge Capital Holdings Common Stock	Common Stock	NCM	12(g)	0001304740	000-50974
OCNB	Bridge Street Financial, Inc. Common Stock (par $.01)	Common Stock	NCM	12(g)	0001182555	000-50105
BRID	Bridgford Foods Corporation Common Stock	Common Stock	NGM	12(g)	0000014177	000-02396
BEXP	Brigham Exploration Company Common Stock	Common Stock	NGS	12(g)	0001034755	000-22433
BFAM	Bright Horizons Family Solutions Inc. Common Stock	Common Stock	NGS	12(g)	0001060559	000-24699
CELL	Brightpoint, Inc. Common Stock	Common Stock	NGS	12(g)	0000918946	000-23494
BSML	Britesmile, Inc. Common Stock	Common Stock	NCM	12(g)	0000866734	001-11064
BKBK	Britton & Koontz Capital Corporation Common Stock	Common Stock	NCM	12(g)	0000707604	000-22606
BRCM	Broadcom Corporation Class A Common Stock	Common Stock	NGS	12(g)	0001054374	000-23993
BYFC	Broadway Financial Corporation Common Stock	Common Stock	NCM	12(g)	0001071171	000-27464
BWNG	Broadwing Corporation Common Stock	Common Stock	NGS	12(g)	0001060490	000-30989
BRCD	Brocade Communications Systems, Inc. Common Stock	Common Stock	NGS	12(g)	0001009626	000-25601
BRNC	Bronco Drilling Company, Inc. Common Stock	Common Stock	NGM	12(g)	0001328650	000-51471
BXXX	Brooke Corporation Common Stock	Common Stock	NGM	12(g)	0000834408	000-31789
BRKL	Brookline Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0001049782	000-23695
BFSB	Brooklyn Federal Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0001310313	000-51208
BRKS	Brooks Automation, Inc.	Common Stock	NGM	12(g)	0000930774	000-25434
BRKR	Bruker BioSciences Corporation Common Stock	Common Stock	NGM	12(g)	0001109354	000-30833

Exhibit A: List of Securities whose Regi[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issuer Market Segment	Section(s) Code	CIK	SEC File Number
BMTC	Bryn Mawr Bank Corporation Common Stock	Common Stock	NGM	12(g)	0000802681	000-15261
BSQR	BSQUARE Corporation Common Stock	Common Stock	NGM	12(g)	0001054721	000-27687
BTUI	BTU International, Inc. Common Stock	Common Stock	NGM	12(g)	0000840883	000-17297
BUCA	BUCA, Inc. Common Stock	Common Stock	NGM	12(g)	0001046501	000-25721
BUCY	Bucyrus International, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0000740761	000-50858
BWLD	Buffalo Wild Wings, Inc. Common Stock	Common Stock	NGS	12(g)	0001062449	000-24743
BLDR	Builders FirstSource, Inc. Common Stock	Common Stock	NGS	12(g)	0001316835	000-51357
BMHC	Building Materials Holding Corporation Common Stock	Common Stock	NGS	12(g)	0001046356	000-19335
BOBJ	Business Objects S.A. American Depositary Shares	American Depositary Shares	NGS	12(g)	0000928753	000-24720
BWCF	BWC Financial Corporation Common Stock	Common Stock	NGM	12(g)	0000353650	000-10658
CFFI	C&F Financial Corporation Common Stock	Common Stock	NGS	12(g)	0000913341	000-23423
CHRW	C.H. Robinson Worldwide, Inc. Common Stock	Common Stock	NGS	12(g)	0001043277	000-23189
CCMP	Cabot Microelectronics Corporation Common Stock	Common Stock	NGS	12(g)	0001102934	000-30205
CACH	Cache, Inc. Common Stock	Common Stock	NGS	12(g)	0000350199	000-10345
CDNS	Cadence Design Systems, Inc. Common Stock	Common Stock	NGS	12(g)	0000813672	001-10606
CDZI	CADIZ, Inc. Common Stock	Common Stock	NGM	12(g)	0000727273	000-12114
CDMS	Cadmus Communications Corporation Common Stock	Common Stock	NGM	12(g)	0000745274	000-12954
CLMS	Calamos Asset Management, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0001299033	000-51003
CAMP	CalAmp Corp. Common Stock	Common Stock	NGS	12(g)	0000730255	000-12182
CVGW	Calavo Growers, Inc. Common Stock	Common Stock	NGM	12(g)	0001133470	000-33385
CALC	California Coastal Communities Inc Common Stock	Common Stock	NGM	12(g)	0000840216	000-17189
CFNB	California First National Bancorp Common Stock	Common Stock	NGM	12(g)	0000803016	000-15641
CAMD	California Micro Devices Corporation Common Stock	Common Stock	NGM	12(g)	0000800460	000-15449
CPKI	California Pizza Kitchen, Inc. Common Stock	Common Stock	NGS	12(g)	0000789356	000-31149
CALP	Caliper Life Sciences Inc Common Stock	Common Stock	NGM	12(g)	0001014672	000-28229
CALD	Callidus Software, Inc. Common Stock	Common Stock	NGM	12(g)	0001035748	000-50463
CALL	CallWave, Inc. Common Stock	Common Stock	NGM	12(g)	0001115091	000-50958
CALM	Cal-Maine Foods, Inc. Common Stock	Common Stock	NGM	12(g)	0000016160	000-04892
CLMT	Calumet Specialty Products Partners, L.P. Common Units	Limited Partnership	NGM	12(g)	0001340122	000-51734
CADA	CAM Commerce Solutions, Inc. Common Stock	Common Stock	NGM	12(g)	0000819334	000-16569
OLED	Cambridge Display Technology, Inc. Common Stock	Common Stock	NGM	12(g)	0001297968	000-51079
CAFI	Camco Financial Corporation Common Stock	Common Stock	NGM	12(g)	0000016614	000-25196
CAMT	Camtek Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0001109138	000-30664
CLZR	Candela Corporation Common Stock	Common Stock	NGS	12(g)	0000793279	000-14742
CBKN	Capital Bank Corporation Common Stock	Common Stock	NGS	12(g)	0001071992	000-30062
CCBG	Capital City Bank Group Common Stock	Common Stock	NGS	12(g)	0000726601	000-13358
CCOW	Capital Corp of the West Common Stock	Common Stock	NGS	12(g)	0001004740	000-27384
CCPCP	Capital Crossing Preferred Corporation Series A Non-Cumulative Exchangeable Preferred Stock	Preferred Stock	NGM	12(g)	0001072806	000-25193
CCPCO	Capital Crossing Preferred Corporation Series C Non-Cumulative Exchangeable Preferred Stock	Preferred Stock	NGM	12(g)	0001072806	000-25193

Exhibit A: List of Securities whose Regi[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
CCPCN	Capital Crossing Preferred Corporation Series D Non-Cumulative Exchangeable Preferred Stock	Preferred Stock	NGM	12(g)	0001072806	000-25193
CSWC	Capital Southwest Corporation Common Stock	Common Stock	NGM	12(g)	0000017313	811-01056
CTGI	Capital Title Group, Inc. Common Stock	Common Stock	NGS	12(g)	0001017158	000-21417
CAPB	CapitalSouth Bancorp Common Stock	Common Stock	NGM	12(g)	0001338977	000-51660
CFFN	Capitol Federal Financial Common Stock	Common Stock	NGS	12(g)	0001074433	000-25391
CPST	Capstone Turbine Corporation Common Stock	Common Stock	NGM	12(g)	0001009759	000-30867
CAPA	Captaris Inc. Common Stock	Common Stock	NGM	12(g)	0000931784	000-25186
CSAR	Caraustar Industries, Inc. Common Stock	Common Stock	NGM	12(g)	0000825692	000-20646
CSCX	Cardiac Science Corporation Common Stock	Common Stock	NGM	12(g)	0001323115	000-51512
CRDC	Cardica, Inc. Common Stock	Common Stock	NGM	12(g)	0001178104	000-51772
CFNL	Cardinal Financial Corporation Common Stock	Common Stock	NGS	12(g)	0001060523	000-24557
CDIC	CardioDynamics International Corporation Common Stock	Common Stock	NGM	12(g)	0000719722	000-11868
CRME	Cardiome Pharma Corporation Ordinary Shares (Canada)	Common Stock	NGM	12(g)	0001036141	000-29338
CECO	Career Education Corporation Common Stock	Common Stock	NGS	12(g)	0001046568	000-23245
CBOU	Caribou Coffee Company, Inc. Common Stock	Common Stock	NGM	12(g)	0001332602	000-51535
CKEC	Carmike Cinemas, Inc. Common Stock	Common Stock	NGM	12(g)	0000799088	000-14993
CLBH	Carolina Bank Holdings Inc. Common Stock	Common Stock	NCM	12(g)	0001127160	000-31877
CNCP	Carolina National Corporation Common Stock	Common Stock	NCM	12(g)	0001157648	000-50257
CANI	Carreker Corporation Common Stock	Common Stock	NGM	12(g)	0001057709	000-24201
CACS	Carrier Access Corporation Common Stock	Common Stock	NGM	12(g)	0001018074	000-24597
CARN	Carrington Laboratories, Inc. Common Stock	Common Stock	NGM	12(g)	0000718007	000-11997
CRZO	Carrizo Oil & Gas, Inc. Common Stock	Common Stock	NGS	12(g)	0001040593	000-22915
CRRB	Carrollton Bancorp Common Stock	Common Stock	NGM	12(g)	0000859222	000-23090
CASM	CAS Medical Systems, Inc. Common Stock	Common Stock	NCM	12(g)	0000764579	000-13839
CACB	Cascade Bancorp Common Stock	Common Stock	NCM	12(g)	0000865911	000-23322
CASB	Cascade Financial Corp. Common Stock	Common Stock	NCM	12(g)	0000928911	000-25286
CSCD	Cascade Microtech, Inc. Common Stock	Common Stock	NGM	12(g)	0000864559	000-51072
CWST	Casella Waste Systems, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0000911177	000-23211
CASY	Casey's General Stores, Inc. Common Stock	Common Stock	NGS	12(g)	0000726958	000-12788
CKNN	Cash Systems Inc Common Stock	Common Stock	NGM	12(g)	0000861050	001-31955
CASS	Cass Information Systems, Inc Common Stock	Common Stock	NGM	12(g)	0000708781	000-20827
CSTL	Castelle Common Stock	Common Stock	NCM	12(g)	0000908605	000-22020
CMRG	Casual Male Retail Group, Inc. Common Stock	Common Stock	NGM	12(g)	0000813298	000-15898
CATS	Catalyst Semiconductor, Inc. Common Stock	Common Stock	NGM	12(g)	0000899636	000-21488
CESI	Catalytica Energy Systems, Inc. Common Stock	Common Stock	NGM	12(g)	0001053361	000-31953
CATT	Catapult Communicatons Corporation Common Stock	Common Stock	NGS	12(g)	0001063085	000-24701
CATY	Cathay General Bancorp Common Stock	Common Stock	NGS	12(g)	0000861842	000-18630
CTTY	Catuity Inc. Common Stock	Common Stock	NCM	12(g)	0001109740	000-30045
CVCO	Cavco Industries, Inc. Common Stock When Issued	Common Stock	NGS	12(g)	0000278166	000-08822
CBEY	Cbeyond, Inc. Common Stock	Common Stock	NGM	12(g)	0001205727	000-51588
CBIZ	CBIZ, Inc. Common Stock	Common Stock	NGS	12(g)	0000944148	000-25890

Exhibit A: List of Securities whose Registration will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
CBRL	CBRL Group Inc. Common Stock	Common Stock	NGS	12(g)	0001067294	000-25225
CCFH	CCF Holding Company Common Stock	Common Stock	NCM	12(g)	0000943033	000-25846
CCBL	C-COR Incorporated Common Stock	Common Stock	NGM	12(g)	0000350621	000-10726
CHINA	CDC Corporation Class A Common Shares	Ordinary Shares	NGM	12(g)	0001076770	000-30134
CDWC	CDW Corporation Common Stock	Common Stock	NGS	12(g)	0000899171	000-21796
CECE	CECO Environmental Corp. Common Stock	Common Stock	NCM	12(g)	0000003197	000-07099
CLDN	Celadon Group, Inc. Common Stock	Common Stock	NGS	12(g)	0000865941	000-23192
BDAY	Celebrate Express, Inc. Common Stock	Common Stock	NGM	12(g)	0001100124	000-50973
CELG	Celgene Corporation Common Stock	Common Stock	NGS	12(g)	0000816284	000-16132
CEGE	Cell Genesys, Inc. Common Stock	Common Stock	NGM	12(g)	0000865231	000-19986
CTIC	Cell Therapeutics, Inc. Common Stock	Common Stock	NGM	12(g)	0000891293	000-28386
CBHI	Centennial Bank Holdings, Inc. Common Stock	Common Stock	NGS	12(g)	0001324410	000-51556
CYCL	Centennial Communications Corporation Class A Common Stock	Common Stock	NGS	12(g)	0000879573	000-19603
CNBC	Center Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0000712771	000-11486
CLFC	Center Financial Corporation Common Stock	Common Stock	NGS	12(g)	0001174820	000-32589
CSFL	Centerstate Banks of Florida, Inc. Common Stock	Common Stock	NGS	12(g)	0001102266	000-32017
CTLM	Centillium Communications, Inc. Common Stock	Common Stock	NGM	12(g)	0001107194	000-30649
CEBK	Central Bancorp, Inc Common Stock	Common Stock	NGM	12(g)	0001076394	000-25251
CEDC	Central European Distribution Corporation Common Stock	Common Stock	NGS	12(g)	0001046880	000-24341
CETV	Central European Media Enterprises Ltd. Class A Common Stock	Ordinary Shares	NGS	12(g)	0000925645	000-24796
CFBK	Central Federal Corporation Common Stock	Common Stock	NCM	12(g)	0001070680	000-25045
CENF	Central Freight Lines, Inc. Common Stock	Common Stock	NGM	12(g)	0001085636	000-50485
CENT	Central Garden & Pet Company Common Stock	Common Stock	NGS	12(g)	0000887733	000-20242
CJBK	Central Jersey Bancorp Common Stock	Common Stock	NCM	12(g)	0001172353	000-27428
CVCY	Central Valley Community Bancorp Common Stock	Common Stock	NCM	12(g)	0001127371	000-31977
CVBK	Central Virginia Bankshares, Inc. Common Stock	Common Stock	NGM	12(g)	0000804561	000-24002
TRUE	Centrue Financial Corporation Common Stock	Common Stock	NGM	12(g)	0000891523	000-20804
CENX	Century Aluminum Company Common Stock	Common Stock	NGS	12(g)	0000949157	000-27918
CNBKA	Century BanCorp, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0000812348	000-15752
CNTY	Century Casinos, Inc. Common Stock	Common Stock	NCM	12(g)	0000911147	000-22900
CRLTS	Century Realty Trust Shares of Beneficial Interest	Shares of Beneficial Interest	NCM	12(g)	0000018914	000-07716
CEPH	Cephalon, Inc. Common Stock	Common Stock	NGS	12(g)	0000873364	000-19119
CPHD	CEPHEID Common Stock	Common Stock	NGM	12(g)	0001037760	000-30755
CRDN	Ceradyne, Inc. Common Stock	Common Stock	NGS	12(g)	0000018937	000-13059
CRNT	Ceragon Networks Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0001119769	000-30862
CERG	Ceres Group Inc. Common Stock	Common Stock	NGS	12(g)	0000215403	000-08483
CERN	Cerner Corporation Common Stock	Common Stock	NGS	12(g)	0000804753	000-15386
CERS	Cerus Corporation Common Stock	Common Stock	NGM	12(g)	0001020214	000-21937
CEVA	CEVA, Inc. Common Stock	Common Stock	NGM	12(g)	0001173489	000-49842
CFCI	CFC International, Inc. Common Stock	Common Stock	NGM	12(g)	0000949859	000-27222

Exhibit A: List of Securities whose Regis[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
CITZ	CFS Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0001058438	000-24611
CHMP	Champion Industries, Inc. Common Stock	Common Stock	NGM	12(g)	0000019149	000-21084
CMPP	Champps Entertainment, Inc Common Stock	Common Stock	NGM	12(g)	0001040328	000-22639
CHNL	Channell Commercial Corporation Common Stock	Common Stock	NGM	12(g)	0001013696	000-28582
CHAP	Chaparral Steel Company Common Stock	Common Stock	NGS	12(g)	0001319048	000-51307
CTHR	Charles & Colvard Ltd Common Stock	Common Stock	NGS	12(g)	0001015155	000-23329
SCHW	Charles Schwab Corporation (The) Common Stock	Common Stock	NGS	12(g)	0000316709	001-9700
CHIC	Charlotte Russe Holding, Inc. Common Stock	Common Stock	NGS	12(g)	0001092006	000-27677
CHRS	Charming Shoppes, Inc. Common Stock	Common Stock	NGS	12(g)	0000019353	000-07258
GTLS	Chart Industries, Inc. Common Stock	Common Stock	NGM	12(g)	0000892553	000-50412
CHTR	Charter Communications, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0001091667	000-27927
CHFN	Charter Financial Corp. Common Stock	Common Stock	NGM	12(g)	0001136796	000-33071
CHRT	Chartered Semiconductor Manufacturing Ltd. American Depositary Shares	American Depositary Shares	NGS	12(g)	0001095270	000-27811
CHTT	Chattem, Inc. Common Stock	Common Stock	NGS	12(g)	0000019520	000-05905
CHKP	Check Point Software Technologies Ltd. Ordinary Shares	Ordinary Shares	NGS	12(g)	0001015922	000-28584
CKFR	CheckFree Corporation Common Stock	Common Stock	NGS	12(g)	0000949341	000-26802
CAKE	Cheesecake Factory Incorporated (The) Common Stock	Common Stock	NGS	12(g)	0000887596	000-20574
CHTP	Chelsea Therapeutics International, Ltd. Common Stock	Common Stock	NCM	12(g)	0001333763	000-51462
CXSP	ChemGenex Pharmaceuticals Ltd Sponsored ADR (Australia)	American Depositary Shares	NCM	12(g)	0001175965	000-51373
CHFC	Chemical Financial Corporation Common Stock	Common Stock	NGS	12(g)	0000019612	000-08185
CHKE	Cherokee Inc. Common Stock	Common Stock	NGS	12(g)	0000844161	000-18640
CHRK	Cherokee International Corporation Common Stock	Common Stock	NGM	12(g)	0001090069	000-50593
CHEV	Cheviot Financial Corp Common Stock	Common Stock	NCM	12(g)	0001248124	000-50529
CBNK	Chicopee Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0001355786	000-51996
PLCE	Children's Place Retail Stores, Inc. (The) Common Stock	Common Stock	NGS	12(g)	0001041859	000-23071
CAAS	China Automotive Systems, Inc. Common Stock	Common Stock	NCM	12(g)	0001157762	000-33123
CBAK	China BAK Battery, Inc. Common Stock	Common Stock	NGM	12(g)	0001117171	000-49712
JRJC	China Finance Online Co. Limited American Depositary Shares	American Depositary Shares	NGM	12(g)	0001297830	000-50975
GRRF	China Grentech Corporation Limited American Depositary Shares	American Depositary Shares	NGM	12(g)	0001347510	000-51839
CMED	China Medical Technologies, Inc. ADS	American Depositary Shares	NGS	12(g)	0001326059	000-51440
CHNR	China Natural Resources, Inc. Common Stock	Common Stock	NCM	12(g)	0000793628	000-26046
CNTF	China TechFaith Wireless Communication Technology Limited American Depository Shares	American Depositary Shares	NGM	12(g)	0001316317	000-51242
CTDC	China Technology Development Group Corporation Common Stock	Common Stock	NCM	12(g)	0001027454	000-29008
CHDX	Chindex International, Inc. Common Stock	Common Stock	NCM	12(g)	0000922717	000-24624
IMOS	ChipMOS TECHNOLOGIES (Bermuda) LTD. Common Shares	Common Stock	NGS	12(g)	0001133478	000-31106
CTEC	Cholestech Corporation Common Stock	Common Stock	NGM	12(g)	0000887227	000-20198
CHRD	Chordiant Software, Inc. Common Stock	Common Stock	NGM	12(g)	0001042134	000-29357
CHSCP	CHS Inc. 8% Cumulative Redeemable Preferred Stock	Preferred Stock	NGS	12(g)	0000823277	000-50150

Exhibit A: List of Securities whose Registration will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
CHDN	Churchill Downs, Incorporated Common Stock	Common Stock	NGS	12(g)	0000020212	000-01469
CIEN	Ciena Corporation Common Stock	Common Stock	NGS	12(g)	0000936395	000-21969
CIMT	Cimatron, Limited Ordinary Shares	Ordinary Shares	NCM	12(g)	0001008595	000-27974
CINF	Cincinnati Financial Corporation Common Stock	Common Stock	NGS	12(g)	0000020286	000-04604
CTAS	Cintas Corporation Common Stock	Common Stock	NGS	12(g)	0000723254	000-11399
CIPH	Ciphergen Biosystems, Inc. Common Stock	Common Stock	NGM	12(g)	0000926617	000-31617
CPCI	Ciprico Inc. Common Stock	Common Stock	NGM	12(g)	0000720145	000-11336
CRUS	Cirrus Logic, Inc. Common Stock	Common Stock	NGS	12(g)	0000772406	000-17795
CSCO	Cisco Systems, Inc. Common Stock	Common Stock	NGS	12(g)	0000858877	000-18225
CTRN	Citi Trends, Inc. Common Stock	Common Stock	NGS	12(g)	0001318484	000-51315
PLJC	Citigroup Funding Inc. Principal-Protected Equity Linked Notes Based Upon the Nasdaq-100 Index	Other Securities	NGM	12(g)	0000831001	001-09924
SFSU	Citigroup Funding Inc. Stock Market Upturn Notes Based Upon the Nasdaq-100 Index	Other Securities	NGM	12(g)	0000831001	001-09924
CZNC	Citizens & Northern Corp Common Stock	Common Stock	NCM	12(g)	0000810958	000-16084
CBCF	Citizens Banking Corporation Common Stock	Common Stock	NGS	12(g)	0000351077	000-10535
CNFL	Citizens Financial Corporation Common Stock	Common Stock	NCM	12(g)	0000887136	000-20148
CTZN	Citizens First Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0001127442	000-32041
CSBC	Citizens South Banking Corporation	Common Stock	NGM	12(g)	0001051871	000-23971
CTXS	Citrix Systems, Inc. Common Stock	Common Stock	NGS	12(g)	0000877890	000-27084
CHCO	City Holding Company Common Stock	Common Stock	NGS	12(g)	0000726854	000-11733
CTEL	City Telecom (H.K.) Limited American Depositary Shares	American Depositary Shares	NGM	12(g)	0001097086	000-30354
CVBG	Civitas BankGroup, Inc. (TN) Common Stock	Common Stock	NGM	12(g)	0001092099	000-27393
CKXE	CKX, Inc. Common Stock	Common Stock	NGS	12(g)	0000793044	000-17436
CLRT	Clarient, Inc. Common Stock	Common Stock	NCM	12(g)	0001038223	000-22677
CLAY	Clayton Holdings, Inc. Common Stock	Common Stock	NGM	12(g)	0001325228	000-51846
CWEI	Clayton Williams Energy, Inc. Common Stock	Common Stock	NGM	12(g)	0000880115	000-20838
CLHB	Clean Harbors, Inc. Common Stock	Common Stock	NGS	12(g)	0000822818	000-16379
CBLI	Cleveland BioLabs, Inc. Common Stock	Common Stock	NCM	12(g)	0001318641	001-13111
CKCM	Click Commerce, Inc. Common Stock	Common Stock	NGM	12(g)	0001107050	000-30881
CKSW	ClickSoftware Technologies Ltd. Ordinary Shares	Ordinary Shares	NCM	12(g)	0001105841	000-30827
CSBK	Clifton Savings Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0001240581	000-50358
CLDA	Clinical Data, Inc. Common Stock	Common Stock	NGM	12(g)	0000716646	000-12716
CMGI	CMGI, Inc. Common Stock	Common Stock	NGM	12(g)	0000914712	000-23262
CCNE	CNB Financial Corporation Common Stock	Common Stock	NGS	12(g)	0000736772	000-13396
CNET	CNET Networks, Inc. Common Stock	Common Stock	NGS	12(g)	0001015577	000-20939
CNXS	CNS, Inc. Common Stock	Common Stock	NGS	12(g)	0000814258	000-16612
CMKG	CoActive Marketing Group Inc Common Stock	Common Stock	NCM	12(g)	0000886475	000-20394
CFHI	Coast Financial Holdings, Inc. Common Stock	Common Stock	NGM	12(g)	0001262276	000-50433
CBSAN	Coastal Bancorp Inc. Cumulative Trust Preferred Securities	Other Securities	NGM	12(g)	0000927628	001-13300
CFCP	Coastal Financial Corporation Common Stock	Common Stock	NCM	12(g)	0000935930	000-19684
COBZ	CoBiz, Inc. Common Stock	Common Stock	NGS	12(g)	0001028734	000-24445

Exhibit A: List of Securities whose Regi[illegible]on will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
COBR	Cobra Electronics Corporation Common Stock	Common Stock	NGM	12(g)	0000030828	000-00511
COKE	Coca-Cola Bottling Co. Consolidated Common Stock	Common Stock	NGM	12(g)	0000317540	000-09286
CVLY	Codorus Valley Bancorp, Inc Common Stock	Common Stock	NGM	12(g)	0000806279	000-15536
CCOI	Cogent Communications Group, Inc. Cogent Common Stock	Common Stock	NGM	12(g)	0001158324	000-51829
COGT	Cogent, Inc. Common Stock	Common Stock	NGS	12(g)	0001289434	000-50947
CGNX	Cognex Corporation Common Stock	Common Stock	NGS	12(g)	0000851205	000-17869
CTSH	Cognizant Technology Solutions Corporation Class A Common Stock	Common Stock	NGS	12(g)	0001058290	000-24429
COGN	Cognos Incorporated Common Shares	Common Stock	NGM	12(g)	0000746782	000-16006
COHR	Coherent, Inc. Common Stock	Common Stock	NGS	12(g)	0000021510	000-05255
COHU	Cohu, Inc. Common Stock	Common Stock	NGS	12(g)	0000021535	000-14298
CSTR	Coinstar, Inc. Common Stock	Common Stock	NGS	12(g)	0000941604	000-22555
CWTR	Coldwater Creek, Inc. Common Stock	Common Stock	NGS	12(g)	0001018005	000-21915
COLY	Coley Pharmaceutical Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001319197	000-51472
CGPI	CollaGenex Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0001012270	000-28308
CLCT	Collectors Universe, Inc. New	Common Stock	NGM	12(g)	0001089143	000-27887
COBK	Colonial Bankshares, Inc. Common Stock	Common Stock	NGM	12(g)	0001317019	000-51385
CBAN	Colony Bankcorp, Inc. Common Stock	Common Stock	NGM	12(g)	0000711669	000-12436
CLRK	Color Kinetics Incorporated Common Stock	Common Stock	NGM	12(g)	0001048611	000-50798
CBBO	Columbia Bancorp Common Stock	Common Stock	NGS	12(g)	0001010002	000-27938
COLB	Columbia Banking System, Inc. Common Stock	Common Stock	NGS	12(g)	0000887343	000-20288
CBRX	Columbia Laboratories, Inc. Common Stock	Common Stock	NGM	12(g)	0000821995	000-17499
COLM	Columbia Sportswear Company Common Stock	Common Stock	NGS	12(g)	0001050797	000-23939
CMCO	Columbus McKinnon Corporation Common Stock	Common Stock	NGM	12(g)	0001005229	000-27618
CMRO	COMARCO, Inc. Common Stock	Common Stock	NGM	12(g)	0000022252	000-05449
CRXX	CombinatoRx, Incorporated Common Stock	Common Stock	NGM	12(g)	0001135906	000-51171
CMCSA	Comcast Corporation Class A Common Stock	Common Stock	NGS	12(g)	0001166691	000-50093
CMCSK	Comcast Corporation Class A Special Common Stock	Common Stock	NGS	12(g)	0001166691	000-50093
CCBP	Comm Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0000730030	000-17455
CBSH	Commerce Bancshares, Inc. Common Stock	Common Stock	NGS	12(g)	0000022356	000-02989
CMFB	COMMERCEFIRST BANCORP INC Common Stock	Common Stock	NCM	12(g)	0001098813	000-51104
CLBK	Commercial Bankshares, Inc. Common Stock	Common Stock	NGM	12(g)	0000354562	000-22246
CCBI	Commercial Capital Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0001184818	000-50126
CNAF	Commercial National Financial Corporation Common Stock	Common Stock	NGM	12(g)	0000866054	000-18676
CVGI	Commercial Vehicle Group, Inc. Common Stock	Common Stock	NGS	12(g)	0001290900	000-50890
CWBS	Commonwealth Bankshares, Inc. Common Stock	Common Stock	NGM	12(g)	0000835012	000-17377
CWBSP	Commonwealth Bankshares, Inc. Commonwealth Bankshares Capital Trust I - 8% Convertible Trust Preferred Securities	Other Securities	NGM	12(g)	0000835012	000-17377
CBTE	Commonwealth Biotechnologies, Inc. Common Stock	Common Stock	NCM	12(g)	0001042418	001-13467
CTCO	Commonwealth Telephone Enterprises, Inc. Common Stock	Common Stock	NGS	12(g)	0000310433	000-11053
CTCH	Commtouch Software Ltd. Ordinary Shares	Ordinary Shares	NCM	12(g)	0001084577	000-26495
CBON	Community Bancorp Common Stock	Common Stock	NGM	12(g)	0001304366	000-51044

Exhibit A: List of Securities whose Regi[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
CMBC	Community Bancorp Inc. Common Stock	Common Stock	NGS	12(g)	0001089503	000-26505
COMB	Community Bancshares, Inc. (DE) Common Stock	Common Stock	NCM	12(g)	0000752195	000-16461
CBIN	Community Bank Shares of Indiana, Inc. Common Stock	Common Stock	NCM	12(g)	0000933590	000-25766
CMTY	Community Banks, Inc. Common Stock ($5.00 Par Value)	Common Stock	NGS	12(g)	0000714710	000-15786
ALBY	Community Capital Bancshares, Inc. Common Stock	Common Stock	NCM	12(g)	0001074369	000-25345
CPBK	Community Capital Corporation Common Stock	Common Stock	NGM	12(g)	0000832847	000-18460
CCBD	Community Central Bank Corp. Common Stock	Common Stock	NGM	12(g)	0001014133	000-33373
CFFC	Community Financial Corp. Common Stock	Common Stock	NCM	12(g)	0000850606	000-18265
CPBC	Community Partners Bancorp Common Stock	Common Stock	NCM	12(g)	0001343034	000-51889
CSHB	Community Shores Bank Corp. Common Stock	Common Stock	NCM	12(g)	0001070523	000-51166
CTBI	Community Trust Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0000350852	000-11129
CTBIP	Community Trust Bancorp, Inc. CTBI Preferred Capital Trust - 9.0% Cumulative Trust Preferred Securities	Other Securities	NGS	12(g)	0000350852	000-11129
CVLL	Community Valley Bancorp (CA)	Common Stock	NCM	12(g)	0001170833	000-51678
CWBC	Community West Bancshares Common Stock	Common Stock	NGM	12(g)	0001051343	000-23575
CBSS	Compass Bancshares, Inc. Common Stock	Common Stock	NGS	12(g)	0000018568	000-06032
CODI	Compass Diversified Trust Shares of Beneficial Interest	Shares of Beneficial Interest	NGS	12(g)	0001345126	000-51937
CCRT	CompuCredit Corporation Common Stock	Common Stock	NGS	12(g)	0001068199	000-25751
CDCY	CompuDyne Corporation Common Stock	Common Stock	NGM	12(g)	0000022912	000-29798
CGEN	Compugen Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0001119774	000-30902
CHRZ	Computer Horizons Corp. Common Stock	Common Stock	NGM	12(g)	0000023019	000-07282
CPSI	Computer Programs and Systems, Inc. Common Stock	Common Stock	NGS	12(g)	0001169445	000-49796
CTGX	Computer Task Group, Inc. Common Stock	Common Stock	NCM	12(g)	0000023111	001-09410
CPWR	Compuware Corporation Common Stock	Common Stock	NGS	12(g)	0000859014	000-20900
CHCI	Comstock Homebuilding Companies, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0001299969	000-51070
CITP	COMSYS IT Partners, Inc. Common Stock	Common Stock	NGM	12(g)	0000948850	000-27792
COGO	Comtech Group, Inc. Common Stock	Common Stock	NGS	12(g)	0000028367	000-02642
CMTL	Comtech Telecommunications Corp. Common Stock	Common Stock	NGS	12(g)	0000023197	000-07928
CMVT	Comverse Technology, Inc. Common Stock	Common Stock	NGM	12(g)	0000803014	000-15502
CPTS	Conceptus, Inc. Common Stock	Common Stock	NGM	12(g)	0000896778	000-27596
LENS	Concord Camera Corp. Common Stock	Common Stock	NGM	12(g)	0000831861	000-17038
CCDC	Concorde Career Colleges, Inc. Common Stock	Common Stock	NCM	12(g)	0000832483	000-16992
CNQR	Concur Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0001066026	000-25137
CCUR	Concurrent Computer Corporation Common Stock	Common Stock	NGM	12(g)	0000749038	000-13150
CNXT	Conexant Systems, Inc. Common Stock	Common Stock	NGS	12(g)	0001069353	000-24923
CNMD	CONMED Corporation Common Stock	Common Stock	NGS	12(g)	0000816956	000-16093
CTWS	Connecticut Water Service, Inc. Common Stock	Common Stock	NGS	12(g)	0000276209	000-08084
CNCT	Connetics Corporation Common Stock	Common Stock	NGM	12(g)	0001004960	000-27406
CONN	Conn's, Inc. Common Stock	Common Stock	NGS	12(g)	0001223389	000-50421
CNLG	Conolog Corporation Common Stock	Common Stock	NCM	12(g)	0000023503	000-08174
CONR	Conor Medsystems, Inc. Common Stock	Common Stock	NGM	12(g)	0001108271	000-51066

Exhibit A: List of Securities whose Reg[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
CNSL	Consolidated Communications Holdings, Inc. Common Stock	Common Stock	NGM	12(g)	0001304421	000-51446
CSLMF	Consolidated Mercantile Inc Common Stock	Common Stock	NCM	12(g)	0000784012	000-14009
CWCO	Consolidated Water Co. Ltd. Ordinary Shares	Ordinary Shares	NGS	12(g)	0000928340	000-25248
CNST	Constar International Inc. Common Stock	Common Stock	NGM	12(g)	0000029806	000-16496
CSLR	Consulier Engineering, Inc. Common Stock	Common Stock	NCM	12(g)	0000846718	000-17756
CPSS	Consumer Portfolio Services, Inc. Common Stock	Common Stock	NGM	12(g)	0000889609	000-51027
CNVR	Convera Corporation Class A Common Stock	Common Stock	NGM	12(g)	0001125536	000-09747
COOP	Cooperative Bankshares, Inc. Common Stock	Common Stock	NGM	12(g)	0000923529	000-24626
CPNO	Copano Energy, L.L.C. Common Units Representing Limited Liability Company Interest Units	Units/Benif Int	NGS	12(g)	0001297067	001-32329
CPRT	Copart, Inc. Common Stock	Common Stock	NGS	12(g)	0000900075	000-23254
VEGF	Corautus Genetics Inc. Common Stock	Common Stock	NCM	12(g)	0001003929	000-27264
CORT	Corcept Therapeutics Incorporated Common Stock	Common Stock	NGM	12(g)	0001088856	000-50679
CORE	Core Mark Holding Co Inc Common Stock	Common Stock	NGS	12(g)	0001318084	000-51515
CREL	Corel Corporation Common Stock	Common Stock	NGM	12(g)	0000890640	000-20562
CRGI	Corgi International Limited American Depositary Shares	American Depositary Shares	NGM	12(g)	0001028637	000-22161
CORI	Corillian Corporation Common Stock	Common Stock	NGS	12(g)	0001041403	000-29291
COCO	Corinthian Colleges, Inc. Common Stock	Common Stock	NGS	12(g)	0001066134	000-25283
EXBD	Corporate Executive Board Company (The) Common Stock	Common Stock	NGS	12(g)	0001066104	000-24799
CORS	CORUS Bankshares, Inc. Common Stock	Common Stock	NGS	12(g)	0000051939	000-06136
CRVL	CorVel Corp. Common Stock	Common Stock	NGS	12(g)	0000874866	000-19291
COSI	Cosi, Inc. Common Stock	Common Stock	NGM	12(g)	0001171014	000-50052
CPWM	Cost Plus, Inc. Common Stock	Common Stock	NGS	12(g)	0000798955	000-14970
CSGP	CoStar Group, Inc. Common Stock	Common Stock	NGS	12(g)	0001057352	000-24531
COST	Costco Wholesale Corporation Common Stock	Common Stock	NGS	12(g)	0000909832	000-20355
CULS	Cost-U-Less, Inc. Common Stock	Common Stock	NCM	12(g)	0000851368	000-24543
CTRX	CoTherix, Inc. Common Stock	Common Stock	NGM	12(g)	0001138812	000-50794
CRRC	Courier Corporation Common Stock	Common Stock	NGS	12(g)	0000025212	000-07597
CVGR	Covalent Group, Inc. Common Stock	Common Stock	NCM	12(g)	0000856569	000-21145
CVNS	Covansys Corporation Common Stock	Common Stock	NGS	12(g)	0001028461	000-22141
CVTI	Covenant Transport, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0000928658	000-24960
COWN	Cowen Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001355007	000-52048
CWLZ	Cowlitz Bancorporation Common Stock	Common Stock	NGM	12(g)	0000894267	000-23881
CPAK	CPAC, Inc. Common Stock	Common Stock	NGM	12(g)	0000351717	000-09600
CPII	CPI International, Inc. Common Stock	Common Stock	NGM	12(g)	0001279176	000-51928
CRAI	CRA International, Inc. Common Stock	Common Stock	NGS	12(g)	0001053706	000-24049
CRFT	Craftmade International, Inc. Common Stock	Common Stock	NGM	12(g)	0000856250	000-26667
CRAY	Cray Inc. Common Stock	Common Stock	NGM	12(g)	0000949158	000-26820
CREAF	Creative Technology Ltd. Ordinary Shares	Ordinary Shares	NGS	12(g)	0000888295	000-20281
CMOS	Credence Systems Corporation Common Stock	Common Stock	NGS	12(g)	0000893162	000-22366
CACC	Credit Acceptance Corporation Common Stock	Common Stock	NGM	12(g)	0000885550	000-20202
CRED	Credo Petroleum Corporation Common Stock	Common Stock	NCM	12(g)	0000277924	000-08877

Exhibit A: List of Securities whose Registration will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
CREE	Cree, Inc. Common Stock	Common Stock	NGS	12(g)	0000895419	000-21154
CSNT	Crescent Banking Company Common Stock	Common Stock	NCM	12(g)	0000883476	000-20251
CRFN	Crescent Financial Corporation Common Stock	Common Stock	NGM	12(g)	0001143921	000-32951
CRESY	Cresud S.A.C.I.F. y A. American Depositary Shares	American Depositary Shares	NGS	12(g)	0001034957	000-29190
CRTX	Critical Therapeutics, Inc. Common Stock	Common Stock	NGM	12(g)	0001145404	000-50767
CRMH	CRM Holdings, Ltd. Common Shares	Common Stock	NGS	12(g)	0001338949	000-51683
CROX	Crocs, Inc. Common Stock	Common Stock	NGS	12(g)	0001334036	000-51754
CRNS	Cronos Group (The) Common Stock	Common Stock	NGM	12(g)	0000919869	000-24464
CCRN	Cross Country Healthcare, Inc. Common Stock $0.0001 Par Value	Common Stock	NGS	12(g)	0001141103	000-33169
XTXI	Crosstex Energy, Inc. Common Stock	Common Stock	NGS	12(g)	0001209821	000-50536
XTEX	Crosstex Energy, L.P. LIMITED PARTNERSHIP INTEREST	Limited Partnership	NGS	12(g)	0001179060	000-50067
CRWN	Crown Media Holdings, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0001103837	000-30700
CRXL	Crucell NV American Depositary Shares	American Depositary Shares	NGM	12(g)	0001126136	000-30962
CRYO	CryoCor, Inc. Common Stock	Common Stock	NGM	12(g)	0001125294	000-51410
CRYP	Cryptologic, Inc. Common Stock	Common Stock	NGS	12(g)	0001094036	000-30224
CSGS	CSG Systems International, Inc. Common Stock	Common Stock	NGS	12(g)	0001005757	000-27512
CSPI	CSP Inc. Common Stock	Common Stock	NGM	12(g)	0000356037	000-10843
CTCI	CT Communications, Inc. Common Stock	Common Stock	NGS	12(g)	0000023259	000-19179
CTCM	CTC Media, Inc. Common Stock	Common Stock	NGM	12(g)	0001354513	000-52003
CTIB	CTI Industries Corporation Common Stock	Common Stock	NCM	12(g)	0001042187	000-23115
CTRP	Ctrip.com International, Ltd. American Depositary Shares	American Depositary Shares	NGS	12(g)	0001269238	000-50483
CBST	Cubist Pharmaceuticals, Inc. Common Stock	Common Stock	NGS	12(g)	0000912183	000-21379
CMLS	Cumulus Media Inc. Common Stock	Common Stock	NGS	12(g)	0001058623	000-24525
CRGN	CuraGen Corporation Common Stock	Common Stock	NGM	12(g)	0001030653	000-23223
CRIS	Curis, Inc. Common Stock	Common Stock	NGM	12(g)	0001108205	000-30347
CUTR	Cutera, Inc. Common Stock	Common Stock	NGS	12(g)	0001162461	000-50644
CBUK	Cutter & Buck Inc. Common Stock	Common Stock	NGM	12(g)	0000948069	000-26608
CVTX	CV Therapeutics, Inc. Common Stock	Common Stock	NGM	12(g)	0000921506	000-21643
CVBF	CVB Financial Corporation Common Stock	Common Stock	NGS	12(g)	0000354647	000-10140
CYAN	Cyanotech Corporation Common Stock	Common Stock	NCM	12(g)	0000768408	000-14602
CYBX	Cyberonics, Inc. Common Stock	Common Stock	NGM	12(g)	0000864683	000-19806
CYBE	CyberOptics Corporation Common Stock	Common Stock	NGM	12(g)	0000768411	000-16577
CYBS	CyberSource Corporation Common Stock	Common Stock	NGM	12(g)	0000934280	000-26477
CYCCP	Cyclacel Pharmaceuticals, Inc. 6% Convertible Preferred Stock	Preferred Stock	NCM	12(g)	0001130166	000-50626
CYCC	Cyclacel Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0001130166	000-50626
CYDS	Cygne Designs, Inc. Common Stock	Common Stock	NCM	12(g)	0000906782	000-22102
CYMI	Cymer, Inc. Common Stock	Common Stock	NGS	12(g)	0000897067	000-21321
CYNO	Cynosure, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0000885306	000-51623
CYPB	Cypress Bioscience Inc. Common Stock	Common Stock	NGM	12(g)	0000716054	000-12943
CYTO	Cytogen Corporation Common Stock	Common Stock	NGM	12(g)	0000725058	000-14879
CYTK	Cytokinetics, Incorporated Common Stock	Common Stock	NGM	12(g)	0001061983	000-50633

Exhibit A: List of Securities whose Regi[redacted]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
CYTX	Cytori Therapeutics Inc Common Stock (DE)	Common Stock	NGM	12(g)	0001095981	000-32501
CYTR	CytRx Corporation Common Stock	Common Stock	NCM	12(g)	0000799698	000-15327
CYTC	CYTYC Corporation Common Stock	Common Stock	NGS	12(g)	0000849778	000-27558
DECC	D&E Communications, Inc. Common Stock	Common Stock	NGM	12(g)	0001011737	000-20709
DADE	Dade Behring Holdings, Inc Common Stock	Common Stock	NGS	12(g)	0001183920	000-50010
DAGM	DAG Media, Inc. Common Stock	Common Stock	NCM	12(g)	0001080340	000-25991
DJCO	Daily Journal Corp. (S.C.) Common Stock	Common Stock	NCM	12(g)	0000783412	000-14665
DAKT	Daktronics, Inc. Common Stock	Common Stock	NGS	12(g)	0000915779	000-23246
DANKY	Danka Business Systems PLC American Depositary Shares	American Depositary Shares	NCM	12(g)	0000894010	000-20828
DASTY	Dassault Systemes, S.A. American Depositary Shares	American Depositary Shares	NGS	12(g)	0001016118	000-28578
DAIO	Data I/O Corporation Common Stock	Common Stock	NCM	12(g)	0000351998	000-10394
DTLK	Datalink Corporation Common Stock	Common Stock	NGM	12(g)	0001056923	000-29758
DRAM	Dataram Corporation Common Stock	Common Stock	NGM	12(g)	0000027093	001-8266
DSCP	Datascope Corp. Common Stock	Common Stock	NGS	12(g)	0000027096	000-06516
DATA	DataTrak International, Inc. Common Stock	Common Stock	NCM	12(g)	0000886530	000-20699
DWCH	Datawatch Corporation Common Stock	Common Stock	NCM	12(g)	0000792130	000-19960
DWSN	Dawson Geophysical Company Common Stock	Common Stock	NGM	12(g)	0000351231	000-10144
DSTI	DayStar Technologies, Inc. Common Stock	Common Stock	NCM	12(g)	0001262200	000-50508
DSTIZ	DayStar Technologies, Inc. Warrant B	Warrant	NCM	12(g)	0001262200	000-50508
DCAP	DCAP Group, Inc. Common Stock	Common Stock	NCM	12(g)	0000033992	000-01665
DDIC	DDi Corp Common Stock	Common Stock	NGM	12(g)	0001104252	000-30241
TRAK	DealerTrack Holdings, Inc. Common Stock	Common Stock	NGM	12(g)	0001333513	000-51653
DEAR	Dearborn Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0000895541	000-24478
DEBS	Deb Shops, Inc. Common Stock	Common Stock	NGS	12(g)	0000715779	000-12188
DECK	Deckers Outdoor Corporation Common Stock	Common Stock	NGS	12(g)	0000910521	000-22446
DCGN	deCODE genetics, Inc. Common Stock	Common Stock	NGM	12(g)	0001022974	000-30469
DECT	Dectron International, Inc. Common Stock	Common Stock	NCM	12(g)	0001066042	000-24845
DCTH	Delcath Systems, Inc. Common Stock	Common Stock	NCM	12(g)	0000872912	001-16133
DLIA	dELIA*s Inc. Common Stock	Common Stock	NGM	12(g)	0001337885	000-51648
DELL	Dell Inc. Common Stock	Common Stock	NGS	12(g)	0000826083	000-17017
DLPX	Delphax Technologies Inc. Common Stock	Common Stock	NGM	12(g)	0000350692	000-10691
DELT	Delta Galil Industries Ltd. American Depositary Shares	American Depositary Shares	NGM	12(g)	0001081022	000-30020
DGAS	Delta Natural Gas Company, Inc. Common Stock	Common Stock	NGM	12(g)	0000277375	000-08788
DPTR	Delta Petroleum Corporation Common Stock	Common Stock	NGM	12(g)	0000821483	000-16203
DDDC	deltathree Inc Class A Common Stock	Common Stock	NCM	12(g)	0001086740	000-28063
DNDN	Dendreon Corporation Common Stock	Common Stock	NGM	12(g)	0001107332	000-30681
DRTE	Dendrite International, Inc. Common Stock	Common Stock	NGS	12(g)	0000880321	000-26138
DENN	Denny's Corporation Common Stock	Common Stock	NCM	12(g)	0000852772	000-18051
XRAY	DENTSPLY International Inc. Common Stock	Common Stock	NGS	12(g)	0000818479	000-16211
DEPO	Depomed, Inc. Common Stock	Common Stock	NGM	12(g)	0001005201	000- 23267
DSGX	Descartes Systems Group Inc. (The) Common Stock	Common Stock	NGM	12(g)	0001050140	000-29970
DWRI	Design Within Reach, Inc. Common Stock	Common Stock	NGM	12(g)	0001116755	000-50807

Exhibit A: List of Securities whose Regis[redacted]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
DSWL	Deswell Industries, Inc. Common Shares	Common Stock	NGM	12(g)	0000946936	000-26448
DEVC	Devcon International Corp. Common Stock	Common Stock	NGM	12(g)	0000028452	000-07152
DXCM	DexCom, Inc. Common Stock	Common Stock	NGM	12(g)	0001093557	000-51222
DGSE	DGSE Companies, Inc. Common Stock	Common Stock	NCM	12(g)	0000701719	001-11048
DLGS	Dialog Semiconductor Plc American Depositary Shares	American Depositary Shares	NGM	12(g)	0001116581	001-15042
DCAI	Dialysis Corporation of America Common Stock	Common Stock	NCM	12(g)	0000201653	000-08527
DMND	Diamond Foods, Inc. Common Stock	Common Stock	NGS	12(g)	0001320947	000-51439
DHIL	Diamond Hill Investment Group, Inc. Class A Common Stock	Common Stock	NCM	12(g)	0000909108	000-24498
DTPI	DiamondCluster International, Inc. Common Stock	Common Stock	NGM	12(g)	0000924940	000-22125
DDRX	Diedrich Coffee Common Stock	Common Stock	NGM	12(g)	0000947661	000-21203
DIGE	Digene Corporation Common Stock	Common Stock	NGS	12(g)	0001011582	000-28194
DGII	Digi International Inc. Common Stock	Common Stock	NGS	12(g)	0000854775	000-17972
DMRC	Digimarc Corporation Common Stock	Common Stock	NGM	12(g)	0001089443	000-28317
DRAD	Digirad Corporation Common Stock	Common Stock	NGM	12(g)	0000707388	000-50789
DGIT	Digital Generation Systems, Inc. Common Stock	Common Stock	NGM	12(g)	0000934448	000-27644
DGIN	Digital Insight Corporation Common Stock	Common Stock	NGS	12(g)	0001037275	000-27459
DMGI	Digital Music Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001339729	000-51761
TBUS	Digital Recorders, Inc. Common Stock	Common Stock	NCM	12(g)	0000853695	001-13408
DRIV	Digital River, Inc. Common Stock	Common Stock	NGS	12(g)	0001062530	000-24643
DTAS	Digitas, Inc. Common Stock	Common Stock	NGS	12(g)	0001100885	000-29723
DCOM	Dime Community Bancshares, Inc. Common Stock	Common Stock	NGS	12(g)	0001005409	000-27782
DIOD	Diodes Incorporated Common Stock	Common Stock	NGS	12(g)	0000029002	001-5740
DNEX	Dionex Corporation Common Stock	Common Stock	NGS	12(g)	0000708850	000-11250
DRCT	Direct General Corporation Common stock	Common Stock	NGS	12(g)	0001023031	000-50360
DEIX	Directed Electronics, Inc. Common Stock	Common Stock	NGM	12(g)	0001323630	000-51664
DISCA	Discovery Holding Company Series A Common Stock	Common Stock	NGS	12(g)	0001320482	000-51205
DISCB	Discovery Holding Company Series B Common Stock	Common Stock	NGS	12(g)	0001320482	000-51205
DSCO	Discovery Laboratories, Inc. Common Stock	Common Stock	NGM	12(g)	0000946486	000-26422
DPII	Discovery Partners International, Inc. Common Stock	Common Stock	NGM	12(g)	0001113148	000-31141
DESC	Distributed Energy Systems Corporation Common Stock	Common Stock	NGM	12(g)	0001261482	000-31533
DITC	Ditech Networks, Inc. Common Stock	Common Stock	NGM	12(g)	0001080667	000-26209
DVSA	Diversa Corporation Common Stock	Common Stock	NGM	12(g)	0001049210	000-29173
DXYN	Dixie Group, Inc. (The) Common Stock	Common Stock	NGM	12(g)	0000029332	000-02585
DCEL	Dobson Communications Corporation Class A Common Stock	Common Stock	NGS	12(g)	0001035985	000-29225
DOCC	DocuCorp International, Inc. Common Stock	Common Stock	NGM	12(g)	0001033864	000-23829
DOCX	Document Sciences Corporation Common Stock	Common Stock	NCM	12(g)	0001016831	000-20981
DLLR	Dollar Financial Corp. Common Stock	Common Stock	NGS	12(g)	0001271625	000-50866
DLTR	Dollar Tree Stores, Inc. Common Stock	Common Stock	NGS	12(g)	0000935703	000-25464
DHOM	Dominion Homes Inc. Common Stock	Common Stock	NGM	12(g)	0000917857	000-23270
DGICA	Donegal Group, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0000800457	000-15341
DGICB	Donegal Group, Inc. Class B Common Stock	Common Stock	NGS	12(g)	0000800457	000-15341

Exhibit A: List of Securities whose Regis[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
DMLP	Dorchester Minerals, L.P. Common Units Representing Limited Partnership Interests	Limited Partnership	NGM	12(g)	0001172358	000-50175
DIIB	Dorel Industries, Inc Class B Subordinate Voting Shares	Common Stock	NGS	12(g)	0000843405	000-29712
DORM	Dorman Products, Inc. Common Stock	Common Stock	NGM	12(g)	0000868780	000-18914
HILL	Dot Hill Systems Corporation Common Stock	Common Stock	NGM	12(g)	0001042783	001-13317
DBLE	Double Eagle Petroleum Company Common Stock	Common Stock	NCM	12(g)	0000029834	000-06529
DOVP	DOV Pharmaceutical, Inc. Common Stock	Common Stock	NGM	12(g)	0001066833	000-49730
DOVR	Dover Saddlery, Inc. Common Stock	Common Stock	NGM	12(g)	0001071625	000-51624
DRAX	Draxis Health Inc. Common Shares	Common Stock	NGS	12(g)	0000845802	000-17434
DROOY	DRDGOLD Limited American Depositary Shares	American Depositary Shares	NCM	12(g)	0001023512	000-28800
DBRN	Dress Barn, Inc. (The) Common Stock	Common Stock	NGS	12(g)	0000717724	000-11736
DSCM	drugstore.com, inc. Common Stock	Common Stock	NGM	12(g)	0001086467	000-26137
DRYS	DryShips Inc. Common Stock	Common Stock	NGS	12(g)	0001308858	000-51141
DSPG	DSP Group, Inc. Common Stock	Common Stock	NGS	12(g)	0000915778	000-23006
DTSI	DTS, Inc. Common Stock	Common Stock	NGS	12(g)	0001226308	000-50335
DUCK	Duckwall-Alco Stores, Inc. Common Stock	Common Stock	NGM	12(g)	0000030302	000-20269
DRRA	Dura Automotive Systems, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0001016177	000-21139
DRRAP	Dura Automotive Systems, Inc. Dura Automotive Systems Capital Trust - 7.50% Convertible Trust Preferred Securities	Other Securities	NGM	12(g)	0001016177	000-21139
DRRX	Durect Corporation Common Stock	Common Stock	NGM	12(g)	0001082038	000-31615
DUSA	DUSA Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0000879993	000-19777
DXPE	DXP Enterprises, Inc. Common Stock	Common Stock	NCM	12(g)	0001020710	000-21513
DYAX	Dyax Corp. Common Stock	Common Stock	NGM	12(g)	0000907562	000-24537
DYII	Dynacq Healthcare, Inc. Common Stock	Common Stock	NCM	12(g)	0000890908	000-21574
DDMX	Dynamex, Inc. Common Stock	Common Stock	NGS	12(g)	0001015483	000-21057
BOOM	Dynamic Materials Corporation Common Stock	Common Stock	NGS	12(g)	0000034067	001-14775
DRCO	Dynamics Research Corporation Common Stock	Common Stock	NGM	12(g)	0000030822	000-02479
DYNT	Dynatronics Corporation Common Stock	Common Stock	NCM	12(g)	0000720875	000-12697
DVAX	Dynavax Technologies Corporation Common Stock	Common Stock	NGM	12(g)	0001029142	000-50577
ECMV	E Com Ventures, Inc. Common Stock	Common Stock	NCM	12(g)	0000880460	000-19714
EGBN	Eagle Bancorp, Inc. Common Stock	Common Stock	NCM	12(g)	0001050441	000-25923
EGLE	Eagle Bulk Shipping Inc. Common Stock	Common Stock	NGS	12(g)	0001322439	000-51366
EGLT	Eagle Test Systems, Inc. Common Stock	Common Stock	NGM	12(g)	0001290096	000-51828
ELNK	EarthLink, Inc. Common Stock	Common Stock	NGS	12(g)	0001102541	001-15605
EPEN	East Penn Financial Corporation Common Stock	Common Stock	NCM	12(g)	0001220483	000-50330
EWBC	East West Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0001069157	000-24939
EIHI	Eastern Insurance Holdings, Inc. Common Stock	Common Stock	NGM	12(g)	0001321268	000-52058
EVBS	Eastern Virginia Bankshares, Inc. Common Stock	Common Stock	NCM	12(g)	0001047170	000-23565
EASY	EasyLink Services Corporation Class A Common Stock	Common Stock	NCM	12(g)	0001081661	000-26371
EBAY	eBay Inc. Common Stock	Common Stock	NGS	12(g)	0001065088	000-24821
EBIX	Ebix Inc Common Stock	Common Stock	NCM	12(g)	0000814549	000-15946
ECBE	ECB Bancorp Inc Common Stock	Common Stock	NGM	12(g)	0001066254	000-24753

Exhibit A: List of Securities whose Reg[redacted]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Nasdaq Market Segment	Reason for Filing	CIK	File No.
ELON	Echelon Corporation Common Stock	Common Stock	NGM	12(g)	0000031347	000-29748
DISH	EchoStar Communications Corporation Class A Common Stock	Common Stock	NGS	12(g)	0001001082	000-26176
ECIL	ECI Telecom Ltd. Ordinary Shares	Ordinary Shares	NGS	12(g)	0000701544	000-12672
ECLP	Eclipsys Corporation Common Stock	Common Stock	NGS	12(g)	0001034088	000-24539
ECLG	eCollege.com Common Stock	Common Stock	NGM	12(g)	0001085653	000-28393
ECTX	ECtel Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0001096197	000-30348
EDAP	EDAP TMS S.A. American Depositary Shares	American Depositary Shares	NGM	12(g)	0001041934	000-29374
EDEN	EDEN Bioscience Corporation Common Stock	Common Stock	NCM	12(g)	0000930095	000-31499
EDGR	EDGAR Online, Inc. Common Stock	Common Stock	NGM	12(g)	0001080224	000-26071
EPEX	Edge Petroleum Corporation Common Stock	Common Stock	NGS	12(g)	0001021010	000-22149
EDGW	Edgewater Technology, Inc. Common Stock	Common Stock	NGM	12(g)	0001017968	000-20971
DIET	Ediets Com Inc Common Stock	Common Stock	NCM	12(g)	0001094058	000-30559
EEEE	Educate, Inc. Common Stock	Common Stock	NGS	12(g)	0001286862	000-50952
EDUC	Educational Development Corporation Common Stock	Common Stock	NGM	12(g)	0000031667	000-04957
EFJI	EFJ, Inc. Common Stock	Common Stock	NGM	12(g)	0001023516	000-21681
EAGL	EGL, Inc. Common Stock	Common Stock	NGS	12(g)	0001001718	000-27288
EMITF	Elbit Medical Imaging Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0001027662	000-28996
ESLT	Elbit Systems Ltd. Ordinary Shares	Ordinary Shares	NGS	12(g)	0001027664	000-28998
EEEI	Electro Energy Inc. Common Stock	Common Stock	NCM	12(g)	0001175636	000-51083
ELRC	Electro Rent Corporation Common Stock	Common Stock	NGM	12(g)	0000032166	000-09061
ESIO	Electro Scientific Industries, Inc. Common Stock	Common Stock	NGM	12(g)	0000726514	000-12853
EGLS	Electroglas, Inc. Common Stock	Common Stock	NGM	12(g)	0000902281	000-21626
ERTS	Electronic Arts Inc. Common Stock	Common Stock	NGS	12(g)	0000712515	000-17948
ECHO	Electronic Clearing House, Inc. Common Stock	Common Stock	NCM	12(g)	0000721773	000-15245
EFII	Electronics for Imaging, Inc. Common Stock	Common Stock	NGS	12(g)	0000867374	000-18805
MELA	Electro-Optical Sciences, Inc Common Stock	Common Stock	NCM	12(g)	0001051514	000-51481
ELSE	Electro-Sensors, Inc. Common Stock	Common Stock	NCM	12(g)	0000351789	000-09587
RDEN	Elizabeth Arden, Inc. Common Stock	Common Stock	NGS	12(g)	0000095052	001-06370
LONG	eLong, Inc. American Depositary Shares	American Depositary Shares	NGM	12(g)	0001290903	000-50984
ELOY	eLoyalty Corporation Common Stock	Common Stock	NGM	12(g)	0001094348	000-27975
ELRN	Elron Electronic Industries Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0000315126	000-11456
ELTK	Eltek Ltd. Ordinary Shares	Ordinary Shares	NCM	12(g)	0001024672	000-28884
EMAG	Emageon Inc. Common Stock	Common Stock	NGM	12(g)	0001121439	000-51149
EMAK	EMAK Worldwide, Inc. Common Stock	Common Stock	NGM	12(g)	0000911151	000-23346
EMBT	Embarcadero Technologies, Inc. Common Stock	Common Stock	NGS	12(g)	0001107112	000-30293
EMBX	Embrex, Inc. Common Stock	Common Stock	NGM	12(g)	0000878725	000-19495
EMCI	EMC Insurance Group, Inc. Common Stock	Common Stock	NGS	12(g)	0000356130	000-10956
EMKR	EMCORE Corporation Common Stock	Common Stock	NGM	12(g)	0000808326	000-22175
HLTH	Emdeon Corporation Common Stock	Common Stock	NGS	12(g)	0001009575	000-24975
EMRG	eMerge Interactive, Inc. Class A Common Stock	Common Stock	NCM	12(g)	0001092605	000-29037
EMIS	Emisphere Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0000805326	001-10615

Exhibit A: List of Securities whose Regi[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
EMMSP	Emmis Communications Corporation 6.25% Series A Cumulative Convertible Preferred Stock	Preferred Stock	NGS	12(g)	0000783005	000-23264
EMMS	Emmis Communications Corporation Class A Common Stock	Common Stock	NGS	12(g)	0000783005	000-23264
ELMG	EMS Technologies, Inc. Common Stock	Common Stock	NGS	12(g)	0000032198	000-06072
ENPT	En Pointe Technologies, Inc. Common Stock	Common Stock	NCM	12(g)	0001010305	000-28052
ECPG	Encore Capital Group Inc Common Stock	Common Stock	NGS	12(g)	0001084961	000-26489
ENMC	Encore Medical Corporation Common Stock	Common Stock	NGM	12(g)	0000944763	000-26538
WIRE	Encore Wire Corporation Common Stock	Common Stock	NGS	12(g)	0000850460	000-20278
ENCY	Encysive Pharmaceuticals Inc Common Stock	Common Stock	NGM	12(g)	0000887023	000-20117
ELGX	Endologix Inc	Common Stock	NGM	12(g)	0001013606	000-28440
ENWV	Endwave Corporation Common Stock	Common Stock	NGM	12(g)	0001118941	000-31635
ENER	Energy Conversion Devices, Inc. Common Stock	Common Stock	NGS	12(g)	0000032878	001-08403
EWST	Energy West, Inc. Common Stock	Common Stock	NGM	12(g)	0000043350	000-14183
ENSI	EnergySouth, Inc. Common Stock	Common Stock	NGS	12(g)	0001051286	000-29604
NPTH	Enpath Medical, Inc. Common Stock	Common Stock	NGM	12(g)	0000833140	000-19467
ESGR	Enstar Group Inc Common Stock	Common Stock	NGS	12(g)	0000055820	000-07477
ENTG	Entegris, Inc. Common Stock	Common Stock	NGS	12(g)	0001101302	000-30789
EBTC	Enterprise Bancorp Inc Common Stock	Common Stock	NGM	12(g)	0001018399	000-21021
EFSC	Enterprise Financial Services Corporation Common Stock	Common Stock	NGM	12(g)	0001025835	000-24131
ENMD	EntreMed, Inc. Common Stock	Common Stock	NGM	12(g)	0000895051	000-20713
ENTU	Entrust, Inc. Common Stock	Common Stock	NGM	12(g)	0001031283	000-24733
ECGI	Envoy Communications Group, Inc. Common Stock	Common Stock	NCM	12(g)	0001031516	000-30082
ENZN	Enzon, Inc. Common Stock	Common Stock	NGM	12(g)	0000727510	000-12957
EONC	eOn Communications Corporation Common Stock	Common Stock	NCM	12(g)	0001084752	000-26399
EPMD	EP MedSystems, Inc. Common Stock	Common Stock	NCM	12(g)	0001012394	000-28260
EPIK	Epic Bancorp Common Stock	Common Stock	NCM	12(g)	0001099980	000-50878
EPCT	EpiCept Corporation Common Stock	Common Stock	NGM	12(g)	0001208261	000-51290
EPIC	Epicor Software Corporation Common Stock	Common Stock	NGS	12(g)	0000891178	000-20740
EPIQ	EPIQ Systems, Inc. Common Stock	Common Stock	NGS	12(g)	0001027207	000-22081
EPIX	EPIX Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0001027702	000-21863
PLUS	ePlus Inc. Common Stock	Common Stock	NGM	12(g)	0001022408	000-28926
EPHC	Epoch Holding Corporation Common Stock	Common Stock	NCM	12(g)	0000351903	001-09728
EQIX	Equinix, Inc. Common Stock $0.001 Par Value	Common Stock	NGS	12(g)	0001101239	000-31293
ERES	eResearch Technology Inc. Common Stock	Common Stock	NGS	12(g)	0001026650	000-29100
ERIE	Erie Indemnity Company Class A Common Stock	Common Stock	NGS	12(g)	0000922621	000-24000
ESBF	ESB Financial Corporation Common Stock	Common Stock	NGS	12(g)	0000872825	000-19345
ESCA	Escalade, Incorporated Common Stock	Common Stock	NGM	12(g)	0000033488	000-06966
ESMC	Escalon Medical Corp. Common Stock	Common Stock	NCM	12(g)	0000862668	000-20127
ESCH	Eschelon Telecom, Inc. Common Stock	Common Stock	NGM	12(g)	0001110507	000-50706
ESPD	eSpeed, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0001094831	000-28191
ESST	ESS Technology, Inc Common Stock	Common Stock	NGM	12(g)	0000907410	000-26660
KEYW	Essex Corp Common Stock	Common Stock	NGS	12(g)	0000355199	001-31703

Exhibit A: List of Securities whose Regis[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
ETWC	etrials Worldwide, Inc. Common Stock	Common Stock	NGM	12(g)	0001268904	000-50531
ETWCU	etrials Worldwide, Inc. Units	Unit	NGM	12(g)	0001268904	000-50531
ETWCW	etrials Worldwide, Inc. Warrants	Warrant	NGM	12(g)	0001268904	000-50531
CLWT	Euro Tech Holdings Company Limited Common Stock	Common Stock	NCM	12(g)	0001026662	000-22113
EUBK	EuroBancshares, Inc. Common Stock	Common Stock	NGS	12(g)	0001164554	000-50872
EEFT	Euronet Worldwide, Inc. Common Stock	Common Stock	NGS	12(g)	0001029199	000-22167
EURO	EuroTrust A/S American Depository Shares	American Depositary Shares	NGM	12(g)	0001041457	000-30690
EVVV	ev3 Inc. Common Stock	Common Stock	NGS	12(g)	0001318310	000-51348
ESCC	Evans & Sutherland Computer Corporation Common Stock	Common Stock	NGM	12(g)	0000276283	000-8771
EVBN	Evans Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0000842518	000-18539
EVCI	EVCI Career Colleges Holding Corp. Common Stock	Common Stock	NCM	12(g)	0001065591	000-25371
ESLR	Evergreen Solar, Inc. Common Stock	Common Stock	NGM	12(g)	0000947397	000-31687
EVST	Everlast Worldwide Inc. Common Stock	Common Stock	NCM	12(g)	0000934795	000-25918
EVOL	Evolving Systems, Inc. Common Stock	Common Stock	NCM	12(g)	0001052054	000-24081
EXAS	EXACT Sciences Corporation Common Stock	Common Stock	NGM	12(g)	0001124140	000-32179
EXAC	Exactech, Inc. Common Stock	Common Stock	NGM	12(g)	0000913165	000-28240
EXAR	Exar Corporation Common Stock	Common Stock	NGM	12(g)	0000753568	000-14225
XLTC	Excel Technology, Inc. Common Stock	Common Stock	NGS	12(g)	0000873603	000-19306
EXJF	Exchange National Bancshares, Inc. Common Stock	Common Stock	NGM	12(g)	0000893847	000-23636
EXEL	Exelixis, Inc. Common Stock	Common Stock	NGS	12(g)	0000939767	000-30235
EXFO	EXFO Electro-Optical Engineering Subordinate Voting Shares	Common Stock	NGM	12(g)	0001116284	000-30895
XIDE	Exide Technologies New Common Stock	Common Stock	NGM	12(g)	0000813781	000-50745
XIDEW	Exide Technologies New Warrant 2011	Warrant	NGM	12(g)	0000813781	000-50745
EXPE	Expedia, Inc. Common Stock	Common Stock	NGS	12(g)	0001324424	000-51447
EXPEW	Expedia, Inc. Warrant to purchase one half of one share of Expedia Inc Common Stock	Warrant	NGS	12(g)	0001324424	000-51447
EXPEZ	Expedia, Inc. Warrants to purchase .969375 shares of Expedia Inc Common Stock	Warrant	NGS	12(g)	0001324424	000-51447
EXPD	Expeditors International of Washington, Inc. Common Stock	Common Stock	NGS	12(g)	0000746515	000-13468
EXPO	Exponent, Inc. Common Stock	Common Stock	NGS	12(g)	0000851520	000-18655
ESRX	Express Scripts, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0000885721	000-20199
EXTR	Extreme Networks, Inc. Common Stock	Common Stock	NGM	12(g)	0001078271	000-25711
EZPW	EZCORP, Inc. Class A Non-Voting Common Stock	Common Stock	NGS	12(g)	0000876523	000-19424
EZEM	E-Z-EM, Inc. Common Stock	Common Stock	NGS	12(g)	0000727008	001-11479
FFIV	F5 Networks, Inc. Common Stock	Common Stock	NGS	12(g)	0001048695	000-26041
FCPO	Factory Card & Party Outlet Corp.	Common Stock	NGM	12(g)	0001024441	000-21859
FALC	FalconStor Software, Inc. Common Stock	Common Stock	NGM	12(g)	0000922521	000-23970
FMRX	Familymeds Group, Inc. Common Stock	Common Stock	NCM	12(g)	0000921878	001-15445
DAVE	Famous Dave's of America, Inc. Common Stock	Common Stock	NGM	12(g)	0001021270	000-21625
FRGO	Fargo Electronics, Inc. Common Stock	Common Stock	NGS	12(g)	0001098834	000-29029
FARM	Farmer Brothers Company Common Stock	Common Stock	NGM	12(g)	0000034563	000-01375
FFKT	Farmers Capital Bank Corporation Common Stock	Common Stock	NCM	12(g)	0000713095	000-14412

Exhibit A: List of Securities whose Regis[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
FARO	FARO Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0000917491	000-23081
FAST	Fastenal Company Common Stock	Common Stock	NGS	12(g)	0000815556	000-16125
FBSS	Fauquier Bankshares, Inc. Common Stock	Common Stock	NCM	12(g)	0001083643	000-25805
FVRL	Favrille, Inc. Common Stock	Common Stock	NGM	12(g)	0001285701	000-51134
FTHR	Featherlite, Inc. Common Stock	Common Stock	NCM	12(g)	0000928064	000-24804
FFCO	FedFirst Financial Corporation Common Stock	Common Stock	NCM	12(g)	0001308017	000-51153
FEIC	FEI Company Common Stock	Common Stock	NGM	12(g)	0000914329	000-22780
FFDF	FFD Financial Corporation Common Stock	Common Stock	NCM	12(g)	0001006177	000-27916
FTGX	Fibernet Telecom Group, Inc. Common Stock	Common Stock	NCM	12(g)	0001001868	000-24661
FBST	Fiberstars, Inc. Common Stock	Common Stock	NGM	12(g)	0000924168	000-24564
FSBI	Fidelity Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0000769207	000-22288
FFFL	Fidelity Bankshares, Inc. Common Stock	Common Stock	NGS	12(g)	0001028336	000-29040
LION	Fidelity Southern Corporation New Common Stock	Common Stock	NGS	12(g)	0000822662	000-22374
FICC	Fieldstone Investment Corporation Common Stock	Common Stock	NGS	12(g)	0001271831	000-50938
FITB	Fifth Third Bancorp Common Stock	Common Stock	NGS	12(g)	0000035527	000-08076
FILE	FileNet Corporation Common Stock	Common Stock	NGS	12(g)	0000706015	000-15997
FISI	Financial Institutions, Inc. Common Stock	Common Stock	NGS	12(g)	0000862831	000-26481
FNSR	Finisar Corporation Common Stock	Common Stock	NGS	12(g)	0001094739	000-27999
FINL	Finish Line, Inc. (The) Class A Common Stock	Common Stock	NGS	12(g)	0000886137	000-20184
FNLY	Finlay Enterprises, Inc. Common Stock	Common Stock	NGM	12(g)	0000878731	000-25716
FADV	First Advantage Corporation Common Stock	Common Stock	NGS	12(g)	0001210677	000-50285
FACT	First Albany Companies, Inc. Common Stock	Common Stock	NGM	12(g)	0000782842	000-14140
FRNS	First Avenue Networks, Inc. Common Stock	Common Stock	NGM	12(g)	0001010286	000-21091
FAVS	First Aviation Services, Inc. Common Stock	Common Stock	NCM	12(g)	0001025743	000-21995
FBNC	First Bancorp Common Stock	Common Stock	NGS	12(g)	0000811589	000-15572
FBEI	First Bancorp of Indiana, Inc. Common Stock	Common Stock	NGM	12(g)	0001074543	000-29814
FBMS	First Bancshares, Inc. (The) (MS) Common Stock	Common Stock	NCM	12(g)	0000947559	000-22507
FBSI	First Bancshares, Inc. Common Stock	Common Stock	NGM	12(g)	0000912967	000-22842
FBTC	First BancTrust Corporation Common Stock	Common Stock	NCM	12(g)	0001129847	000-32535
FBNKM	First Banks, Inc. First Preferred Capital Trust III - 9.00% Cumulative Trust Preferred Securities	Other Securities	NGM	12(g)	0000710507	000-20632
BUSE	First Busey Corporation Class A Common Stock	Common Stock	NGS	12(g)	0000314489	000-15950
FBIZ	First Business Financial Services, Inc. Common Stock	Common Stock	NGM	12(g)	0001305399	000-51028
FCAP	First Capital, Inc. Common Stock	Common Stock	NCM	12(g)	0001070296	000-25023
FCFS	First Cash Financial Services, Inc. Common Stock	Common Stock	NGS	12(g)	0000840489	000-19133
FCTR	First Charter Corporation Common Stock	Common Stock	NGS	12(g)	0000717306	000-15829
FCZA	First Citizens Banc Corp. Common Stock	Common Stock	NCM	12(g)	0000944745	000-25980
FCNCA	First Citizens BancShares, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0000798941	000-16471
FCLF	First Clover Leaf Financial Corp. Common Stock	Common Stock	NCM	12(g)	0001283582	000-50820
FCBP	First Community Bancorp Common Stock	Common Stock	NGS	12(g)	0001102112	000-30747
FCBC	First Community Bancshares, Inc. Common Stock	Common Stock	NGS	12(g)	0000859070	000-19297

Exhibit A: List of Securities whose Regis[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
FCFL	First Community Bank Corporation of America (FL) Common Stock	Common Stock	NCM	12(g)	0001082564	000-50357
FCCO	First Community Corporation Common Stock	Common Stock	NCM	12(g)	0000932781	000-28344
FCGI	First Consulting Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001049758	000-23651
FDEF	First Defiance Financial Corp. Common Stock	Common Stock	NGS	12(g)	0000946647	000-26850
FFSW	First Federal Banc of the Southwest, Inc. Common Stock	Common Stock	NCM	12(g)	0001060939	000-51243
FFBH	First Federal Bancshares of Arkansas, Inc. Common Stock	Common Stock	NGM	12(g)	0001006424	000-28312
FFBI	First Federal Bancshares, Inc. Common Stock	Common Stock	NGM	12(g)	0001113107	000-30753
FFSX	First Federal Bankshares, Inc. Common Stock	Common Stock	NGM	12(g)	0001075348	000-25509
FFNM	First Federal of Northern Michigan Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0001128227	000-31957
FFBC	First Financial Bancorp. Common Stock	Common Stock	NGS	12(g)	0000708955	000-12379
FFIN	First Financial Bankshares, Inc. Common Stock	Common Stock	NGS	12(g)	0000036029	000-07674
THFF	First Financial Corporation Indiana Common Stock	Common Stock	NGS	12(g)	0000714562	000-16758
FFCH	First Financial Holdings, Inc. Common Stock	Common Stock	NGS	12(g)	0000787075	000-17122
FFKY	First Financial Service Corporation Common Stock	Common Stock	NGM	12(g)	0000854395	000-18832
FFHS	First Franklin Corporation Common Stock	Common Stock	NGM	12(g)	0000742161	000-16362
FINB	First Indiana Corporation Common Stock	Common Stock	NGS	12(g)	0000789670	000-14354
FKFS	First Keystone Financial, Inc. Common Stock	Common Stock	NGM	12(g)	0000856751	000-25328
FMFC	First M & F Corporation Common Stock	Common Stock	NGS	12(g)	0000320387	000-09424
FMAR	First Mariner Bancorp Common Stock	Common Stock	NGM	12(g)	0000946090	000-21815
FRME	First Merchants Corporation Common Stock	Common Stock	NGS	12(g)	0000712534	000-17071
FRMEP	First Merchants Corporation First Merchants Capital Trust I - 8.75% Cumulative Trust Preferred Securities	Other Securities	NGS	12(g)	0000712534	000-17071
FMBI	First Midwest Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0000702325	000-10967
FMSB	First Mutual Bancshares, Inc. Common Stock	Common Stock	NGM	12(g)	0001098337	000-28261
FNSC	First National Bancshares Inc (SC) Common Stock	Common Stock	NGM	12(g)	0001095274	000-30523
FNLC	First National Lincoln Corporation Common Stock	Common Stock	NGS	12(g)	0000765207	000-26589
FNFG	First Niagara Financial Group Inc. Common Stock	Common Stock	NGS	12(g)	0001051741	000-23975
FNFI	First Niles Financial, Inc. Common Stock	Common Stock	NCM	12(g)	0001065823	000-24849
FOBB	First Oak Brook Bancshares, Inc. Common Stock	Common Stock	NGS	12(g)	0000717837	000-14468
FLIC	First of Long Island Corporation (The) Common Stock	Common Stock	NCM	12(g)	0000740663	000-12220
FPTB	First Pactrust Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0001169770	000-49806
FPFC	First Place Financial Corp. Common Stock	Common Stock	NGS	12(g)	0001068912	000-25049
FRGB	First Regional Bancorp Common Stock	Common Stock	NGM	12(g)	0000356708	000-10232
FRCCP	First Republic Preferred Capital Corporation Preferred Stock	Preferred Stock	NGM	12(g)	0001143834	000-33461
FRCCO	First Republic Preferred Capital Corporation Preferred Stock	Preferred Stock	NGM	12(g)	0001143834	000-33461
FSGI	First Security Group, Inc. Common Stock	Common Stock	NGS	12(g)	0001138817	000-49747
FSBK	First South Bancorp Inc Common Stock	Common Stock	NGS	12(g)	0001027183	000-22219
FSNM	First State Bancorporation Common Stock	Common Stock	NGS	12(g)	0000897861	001-12487
FSTF	First State Financial Corporation Common Stock	Common Stock	NGM	12(g)	0001282582	000-50992
FUNC	First United Corporation Common Stock	Common Stock	NGM	12(g)	0000763907	000-14237
FBMI	Firstbank Corporation Common Stock	Common Stock	NGS	12(g)	0000778972	000-14209

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
FBNW	FirstBank NW Corp. Common Stock	Common Stock	NGM	12(g)	0001035513	000-22435
FCFC	FirstCity Financial Corporation Common Stock	Common Stock	NGS	12(g)	0000828678	033-19694
FMER	FirstMerit Corporation Common Stock	Common Stock	NGS	12(g)	0000354869	000-10161
FSRV	FirstService Corporation Subordinate Voting Shares	Common Stock	NGS	12(g)	0000913353	000-24762
FSTW	Firstwave Technologies Inc. Common Stock	Common Stock	NCM	12(g)	0000897078	000-21202
FISV	Fiserv, Inc. Common Stock	Common Stock	NGS	12(g)	0000798354	000-14948
FSCI	Fisher Communications, Inc. Common Stock	Common Stock	NGM	12(g)	0001034669	000-22439
FLAG	FLAG Financial Corporation Common Stock	Common Stock	NGS	12(g)	0000897509	000-24532
FLML	Flamel Technologies S.A. American Depositary Shares	American Depositary Shares	NGM	12(g)	0001012477	000-28508
FLDR	Flanders Corporation Common Stock	Common Stock	NGS	12(g)	0000799526	000-27958
FLXS	Flexsteel Industries, Inc. Common Stock	Common Stock	NGM	12(g)	0000037472	000-05151
FLEX	Flextronics International Ltd. Ordinary Shares	Ordinary Shares	NGS	12(g)	0000866374	000-23354
FLIR	FLIR Systems, Inc. Common Stock	Common Stock	NGS	12(g)	0000354908	000-21918
FLOW	Flow International Corporation Common Stock	Common Stock	NGM	12(g)	0000713002	000-12448
FFIC	Flushing Financial Corporation Common Stock	Common Stock	NGS	12(g)	0000923139	000-24272
FMCO	FMS Financial Corporation Common Stock	Common Stock	NGM	12(g)	0000839845	000-17353
FNBP	FNB Corporation Common Stock	Common Stock	NGS	12(g)	0001010961	000-24141
FNBF	FNB Financial Services Corporation Common Stock	Common Stock	NGM	12(g)	0000742679	000-13086
FNBN	FNB United Corp. Common Stock	Common Stock	NGS	12(g)	0000764811	000-13823
FCSE	FOCUS Enhancements, Inc. Common Stock	Common Stock	NCM	12(g)	0000884719	001-11860
FMCN	Focus Media Holding Limited Sponsored American Depositary Receipt (Cayman Islands)	American Depositary Shares	NGM	12(g)	0001330017	000-51387
FONR	Fonar Corporation Common Stock	Common Stock	NCM	12(g)	0000355019	000-10248
VIFLD	Food Technology Service, Inc. New Common Stock	Common Stock	NCM	12(g)	0000868267	000-19047
FMTI	Forbes Medi-Tech Inc. Common Share	Common Stock	NGM	12(g)	0001087477	000-30076
FORG	Forgent Networks Inc Common Stock	Common Stock	NGM	12(g)	0000884144	000-20008
FORM	FormFactor, Inc. FormFactor, Inc. Common Stock	Common Stock	NGS	12(g)	0001039399	000-50307
FORTY	Formula Systems (1985) Ltd. American Depositary Shares	American Depositary Shares	NGM	12(g)	0001045986	000-29442
FORR	Forrester Research, Inc. Common Stock	Common Stock	NGS	12(g)	0001023313	000-21433
FNET	FortuNet, Inc. Common Stock	Common Stock	NGM	12(g)	0001337899	000-51703
FWRD	Forward Air Corporation Common Stock	Common Stock	NGS	12(g)	0000912728	000-22490
FORD	Forward Industries, Inc. Common Stock	Common Stock	NCM	12(g)	0000038264	000-06669
FOSL	Fossil, Inc. Common Stock	Common Stock	NGS	12(g)	0001091667	000-19848
FWLT	Foster Wheeler Ltd. (Bermuda)	Common Stock	NGS	12(g)	0001130385	000-50740
FWLTW	Foster Wheeler Ltd. Class A Warrants 9/24/2009 (Bermuda)	Warrant	NGS	12(g)	0001130385	000-50740
FWLTZ	Foster Wheeler Ltd. Warrants B 9/24/2007 (Bermuda)	Warrant	NGS	12(g)	0001130385	000-50740
FDRY	Foundry Networks, Inc. Common Stock	Common Stock	NGS	12(g)	0001090071	000-26689
FOXH	FoxHollow Technologies, Inc. Common Stock	Common Stock	NGS	12(g)	0001217688	000-50998
FPBI	FPB Bancorp, Inc. Common Stock	Common Stock	NCM	12(g)	0001162245	000-33351
FPIC	FPIC Insurance Group, Inc. Common Stock	Common Stock	NGS	12(g)	0001010247	001-11983
FBTX	Franklin Bank Corp. Common Stock	Common Stock	NGS	12(g)	0001207070	000-50518
FCMC	Franklin Credit Management Corp Common Stock	Common Stock	NGM	12(g)	0000831246	000-17771

Exhibit A: List of Securities whose Regis[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
FELE	Franklin Electric Co., Inc. Common Stock	Common Stock	NGS	12(g)	0000038725	000-00362
FRED	Fred's, Inc. Common Stock	Common Stock	NGS	12(g)	0000724571	000-19288
FREEW	FreeSeas Inc. Warrant W 7/29/2009	Warrant	NCM	12(g)	0001325159	000-51672
FREEZ	FreeSeas Inc. Warrant Z 7/29/2011	Warrant	NCM	12(g)	0001325159	000-51672
FREE	FreeSeas Inc. Common Stock	Common Stock	NCM	12(g)	0001325159	000-51672
RAIL	FreightCar America, Inc. Common Stock	Common Stock	NGS	12(g)	0001320854	000-51237
FRNT	Frontier Airlines Holdings, Inc. Common Stock	Common Stock	NGM	12(g)	0000921929	000-24126
FTBK	Frontier Financial Corporation Common Stock	Common Stock	NGS	12(g)	0000716457	000-15540
FFEX	Frozen Food Express Industries, Inc. Common Stock	Common Stock	NGM	12(g)	0000039273	001-10006
FSII	FSI International, Inc. Common Stock	Common Stock	NGM	12(g)	0000841692	000-17276
FCEL	FuelCell Energy, Inc. Common Stock	Common Stock	NGM	12(g)	0000886128	001-14204
FTEK	Fuel-Tech, N.V. Common Stock	Common Stock	NGM	12(g)	0000846913	000-21724
FULT	Fulton Financial Corporation Common Stock	Common Stock	NGS	12(g)	0000700564	000-10587
FNDT	Fundtech Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0001054836	000-29634
FMDAY	Futuremedia Public Limited Company American Depositary Shares	American Depositary Shares	NCM	12(g)	0000906476	000-21978
FXEN	FX Energy, Inc. Common Stock	Common Stock	NGM	12(g)	0000907649	000-25386
GKSR	G&K Services, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0000039648	000-04063
WILC	G. Willi-Food International, Ltd. Ordinary Shares	Ordinary Shares	NCM	12(g)	0001030997	000-29256
GAIA	Gaiam, Inc. Common Stock	Common Stock	NGM	12(g)	0001089872	000-27517
HIST	Gallery of History, Inc. Common Stock	Common Stock	NCM	12(g)	0000763730	000-13757
GMTC	GameTech International, Inc. Common Stock	Common Stock	NGM	12(g)	0001045014	000-23401
GPIC	Gaming Partners International Corporation Common Stock	Common Stock	NGM	12(g)	0000918580	000-23588
GMTN	Gander Mountain Company Common Stock	Common Stock	NGM	12(g)	0001277475	000-50659
GRMN	Garmin Ltd. Common Stock	Common Stock	NGS	12(g)	0001121788	000-31983
GBTS	Gateway Financial Holdings, Inc. Common Stock	Common Stock	NGM	12(g)	0001156953	000-33223
GBTB	GB&T Bancshares Common Stock	Common Stock	NGS	12(g)	0001061068	000-24203
GEHL	Gehl Company Common Stock	Common Stock	NGS	12(g)	0000856386	000-18110
GEMP	Gemplus International S.A. American Depositary Shares	American Depositary Shares	NGS	12(g)	0001128749	000-31052
GMST	Gemstar-TV Guide International Inc. Common Stock	Common Stock	NGS	12(g)	0000923282	000-24218
GENR	Genaera Corporation Common Stock	Common Stock	NCM	12(g)	0000880431	000-19651
GSTL	Genco Shipping & Trading Limited Common Stock	Common Stock	NGM	12(g)	0001326200	000-51442
GLGC	Gene Logic Inc. Common Stock	Common Stock	NGM	12(g)	0001043914	000-23317
GNLB	Genelabs Technologies, Inc. Common Stock	Common Stock	NCM	12(g)	0000874443	000-19222
GNCMA	General Communication, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0000808461	000-15279
GNBT	Generex Biotechnology Corporation Common Stock	Common Stock	NCM	12(g)	0001059784	000-25169
GHCI	Genesis HealthCare Corporation Common Stock	Common Stock	NGS	12(g)	0001236736	000-50351
GNSS	Genesis Microchip Inc. Common Stock	Common Stock	NGM	12(g)	0001161396	000-33477
GNSY	Genesys S.A. American Depositary Shares	American Depositary Shares	NGM	12(g)	0001125276	000-31134
GENE	Genetic Technologies Ltd Sponsored ADR	American Depositary Shares	NGM	12(g)	0001166272	000-51504
GTOP	Genitope Corporation Common Stock	Common Stock	NGM	12(g)	0001028358	000-50425
GLYT	Genlyte Group Incorporated (The) Common Stock	Common Stock	NGS	12(g)	0000833076	000-16960

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
GHDX	Genomic Health, Inc. Common Stock	Common Stock	NGM	12(g)	0001131324	000-51541
GPRO	Gen-Probe Incorporated Common Stock	Common Stock	NGS	12(g)	0000820237	001-31279
GNTA	Genta Incorporated Common Stock	Common Stock	NGM	12(g)	0000880643	000-19635
GETI	GenTek Inc. Common Stock	Common Stock	NGS	12(g)	0001077552	000-29163
GNTX	Gentex Corporation Common Stock	Common Stock	NGS	12(g)	0000355811	000-10235
GENT	Gentium SpA Gentium SpA American Depositary Shares ("ADSs")	American Depositary Shares	NGM	12(g)	0001314755	000-51341
GTIV	Gentiva Health Services, Inc. Common Stock	Common Stock	NGS	12(g)	0001096142	001-15669
GNVC	GenVec, Inc. Common Stock	Common Stock	NGM	12(g)	0000934473	000-24469
GENZ	Genzyme Corporation Common Stock	Common Stock	NGS	12(g)	0000732485	000-14680
GMET	GeoMet, Inc. Common Stock	Common Stock	NGM	12(g)	0001352302	000-52155
GEOI	GeoResources, Inc. Common Stock	Common Stock	NCM	12(g)	0000041023	000-08041
GABC	German American Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0000714395	000-11244
GERN	Geron Corporation Common Stock	Common Stock	NGM	12(g)	0000886744	000-20859
GVHR	Gevity HR, Inc. Common Stock	Common Stock	NGS	12(g)	0001035185	000-22701
GFIG	GFI Group Inc. Common Stock	Common Stock	NGS	12(g)	0001292426	000-51103
ROCK	Gibraltar Industries, Inc. Common Stock	Common Stock	NGS	12(g)	0000912562	000-22462
GGBMZ	Gigabeam Corporation Class Z Warrant 1/28/2011	Warrant	NCM	12(g)	0001279831	000-50985
GGBM	Gigabeam Corporation Common Stock	Common Stock	NCM	12(g)	0001279831	000-50985
GGBMW	Gigabeam Corporation Warrant 10/14/2009	Warrant	NCM	12(g)	0001279831	000-50985
GIGM	GigaMedia Limited Ordinary Shares	Ordinary Shares	NGM	12(g)	0001105101	000-30540
GIGA	Giga-tronics Incorporated Common Stock	Common Stock	NCM	12(g)	0000719274	000-12719
GIII	G-III Apparel Group, LTD. Common Stock	Common Stock	NGM	12(g)	0000821002	000-18183
GILT	Gilat Satellite Networks Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0000897322	000-21218
GILD	Gilead Sciences, Inc. Common Stock	Common Stock	NGS	12(g)	0000882095	000-19731
GIVN	Given Imaging Ltd. Ordinary shares	Ordinary Shares	NGM	12(g)	0001126140	000-33133
GBCI	Glacier Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0000868671	000-18911
GLAD	Gladstone Capital Corporation Common Stock	Common Stock	NGS	12(g)	0001143513	000-33117
GOODP	Gladstone Commercial Corporation 7.75% Series A Cumulative Convertible Preferred Stock	Preferred Stock	NGM	12(g)	0001234006	000-106024
GOOD	Gladstone Commercial Corporation Common stock	Common Stock	NGM	12(g)	0001234006	000-106024
GAIN	Gladstone Investment Corporation Common Stock	Common Stock	NGS	12(g)	0001321741	000-51233
GLBZ	Glen Burnie Bancorp Common Stock	Common Stock	NCM	12(g)	0000890066	000-24047
GEMS	Glenayre Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0000808918	000-15761
GLBC	Global Crossing Ltd. New Common Stock (Bermuda)	Common Stock	NGM	12(g)	0001061322	001-16201
GEPT	Global ePoint, Inc. Common Stock	Common Stock	NCM	12(g)	0000896195	000-21738
GISX	Global Imaging Systems, Inc. Common Stock	Common Stock	NGS	12(g)	0001050167	000-24373
GLBL	Global Industries, Ltd. Common Stock	Common Stock	NGS	12(g)	0000895663	000-21086
GPTX	Global Payment Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0000933020	000-25148
GSOL	Global Sources Ltd. Common Stock	Common Stock	NGS	12(g)	0001110650	000-30678
GNET	Global Traffic Network, Inc. Common Stock	Common Stock	NGM	12(g)	0001344907	000-51838
GCOM	Globecomm Systems Inc. Common Stock	Common Stock	NGM	12(g)	0001031028	000-22839

Exhibit A: List of Securities whose Regis[redacted]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
GMKT	Gmarket Inc. American Depositary Shares	American Depositary Shares	NGM	12(g)	0001365241	000-52060
GMXR	GMX Resources, Inc. Common Stock	Common Stock	NGM	12(g)	0001127342	000-32325
GOAM	GoAmerica, Inc. New Common Stock	Common Stock	NCM	12(g)	0001101268	000-29359
GLNG	Golar Lng Ltd Golar Lng Ltd	Common Stock	NGS	12(g)	0001207179	000-50113
GKIS	Gold Kist Inc. Common Stock	Common Stock	NGS	12(g)	0001292215	000-50925
GLDC	Golden Enterprises, Inc. Common Stock	Common Stock	NGM	12(g)	0000042228	000-04339
GLDN	Golden Telecom, Inc. Common Stock	Common Stock	NGS	12(g)	0001089874	000-27423
GFSI	Goldleaf Financial Solutions, Inc. Common Stock	Common Stock	NCM	12(g)	0001069469	000-25959
GGXY	Golf Galaxy, Inc. Common Stock	Common Stock	NGS	12(g)	0001327098	000-51460
GOLF	Golfsmith International Holdings, Inc. Common Stock	Common Stock	NGM	12(g)	0001202273	000-52041
GTIM	Good Times Restaurants Inc. Common Stock	Common Stock	NCM	12(g)	0000825324	000-18590
GOOG	Google Inc. Class A Common Stock	Common Stock	NGS	12(g)	0001288776	000-50726
GPCB	Gpc Biotech Ag American Depositary Shares	American Depositary Shares	NGM	12(g)	0001117629	000-50825
GRIN	Grand Toys International Limited American Depositary Shares	American Depositary Shares	NCM	12(g)	0001285066	000-22372
GCFB	Granite City Food & Brewery Ltd	Common Stock	NCM	12(g)	0001048620	000-29643
GRVY	GRAVITY Co., Ltd. American Depository Shares	American Depositary Shares	NGM	12(g)	0001313310	000-51138
PEDE	Great Pee Dee Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0001046587	000-23521
GSBC	Great Southern Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0000854560	000-18082
GSBCP	Great Southern Bancorp, Inc. Great Southern Capital Trust I - 9.00% Cumulative Trust Preferred Securities	Other Securities	NGS	12(g)	0000854560	000-18082
WOLF	Great Wolf Resorts, Inc. Common Stock	Common Stock	NGM	12(g)	0001294538	000-51064
GAFC	Greater Atlantic Financial Corp. Common Stock	Common Stock	NGM	12(g)	0001082735	000-26467
GBBK	Greater Bay Bancorp Common Stock	Common Stock	NGS	12(g)	0000775473	000-25034
GBBKO	Greater Bay Bancorp GBB Capital V - 9.00% Cumulative Trust Preferred Securities	Other Securities	NGS	12(g)	0000775473	000-25034
GFLS	Greater Community Bancorp Common Stock	Common Stock	NGM	12(g)	0000773845	000-14294
GFLSO	Greater Community Bancorp Cumulative Trust Preferred Securities	Other Securities	NGM	12(g)	0000773845	000-14294
GMCR	Green Mountain Coffee, Roasters Inc. Common Stock	Common Stock	NGS	12(g)	0000909954	001-12340
GPRE	Green Plains Renewable Energy, Inc. Common Stock	Common Stock	NCM	12(g)	0001309402	000-51677
GCBC	Greene County Bancorp, Inc. Common Stock	Common Stock	NCM	12(g)	0001070524	000-25165
GCBS	Greene County Bancshares Inc Common Stock	Common Stock	NGS	12(g)	0000764402	000-14289
SRVY	Greenfield Online, Inc. Common Stock	Common Stock	NGM	12(g)	0001108906	000-50698
GVBK	Greenville First Bancshares Inc. Common Stock	Common Stock	NGM	12(g)	0001090009	000-27719
GRIF	Griffin Land & Nurseries, Inc. Common Stock	Common Stock	NGM	12(g)	0001037390	000-29288
GRIL	Grill Concepts Inc. Common Stock	Common Stock	NCM	12(g)	0000895041	000-23326
GGAL	Grupo Financiero Galicia S.A. American Depositary Shares	American Depositary Shares	NCM	12(g)	0001114700	000-30852
GSLA	GS Financial Corp. Common Stock	Common Stock	NGM	12(g)	0001029630	000-22269
GSIC	GSI Commerce, Inc. Common Stock	Common Stock	NGS	12(g)	0000828750	000-16611
GSIG	GSI Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001076930	000-25705
GTCB	GTC Biotherapeutics Inc Common Stock	Common Stock	NGM	12(g)	0000904973	000-21794
GTSI	GTSI Corp. Common Stock	Common Stock	NGM	12(g)	0000850483	000-19394

Exhibit A: List of Securities whose Regis[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
GTXI	GTx, Inc. Common Stock	Common Stock	NGM	12(g)	0001260990	000-50549
GFED	Guaranty Federal Bancshares, Inc. Common Stock	Common Stock	NGM	12(g)	0001046203	000-23325
GTRC	Guitar Center, Inc. Common Stock	Common Stock	NGS	12(g)	0001021113	000-22207
GIFI	Gulf Island Fabrication, Inc. Common Stock	Common Stock	NGS	12(g)	0001031623	000-22303
GMRK	GulfMark Offshore, Inc. Common Stock	Common Stock	NGS	12(g)	0001030749	000-22853
GPOR	Gulfport Energy Corporation Common Stock	Common Stock	NGS	12(g)	0000874499	000-19514
GYMB	Gymboree Corporation (The) Common Stock	Common Stock	NGS	12(g)	0000786110	000-21250
GYRO	Gyrodyne Company of America, Inc. Common Stock	Common Stock	NCM	12(g)	0000044689	000-01684
HEES	H&E Equipment Services, Inc. Common Stock	Common Stock	NGS	12(g)	0001339605	000-51759
HABC	Habersham Bancorp Common Stock	Common Stock	NGM	12(g)	0000754597	000-13153
HAIN	Hain Celestial Group, Inc. (The) Common Stock	Common Stock	NGS	12(g)	0000910406	000-22818
HAMP	Hampshire Group, Limited Common Stock	Common Stock	NGM	12(g)	0000887150	000-20201
HNAB	Hana Biosciences, Inc. Common Stock	Common Stock	NGM	12(g)	0001140028	000-50782
HANA	hanarotelecom incorporated American Depositary Shares	American Depositary Shares	NGS	12(g)	0001108838	001-15012
HBHC	Hancock Holding Company Common Stock	Common Stock	NGS	12(g)	0000750577	000-13089
HAFC	Hanmi Financial Corporation Common Stock	Common Stock	NGS	12(g)	0001109242	000-30421
HANS	Hansen Natural Corporation Common Stock	Common Stock	NCM	12(g)	0000865752	000-18761
HARB	Harbor Florida Bancshares Inc Common Stock	Common Stock	NGS	12(g)	0001029407	000-22817
HDNG	Hardinge, Inc. Common Stock	Common Stock	NGS	12(g)	0000313716	000-15760
HGIC	Harleysville Group Inc. Common Stock	Common Stock	NGS	12(g)	0000792013	000-14697
HNBC	Harleysville National Corporation Common Stock	Common Stock	NGS	12(g)	0000702902	000-15237
HARL	Harleysville Savings Bank Common Stock	Common Stock	NGM	12(g)	0001107160	000-29709
HLIT	Harmonic Inc. Common Stock	Common Stock	NGM	12(g)	0000851310	000-25826
HWFG	Harrington West Financial Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001063997	000-50066
TINY	Harris & Harris Group, Inc. Common Stock	Common Stock	NGM	12(g)	0000893739	000-11576
HPOL	Harris Interactive, Inc. Common Stock	Common Stock	NGS	12(g)	0001094238	000-27577
HBIO	Harvard Bioscience, Inc. Common Stock	Common Stock	NGM	12(g)	0001123494	000-31923
HRVE	Harvey Electronics, Inc. Common Stock	Common Stock	NCM	12(g)	0000046043	000-14626
HAST	Hastings Entertainment, Inc. Common Stock	Common Stock	NGM	12(g)	0001054579	000-24381
HAUP	Hauppauge Digital, Inc. Common Stock	Common Stock	NGM	12(g)	0000930803	001-13550
HWKN	Hawkins, Inc. Common Stock	Common Stock	NGM	12(g)	0000046250	000-07647
HAYZ	Hayes Lemmerz International, Inc.	Common Stock	NGM	12(g)	0001237941	000-20932
HGRD	Health Grades, Inc. Common Stock	Common Stock	NCM	12(g)	0001027915	000-22019
HAXS	HealthAxis Inc. Common Stock	Common Stock	NCM	12(g)	0000768892	000-13591
HCSG	Healthcare Services Group, Inc. Common Stock	Common Stock	NGS	12(g)	0000731012	000-12015
HCTL	Healthcare Technologies Ltd. Ordinary Shares	Ordinary Shares	NCM	12(g)	0000835688	000-17788
HLEX	HealthExtras, Inc. Common Stock	Common Stock	NGS	12(g)	0001090403	000-31014
HSTM	HealthStream, Inc. Common Stock	Common Stock	NGM	12(g)	0001095565	000-27701
HTRN	HealthTronics, Inc. Common Stock	Common Stock	NGS	12(g)	0001018871	000-30406
HWAY	Healthways, Inc. Common Stock	Common Stock	NGS	12(g)	0000704415	000-19364
HTLD	Heartland Express, Inc. Common Stock	Common Stock	NGS	12(g)	0000799233	000-15087
HTLF	Heartland Financial USA, Inc. Common Stock	Common Stock	NGS	12(g)	0000920112	001-15393

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Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
HEII	HEI, Inc. Common Shares	Common Stock	NGM	12(g)	0000351298	000-10078
HSII	Heidrick & Struggles International, Inc. Common Stock	Common Stock	NGS	12(g)	0001066605	000-25837
HELE	Helen of Troy Limited Common Stock	Common Stock	NGS	12(g)	0000916789	000-23312
HSIC	Henry Schein, Inc. Common Stock	Common Stock	NGS	12(g)	0001000228	000-27078
HERO	Hercules Offshore, Inc. Common Stock	Common Stock	NGS	12(g)	0001330849	000-51582
HTGC	Hercules Technology Growth Capital, Inc. Common Stock	Common Stock	NGM	12(g)	0001280784	814-00792
HTBK	Heritage Commerce Corp Common Stock	Common Stock	NGS	12(g)	0001053352	000-23877
HFWA	Heritage Financial Corporation Common Stock	Common Stock	NGS	12(g)	0001046025	000-29480
HBOS	Heritage Financial Group Common Stock	Common Stock	NGM	12(g)	0001320002	000-51305
HEOP	Heritage Oaks Bancorp (CA) Common Stock	Common Stock	NCM	12(g)	0000921547	000-25020
HRLY	Herley Industries, Inc. Common Stock	Common Stock	NGM	12(g)	0000047035	000-05411
MLHR	Herman Miller, Inc. Common Stock	Common Stock	NGS	12(g)	0000066382	001-15141
HSKA	Heska Corporation Common Stock	Common Stock	NCM	12(g)	0001038133	000-22427
HFFC	HF Financial Corp. Common Stock ($0.01 Par Value)	Common Stock	NGM	12(g)	0000881790	000-19772
HIFN	hi/fn, inc. Common Stock	Common Stock	NGM	12(g)	0001065246	000-24765
HIBB	Hibbett Sporting Goods, Inc. Common Stock	Common Stock	NGS	12(g)	0001017480	000-20969
HTCO	Hickory Tech Corporation Common Stock	Common Stock	NGM	12(g)	0000766561	000-13721
HIHO	Highway Holdings Limited Common Stock	Common Stock	NCM	12(g)	0001026785	000-28990
HLND	Hiland Partners, LP Common Units	Limited Partnership	NGS	12(g)	0001306527	000-51120
HINT	Hill International, Inc. Common Stock	Common Stock	NGM	12(g)	0001287808	000-50781
HINTU	Hill International, Inc. Unit Expires 4/23/2008	Unit	NGM	12(g)	0001287808	000-50781
HINTW	Hill International, Inc. Warrant Expires 4/23/2008	Warrant	NGM	12(g)	0001287808	000-50781
HIMX	Himax Technologies, Inc. American Depositary Shares	American Depositary Shares	NGS	12(g)	0001342338	000-51847
HORT	Hines Horticulture, Inc. Common Stock	Common Stock	NGM	12(g)	0001003515	000-24439
HRSH	Hirsch International Corp. Class A Common Stock	Common Stock	NCM	12(g)	0000915909	000-23434
HITK	Hi-Tech Pharmacal Co., Inc. Common Stock	Common Stock	NGS	12(g)	0000887497	000-20424
HITT	Hittite Microwave Corporation Common Stock	Common Stock	NGS	12(g)	0001130866	000-51448
HMNF	HMN Financial, Inc. Common Stock	Common Stock	NGM	12(g)	0000921183	000-24100
HMSY	HMS Holdings Corp	Common Stock	NGS	12(g)	0001196501	000-20946
HOKU	Hoku Scientific, Inc. Common Stock	Common Stock	NGM	12(g)	0001178336	000-51458
HEPH	Hollis-Eden Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0000899394	000-24672
HOLL	Hollywood Media Corp. Common Stock	Common Stock	NGM	12(g)	0000912544	000-22908
HOLX	Hologic, Inc. Common Stock	Common Stock	NGS	12(g)	0000859737	000-18281
HOMB	Home BancShares, Inc. Common Stock	Common Stock	NGM	12(g)	0001331520	000-51904
HCFC	Home City Financial Corporation Common Stock	Common Stock	NCM	12(g)	0001022103	000-21809
HOMF	Home Federal Bancorp Common Stock	Common Stock	NGM	12(g)	0000867493	000-18847
HOME	Home Federal Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0001283858	000-50901
HSOA	Home Solutions of America, Inc. Common Stock	Common Stock	NGM	12(g)	0000855424	000-22388
HOFT	Hooker Furniture Corporation Common Stock	Common Stock	NCM	12(g)	0001077688	000-25349
HFBC	HopFed Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0001041550	000-23667
HBNC	Horizon Bancorp (IN) Common Stock	Common Stock	NCM	12(g)	0000706129	000-10792
HRZB	Horizon Financial Corp. Common Stock	Common Stock	NGS	12(g)	0001002682	000-27062

Exhibit A: List of Securities whose Regi[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
HORC	Horizon Health Corporation Common Stock	Common Stock	NGS	12(g)	0000935007	001-13626
HOFF	Horizon Offshore, Inc. Common Stock	Common Stock	NGM	12(g)	0001051431	001-16857
HOTT	Hot Topic, Inc. Common Stock	Common Stock	NGS	12(g)	0001017712	000-28784
HOTJ	House of Taylor Jewelry, Inc. Common Stock	Common Stock	NCM	12(g)	0001069249	000-25377
SOLD	HouseValues, Inc. Common Stock	Common Stock	NGS	12(g)	0001298978	000-51032
HWCC	Houston Wire & Cable Company Common Stock	Common Stock	NGM	12(g)	0001356949	000-52046
HOVNP	Hovnanian Enterprises Inc Dep Shr Srs A Pfd	Depository Receipt	NGM	12(g)	0000357294	000-32447
HUBG	Hub Group, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0000940942	000-27754
HCBK	Hudson City Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0000921847	000-26001
HHGP	Hudson Highland Group, Inc. COMMON STOCK	Common Stock	NGM	12(g)	0001210708	000-50129
HDSN	Hudson Technologies, Inc. Common Stock	Common Stock	NCM	12(g)	0000925528	000-13412
HGSI	Human Genome Sciences, Inc. Common Stock	Common Stock	NGM	12(g)	0000901219	000-22962
HUMC	Hummingbird Ltd Common Shares	Common Stock	NGM	12(g)	0000919548	000-23464
HBAN	Huntington Bancshares Incorporated Common Stock	Common Stock	NGS	12(g)	0000049196	000-02525
HPCCP	Huntington Preferred Capital, Inc. Class C Preferred Stock	Preferred Stock	NGM	12(g)	0001140657	000-33243
HURC	Hurco Companies, Inc. Common Stock	Common Stock	NGS	12(g)	0000315374	000-09143
HURN	Huron Consulting Group Inc. Common Stock	Common Stock	NGS	12(g)	0001289848	000-50976
HRAY	Hurray! Holding Co., Ltd. American Depositary Shares	American Depositary Shares	NGM	12(g)	0001294435	000-51116
HTCH	Hutchinson Technology Incorporated Common Stock	Common Stock	NGS	12(g)	0000772897	000-14709
HYDL	Hydril Common Stock	Common Stock	NGS	12(g)	0001116030	000-31579
HYGS	Hydrogenics Corporation Common Shares	Common Stock	NGM	12(g)	0001119985	000-31815
HYSL	Hyperion Solutions Corporation Common Stock	Common Stock	NGS	12(g)	0001001113	000-26934
HYTM	Hythiam, Inc. Common Stock	Common Stock	NGM	12(g)	0001136174	000-51181
ITWO	i2 Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0001009304	000-28030
IACI	IAC/InterActiveCorp Common Stock	Common Stock	NGS	12(g)	0000891103	000-20570
IACIW	IAC/InterActiveCorp Warrants 2/4/2009	Warrant	NGS	12(g)	0000891103	000-20570
IACIZ	IAC/InterActiveCorp Warrants 2/4/2009	Warrant	NGS	12(g)	0000891103	000-20570
IBAS	iBasis, Inc. Common Stock	Common Stock	NGM	12(g)	0001091756	000-27127
IBKC	IBERIABANK Corporation Common Stock	Common Stock	NGS	12(g)	0000933141	000-25756
IBIS	Ibis Technology Corporation Common Stock	Common Stock	NGM	12(g)	0000855182	000-23150
ICAB	i-CABLE Communications Limited American Depositary Shares	American Depositary Shares	NGM	12(g)	0001097020	000-30350
ICAD	icad inc. Common Stock	Common Stock	NCM	12(g)	0000749660	001-9341
ICGN	Icagen, Inc. Common Stock	Common Stock	NGM	12(g)	0000902622	000-50676
ICOC	ICO, Inc. Common Stock	Common Stock	NGM	12(g)	0000353567	000-10068
ICOCZ	ICO, Inc. Depository Shares	Depository Receipt	NGM	12(g)	0000353567	000-10068
ICLR	ICON plc American Depositary Shares	American Depositary Shares	NGS	12(g)	0001060955	000-29714
ICON	Iconix Brand Group, Inc. Common Stock	Common Stock	NGM	12(g)	0000857737	000-10593
ICOP	ICOP Digital, Inc. Common Stock	Common Stock	NCM	12(g)	0001094572	000-27321
ICOPW	ICOP Digital, Inc. Warrant	Warrant	NCM	12(g)	0001094572	000-27321
ICOS	ICOS Corporation Common Stock	Common Stock	NGS	12(g)	0000874294	000-19171
IVIS	ICOS Vision Systems Corporation N.V. Common Stock	Common Stock	NGM	12(g)	0001049253	000-29554
ICTG	ICT Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001013149	000-20807

Exhibit A: List of Securities whose Regis[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
ICTS	ICTS International N.V. Common Shares	Common Stock	NGM	12(g)	0001010134	000-28542
ICUI	ICU Medical, Inc. Common Stock	Common Stock	NGS	12(g)	0000883984	000-19974
IDIX	Idenix Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0001093649	000-49839
IDXX	IDEXX Laboratories, Inc. Common Stock	Common Stock	NGS	12(g)	0000874716	000-19271
IDMI	IDM Pharma, Inc. Common Stock	Common Stock	NGM	12(g)	0000822206	000-19591
IFLO	I-Flow Corporation Common Stock	Common Stock	NGM	12(g)	0000857728	000-18338
IGTE	iGate Corporation Common Stock	Common Stock	NGM	12(g)	0001024732	000-21755
IIVI	II-VI Incorporated Common Stock	Common Stock	NGS	12(g)	0000820318	000-16195
IKAN	Ikanos Communications, Inc. Common Stock	Common Stock	NGM	12(g)	0001219210	000-51532
IKNX	Ikonics Corporation	Common Stock	NCM	12(g)	0001083301	000-25727
ILMN	Illumina, Inc. Common Stock	Common Stock	NGM	12(g)	0001110803	000-30361
ILOG	ILOG S.A. American Depositary Shares	American Depositary Shares	NGS	12(g)	0001031140	000-29144
DISK	Image Entertainment, Inc. Common Stock	Common Stock	NGM	12(g)	0000216324	000-11071
ISNS	Image Sensing Systems, Inc. Common Stock	Common Stock	NCM	12(g)	0000943034	000-26056
IMNY	I-many, Inc. Common Stock	Common Stock	NGM	12(g)	0001104017	000-30883
IMAX	Imax Corporation Common Stock	Common Stock	NGM	12(g)	0000921582	000-24216
IMCL	ImClone Systems Incorporated Common Stock	Common Stock	NGS	12(g)	0000765258	000-19612
IMMR	Immersion Corporation Common Stock	Common Stock	NGM	12(g)	0001058811	000-27969
ICCC	ImmuCell Corporation Common Stock	Common Stock	NCM	12(g)	0000811641	000-15507
BLUD	Immucor, Inc. Common Stock	Common Stock	NGS	12(g)	0000736822	000-14820
IMMC	Immunicon Corporation Common Stock	Common Stock	NGM	12(g)	0001083132	000-50677
IMGN	ImmunoGen, Inc. Common Stock	Common Stock	NGM	12(g)	0000855654	000-17999
IMMU	Immunomedics, Inc. Common Stock	Common Stock	NGM	12(g)	0000722830	000-12104
IMCO	IMPCO Technologies, Inc Common Stock	Common Stock	NGM	12(g)	0000790708	000-16115
IPII	Imperial Industries, Inc. Common Stock	Common Stock	NCM	12(g)	0000049930	001-07190
IPSU	Imperial Sugar Company Common Stock	Common Stock	NGM	12(g)	0000831327	000-16674
IPSUW	Imperial Sugar Company Warrants 01/01/2008	Warrant	NGM	12(g)	0000831327	000-16674
ZCOM	Impreso, Inc. Common Stock	Common Stock	NCM	12(g)	0001108345	000-29883
MAIL	IncrediMail Ltd. Ordinary Shares	Ordinary Shares	NCM	12(g)	0001338940	000-51694
INCY	Incyte Corp. Common Stock	Common Stock	NGM	12(g)	0000879169	001-12400
INDB	Independent Bank Corp. Common Stock	Common Stock	NGS	12(g)	0000776901	000-19264
INDBN	Independent Bank Corp. Independent Capital Trust III - 8.625% Cumulative Trust Preferred Securities	Other Securities	NGS	12(g)	0000776901	000-19264
INDBM	Independent Bank Corp. Independent Capital Trust IV - 8.375% Cumulative Trust Preferred Securities	Other Securities	NGS	12(g)	0000776901	000-19264
IBCP	Independent Bank Corporation Common Stock	Common Stock	NGS	12(g)	0000039311	000-07818
IBCPO	Independent Bank Corporation IBC Capital Finance II - % Cumulative Trust Preferred Securities	Other Securities	NGS	12(g)	0000039311	000-07818
IDEV	Indevus Pharmaceuticals Inc.	Common Stock	NGM	12(g)	0000854222	000-18728
IINT	Indus International, Inc. Common Stock	Common Stock	NGM	12(g)	0001041333	000-22993
IDGR	Industrial Distribution Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001042351	001-13195
IDSA	Industrial Services of America, Inc. Common Stock	Common Stock	NCM	12(g)	0000004187	000-20979

Exhibit A: List of Securities whose Regis[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
NRGP	Inergy Holdings, L.P. Common Units	Limited Partnership	NGS	12(g)	0001228068	000-51304
NRGY	Inergy, L.P. Common Units Representing Limited Partnership Interests	Limited Partnership	NGS	12(g)	0001136352	000-32453
IFNY	Infinity Energy Resources, Inc. Common Stock	Common Stock	NGM	12(g)	0000822746	000-17204
IPCC	Infinity Property and Casualty Corporation Common Stock	Common Stock	NGS	12(g)	0001195933	000-50167
IFOX	Infocrossing, Inc. Common Stock	Common Stock	NGS	12(g)	0000893816	000-20824
INFS	InFocus Corporation Common Stock	Common Stock	NGM	12(g)	0000845434	000-18908
INFA	Informatica Corporation Common Stock	Common Stock	NGS	12(g)	0001080099	000-25871
INFT	Inforte Corp. Common Stock	Common Stock	NGM	12(g)	0001099944	000-29239
INSP	InfoSpace, Inc. Common Stock	Common Stock	NGS	12(g)	0001068875	000-25131
INFY	Infosys Technologies Limited American Depositary Shares	American Depositary Shares	NGS	12(g)	0001067491	000-25383
IUSA	infoUSA, Inc. Common Stock	Common Stock	NGS	12(g)	0000879437	000-19598
IVTA	InfoVista S.A. American Depositary Shares	American Depositary Shares	NGM	12(g)	0001117064	000-30838
IMKTA	Ingles Markets, Incorporated Class A Common Stock	Common Stock	NGM	12(g)	0000050493	000-14706
INHX	Inhibitex, Inc. Common Stock	Common Stock	NGM	12(g)	0001274913	000-50772
INOD	Innodata Isogen Inc Common Stock	Common Stock	NGM	12(g)	0000903651	000-22196
IOSP	Innospec Inc. Common Stock	Common Stock	NGM	12(g)	0001054905	000-51849
INOC	Innotrac Corporation Common Stock	Common Stock	NGM	12(g)	0001051114	000-23741
ISSC	Innovative Solutions and Support, Inc. Common Stock	Common Stock	NGS	12(g)	0000836690	000-31157
INVX	Innovex, Inc. Common Stock	Common Stock	NGM	12(g)	0000050601	000-13143
INNO	Innovo Group, Inc. Common Stock	Common Stock	NCM	12(g)	0000844143	000-18926
INPC	InPhonic, Inc. Common Stock	Common Stock	NGM	12(g)	0001133324	000-51023
NPLA	InPlay Technologies, Inc. Common Stock	Common Stock	NCM	12(g)	0001054070	001-15069
NSIT	Insight Enterprises, Inc. Common Stock	Common Stock	NGS	12(g)	0000932696	000-25092
IFUL	Insightful Corporation Common Stock	Common Stock	NCM	12(g)	0000895095	000-20992
ISIG	Insignia Systems, Inc. Common Stock	Common Stock	NCM	12(g)	0000875355	000-19380
INSU	Insituform Technologies, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0000353020	000-10786
INSM	Insmed, Inc. Common Stock	Common Stock	NGM	12(g)	0001104506	000-30739
ISPH	Inspire Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0001040416	000-31135
IIIN	Insteel Industries, Inc. Common Stock	Common Stock	NGM	12(g)	0000764401	001-09929
QUOT	Insure.com, Inc. Common Stock	Common Stock	NCM	12(g)	0001079996	000-26781
INSW	InsWeb Corporation Common Stock	Common Stock	NCM	12(g)	0001077370	000-26083
INTN	INTAC International Common Stock	Common Stock	NCM	12(g)	0001127439	000-32621
IBNK	Integra Bank Corporation Common Stock	Common Stock	NGM	12(g)	0000764241	000-13585
IART	Integra LifeSciences Holdings Corporation Common Stock	Common Stock	NGS	12(g)	0000917520	000-26224
ISYS	Integral Systems, Inc. Common Stock	Common Stock	NGS	12(g)	0000718130	000-18603
INMD	IntegraMed America, Inc. Common Stock	Common Stock	NGM	12(g)	0000885988	000-20260
IASG	Integrated Alarm Services Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001200022	000-50343
IDTI	Integrated Device Technology, Inc. Common Stock	Common Stock	NGS	12(g)	0000703361	000-12695
IESC	Integrated Electrical Services, Inc. Common Stock	Common Stock	NGM	12(g)	0001048268	001-13783
ISSI	Integrated Silicon Solution, Inc. Common Stock	Common Stock	NGM	12(g)	0000854701	000-23084
INTC	Intel Corporation Common Stock	Common Stock	NGS	12(g)	0000050863	000-06217

Exhibit A: List of Securities whose Regis[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
IPAR	Inter Parfums, Inc. Common Stock	Common Stock	NGS	12(g)	0000822663	000-16469
ININ	Interactive Intelligence, Inc. Common Stock	Common Stock	NGM	12(g)	0001083318	000-27385
ISWI	Interactive Systems Worldwide Inc. Common Stock	Common Stock	NCM	12(g)	0001025995	000-21831
INCX	Interchange Corporation Common Stock	Common Stock	NCM	12(g)	0001259550	000-50989
IFCJ	Interchange Financial Services Corporation Common Stock	Common Stock	NGS	12(g)	0000755933	001-10518
IDCC	InterDigital Communications Corp. Common Stock	Common Stock	NGS	12(g)	0000354913	001-11152
IFSIA	Interface, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0000715787	000-12016
INGR	Intergraph Corporation Common Stock	Common Stock	NGS	12(g)	0000351145	000-09722
IMGC	Intermagnetics General Corporation Common Stock	Common Stock	NGS	12(g)	0000351012	000-09968
ITMN	InterMune, Inc. Common Stock	Common Stock	NGM	12(g)	0001087432	000-29801
IAAC	International Assets Holding Corporation Common Stock	Common Stock	NCM	12(g)	0000913760	000-23554
LFINP	International Bancshares Corporation - Local Financial Capital Trust I - 9.00% Cumulative Trust Preferred Securities	Other Securities	NGS	12(g)	0000315709	000-09439
IBOC	International Bancshares Corporation Common Stock	Common Stock	NGS	12(g)	0000315709	000-09439
IDWK	International DisplayWorks, Inc. Common Stock	Common Stock	NGM	12(g)	0000866415	000-27002
ISCA	International Speedway Corporation Class A Common Stock	Common Stock	NGS	12(g)	0000051548	000-02384
ICGE	Internet Capital Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001085621	000-26929
ICCA	Internet Commerce Corp. Class A Common Stock	Common Stock	NCM	12(g)	0000894738	000-24996
IGLD	Internet Gold Golden Lines Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0001090159	000-30198
IIJI	Internet Initiative Japan, Inc. American Depositary Shares	American Depositary Shares	NGM	12(g)	0001090633	000-30204
ISSX	Internet Security Systems Inc Common Stock	Common Stock	NGS	12(g)	0001053148	000-23655
INPH	Interphase Corporation Common Stock	Common Stock	NGM	12(g)	0000728249	000-13071
INTX	Intersections, Inc. Common Stock	Common Stock	NGM	12(g)	0001095277	000-50580
ISIL	Intersil Corporation Class A Common Stock	Common Stock	NGS	12(g)	0001096325	000-29617
INTL	Inter-Tel, Incorporated Series A Common Stock	Common Stock	NGS	12(g)	0000350066	000-10211
IBCA	Intervest Bancshares Corp. Class A Common Stock	Common Stock	NGS	12(g)	0000927807	000-23377
IVII	Intervideo, Inc. Common Stock	Common Stock	NGM	12(g)	0001114084	000-49809
INTV	InterVoice Inc. Common Stock	Common Stock	NGS	12(g)	0000764244	001-15045
IWOV	Interwoven, Inc. Common Stock	Common Stock	NGM	12(g)	0001042431	000-27389
INTT	inTest Corporation Common Stock	Common Stock	NGM	12(g)	0001036262	000-22529
IVAC	Intevac, Inc. Common Stock	Common Stock	NGM	12(g)	0001001902	000-26946
ILSE	IntraLase Corp. Common Stock	Common Stock	NGM	12(g)	0001163848	000-50939
ITRA	Intraware, Inc. Common Stock	Common Stock	NCM	12(g)	0001025134	000-25249
INGN	Introgen Therapeutics, Inc. Common Stock	Common Stock	NGM	12(g)	0001018710	000-21291
INTZ	Intrusion Inc. New Common Stock	Common Stock	NCM	12(g)	0000736012	000-20191
INTU	Intuit Inc. Common Stock	Common Stock	NGS	12(g)	0000896878	000-21180
ISRG	Intuitive Surgical, Inc. Common Stock	Common Stock	NGS	12(g)	0001035267	000-30713
VTIV	inVentiv Health, Inc. Common Stock	Common Stock	NGS	12(g)	0001089473	000-30318
SNAK	Inventure Group, Inc. (The) Common Stock	Common Stock	NCM	12(g)	0000944508	001-14556
IEDU	INVESTools Inc Common Stock	Common Stock	NGM	12(g)	0001145124	001-31917
ISBC	Investors Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0001326807	000-51557
IFIN	Investors Financial Services Corp. Common Stock	Common Stock	NGS	12(g)	0000949589	000-26996

Exhibit A: List of Securities whose Reg[redacted]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
IRETP	Investors Real Estate Trust Series A Cumulative Redeemable Preferred Shares of Beneficial Interest	Preferred Stock	NGS	12(g)	0000798359	000-14851
IRETS	Investors Real Estate Trust Shares of Beneficial Interest	Shares of Beneficial Interest	NGS	12(g)	0000798359	000-14851
ITIC	Investors Title Company Common Stock	Common Stock	NGM	12(g)	0000720858	000-11774
IVGN	Invitrogen Corporation Common Stock	Common Stock	NGS	12(g)	0001073431	000-25317
INXI	INX Inc. Common Stock	Common Stock	NCM	12(g)	0001020017	000-21479
INXIW	INX Inc. Warrants 5/7/2009	Warrant	NCM	12(g)	0001020017	000-21479
IOMI	Iomai Corporation Common Stock	Common Stock	NGM	12(g)	0001125001	000-51709
IONA	IONA Technologies PLC American Depositary Shares	American Depositary Shares	NGM	12(g)	0001032346	000-29154
IOTN	Ionatron, Inc. Common Stock	Common Stock	NGM	12(g)	0000879911	001-14015
IPAS	iPass Inc. Common Stock	Common Stock	NGS	12(g)	0001053374	000-50327
IPCR	IPC Holdings, Limited Common Shares	Common Stock	NGS	12(g)	0000909815	000-27662
IPCS	iPCS, Inc. Common Stock	Common Stock	NCM	12(g)	0001108727	000-51844
IPIX	IPIX Corporation Common Stock	Common Stock	NCM	12(g)	0001088022	000-26363
IRIX	IRIDEX Corporation Common Stock	Common Stock	NGM	12(g)	0001006045	000-27598
IRIS	IRIS International, Inc. Common Stock	Common Stock	NGM	12(g)	0000319240	000-09767
IRBT	iRobot Corporation Common Stock	Common Stock	NGM	12(g)	0001159167	000-51598
ISIS	Isis Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0000874015	000-19125
ISLE	Isle of Capri Casinos, Inc. Common Stock	Common Stock	NGS	12(g)	0000863015	000-20538
ISONL	Isonics Corporation Class B Warrants 12/29/2006	Warrant	NCM	12(g)	0001023966	000-21607
ISONZ	Isonics Corporation Class C Warrants 12/29/2006	Warrant	NCM	12(g)	0001023966	000-21607
ISON	Isonics Corporation Common Stock	Common Stock	NCM	12(g)	0001023966	000-21607
ISRL	Isramco, Inc. Common Stock	Common Stock	NCM	12(g)	0000719209	000-12500
ISTA	ISTA Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0000930553	000-31255
ITLA	ITLA Capital Corporation Common Stock	Common Stock	NGS	12(g)	0001000234	000-26960
ITRI	Itron, Inc. Common Stock	Common Stock	NGS	12(g)	0000780571	000-22418
ITRN	Ituran Location and Control Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0001337117	000-51526
IVAN	Ivanhoe Energy, Inc. Common Shares	Common Stock	NCM	12(g)	0001106935	000-30586
IVOW	iVOW, Inc. Common Stock	Common Stock	NCM	12(g)	0001035181	000-22743
XXIA	Ixia Common Stock	Common Stock	NGS	12(g)	0001120295	000-31523
SYXI	IXYS Corporation Common Stock	Common Stock	NGM	12(g)	0000945699	000-26124
JJSF	J & J Snack Foods Corp. Common Stock	Common Stock	NGS	12(g)	0000785956	000-14616
MAYS	J. W. Mays, Inc. Common Stock	Common Stock	NCM	12(g)	0000054187	001-3647
JBHT	J.B. Hunt Transport Services, Inc. Common Stock	Common Stock	NGS	12(g)	0000728535	000-11757
JCOM	j2 Global Communications Inc Common Stock	Common Stock	NGS	12(g)	0001084048	000-25965
JCDA	Jacada Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0001095747	000-30342
JKHY	Jack Henry & Associates, Inc. Common Stock	Common Stock	NGS	12(g)	0000779152	000-14112
JXSB	Jacksonville Bancorp Common Stock	Common Stock	NCM	12(g)	0001172097	000-49792
JAXB	JACKSONVILLE BANCORP INC (FL) Common Stock	Common Stock	NCM	12(g)	0001071264	000-30248
JACO	Jaco Electronics, Inc. Common Stock	Common Stock	NGM	12(g)	0000052971	000-5896
JAKK	JAKKS Pacific, Inc. Common Stock	Common Stock	NGS	12(g)	0001009829	000-28104
JRCC	James River Coal Company New Common Stock	Common Stock	NGM	12(g)	0001297720	000-51129

Exhibit A: List of Securities whose Registration will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
JRVR	James River Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001325177	000-51480
JDAS	JDA Software Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001006892	000-27876
JDSU	JDS Uniphase Corporation Common Stock	Common Stock	NGS	12(g)	0000912093	000-22874
JFBI	Jefferson Bancshares, Inc. Common Stock	Common Stock	NGM	12(g)	0001222915	000-50347
JFBC	Jeffersonville Bancorp Common Stock	Common Stock	NCM	12(g)	0000874495	000-19212
JBLU	JetBlue Airways Corporation Common Stock	Common Stock	NGS	12(g)	0001158463	000-49728
JCTCF	Jewett-Cameron Trading Company Common Shares	Common Stock	NCM	12(g)	0000885307	000-19954
JMAR	JMAR Technologies, Inc. Common Stock	Common Stock	NCM	12(g)	0000857953	001-10515
JBSS	John B. Sanfilippo & Son, Inc. Common Stock	Common Stock	NGM	12(g)	0000880117	000-19681
JOUT	Johnson Outdoors Inc. Class A Common Stock	Common Stock	NGM	12(g)	0000788329	000-16255
JSDA	Jones Soda Co. Common Stock	Common Stock	NCM	12(g)	0001083522	000-28820
JOSB	Jos. A. Bank Clothiers, Inc. Common Stock	Common Stock	NGS	12(g)	0000920033	000-23874
JOYG	Joy Global Inc. Common Stock	Common Stock	NGS	12(g)	0000801898	001-9299
JNPR	Juniper Networks, Inc. Common Stock	Common Stock	NGS	12(g)	0001043604	000-26339
JUPM	Jupitermedia Corporation	Common Stock	NGS	12(g)	0001083712	000-26393
KALU	Kaiser Aluminum Corporation Common Stock	Common Stock	NGM	12(g)	0000811596	000-52105
KAMN	Kaman Corporation Common Stock	Common Stock	NGM	12(g)	0000054381	000-1093
KBAY	Kanbay International, Inc. Common Stock	Common Stock	NGS	12(g)	0001125011	000-50849
KRNY	Kearny Financial Common Stock	Common Stock	NGS	12(g)	0001295664	000-51093
KELYA	Kelly Services, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0000055135	000-01088
KELYB	Kelly Services, Inc. Class B Common Stock	Common Stock	NGS	12(g)	0000055135	000-01088
KNDL	Kendle International Inc. Common Stock	Common Stock	NGS	12(g)	0001039151	000-23019
KNXA	Kenexa Corporation Common Stock	Common Stock	NGM	12(g)	0001114714	000-51358
KNSY	Kensey Nash Corporation Common Stock	Common Stock	NGS	12(g)	0001002811	000-27120
KENT	Kent Financial Services, Inc. Common Stock	Common Stock	NCM	12(g)	0000316028	001-7986
KFFB	Kentucky First Federal Bancorp Common Stock	Common Stock	NGM	12(g)	0001297341	000-51176
KERX	Keryx Biopharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0001114220	000-30929
KEQU	Kewaunee Scientific Corporation Common Stock	Common Stock	NGM	12(g)	0000055529	000-05286
KTEC	Key Technology, Inc. Common Stock	Common Stock	NGM	12(g)	0000906193	000-21820
KTCC	Key Tronic Corporation Common Stock	Common Stock	NGM	12(g)	0000719733	000-11559
KEYN	Keynote Systems, Inc. Common Stock	Common Stock	NGM	12(g)	0001032761	000-27241
KEYS	Keystone Automotive Industries, Inc. Common Stock	Common Stock	NGS	12(g)	0001012393	000-28568
KFED	K-Fed Bancorp Common Stock	Common Stock	NGM	12(g)	0001270985	000-50592
KFRC	Kforce, Inc. Common Stock	Common Stock	NGS	12(g)	0000930420	000-26058
KHDH	KHD Humboldt Wedag International Ltd. Common Stock	Common Stock	NGS	12(g)	0000016859	001-04192
KBALB	Kimball International, Inc. Class B Common Stock	Common Stock	NGS	12(g)	0000055772	000-03279
KNTA	Kintera Inc. Common Stock	Common Stock	NGM	12(g)	0001117119	000-50507
KIRK	Kirkland's, Inc. COMMONSTOCK	Common Stock	NGM	12(g)	0001056285	000-49885
KLAC	KLA-Tencor Corporation Common Stock	Common Stock	NGS	12(g)	0000319201	000-09992
KMGB	KMG Chemicals, Inc. Common Stock	Common Stock	NGM	12(g)	0001028215	000-29278
KNBT	KNBT Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0001236964	000-50426
NITE	Knight Capital Group, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0001060749	001-14223

Exhibit A: List of Securities whose Registration will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
VLCCF	Knightsbridge Tankers, Limited Common Stock	Common Stock	NGS	12(g)	0001029145	000-29106
KNOL	Knology, Inc. Common Stock	Common Stock	NGM	12(g)	0001096788	000-32647
KNOT	Knot, Inc. (The) Common Stock	Common Stock	NGM	12(g)	0001062292	000-28271
KOMG	Komag, Incorporated Common Stock	Common Stock	NGS	12(g)	0000813347	000-16852
KONA	Kona Grill, Inc. Common Stock	Common Stock	NGM	12(g)	0001265572	000-51491
KONG	KongZhong Corporation American Depositary Shares	American Depositary Shares	NGM	12(g)	0001285137	000-50826
KOPN	Kopin Corporation Common Stock	Common Stock	NGM	12(g)	0000771266	000-19882
KOSP	Kos Pharmaceuticals, Inc. Common Stock	Common Stock	NGS	12(g)	0001018952	000-22171
KOSN	Kosan Biosciences Incorporated Common Stock	Common Stock	NGM	12(g)	0001110206	000-31633
KOSS	Koss Corporation Common Stock	Common Stock	NGM	12(g)	0000056701	000-03295
KRSL	Kreisler Manufacturing Corporation Common Stock	Common Stock	NCM	12(g)	0000056806	000-04036
KRON	Kronos Incorporated Common Stock	Common Stock	NGS	12(g)	0000886903	000-20109
KSWS	K-Swiss Inc. Class A Common Stock	Common Stock	NGS	12(g)	0000862480	000-18490
KTII	K-Tron International, Inc. Common Stock	Common Stock	NGM	12(g)	0000000020	000-09576
KLIC	Kulicke and Soffa Industries, Inc. Common Stock	Common Stock	NGM	12(g)	0000056978	000-00121
KVHI	KVH Industries, Inc. Common Stock	Common Stock	NGM	12(g)	0001007587	000-28082
KYPH	Kyphon Inc. Common Stock	Common Stock	NGS	12(g)	0001123313	000-49804
FSTR	L.B. Foster Company Common Stock	Common Stock	NGS	12(g)	0000352825	000-10436
LJPC	La Jolla Pharmaceutical Company Common Stock	Common Stock	NGM	12(g)	0000920465	000-24274
DDSS	Labopharm Inc Ordinary Shares	Ordinary Shares	NGM	12(g)	0001284519	000-51933
BOOT	LaCrosse Footwear, Inc. Common Stock	Common Stock	NGM	12(g)	0000919443	000-23800
LDSH	Ladish Co., Inc. Common Stock	Common Stock	NGM	12(g)	0000814250	000-23539
LSBK	Lake Shore Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0001341318	000-51821
LBAI	Lakeland Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0000846901	000-17820
LKFN	Lakeland Financial Corporation Common Stock	Common Stock	NGS	12(g)	0000721994	000-11487
LAKE	Lakeland Industries, Inc. Common Stock	Common Stock	NGM	12(g)	0000798081	000-15535
LACO	Lakes Entertainment, Inc. Common Stock	Common Stock	NGM	12(g)	0001071255	000-24993
LRCX	Lam Research Corporation Common Stock	Common Stock	NGS	12(g)	0000707549	000-12933
LAMR	Lamar Advertising Company Class A Common Stock	Common Stock	NGS	12(g)	0001090425	000-30242
LANC	Lancaster Colony Corporation Common Stock	Common Stock	NGS	12(g)	0000057515	000-04065
LNCE	Lance, Inc. Common Stock	Common Stock	NGS	12(g)	0000057528	000-00398
LNDC	Landec Corporation Common Stock	Common Stock	NGS	12(g)	0001005286	000-27446
LARK	Landmark Bancorp Inc. Common Stock	Common Stock	NGM	12(g)	0001141688	000-23164
LSTR	Landstar System, Inc. Common Stock	Common Stock	NGS	12(g)	0000853816	000-21238
GAIT	Langer, Inc. Common Stock	Common Stock	NGM	12(g)	0000725460	000-12991
LNOP	LanOptics Ltd. Ordinary Shares	Ordinary Shares	NCM	12(g)	0000892534	000-20860
LTRX	Lantronix, Inc. Common Stock	Common Stock	NCM	12(g)	0001114925	001-16027
LCRD	LaserCard Corporation Common Stock	Common Stock	NGM	12(g)	0000030140	000-06377
LSCC	Lattice Semiconductor Corporation Common Stock	Common Stock	NGM	12(g)	0000855658	000-18032
LAUR	Laureate Education, Inc. Common Stock	Common Stock	NGS	12(g)	0000912766	000-22844
LARL	Laurel Capital Group, Inc. Common Stock	Common Stock	NCM	12(g)	0000892158	000-23010
LAWS	Lawson Products, Inc. Common Stock	Common Stock	NGS	12(g)	0000703604	000-10546

Exhibit A: List of Securities whose Regis[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Class	Issuer Market Segment	Reason for Filing	CIK	SEC File #
LWSN	Lawson Software, Inc. Common Stock	Common Stock	NGS	12(g)	0001141517	000-33335
LAYN	Layne Christensen Company Common Stock	Common Stock	NGS	12(g)	0000888504	000-20578
LCAV	LCA-Vision Inc. Common Stock	Common Stock	NGS	12(g)	0001003130	000-27610
LCCI	LCC International, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0001016229	000-21213
LBIX	Leading Brands Inc Common Shares	Common Stock	NCM	12(g)	0000884247	000-19884
LDIS	Leadis Technology, Inc. Common Stock	Common Stock	NGM	12(g)	0001130626	000-50770
LEAP	Leap Wireless International, Inc. Common Stock	Common Stock	NGS	12(g)	0001065049	000-29752
LTRE	Learning Tree International, Inc. Common Stock	Common Stock	NGM	12(g)	0001002037	000-27248
XPRT	LECG Corporation Common Stock	Common Stock	NGS	12(g)	0001192305	000-50464
LCRY	LeCroy Corporation Common Stock	Common Stock	NGM	12(g)	0000943580	000-26634
FLPB	Leesport Financial Corp. Common Stock	Common Stock	NGS	12(g)	0000775662	000-14555
LEGC	Legacy Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0001332199	000-51525
LSCO	LESCO, Inc. Common Stock	Common Stock	NGM	12(g)	0000745394	000-13147
LVLT	Level 3 Communications, Inc. Common Stock	Common Stock	NGS	12(g)	0000794323	000-15658
LEXG	Lexicon Genetics Incorporated Common Stock	Common Stock	NGM	12(g)	0001062822	000-30111
LHCG	LHC Group Common Stock	Common Stock	NGM	12(g)	0001303313	000-51343
LBCP	Liberty Bancorp, Inc. Common Stock	Common Stock	NCM	12(g)	0001353268	000-51992
LBTYA	Liberty Global, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0001316631	000-51360
LBTYB	Liberty Global, Inc. Class B Common Stock	Common Stock	NGS	12(g)	0001316631	000-51360
LBTYK	Liberty Global, Inc. Series C Common Stock	Common Stock	NGS	12(g)	0001316631	000-51360
LCAPA	Liberty Media Corporation Capital Common Series A	Common Stock	NGS	12(g)	0001355096	000-51990
LCAPB	Liberty Media Corporation Capital Common Series B	Common Stock	NGS	12(g)	0001355096	000-51990
LINTA	Liberty Media Corporation Interactive Common Series A	Common Stock	NGS	12(g)	0001355096	000-51990
LINTB	Liberty Media Corporation Interactive Common Series B	Common Stock	NGS	12(g)	0001355096	000-51990
LPHI	Life Partners Holdings Inc Common Stock	Common Stock	NCM	12(g)	0000049534	000-07900
LIFC	LifeCell Corporation Common Stock	Common Stock	NGS	12(g)	0000849448	000-19890
LCBM	Lifecore Biomedical, Inc. Common Stock	Common Stock	NGM	12(g)	0000028626	000-04136
LPNT	LifePoint Hospitals, Inc. Common Stock	Common Stock	NGS	12(g)	0001301611	000-29818
LCUT	Lifetime Brands, Inc. Common Stock	Common Stock	NGS	12(g)	0000874396	000-19254
LWAY	Lifeway Foods, Inc. Common Stock	Common Stock	NGM	12(g)	0000814586	000-17363
LGND	Ligand Pharmaceuticals Incorporated Common Stock	Common Stock	NGM	12(g)	0000886163	000-20720
LTBG	Lightbridge, Inc. Common Stock	Common Stock	NGM	12(g)	0001017172	000-21319
LPTH	LightPath Technologies, Inc. Class A Common Stock	Common Stock	NCM	12(g)	0000889971	000-27548
LIHRY	Lihir Gold Limited Sponsored ADR	American Depositary Shares	NGS	12(g)	0001000300	000-26860
LNCR	Lincare Holdings Inc. Common Stock	Common Stock	NGS	12(g)	0000882235	000-19946
LNCB	Lincoln Bancorp Common Stock	Common Stock	NGM	12(g)	0001070259	000-25219
LINC	Lincoln Educational Services Corporation Common Stock	Common Stock	NGM	12(g)	0001286613	000-51371
LECO	Lincoln Electric Holdings, Inc. Common Shares	Common Stock	NGS	12(g)	0000059527	000-1402
LLTC	Linear Technology Corporation Common Stock	Common Stock	NGS	12(g)	0000791907	000-14864
LTON	Linktone Ltd. American Depository Shares	American Depositary Shares	NGM	12(g)	0001270532	000-50596
LINE	Linn Energy, LLC Common Units Representing Limited Liability Company Interests	Units/Benif Int	NGM	12(g)	0001326428	000-51719

Exhibit A: List of Securities whose Regis[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
LIOX	Lionbridge Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0001058299	000-26933
LIPD	Lipid Sciences Incorporated Common Stock No Par Value	Common Stock	NGM	12(g)	0000071478	000-00497
LPMA	Lipman Electronic Engineering Ltd. Ordinary Shares	Ordinary Shares	NGS	12(g)	0001270484	000-50544
LQDT	Liquidity Services, Inc. Common Stock	Common Stock	NGM	12(g)	0001235468	000-51813
LFUS	Littelfuse, Inc. Common Stock	Common Stock	NGS	12(g)	0000889331	000-20388
LPSN	LivePerson, Inc. Common Stock	Common Stock	NCM	12(g)	0001102993	000-30141
JADE	LJ International, Inc. Common Stock	Common Stock	NGM	12(g)	0001046692	000-29620
LKQX	LKQ Corporation Common Stock	Common Stock	NGS	12(g)	0001065696	000-50404
ERICY	LM Ericsson Telephone Company American Depositary Shares	American Depositary Shares	NGS	12(g)	0000717826	000-12033
LMIA	LMI Aerospace, Inc. Common Stock	Common Stock	NGM	12(g)	0001059562	000-24293
LMLP	LML Payment Systems, Inc. Common Stock	Common Stock	NCM	12(g)	0000781891	000-13959
LNBB	LNB Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0000737210	000-13203
LNET	LodgeNet Entertainment Corporation Common Stock	Common Stock	NGM	12(g)	0000911002	000-22334
LOGC	Logic Devices Incorporated Common Stock	Common Stock	NCM	12(g)	0000802851	000-17187
LGVN	LogicVision, Inc. Common Stock	Common Stock	NGM	12(g)	0001041418	000-31773
LGTY	Logility, Inc. Common Stock	Common Stock	NGM	12(g)	0001043915	000-23057
LOGI	Logitech International S.A. American Depositary Shares	American Depositary Shares	NGS	12(g)	0001032975	000-29174
LOJN	LoJack Corporation Common Stock	Common Stock	NGS	12(g)	0000355777	001-8439
STAR	Lone Star Steakhouse & Saloon, Inc. Common Stock	Common Stock	NGS	12(g)	0000883670	000-19907
LOOK	LookSmart, Ltd. Common Stock	Common Stock	NGM	12(g)	0001077866	000-26357
LOOP	LoopNet, Inc. Common Stock	Common Stock	NGM	12(g)	0001353209	000-52026
LORL	Loral Space and Communications, Inc. Common Stock	Common Stock	NGM	12(g)	0001006269	001-14180
LTEC	LOUD Technologies Inc. Common Stock	Common Stock	NCM	12(g)	0000946815	000-26524
LOUD	Loudeye Corporation Common Stock	Common Stock	NCM	12(g)	0001064648	000-29583
LXBK	LSB Bancshares, Inc. Common Stock	Common Stock	NGS	12(g)	0000714530	000-11448
LSBX	LSB Corporation Common Stock	Common Stock	NGM	12(g)	0001143848	000-32955
LSBI	LSB Financial Corp. Common Stock	Common Stock	NGM	12(g)	0000930405	000-25070
LYTS	LSI Industries Inc. Common Stock	Common Stock	NGS	12(g)	0000763532	000-13375
LTXX	LTX Corporation Common Stock	Common Stock	NGM	12(g)	0000357020	000-10761
LUFK	Lufkin Industries, Inc. Common Stock	Common Stock	NGS	12(g)	0000060849	000-02612
LMRA	Lumera Corporation Common Stock	Common Stock	NGM	12(g)	0001137399	000-50862
LMNX	Luminex Corporation Common Stock	Common Stock	NGM	12(g)	0001033905	000-30109
LUNA	Luna Innovations Incorporated Common Stock	Common Stock	NGM	12(g)	0001239818	000-52008
MBTF	M B T Financial Corp Common Stock	Common Stock	NGS	12(g)	0001118237	000-30973
MCBC	Macatawa Bank Corporation Common Stock	Common Stock	NGS	12(g)	0001053584	000-25927
MACC	MACC Private Equities Inc. Common Stock	Common Stock	NCM	12(g)	0000923808	000-24412
MACE	Mace Security International, Inc. Common Stock	Common Stock	NGM	12(g)	0000912607	000-22810
MFNC	Mackinac Financial Corporation Common Stock	Common Stock	NCM	12(g)	0000036506	000-20167
MXICY	Macronix International Co. Ltd American Depositary Shares	American Depositary Shares	NGS	12(g)	0001009680	000-27884
MVSN	Macrovision Corporation Common Stock	Common Stock	NGS	12(g)	0001027443	000-22023
MGEE	Madison Gas and Electric Company Common Stock	Common Stock	NGS	12(g)	0000061339	000-01125
MAFB	MAF Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0000854662	000-18121

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
MAGS	Magal Security Systems Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0000896494	000-21388
MGLN	Magellan Health Services, Inc. Common Stock	Common Stock	NGS	12(g)	0000019411	000-50540
MGIC	Magic Software Enterprises Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0000876779	000-19415
LAVA	Magma Design Automation, Inc. Common Stock	Common Stock	NGM	12(g)	0001065034	000-33213
MECA	Magna Entertainment Corporation Class A Subordinate Voting Stock	Common Stock	NGM	12(g)	0001093273	000-30578
MGYR	Magyar Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0001337068	000-51726
MSFG	MainSource Financial Group Inc Common Stock	Common Stock	NGS	12(g)	0000720002	000-12422
MAIR	MAIR Holdings, Inc. Common Stock	Common Stock	NGM	12(g)	0000835768	000-17895
COOL	Majesco Entertainment Company Common Stock	Common Stock	NCM	12(g)	0001076682	000-51128
MMUS	MakeMusic, Inc. Common Stock	Common Stock	NCM	12(g)	0000920707	000-26192
MKTAY	Makita Corp. American Depositary Shares	American Depositary Shares	NGS	12(g)	0000202467	000-12602
MAMA	Mamma.com Inc Common Stock	Common Stock	NCM	12(g)	0000839435	000-17164
TMNG	Management Network Group, Inc. (The) Common Stock	Common Stock	NGM	12(g)	0001094814	000-27617
MANA	Manatron, Inc. Common Stock	Common Stock	NCM	12(g)	0000798736	000-15264
MANH	Manhattan Associates, Inc. Common Stock	Common Stock	NGS	12(g)	0001056696	000-23999
MTEX	Mannatech, Incorporated Common Stock	Common Stock	NGS	12(g)	0001056358	000-24657
MNKD	MannKind Corporation Common Stock	Common Stock	NGM	12(g)	0000899460	000-50865
MANT	ManTech International Corporation Common Stock $0.01 Par Value	Common Stock	NGS	12(g)	0000892537	000-49604
MAPS	MapInfo Corporation Common Stock	Common Stock	NGM	12(g)	0000916238	000-23078
MCHX	Marchex, Inc. Class B Common Stock	Common Stock	NGM	12(g)	0001224133	000-50658
MCHXP	Marchex, Inc. Convertible Exchangeable Preferred Stock	Preferred Stock	NGM	12(g)	0001224133	000-50658
MRGO	Margo Caribe Inc. Common Stock	Common Stock	NCM	12(g)	0000808493	000-15336
MARPS	Marine Petroleum Trust Units of Beneficial Interest	Units/Benif Int	NCM	12(g)	0000062362	000-08565
MKTX	MarketAxess Holdings, Inc. Common Stock	Common Stock	NGS	12(g)	0001278021	000-50670
MRLN	Marlin Business Services Corp. Common Stock	Common Stock	NGM	12(g)	0001260968	000-50448
MARSA	Marsh Supermarkets, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0000062737	000-01532
MARSB	Marsh Supermarkets, Inc. Class B Common Stock	Common Stock	NGM	12(g)	0000062737	000-01532
MSHL	Marshall Edwards, Inc. Common Stock	Common Stock	NGM	12(g)	0001262104	000-50484
MSHLW	Marshall Edwards, Inc. Warrants 12/18/2006	Warrant	NGM	12(g)	0001262104	000-50484
MATK	Martek Biosciences Corporation Common Stock	Common Stock	NGS	12(g)	0000892025	000-22354
MRTN	Marten Transport, Ltd. Common Stock	Common Stock	NGS	12(g)	0000799167	000-15010
MMLP	Martin Midstream Partners L.P. Limited Partnership	Limited Partnership	NGS	12(g)	0001176334	000-50056
MRVL	Marvell Technology Group, Ltd. Common Stock	Common Stock	NGS	12(g)	0001058057	000-30877
MSDXP	Mason-Dixon Bancshares, Inc. Mason-Dixon Capital Trust - $2.5175 Preferred Securities	Other Securities	NGM	12(g)	0000092230	000-27652
MASB	MASSBANK Corp. Common Stock	Common Stock	NGS	12(g)	0000799166	000-15137
MATH	MathStar, Inc. Common Stock	Common Stock	NGM	12(g)	0001118037	000-51560
MATR	Matria Healthcare, Inc. Common Stock	Common Stock	NGS	12(g)	0001007228	000-20619
MTXC	Matrix Bancorp, Inc Common Stock	Common Stock	NGM	12(g)	0000944725	000-21231

Issue Symbol	Issue Name	Issue Type	Issuer Market Segment	Registration Type	CIK	SEC File #
MTXCP	Matrix Bancorp, Inc Matrix Bancorp Capital Trust I - 10.0% Trust Preferred Securities	Other Securities	NGM	12(g)	0000944725	000-21231
MTRX	Matrix Service Company Common Stock	Common Stock	NGM	12(g)	0000866273	000-18716
MTXX	Matrixx Initiatives, Inc.	Common Stock	NGS	12(g)	0001006195	000-27646
MATW	Matthews International Corporation Class A Common Stock	Common Stock	NGS	12(g)	0000063296	000-09115
MTSN	Mattson Technology, Inc. Common Stock	Common Stock	NGM	12(g)	0000928421	000-24838
MAXE	Max & Erma's Restaurants, Inc. Common Stock	Common Stock	NGM	12(g)	0000706471	000-11514
MXRE	Max Re Capital Ltd. Common Stock	Common Stock	NGS	12(g)	0001141719	000-33047
MAXC	Maxco, Inc. Common Stock	Common Stock	NCM	12(g)	0000078966	000-02762
MXIM	Maxim Integrated Products, Inc. Common Stock	Common Stock	NGS	12(g)	0000743316	000-16538
MRTI	Maxus Realty Trust Inc Common Stock	Common Stock	NGM	12(g)	0000748580	000-13754
MXWL	Maxwell Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0000319815	000-10964
MAXY	Maxygen, Inc. Common Stock	Common Stock	NGM	12(g)	0001068796	000-28401
MBFI	MB Financial Inc. Common Stock	Common Stock	NGS	12(g)	0001139812	000-24566
MBFIP	MB Financial Inc. MB Financial Capital Trust I - % Cumulative Trust Preferred Securities	Other Securities	NGS	12(g)	0001139812	000-24566
MSSR	McCormick & Schmick's Seafood Restaurants, Inc. Common Stock	Common Stock	NGM	12(g)	0001288741	000-50845
MCDTA	McDATA Corporation Class A Common Stock	Common Stock	NGS	12(g)	0000731502	000-31257
MCDT	McDATA Corporation Class B Common Stock	Common Stock	NGS	12(g)	0000731502	000-31257
MCGC	MCG Capital Corporation Common Stock $0.01 Par Value	Common Stock	NGS	12(g)	0001141299	000-33377
MGRC	McGrath RentCorp Common Stock	Common Stock	NGS	12(g)	0000752714	000-13292
MDCA	MDC Partners Inc. CL A Subordinate Voting Shares	Common Stock	NGS	12(g)	0000876883	000-19382
MDII	MDI, Inc. Common Stock	Common Stock	NCM	12(g)	0000318259	000-09463
MEAD	Meade Instruments Corp. Common Stock	Common Stock	NGM	12(g)	0001032067	000-22183
MVCO	Meadow Valley Corporation Common Stock	Common Stock	NCM	12(g)	0000934749	000-25428
MEAS	Measurement Specialties, Inc. Common Stock	Common Stock	NGM	12(g)	0000778734	000-16085
MKTY	Mechanical Technology Incorporated Common Stock ($0.01 Par Value)	Common Stock	NGM	12(g)	0000064463	000-06890
TAXI	Medallion Financial Corp. Common Stock	Common Stock	NGS	12(g)	0001000209	000-27812
MEDX	Medarex, Inc. Common Stock	Common Stock	NGM	12(g)	0000874255	000-19312
MDTH	MedCath Corporation Common Stock	Common Stock	NGM	12(g)	0001139463	000-33009
MBAY	MediaBay, Inc. Common Stock	Common Stock	NGM	12(g)	0001040973	001-13469
MCCC	Mediacom Communications Corporation Class A Common Stock	Common Stock	NGS	12(g)	0001098659	000-29227
MDLK	Medialink Worldwide Incorporated Common Stock	Common Stock	NGM	12(g)	0000812890	000-21989
MDCI	Medical Action Industries Inc. Common Stock	Common Stock	NGS	12(g)	0000748270	000-13251
MDCO	Medicines Company (The) Common Stock	Common Stock	NGS	12(g)	0001113481	000-31191
MEDI	MedImmune, Inc. Common Stock	Common Stock	NGS	12(g)	0000873591	000-19131
MDTL	Medis Technologies Ltd. Common Stock	Common Stock	NGM	12(g)	0001090507	000-30391
MEDW	MEDIWARE Information Systems, Inc. Common Stock	Common Stock	NCM	12(g)	0000874733	001-10768
MTOX	Medtox Scientific, Inc. Common Stock	Common Stock	NGM	12(g)	0000739944	000-12971

Exhibit A: List of Securities whose Regis[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Listed Market Segment	Registration Type	CIK	File #
MDWV	Medwave, Inc. Common Stock	Common Stock	NCM	12(g)	0000876043	000-28010
MEMY	Memory Pharmaceuticals Corp. Common Stock	Common Stock	NGM	12(g)	0001062216	000-50642
MENT	Mentor Graphics Corporation Common Stock	Common Stock	NGS	12(g)	0000701811	000-13442
MTSL	MER Telemanagement Solutions Ltd. Common Shares	Ordinary Shares	NCM	12(g)	0001025561	000-28950
MBWM	Mercantile Bank Corporation Common Stock	Common Stock	NGS	12(g)	0001042729	000-26719
MRBK	Mercantile Bankshares Corporation Common Stock	Common Stock	NGS	12(g)	0000064908	000-05127
MIGP	Mercer Insurance Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001050690	000-25425
MERC	Mercer International Inc. Common Stock	Common Stock	NGM	12(g)	0001333274	000-09409
MBVT	Merchants Bancshares, Inc. Common Stock	Common Stock	NGM	12(g)	0000726517	000-11595
MRCY	Mercury Computer Systems Common Stock	Common Stock	NGS	12(g)	0001049521	000-23599
MRGE	Merge Technologies Inc. Common Stock	Common Stock	NGM	12(g)	0000944765	000-29486
VIVO	Meridian Bioscience Inc. Common Stock	Common Stock	NGS	12(g)	0000794172	000-14902
MMSI	Merit Medical Systems, Inc. Common Stock	Common Stock	NGS	12(g)	0000856982	000-18592
MERX	Merix Corporation Common Stock	Common Stock	NGM	12(g)	0000921365	000-23818
PGEB	Merrill Lynch & Co., Inc. 97% Protected Notes Linked to Global Equity Basket	Other Securities	NGM	12(g)	0000065100	001-07182
PDNT	Merrill Lynch & Co., Inc. 97% Protected Notes linked to the Performance of the Dow Jones Industrial Average	Other Securities	NGM	12(g)	0000065100	001-07182
ARQQ	Merrill Lynch & Co., Inc. Accelerated Return Note Linked to the NASDAQ 100 Index	Other Securities	NGM	12(g)	0000065100	001-07182
DWMT	Merrill Lynch & Co., Inc. Dow Jones Industial Average MITTS Securities due 12/27/2010	Other Securities	NGM	12(g)	0000065100	001-07182
MTDW	Merrill Lynch & Co., Inc. Dow Jones Industrial Average Market Index Target-Term Securities (MITTS)	Other Securities	NGM	12(g)	0000065100	001-07182
MTDB	Merrill Lynch & Co., Inc. Dow Jones Industrial Average Market Index Target-Term Securities (MITTS) due January 16, 2009	Other Securities	NGM	12(g)	0000065100	001-07182
LNDU	Merrill Lynch & Co., Inc. LIRN linked to the Dow Jones Industrial Average	Other Securities	NGM	12(g)	0000065100	001-07182
LERA	Merrill Lynch & Co., Inc. LIRN Linked to the Nikkei 225 Index	Other Securities	NGM	12(g)	0000065100	001-07182
MTSM	Merrill Lynch & Co., Inc. Merrill Lynch & Co., Inc. S&P 500 Market Index Target-Term Securities	Other Securities	NGM	12(g)	0000065100	001-07182
MTNK	Merrill Lynch & Co., Inc. Nikkei 225 Market Index Target-Term Securities (MITTS) 9/30/2010	Other Securities	NGM	12(g)	0000065100	001-07182
MNNY	Merrill Lynch & Co., Inc. Nikkei 225 Market Index Target-Term Securities (MITTS) due 3/8/2011	Other Securities	NGM	12(g)	0000065100	001-07182
MTTX	Merrill Lynch & Co., Inc. S&P 500 Market Index Target-Term Securities	Other Securities	NGM	12(g)	0000065100	001-07182
MTTT	Merrill Lynch & Co., Inc. S&P 500 Market Index Target-Term Securities	Other Securities	NGM	12(g)	0000065100	001-07182
MITT	Merrill Lynch & Co., Inc. S&P 500 Market Index Target-Term Securities (MITTS)	Other Securities	NGM	12(g)	0000065100	001-07182

Exhibit A: List of Securities whose Regis[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
MLMT	Merrill Lynch & Co., Inc. S&P 500 Market Index Target-Term Securities (MITTS)	Other Securities	NGM	12(g)	0000065100	001-07182
MTSP	Merrill Lynch & Co., Inc. S&P 500 Market Index Target-Term Securities (MITTS)	Other Securities	NGM	12(g)	0000065100	001-07182
SPPX	Merrill Lynch & Co., Inc. S&P 500 Market Index Target-Term Securities (MITTS)	Other Securities	NGM	12(g)	0000065100	001-07182
MSPX	Merrill Lynch & Co., Inc. S&P 500 Market Index Target-Term Securities (MITTS) due 8/5/2010	Other Securities	NGM	12(g)	0000065100	001-07182
SRDD	Merrill Lynch & Co., Inc. SRNs Linked to the Select Ten Index due May 2009	Other Securities	NGM	12(g)	0000065100	001-07182
DOWT	Merrill Lynch & Co., Inc. Strategic Return Notes Linked to Select Ten due Feb 2009	Other Securities	NGM	12(g)	0000065100	001-07182
SRRR	Merrill Lynch & Co., Inc. Strategic Return Notes Linked to the Industrial 15 Index	Other Securities	NGM	12(g)	0000065100	001-07182
SRIB	Merrill Lynch & Co., Inc. Strategic Return Notes Linked to the Industrial 15 Index	Other Securities	NGM	12(g)	0000065100	001-07182
SRIX	Merrill Lynch & Co., Inc. Strategic Return Notes linked to the Industrial 15 Index 10/31/2008	Other Securities	NGM	12(g)	0000065100	001-07182
DWID	Merrill Lynch & Co., Inc. Strategic Return Notes Linked to the Industrial 15 Index due 8/5/2008	Other Securities	NGM	12(g)	0000065100	001-07182
DWTT	Merrill Lynch & Co., Inc. Strategic Return Notes Linked to the Select 10 Index due September 30, 2008	Other Securities	NGM	12(g)	0000065100	001-07182
DOTN	Merrill Lynch & Co., Inc. Strategic Return Notes Linked to the Select Ten Index due February 2008	Other Securities	NGM	12(g)	0000065100	001-07182
DWTN	Merrill Lynch & Co., Inc. Strategic Return Notes Linked to the Select Ten Index due June 2008	Other Securities	NGM	12(g)	0000065100	001-07182
MERB	Merrill Merchants Bancshares, Inc. Common Stock	Common Stock	NGM	12(g)	0000913072	000-24715
MESA	Mesa Air Group, Inc. Common Stock	Common Stock	NGS	12(g)	0000810332	000-15495
MLAB	Mesa Laboratories, Inc. Common Stock	Common Stock	NGM	12(g)	0000724004	000-11740
CASH	Meta Financial Group, Inc. Common Stock	Common Stock	NGM	12(g)	0000907471	000-22140
MBRX	Metabasis Therapeutics, Inc common stock	Common Stock	NGM	12(g)	0001053221	000-50785
MTLM	Metal Management , Inc. Common Stock	Common Stock	NGS	12(g)	0000795665	000-14836
MTSX	Metal Storm Limited American Depositary Shares	American Depositary Shares	NCM	12(g)	0001119775	000-31212
MTLK	Metalink, Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0001098462	000-30394
MSLV	MetaSolv Inc Common Stock	Common Stock	NGM	12(g)	0000916704	000-28129
MEOH	Methanex Corporation Common Stock	Common Stock	NGS	12(g)	0000886977	000-20115
METH	Methode Electronics, Inc. Common Stock	Common Stock	NGS	12(g)	0000065270	000-02816
INFOD	Metro One Telecommunications, Inc. New Common Stock	Common Stock	NCM	12(g)	0000920990	000-27024
MCBI	MetroCorp Bancshares, Inc. Common Stock	Common Stock	NGM	12(g)	0001068300	000-25141
MTLG	Metrologic Instruments, Inc. Common Stock	Common Stock	NGS	12(g)	0000815910	000-24712
CASA	Mexican Restaurants, Inc. Common Stock	Common Stock	NCM	12(g)	0001009244	000-28234
MFBC	MFB Corp. Common Stock	Common Stock	NGM	12(g)	0000916396	000-23374

Exhibit A: List of Securities whose Regi[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File No.
MFRI	MFRI, Inc. Common Stock	Common Stock	NGM	12(g)	0000914122	000-18370
MOGN	MGI PHARMA, Inc. Common Stock	Common Stock	NGS	12(g)	0000702131	000-10736
MGPI	MGP Ingredients, Inc.	Common Stock	NGS	12(g)	0000835011	000-17196
MCRL	Micrel, Incorporated Common Stock	Common Stock	NGS	12(g)	0000932111	000-25236
MLIN	Micro Linear Corporation Common Stock	Common Stock	NGM	12(g)	0000875359	000-24758
MCHP	Microchip Technology Incorporated Common Stock	Common Stock	NGS	12(g)	0000827054	000-21184
MITI	Micromet, Inc. Common Stock	Common Stock	NGM	12(g)	0001131907	000-50440
NOIZ	Micronetics, Inc. Common Stock	Common Stock	NCM	12(g)	0000820097	000-17966
MCRS	MICROS Systems, Inc. Common Stock	Common Stock	NGS	12(g)	0000320345	000-09993
MSCC	Microsemi Corporation Common Stock	Common Stock	NGS	12(g)	0000310568	000-08866
MSFT	Microsoft Corporation Common Stock	Common Stock	NGS	12(g)	0000789019	000-14278
MSTR	MicroStrategy Incorporated Common Stock	Common Stock	NGS	12(g)	0001050446	000-24435
MSTRW	MicroStrategy Incorporated Warrants to Purchase Class A Common Stock	Warrant	NGS	12(g)	0001050446	000-24435
MTMD	Microtek Medical Holdings Inc Common Stock	Common Stock	NGS	12(g)	0000929299	000-24866
TUNE	Microtune, Inc. Common Stock	Common Stock	NGM	12(g)	0001108058	000-31029
MVIS	Microvision, Inc. Common Stock	Common Stock	NGM	12(g)	0000065770	000-21221
MVISW	Microvision, Inc. Warrants Expiration 5/26/11	Warrant	NGM	12(g)	0000065770	000-21221
MFCO	Microwave Filter Company, Inc. Common Stock	Common Stock	NCM	12(g)	0000716688	000-10976
MEND	Micrus Endovascular Corporation Common Stock	Common Stock	NGM	12(g)	0001028318	000-51323
MBRG	Middleburg Financial Corporation	Common Stock	NCM	12(g)	0000914138	000-24159
MIDD	Middleby Corporation (The) Common Stock	Common Stock	NGS	12(g)	0000769520	001-9973
MSEX	Middlesex Water Company Common Stock	Common Stock	NGS	12(g)	0000066004	000-00422
MLAN	Midland Company (The) Common Stock	Common Stock	NGS	12(g)	0000066025	001-06026
MDST	Mid-State Bancshares Common Stock	Common Stock	NGS	12(g)	0001027324	000-23925
MBHI	Midwest Banc Holdings, Inc. Common Stock	Common Stock	NGM	12(g)	0001051379	000-29598
OSKY	MidWestOne Financial Group Inc Common Stock	Common Stock	NGM	12(g)	0000741390	000-24630
MIKR	Mikron Infrared, Inc. Common Stock	Common Stock	NCM	12(g)	0000787809	000-15486
MLEA	Millea Holdings Inc. ADR American Depositary Shares	American Depositary Shares	NGS	12(g)	0001169486	000-12011
MBVA	Millennium Bankshares Corporation Common Stock	Common Stock	NCM	12(g)	0001158678	000-49611
MCEL	Millennium Cell Inc. Common Stock	Common Stock	NCM	12(g)	0001114872	000-31083
MLNM	Millennium Pharmaceuticals, Inc. Common Stock	Common Stock	NGS	12(g)	0001002637	000-28494
MICC	Millicom International Cellular S.A. Common Stock	Common Stock	NGS	12(g)	0000912958	000-22828
MNDO	MIND C.T.I. Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0001119083	000-31215
MSPD	Mindspeed Technologies, Inc. Common Stock, par value $0.01	Common Stock	NGM	12(g)	0001224370	000-50499
MIPS	MIPS Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0001059786	000-24487
MRAE	Mirae Corporation American Depositary Shares	American Depositary Shares	NGM	12(g)	0001099196	000-30376
MSON	MISONIX, Inc. Common Stock	Common Stock	NGM	12(g)	0000880432	001-10986
MIND	Mitcham Industries, Inc. Common Stock	Common Stock	NGM	12(g)	0000926423	000-25142
MITSY	Mitsui & Company, Ltd. American Depositary Shares	American Depositary Shares	NGS	12(g)	0000067099	000-9929
MITY	MITY Enterprises Inc. Common Stock	Common Stock	NGM	12(g)	0000921030	000-23898
MIVA	MIVA, Inc. Common Stock	Common Stock	NGM	12(g)	0001094808	000-30428

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
MKSI	MKS Instruments, Inc. Common Stock	Common Stock	NGS	12(g)	0001049502	000-23621
MINI	Mobile Mini, Inc. Common Stock	Common Stock	NGS	12(g)	0000911109	001-12804
MOBE	Mobility Electronics, Inc. Common Stock	Common Stock	NGM	12(g)	0001075656	000-30907
MOBI	Mobius Management Systems, Inc Common Stock	Common Stock	NGM	12(g)	0001025148	000-24077
MOCO	MOCON, Inc. Common Stock	Common Stock	NGM	12(g)	0000067279	000-09273
MPAC	MOD-PAC CORP. Common Stock	Common Stock	NGM	12(g)	0001191857	000-50063
MODT	Modtech Holdings Inc. Common Stock	Common Stock	NGM	12(g)	0001075066	000-25161
MFLO	Moldflow Corporation Common Stock	Common Stock	NGS	12(g)	0001103234	000-30027
MDCC	Molecular Devices Corporation Common Stock	Common Stock	NGS	12(g)	0001003113	000-27316
MOLXA	Molex Incorporated Class A Common Stock	Common Stock	NGS	12(g)	0000067472	000-07491
MOLX	Molex Incorporated Common Stock	Common Stock	NGS	12(g)	0000067472	000-07491
MNTA	Momenta Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0001235010	000-50797
MCRI	Monarch Casino & Resort, Inc. Common Stock	Common Stock	NGS	12(g)	0000907242	000-22088
MCBF	Monarch Community Bancorp, Inc. Common Stock par value .01	Common Stock	NCM	12(g)	0001169769	000-49814
MONM	Monmouth Capital Corporation Common Stock	Common Stock	NGM	12(g)	0000067618	000-24282
MNRTA	Monmouth Real Estate Investment Corporation Class A Common Stock	Common Stock	NGS	12(g)	0000067625	000-04258
MGRM	Monogram Biosciences, Inc. Common Stock	Common Stock	NGM	12(g)	0001094961	000-30369
MPWR	Monolithic Power Systems, Inc. Common Stock	Common Stock	NGM	12(g)	0001280452	000-51026
MNRO	Monro Muffler Brake, Inc. Common Stock	Common Stock	NGS	12(g)	0000876427	000-19357
MROE	Monroe Bancorp Common Stock	Common Stock	NGM	12(g)	0000745456	000-31951
MNST	Monster Worldwide, Inc. Common Stock	Common Stock	NGS	12(g)	0001020416	000-21571
PSTA	Monterey Gourmet Foods, Inc. Common Stock	Common Stock	NGM	12(g)	0000913032	000-22534
MSNQ	Morgan Stanley Capital Protected Notes Based on the Value of the Nasdaq 100 Index	Other Securities	NGM	12(g)	0000895421	001-11758
NBXH	Morgan Stanley Morgan Stanley 9% Targeted Income Strategic Return Securities	Other Securities	NGM	12(g)	0000895421	001-11758
MNDX	Morgan Stanley MPS with minimum return protection	Other Securities	NGM	12(g)	0000895421	001-11758
NXPL	Morgan Stanley Performance Leveraged Upside Securities Linked to Nasdaq 100 Index	Other Securities	NGM	12(g)	0000895421	001-11758
NDPL	Morgan Stanley Performance Leveraged Upside Securities Linked to Nasdaq 100 Index	Other Securities	NGM	12(g)	0000895421	001-11758
NPLU	Morgan Stanley Performance Leveraged Upside Securities Linked to Nasdaq 100 Index due August 20, 2007	Other Securities	NGM	12(g)	0000895421	001-11758
ESTX	Morgan Stanley PLUS Based on the Value of the Dow Jones EURO STOXX 50 Index	Other Securities	NGM	12(g)	0000895421	001-11758
MHGC	Morgans Hotel Group Co. Common Stock	Common Stock	NGM	12(g)	0001342126	000-51802
MORN	Morningstar, Inc. Common Stock	Common Stock	NGS	12(g)	0001289419	000-51280
MOCC	Moscow CableCom Corp. Common Stock	Common Stock	NGM	12(g)	0000006383	000-01460
MOSS	Mossimo Inc. Common Stock	Common Stock	NCM	12(g)	0001005181	001-14208
MOSY	MoSys, Inc. Common Stock	Common Stock	NGM	12(g)	0000890394	000-32929
MWRK	Mothers Work, Inc. Common Stock	Common Stock	NGM	12(g)	0000896985	000-21196

Exhibit A: List of Securities whose Registration will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
MOVE	Move Inc. Common Stock	Common Stock	NGS	12(g)	0001085770	000-26659
MOVI	Movie Gallery, Inc. Common Stock	Common Stock	NGM	12(g)	0000925178	000-24548
MPWG	MPW Industrial Services Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001047098	000-23335
MROI	MRO Software, Inc. Common Stock	Common Stock	NGS	12(g)	0000920354	000-23852
MRVC	MRV Communications, Inc. Common Stock	Common Stock	NGM	12(g)	0000887969	000-25678
MSGI	MSGI Security Solutions, Inc. Common Stock	Common Stock	NCM	12(g)	0000014280	000-16730
FLSH	M-Systems Flash Disk Pioneers Ltd. Ordinary Shares	Ordinary Shares	NGS	12(g)	0000895361	000-28694
MTCT	MTC Technologies, Inc. COMMONSTOCK	Common Stock	NGS	12(g)	0001172243	000-49890
MTIC	MTI Technology Corporation Common Stock	Common Stock	NCM	12(g)	0000901696	000-23418
MTMC	MTM Technologies, Inc. Common Stock	Common Stock	NCM	12(g)	0000906282	000-22122
MNTG	MTR Gaming Group, Inc. Common Stock	Common Stock	NGS	12(g)	0000834162	000-20508
MTSC	MTS Systems Corporation Common Stock	Common Stock	NGS	12(g)	0000068709	000-02382
MBND	Multiband Corporation Common Stock	Common Stock	NCM	12(g)	0000732412	000-13529
LABL	Multi-Color Corporation Common Stock	Common Stock	NGM	12(g)	0000819220	000-16148
MFLX	Multi-Fineline Electronix, Inc. Common Stock	Common Stock	NGS	12(g)	0000830916	000-50812
MGAM	Multimedia Games, Inc. Common Stock	Common Stock	NGS	12(g)	0000896400	000-28318
MFSF	MutualFirst Financial Inc. Common Stock	Common Stock	NGM	12(g)	0001094810	000-27905
MWAV	M-WAVE, Inc. Common Stock	Common Stock	NCM	12(g)	0000883842	000-19944
MWIV	MWI Veterinary Supply, Inc. Common Stock	Common Stock	NGS	12(g)	0001323974	000-51468
MYOG	Myogen, Inc. Common Stock	Common Stock	NGM	12(g)	0001101052	000-50438
MYGN	Myriad Genetics, Inc. Common Stock	Common Stock	NGS	12(g)	0000899923	000-26642
NABI	Nabi Biopharmaceuticals Common Stock	Common Stock	NGM	12(g)	0000072444	000-04829
NGEN	Nanogen, Inc. Common Stock	Common Stock	NGM	12(g)	0001030339	000-23541
NANO	Nanometrics Incorporated Common Stock	Common Stock	NGM	12(g)	0000704532	000-13470
NANX	Nanophase Technologies Corporation Common Stock	Common Stock	NGM	12(g)	0000883107	000-22333
NSSC	Napco Security Systems, Inc. Common Stock	Common Stock	NGS	12(g)	0000069633	000-10004
NAPS	Napster, Inc. Common Stock	Common Stock	NGM	12(g)	0001122787	000-32393
NARA	Nara Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0001128361	000-50245
NASB	NASB Financial Inc. Common Stock	Common Stock	NCM	12(g)	0001059131	000-24033
NDAQ	Nasdaq Stock Market, Inc. (The) Common Stock	Common Stock	NGS	12(g)	0001120193	000-32651
NAFC	Nash-Finch Company Common Stock	Common Stock	NGS	12(g)	0000069671	000-00785
NSHA	Nashua Corporation Common Stock	Common Stock	NGM	12(g)	0000069680	000-21271
NPSN	Naspers Limited N Shs Sponsored American Depositary Receipt Representing Class N Shares (South Africa)	American Depositary Shares	NGM	12(g)	0001106051	000-50117
NSTK	Nastech Pharmaceutical Company, Inc. Common Stock	Common Stock	NGM	12(g)	0000737207	000-13789
NATH	Nathan's Famous, Inc. Common Stock	Common Stock	NGM	12(g)	0000069733	000-03189
NAHC	National Atlantic Holdings Corporation Common Stock	Common Stock	NGM	12(g)	0000946492	000-51127
NKSH	National Bankshares, Inc. Common Stock	Common Stock	NCM	12(g)	0000796534	000-15204
ALLEP	National City Corporation - Allegiant Bancorp, Inc. Allegiant Capital Trust II - 9.00% Cumulative Trust Preferred Securities	Other Securities	NGM	12(g)	0000069970	000-07229
NCOC	National Coal Corp. Common Stock	Common Stock	NGM	12(g)	0001089575	000-26509
NADX	National Dentex Corporation Common Stock	Common Stock	NGM	12(g)	0000913616	000-23092

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
NHHC	National Home Health Care Corp. Common Stock	Common Stock	NGM	12(g)	0000728389	000-12927
EGOV	National Information Consortium, Inc. Common Stock	Common Stock	NGS	12(g)	0001065332	000-26621
NATI	National Instruments Corporation Common Stock	Common Stock	NGS	12(g)	0000935494	000-25426
NATL	National Interstate Corporation Common Stock	Common Stock	NGM	12(g)	0001301106	000-51130
NMHC	National Medical Health Card Systems, Inc. Common Stock	Common Stock	NGM	12(g)	0000813562	000-26749
MBLA	National Mercantile Bancorp Common Stock	Common Stock	NCM	12(g)	0000714801	000-15982
NPBC	National Penn Bancshares, Inc. Common Stock	Common Stock	NGS	12(g)	0000700733	000-10957
NPBCO	National Penn Bancshares, Inc. Cumulative Trust Preferred Securities	Other Securities	NGS	12(g)	0000700733	000-10957
NRCI	National Research Corporation Common Stock	Common Stock	NGM	12(g)	0000070487	000-29466
NSEC	National Security Group, Inc. Common Stock	Common Stock	NGM	12(g)	0000865058	000-18649
NTSC	National Technical Systems, Inc. Common Stock	Common Stock	NGM	12(g)	0000110536	000-16438
NHRX	NationsHealth, Inc. Common Stock	Common Stock	NGM	12(g)	0001233426	000-50348
NHRXU	NationsHealth, Inc. Units Expiring 8/24/2007	Unit	NGM	12(g)	0001233426	000-50348
NHRXW	NationsHealth, Inc. Warrants Expiring 8/24/2007	Warrant	NGM	12(g)	0001233426	000-50348
NTOL	Natrol, Inc. Common Stock	Common Stock	NGM	12(g)	0001025573	000-24567
NAII	Natural Alternatives International, Inc. Common Stock	Common Stock	NGM	12(g)	0000787253	000-15701
BHIP	Natural Health Trends Corporation Common Stock	Common Stock	NGM	12(g)	0000912061	000-26272
NRVN	Nature Vision, Inc. Common Stock	Common Stock	NCM	12(g)	0000078311	000-07475
BABY	Natus Medical Incorporated Common Stock	Common Stock	NGM	12(g)	0000878526	000-33001
NVSL	Naugatuck Valley Financial Corporation Common Stock	Common Stock	NGM	12(g)	0001293413	000-50876
NAVR	Navarre Corporation Common Stock	Common Stock	NGM	12(g)	0000911650	000-22982
FLYR	Navigant International, Inc. Common Stock	Common Stock	NGS	12(g)	0001055455	000-24387
NAVG	Navigators Group, Inc. (The) Common Stock	Common Stock	NGS	12(g)	0000793547	000-15886
BULK	Navios Maritime Holdings Inc. Common Stock	Common Stock	NGM	12(g)	0001333172	000-51047
BULKU	Navios Maritime Holdings Inc. Units 12/9/2008	Unit	NGM	12(g)	0001333172	000-51047
BULKW	Navios Maritime Holdings Inc. Warrants 12/9/2008	Warrant	NGM	12(g)	0001333172	000-51047
NAVI	NaviSite, Inc. Common Stock	Common Stock	NCM	12(g)	0001084750	000-27597
NBTF	NB&T FINANCIAL GROUP INC Common Stock	Common Stock	NCM	12(g)	0000908837	000-23134
NBTB	NBT Bancorp Inc. Common Stock	Common Stock	NGS	12(g)	0000790359	000-14703
NCIT	NCI, Inc. Common Stock	Common Stock	NGM	12(g)	0001334478	000-51579
NCOG	NCO Group, Inc. Common Stock	Common Stock	NGS	12(g)	0001022608	000-21639
NNDS	NDS Group plc. American Depositary Shares	American Depositary Shares	NGS	12(g)	0001098074	000-30364
NIPNY	NEC Corporation American Depositary Shares	American Depositary Shares	NGS	12(g)	0000072127	000-12713
NKTR	Nektar Therapeutics Common Stock	Common Stock	NGS	12(g)	0000906709	000-23556
NEOG	Neogen Corporation Common Stock	Common Stock	NGS	12(g)	0000711377	000-17988
NMGC	NeoMagic Corporation Common Stock	Common Stock	NGM	12(g)	0001030485	000-22009
NEOL	NeoPharm, Inc. Common Stock	Common Stock	NGM	12(g)	0000942788	001-12493
NTEC	Neose Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0000877902	000-27718
NWRE	Neoware, Inc. Common Stock	Common Stock	NGS	12(g)	0000894743	000-21240
NSTC	Ness Technologies, Inc. Common Stock	Common Stock	NGS	12(g)	0001089638	000-50954
NEST	Nestor, Inc. Common Stock	Common Stock	NGM	12(g)	0000720851	000-12965

Exhibit A: List of Securities whose Regis[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
UEPS	Net 1 UEPS Technologies, Inc. Common Stock	Common Stock	NGS	12(g)	0001041514	000-31203
NETC	NET Servicos de Comunicacao S.A. American Depositary Shares	American Depositary Shares	NGM	12(g)	0001024446	000-28860
NTBK	Net.B@nk, Inc. Common Stock	Common Stock	NGM	12(g)	0001035826	000-22361
NTES	Netease.com, Inc. American Depositary Shares	American Depositary Shares	NGS	12(g)	0001110646	000-30666
NFLX	Netflix, Inc. Common Stock	Common Stock	NGS	12(g)	0001065280	000-49802
NTGR	NETGEAR, Inc. Common Stock	Common Stock	NGS	12(g)	0001122904	000-50350
NGRU	netGuru inc Common Stock	Common Stock	NCM	12(g)	0001015920	000-28560
NETL	NetLogic Microsystems, Inc. Common Stock	Common Stock	NGM	12(g)	0001135711	000-50838
NETM	NetManage, Inc. Common Stock	Common Stock	NGM	12(g)	0000909793	000-22158
NTRT	NetRatings, Inc. Common Stock	Common Stock	NGM	12(g)	0001095480	000-27907
NTCT	NetScout Systems, Inc. Common Stock	Common Stock	NGM	12(g)	0001078075	000-26251
NTST	Netsmart Technologies, Inc. Common Stock	Common Stock	NCM	12(g)	0001011028	000-21177
NTWK	NetSol Technologies Inc. Common Stock	Common Stock	NCM	12(g)	0001039280	000-22773
NTAP	Network Appliance, Inc. Common Stock	Common Stock	NGS	12(g)	0001002047	000-27130
NENG	Network Engines, Inc Common Stock	Common Stock	NGM	12(g)	0001110903	000-30863
NTII	Neurobiological Technologies, Inc. Common Stock	Common Stock	NCM	12(g)	0000918112	000-23280
NRMX	Neurochem Inc Common Shares	Ordinary Shares	NGM	12(g)	0001259942	000-50393
NBIX	Neurocrine Biosciences, Inc. Common Stock	Common Stock	NGS	12(g)	0000914475	000-22705
NRGN	Neurogen Corporation Common Stock	Common Stock	NGM	12(g)	0000849043	000-18311
NURO	NeuroMetrix, Inc. Common Stock, $0.0001 par value per share	Common Stock	NGM	12(g)	0001289850	000-50856
NCEM	Nevada Chemicals, Inc. Common Stock	Common Stock	NGM	12(g)	0000356342	000-10634
NBSC	New Brunswick Scientific Co., Inc. Common Stock	Common Stock	NGM	12(g)	0000071241	000-06994
NCBC	New Century Bancorp, Inc. (NC) Common Stock	Common Stock	NGM	12(g)	0001263762	000-50400
NEBS	New England Bancshares, Inc. Common Stock	Common Stock	NGM	12(g)	0001338248	000-51589
NOOF	New Frontier Media, Inc. Common Stock	Common Stock	NGM	12(g)	0000847383	000-23697
NHTB	New Hampshire Thrift Bancshares, Inc. Common Stock	Common Stock	NGM	12(g)	0000846931	000-17859
NRPH	New River Pharmaceuticals Inc. Common Stock	Common Stock	NGM	12(g)	0001288379	000-50851
HAVNP	New York Community Bancorp, Inc. Haven Capital Trust II - 10.25% Capital Securities	Other Securities	NGM	12(g)	0000910073	001-31565
NMIL	NewMil Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0000807524	000-16455
NFSB	Newport Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0001355855	000-51856
NEWP	Newport Corporation Common Stock	Common Stock	NGM	12(g)	0000225263	000-01649
NKBS	Newtek Business Services Inc. Common Stock	Common Stock	NGM	12(g)	0001094019	000-50524
NXTY	Nexity Financial Corporation Common Stock	Common Stock	NGM	12(g)	0001084727	000-51273
NEXM	NexMed, Inc. Common Stock	Common Stock	NGM	12(g)	0001017491	000-22245
NXST	Nexstar Broadcasting Group, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0001142417	000-50478
NEXT	Nextest Systems Corporation Common Stock	Common Stock	NGM	12(g)	0001167896	000-51851
NGAS	NGAS Resources, Inc. Common Stock	Common Stock	NGS	12(g)	0000746834	000-12185
NGPC	NGP Capital Resources Company Common Stock	Common Stock	NGS	12(g)	0001297704	000-50905
NICE	NICE-Systems Limited American Depositary Shares	American Depositary Shares	NGS	12(g)	0001003935	000-27466
NICK	Nicholas Financial, Inc. Common Stock	Common Stock	NGS	12(g)	0001000045	000-26680
NHWK	NightHawk Radiology Holdings, Inc. Common Stock	Common Stock	NGM	12(g)	0001292470	000-51786

Exhibit A: List of Securities whose Regi[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
NIHD	NII Holdings, Inc Class B Common Stock	Common Stock	NGS	12(g)	0001037010	000-32421
NINE	Ninetowns Digital World Trade Holdings Limited American Depositary Shares	American Depositary Shares	NGM	12(g)	0001285735	000-51025
NICH	Nitches, Inc. Common Stock	Common Stock	NCM	12(g)	0000772263	000-13851
NTMD	NitroMed, Inc. Common Stock	Common Stock	NGM	12(g)	0000927829	000-50439
NMSS	NMS Communications Corporation Common Stock	Common Stock	NGM	12(g)	0000915866	000-23282
NMTI	NMT Medical Inc. Common Stock	Common Stock	NGM	12(g)	0001017259	000-21001
NNBR	NN, Inc. Common Stock	Common Stock	NGS	12(g)	0000918541	000-23486
NLCI	Nobel Learning Communities, Inc. Common Stock	Common Stock	NGM	12(g)	0000721237	001-10031
NOBH	Nobility Homes, Inc. Common Stock	Common Stock	NGM	12(g)	0000072205	000-06506
NOBL	Noble International, Ltd. Common Stock	Common Stock	NGS	12(g)	0001034258	001-13581
NDSN	Nordson Corporation Common Stock	Common Stock	NGS	12(g)	0000072331	000-07977
NSYS	Nortech Systems Incorporated Common Stock	Common Stock	NCM	12(g)	0000722313	000-13257
NASI	North American Scientific, Inc. Common Stock	Common Stock	NGM	12(g)	0000949876	000-26670
NBAN	North Bay Bancorp Common Stock	Common Stock	NGM	12(g)	0001102595	000-31080
FFFD	North Central Bancshares, Inc. Common Stock	Common Stock	NGM	12(g)	0001005188	000-27672
NPSI	North Pittsburgh Systems, Inc. Common Stock	Common Stock	NGS	12(g)	0000764765	000-13716
NPTE	North Pointe Holdings Corporation Common Stock	Common Stock	NGM	12(g)	0001171218	000-51530
NOVB	North Valley Bancorp Common Stock	Common Stock	NGS	12(g)	0000353191	000-10652
NECB	Northeast Community Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)		000-51852
NREB	Northern Empire Bancshares Common Stock	Common Stock	NGM	12(g)	0000746253	000-51318
NSFC	Northern States Financial Corporation Common Stock	Common Stock	NCM	12(g)	0000744485	000-19300
NTRS	Northern Trust Corporation Common Stock	Common Stock	NGS	12(g)	0000073124	000-05965
NFLD	Northfield Laboratories Inc. Common Stock	Common Stock	NGM	12(g)	0000920947	000-24050
NRIM	Northrim BanCorp Inc Common Stock	Common Stock	NGS	12(g)	0001163370	000-33501
NSTR	Northstar Neuroscience, Inc. Common Stock	Common Stock	NGM	12(g)	0001351509	000-51951
NWFI	Northway Financial Inc. Common Stock	Common Stock	NGM	12(g)	0001041753	000-23129
NWSB	Northwest Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0001042064	000-23817
NWSBP	Northwest Bancorp, Inc. Northwest Capital Trust I - 8.75% Cumulative Trust Preferred Securities	Other Securities	NGS	12(g)	0001042064	000-23817
NWPX	Northwest Pipe Company Common Stock	Common Stock	NGS	12(g)	0001001385	000-27140
NWEC	NorthWestern Corporation Common Stock	Common Stock	NGS	12(g)	0000073088	001-10499
NWECW	NorthWestern Corporation Warrants Expiring 11/1/2007	Warrant	NGS	12(g)	0000073088	001-10499
NWFL	Norwood Financial Corp. Common Stock	Common Stock	NGM	12(g)	0001013272	000-28364
NVMI	Nova Measuring Instruments Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0001109345	000-30668
NOVC	Novacea, Inc. Common Stock	Common Stock	NGM	12(g)	0001178711	000-51967
NOVA	NovaMed Inc. Common Stock	Common Stock	NGS	12(g)	0001086939	000-26625
TONS	Novamerican Steel, Inc. Common Stock	Common Stock	NGM	12(g)	0001046687	000-29506
NGPS	NovAtel Inc. Common Shares	Common Stock	NGS	12(g)	0001027539	000-29004
NVTL	Novatel Wireless, Inc. New Common Stock	Common Stock	NGM	12(g)	0001022652	000-31659
NVAX	Novavax, Inc. Common Stock	Common Stock	NGM	12(g)	0001000694	000-26770
NOVL	Novell, Inc. Common Stock	Common Stock	NGS	12(g)	0000758004	000-13351

Exhibit A: List of Securities whose Reg[redacted]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
NVLS	Novellus Systems, Inc. Common Stock	Common Stock	NGS	12(g)	0000836106	000-17157
NOVN	Noven Pharmaceuticals, Inc. Common Stock	Common Stock	NGS	12(g)	0000815838	000-17254
NVGN	Novogen Limited American Depositary Shares	American Depositary Shares	NGM	12(g)	0001075880	000-29962
NPSP	NPS Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0000890465	000-23272
NTLS	NTELOS Holdings Corp. Common Stock	Common Stock	NGM	12(g)	0001328571	000-51798
NTLI	NTL Incorporated Common Stock	Common Stock	NGS	12(g)	0001270400	000-50886
NTLIW	NTL Incorporated Series A Warrants	Warrant	NGS	12(g)	0001270400	000-50886
NUHC	Nu Horizons Electronics Corp. Common Stock	Common Stock	NGM	12(g)	0000718074	001-08798
NUAN	Nuance Communications, Inc. Common Stock	Common Stock	NGS	12(g)	0001002517	000-27038
NUCO	NuCo2 Inc. Common Stock	Common Stock	NGM	12(g)	0000947577	000-27378
NCST	NUCRYST Pharmaceuticals Corp. Common Shares	Common Stock	NGM	12(g)	0001344674	000-51686
NMRX	Numerex Corp. Class A Common Stock	Common Stock	NGM	12(g)	0000870753	000-22920
NUTR	Nutraceutical International Corporation Common Stock	Common Stock	NGS	12(g)	0001050007	000-23731
NTRI	NutriSystem Inc Common Stock	Common Stock	NGS	12(g)	0001096376	000-28551
NXXI	Nutrition 21 Inc. Common Stock	Common Stock	NCM	12(g)	0000744962	000-14983
NUVA	NuVasive, Inc. Common Stock	Common Stock	NGM	12(g)	0001142596	000-50744
NUVO	Nuvelo, Inc. New Common Stock	Common Stock	NGM	12(g)	0000907654	000-22873
NVEC	NVE Corporation Common Stock	Common Stock	NCM	12(g)	0000724910	000-12196
NVDA	NVIDIA Corporation Common Stock	Common Stock	NGS	12(g)	0001045810	000-23985
NWIR	NWH, Inc. Common Stock	Common Stock	NGM	12(g)	0000915016	000-23598
NXTM	NxStage Medical Inc. Common Stock	Common Stock	NGM	12(g)	0001333170	000-51567
NYER	Nyer Medical Group, Inc. Common Stock	Common Stock	NCM	12(g)	0000884647	000-20175
NYMX	Nymox Pharmaceutical Corporation Common Stock	Common Stock	NCM	12(g)	0001018735	001-12033
OICO	O. I. Corporation Common Stock	Common Stock	NGM	12(g)	0000073773	000-06511
OIIM	O2Micro International Limited American Depositary Shares	American Depositary Shares	NGS	12(g)	0001095348	000-30910
OAKF	Oak Hill Financial, Inc. Common Stock	Common Stock	NGS	12(g)	0000949953	000-26876
RHEO	OccuLogix, Inc. Common Stock	Common Stock	NGM	12(g)	0001299139	000-51030
OCENY	Oce NV American Depositary Shares	American Depositary Shares	NGM	12(g)	0000753058	000-13742
OBCI	Ocean Bio-Chem, Inc. Common Stock	Common Stock	NCM	12(g)	0000350737	000-11102
OSHC	Ocean Shore Holding Co. Common Stock	Common Stock	NGM	12(g)	0001298716	000-51000
OCFC	OceanFirst Financial Corp. Common Stock	Common Stock	NGS	12(g)	0001004702	000-27428
CHUX	O'Charley's Inc. Common Stock	Common Stock	NGS	12(g)	0000864233	000-18629
ODMO	Odimo Incorporated Common Stock	Common Stock	NGM	12(g)	0001292026	000-51161
ODSY	Odyssey Healthcare, Inc. Common Stock	Common Stock	NGS	12(g)	0001129623	000-33267
OCAS	Ohio Casualty Corporation Common Stock	Common Stock	NGS	12(g)	0000073952	000-05544
OLCB	Ohio Legacy Corporation Common Stock	Common Stock	NCM	12(g)	0001096654	000-31673
OVBC	Ohio Valley Banc Corp. Common Stock	Common Stock	NGM	12(g)	0000894671	000-20914
OLGR	Oilgear Company (The) Common Stock	Common Stock	NCM	12(g)	0000074058	000-00822
ODFL	Old Dominion Freight Line, Inc. Common Stock	Common Stock	NGS	12(g)	0000878927	000-19582
OLBK	Old Line Bancshares, Inc. (MD) Common Stock	Common Stock	NCM	12(g)	0001253317	000-50345
OPOF	Old Point Financial Corporation Common Stock	Common Stock	NCM	12(g)	0000740971	000-12896
OSBC	Old Second Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0000357173	000-10537

Issue Symbol	Issue Name	Issue Class	Issue Market Segment	Registration Rule	CIK	SEC File No.
OSBCP	Old Second Bancorp, Inc. Cumulative Trust Preferred Securities	Other Securities	NGS	12(g)	0000357173	000-10537
ZEUS	Olympic Steel, Inc. Common Stock	Common Stock	NGM	12(g)	0000917470	000-23320
OMEF	Omega Financial Corporation Common Stock	Common Stock	NGS	12(g)	0000705671	000-13599
OFLX	Omega Flex, Inc. Common Stock	Common Stock	NGM	12(g)	0001317945	000-51372
ONAV	Omega Navigation Enterprises, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0001324915	000-51894
OMNI	OMNI Energy Services Corp. Common Stock	Common Stock	NGM	12(g)	0001046212	000-23383
OMCL	Omnicell, Inc. Common Stock ($0.001 par value)	Common Stock	NGM	12(g)	0000926326	000-33043
OMTR	Omniture, Inc. Common Stock	Common Stock	NGM	12(g)	0001357525	000-52076
OVTI	OmniVision Technologies, Inc. Common Stock	Common Stock	NGS	12(g)	0001106851	000-29939
OMRI	Omrix Biopharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0001349426	000-51905
OMTL	Omtool, Ltd. Common Stock	Common Stock	NCM	12(g)	0001020579	000-22871
ASGN	On Assignment, Inc. Common Stock	Common Stock	NGM	12(g)	0000890564	000-20540
ONNN	ON Semiconductor Corporation Common Stock	Common Stock	NGS	12(g)	0001097864	000-30419
OTIV	On Track Innovations Ltd Ordinary Shares	Ordinary Shares	NGM	12(g)	0001021604	000-49877
ONCY	Oncolytics Biotech, Inc. Common Shares	Common Stock	NCM	12(g)	0001129928	000-31062
ONFC	Oneida Financial Corp. Common Stock	Common Stock	NCM	12(g)	0001070190	000-25101
ORCC	Online Resources Corporation Common Stock	Common Stock	NGS	12(g)	0000888953	000-26123
ONSM	Onstream Media Corporation Common Stock	Common Stock	NCM	12(g)	0000919130	000-22849
ONVI	Onvia, Inc. Common Stock	Common Stock	NGM	12(g)	0001100917	000-29609
ONXX	ONYX Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0001012140	000-28298
ONXS	ONYX Software Corporation Common Stock	Common Stock	NGM	12(g)	0001014383	000-25361
OPEN	Open Solutions, Inc. Common Stock	Common Stock	NGS	12(g)	0000873538	000-02333
OTEX	Open Text Corporation Common Shares	Common Stock	NGS	12(g)	0001002638	000-27544
OPTV	OpenTV Corp. Class A Ordinary Shares	Ordinary Shares	NGM	12(g)	0001096958	001-15473
OPWV	Openwave Systems Inc Common Stock	Common Stock	NGS	12(g)	0001082506	000-25687
ORCI	Opinion Research Corporation Common Stock	Common Stock	NGM	12(g)	0000911673	000-22554
OPLK	Oplink Communications, Inc. Common Stock	Common Stock	NGM	12(g)	0001022225	000-31581
OPNT	OPNET Technologies Inc. Common Stock	Common Stock	NGS	12(g)	0001108924	000-30931
OPSW	Opsware, Inc. Common Stock	Common Stock	NGM	12(g)	0001100813	000-32377
OPTC	Optelecom-NKF, Inc. Common Stock	Common Stock	NCM	12(g)	0000275858	000-08828
OBAS	Optibase Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0001077618	000-29992
OCCF	Optical Cable Corporation Common Stock	Common Stock	NGM	12(g)	0001000230	000-27022
OCPI	Optical Communication Products, Inc. Common Stock	Common Stock	NGM	12(g)	0001122668	000-31861
OPMR	Optimal Group, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0001015923	000-28572
OPHC	OptimumBank Holdings, Inc. Common Stock	Common Stock	NCM	12(g)	0001288855	000-50755
OPTN	OPTION CARE, Inc. Common Stock	Common Stock	NGS	12(g)	0000884064	000-19878
ORCL	Oracle Corporation Common Stock	Common Stock	NGS	12(g)	0001341439	000-14376
OLAB	Oralabs Holding Corporation Common Stock	Common Stock	NCM	12(g)	0001044577	000-23039
ORNG	Orange 21 Inc. Common Stock	Common Stock	NGM	12(g)	0000932372	000-51071
OSUR	OraSure Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0001116463	000-15337
ORBT	Orbit International Corporation Common Stock	Common Stock	NCM	12(g)	0000074818	000-03936
ORBK	Orbotech Ltd. Ordinary Shares	Ordinary Shares	NGS	12(g)	0000749037	000-12790

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
ORCH	Orchid Cellmark Inc. Common Stock	Common Stock	NGM	12(g)	0001107216	000-30267
ORCT	Orckit Communications Ltd.	Ordinary Shares	NGM	12(g)	0001021620	000-28724
ORLY	O'Reilly Automotive, Inc. Common Stock	Common Stock	NGS	12(g)	0000898173	000-21318
ORGN	Origen Financial, Inc. Common Stock	Common Stock	NGM	12(g)	0001268039	000-50721
SEED	Origin Agritech Limited Common Stock	Common Stock	NGM	12(g)	0001321851	000-51576
OFIX	Orthofix International N.V. Common Stock	Common Stock	NGS	12(g)	0000884624	000-19961
OLGC	Orthologic Corp. Common Stock	Common Stock	NGM	12(g)	0000887151	000-21214
VITA	Orthovita, Inc. Common Stock	Common Stock	NGM	12(g)	0000913756	000-24517
OSCI	Oscient Pharmaceuticals Corporation Common Stock	Common Stock	NGM	12(g)	0000356830	000-10824
OSIP	OSI Pharmaceuticals Inc. Common Stock	Common Stock	NGS	12(g)	0000729922	000-15190
OSIS	OSI Systems, Inc. Common Stock	Common Stock	NGM	12(g)	0001039065	000-23125
OSTE	Osteotech, Inc. Common Stock	Common Stock	NGM	12(g)	0000874734	000-19278
OTTR	Otter Tail Corporation Common Stock	Common Stock	NGS	12(g)	0000075129	000-00368
OUTD	Outdoor Channel Holdings, Inc. Common Stock	Common Stock	NGM	12(g)	0000760326	000-17287
OVRL	Overland Storage Inc.	Common Stock	NGS	12(g)	0000889930	000-22071
OSTK	Overstock.com, Inc. Common Stock	Common Stock	NGM	12(g)	0001130713	000-49799
OXGN	OXiGENE, Inc. Common Stock	Common Stock	NGM	12(g)	0000908259	000-21990
OYOG	OYO Geospace Corporation Common Stock	Common Stock	NGM	12(g)	0001001115	001-13601
PFIN	P & F Industries, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0000075340	000-15573
PTSI	P.A.M. Transportation Services, Inc. Common Stock	Common Stock	NGM	12(g)	0000798287	000-15057
PFCB	P.F.Chang's China Bistro, Inc. Common Stock	Common Stock	NGS	12(g)	0001039889	000-25123
PABK	PAB Bankshares, Inc. Common Stock	Common Stock	NGS	12(g)	0000705200	000-25422
PCAR	PACCAR Inc. Common Stock	Common Stock	NGS	12(g)	0000075362	001-14817
PACR	Pacer International, Inc. Common stock	Common Stock	NGS	12(g)	0001091735	000-49828
PCBC	Pacific Capital Bancorp Common Stock	Common Stock	NGS	12(g)	0000357264	000-11113
PCBK	Pacific Continental Corporation (Ore) Common Stock	Common Stock	NGM	12(g)	0001084717	000-30106
PEIX	Pacific Ethanol, Inc. Common Stock	Common Stock	NGM	12(g)	0000778164	000-21467
PCNTF	Pacific Internet Limited Ordinary Shares	Ordinary Shares	NGM	12(g)	0001074245	000-29938
PMBC	Pacific Mercantile Bancorp Common Stock	Common Stock	NGS	12(g)	0001109546	000-30777
PPBI	Pacific Premier Bancorp Inc	Common Stock	NGM	12(g)	0001028918	000-22193
PSBC	Pacific State Bancorp (Stockton, CA) Common Stock	Common Stock	NGM	12(g)	0001169424	000-49892
PSUN	Pacific Sunwear of California, Inc. Common Stock	Common Stock	NGS	12(g)	0000874841	000-21296
PACT	PacificNet Inc. Common Stock	Common Stock	NGM	12(g)	0000815017	000-24985
PKTR	Packeteer, Inc. Common Stock	Common Stock	NGS	12(g)	0001011344	000-26785
PACW	Pac-West Telecomm, Inc. Common Stock	Common Stock	NCM	12(g)	0001071598	000-27743
PTIE	Pain Therapeutics Common Stock	Common Stock	NGM	12(g)	0001069530	000-29959
PHHM	Palm Harbor Homes, Inc. Common Stock	Common Stock	NGM	12(g)	0000923473	000-24268
PALM	Palm, Inc. Common Stock	Common Stock	NGS	12(g)	0001100389	000-29597
PMTI	Palomar Medical Technologies, Inc. Common Stock	Common Stock	NGS	12(g)	0000881695	000-22340
PBCI	Pamrapo Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0000854071	000-18014
PAAS	Pan American Silver Corp. Common Stock	Common Stock	NGS	12(g)	0000771992	000-13727
PANC	Panacos Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0001040017	000-24241

Exhibit A: List of Securities whose Registration will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
PNRA	Panera Bread Company Class A Common Stock	Common Stock	NGS	12(g)	0000724606	000-19253
PTRY	Pantry, Inc. (The) Common Stock	Common Stock	NGS	12(g)	0000915862	000-25813
PZZA	Papa John's International, Inc. Common Stock	Common Stock	NGS	12(g)	0000901491	000-21660
PLLL	Parallel Petroleum Corporation Common Stock	Common Stock	NGM	12(g)	0000750561	000-13305
PMTC	Parametric Technology Corporation Common Stock	Common Stock	NGS	12(g)	0000857005	000-18059
PRXL	PAREXEL International Corporation Common Stock	Common Stock	NGS	12(g)	0000799729	000-27058
PFED	Park Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0001013554	000-20867
PKBK	Parke Bancorp, Inc. Common Stock	Common Stock	NCM	12(g)	0001315399	000-51338
PRKR	ParkerVision, Inc. Common Stock	Common Stock	NGM	12(g)	0000914139	000-22904
PKOH	Park-Ohio Holdings Corp. Common Stock	Common Stock	NGM	12(g)	0000076282	000-03134
PVSA	Parkvale Financial Corporation Common Stock	Common Stock	NGS	12(g)	0000820907	000-17411
PARL	Parlux Fragrances, Inc. Common Stock	Common Stock	NGS	12(g)	0000802356	000-15491
PDRT	Particle Drilling Technologies, Inc. Common Stock	Common Stock	NCM	12(g)	0000759153	000-30819
PTNR	Partner Communications Company Ltd. American Depositary Shares	American Depositary Shares	NGS	12(g)	0001096691	001-14968
PRTR	Partners Trust Financial Group, Inc. Common Stock	Common Stock	NGS	12(g)	0001163345	001-31277
PBHC	Pathfinder Bancorp, Inc. Common Stock	Common Stock	NCM	12(g)	0001046188	000-23601
PTMK	Pathmark Stores, Inc. Common Stock	Common Stock	NGM	12(g)	0000095585	001-05287
PTMKW	Pathmark Stores, Inc. Warrant	Warrant	NGM	12(g)	0000095585	001-05287
PATK	Patrick Industries, Inc. Common Stock	Common Stock	NGM	12(g)	0000076605	000-03922
PCAP	Patriot Capital Funding, Inc. Common Stock	Common Stock	NGS	12(g)	0001321560	000-51459
PNBK	Patriot National Bancorp Inc. Common Stock	Common Stock	NCM	12(g)	0001098146	000-29599
PATR	Patriot Transportation Holding, Inc. Common Stock	Common Stock	NGM	12(g)	0000844059	000-17554
PDCO	Patterson Companies, Inc. Common Stock	Common Stock	NGS	12(g)	0000891024	000-20572
PTEN	Patterson-UTI Energy, Inc. Common Stock	Common Stock	NGS	12(g)	0000889900	000-22664
PFCO	PAULA Financial Common Stock	Common Stock	NCM	12(g)	0000929031	000-23181
PLCC	Paulson Capital Corp. Common Stock	Common Stock	NCM	12(g)	0000704159	000-18188
PAYX	Paychex, Inc. Common Stock	Common Stock	NGS	12(g)	0000723531	000-11330
PCCC	PC Connection, Inc. Common Stock	Common Stock	NGM	12(g)	0001050377	000-23827
MALL	PC Mall, Inc. Common Stock	Common Stock	NGM	12(g)	0000937941	000-25790
PCTI	PC-Tel, Inc. Common Stock	Common Stock	NGM	12(g)	0001057083	000-27115
PDFS	PDF Solutions, Inc. Common Stock	Common Stock	NGM	12(g)	0001120914	000-31311
PDII	PDI, Inc. Common Stock	Common Stock	NGM	12(g)	0001054102	000-24249
PDLI	PDL BioPharma, Inc. Common Stock	Common Stock	NGS	12(g)	0000882104	000-19756
PEAK	Peak International Limited Common Stock	Common Stock	NGM	12(g)	0001036081	000-29332
PIII	PECO II, Inc. Common Stock	Common Stock	NCM	12(g)	0000845072	000-31283
PSAI	Pediatric Services of America, Inc. Common Stock	Common Stock	NGM	12(g)	0000893430	000-23946
PMFG	Peerless Manufacturing Company Common Stock	Common Stock	NGM	12(g)	0000076954	000-05214
PRLS	Peerless Systems Corporation Common Stock	Common Stock	NCM	12(g)	0000897893	000-21287
PEET	Peet's Coffee & Tea, Inc. Common Stock	Common Stock	NGS	12(g)	0000917968	000-32233
PGWC	Pegasus Wireless Corp. (NV) Common Stock	Common Stock	NGM	12(g)	0001126752	000-32567
PEGA	Pegasystems Inc. Common Stock	Common Stock	NGS	12(g)	0001013857	001-11859

Issue Symbol	Issue Name	Issue Type	Issuer Market Selected	Registration Type	CIK	SEC File #
PAGI	Pemco Aviation Group, Inc. Common Stock	Common Stock	NGM	12(g)	0000771729	000-13829
PMTR	Pemstar Inc. Common Stock	Common Stock	NGM	12(g)	0000924829	000-31223
PENX	Penford Corporation Common Stock	Common Stock	NGM	12(g)	0000739608	000-11488
PENN	Penn National Gaming, Inc. Common Stock	Common Stock	NGS	12(g)	0000921738	000-24206
PFSB	PennFed Financial Services, Inc. Common Stock	Common Stock	NGM	12(g)	0000920945	000-24040
PNNW	Pennichuck Corporation Common Stock	Common Stock	NGM	12(g)	0000788885	000-18552
PWOD	Penns Woods Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0000716605	000-17077
COBH	Pennsylvania Commerce Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0001085706	000-50961
PNSN	Penson Worldwide, Inc. Common Stock	Common Stock	NGM	12(g)	0001123541	000-32095
PPCO	Penwest Pharmaceuticals Co. Common Stock	Common Stock	NGM	12(g)	0001047188	000-23467
PFDC	Peoples Bancorp Common Stock	Common Stock	NGM	12(g)	0000869004	000-18991
PEBO	Peoples Bancorp Inc. Common Stock	Common Stock	NGS	12(g)	0000318300	000-16772
PEBK	Peoples Bancorp of North Carolina, Inc. Common Stock	Common Stock	NGM	12(g)	0001093672	000-27205
PBTC	Peoples BancTrust Company, Inc. (The) Common Stock	Common Stock	NCM	12(g)	0000762128	000-13653
PCBI	Peoples Community Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0001100983	000-29949
PEDH	Peoples Educational Holdings, Inc. Common Stock	Common Stock	NCM	12(g)	0000729156	000-50916
PFBX	Peoples Financial Corporation Common Stock	Common Stock	NCM	12(g)	0000770460	000-30050
PSPT	PeopleSupport, Inc. Common Stock	Common Stock	NGM	12(g)	0001289001	000-50843
PRCP	Perceptron, Inc. Common Stock	Common Stock	NGM	12(g)	0000887226	000-20206
PPHM	Peregrine Pharmaceuticals Inc. Common Stock	Common Stock	NCM	12(g)	0000704562	000-17085
PRFT	Perficient, Inc. Common Stock	Common Stock	NGS	12(g)	0001085869	000-51167
PFGC	Performance Food Group Company Common Stock	Common Stock	NGS	12(g)	0000908254	000-22192
PTIX	Performance Technologies, Incorporated Common Stock	Common Stock	NGM	12(g)	0001003950	000-27460
PSEM	Pericom Semiconductor Corporation Common Stock	Common Stock	NGM	12(g)	0001001426	000-27026
PRGO	Perrigo Company Common Stock	Common Stock	NGS	12(g)	0000820096	000-19725
PERY	Perry Ellis International Inc. Common Stock	Common Stock	NGS	12(g)	0000900349	000-21764
PSTI	Per-Se Technologies, Inc. Common Stock	Common Stock	NGS	12(g)	0000878556	000-19480
PVSW	Pervasive Software Inc. Common Stock	Common Stock	NGM	12(g)	0001042821	000-23043
PETC	PETCO Animal Supplies, Inc. Common Stock	Common Stock	NGS	12(g)	0000888455	000-23574
PETS	PetMed Express, Inc. Common Stock	Common Stock	NGS	12(g)	0001040130	000-28827
HAWK	Petrohawk Energy Corporation Common Stock	Common Stock	NGS	12(g)	0001059324	000-25717
PETD	Petroleum Development Corporation Common Stock	Common Stock	NGS	12(g)	0000077877	000-07246
PETM	PETsMART, Inc. Common Stock	Common Stock	NGS	12(g)	0000863157	000-21888
PFSW	PFSweb, Inc. Common Stock	Common Stock	NCM	12(g)	0001095315	000-28275
PGTI	PGT, Inc. Common Stock	Common Stock	NGM	12(g)	0001354327	000-52059
PPDI	Pharmaceutical Product Development, Inc. Common Stock	Common Stock	NGS	12(g)	0001003124	000-27570
PCOP	Pharmacopeia Drug Discovery, Inc. Common Stock	Common Stock	NGM	12(g)	0001273013	000-50523
PCYC	Pharmacyclics, Inc. Common Stock	Common Stock	NGM	12(g)	0000949699	000-27066
PXSL	Pharmaxis Limited ADR	American Depositary Shares	NGM	12(g)	0001301357	000-51505
PHRM	Pharmion Corporation Common Stock	Common Stock	NGM	12(g)	0001203866	000-50447
PARS	Pharmos Corporation Common Stock	Common Stock	NCM	12(g)	0000713275	000-11550
PFWD	Phase Forward Incorporated Common Stock	Common Stock	NGM	12(g)	0001050180	000-50839

Exhibit A: List of Securities whose Registration will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Class Type	Issue Market Segment	Registration Type	CIK	SEC File Number
ANTP	PHAZAR CORP Common Stock	Common Stock	NCM	12(g)	0000724267	000-12866
PHII	PHI, Inc. Common Stock	Common Stock	NGM	12(g)	0000350403	000-09827
PHIIK	PHI, Inc. Non-Voting Common Stock	Common Stock	NGM	12(g)	0000350403	000-09827
PHLY	Philadelphia Consolidated Holding Corp. Common Stock	Common Stock	NGS	12(g)	0000909109	000-22280
PTEC	Phoenix Technologies Ltd. Common Stock	Common Stock	NGM	12(g)	0000832767	000-17111
PHMD	PhotoMedex, Inc. Common Stock	Common Stock	NGM	12(g)	0000711665	000-11635
PHTN	Photon Dynamics, Inc. Common Stock	Common Stock	NGM	12(g)	0001002663	000-27234
PLAB	Photronics, Inc. Common Stock	Common Stock	NGS	12(g)	0000810136	000-15451
PICO	PICO Holdings Inc. Common Stock	Common Stock	NGM	12(g)	0000830122	000-18786
PNCL	Pinnacle Airlines Corp. Common Stock	Common Stock	NGM	12(g)	0001166291	001-31898
PNFP	Pinnacle Financial Partners, Inc. Common Stock	Common Stock	NGS	12(g)	0001115055	000-31225
PONR	Pioneer Companies, Inc. Common Stock	Common Stock	NGM	12(g)	0000830141	000-31230
PXPL	Pixelplus Co., Ltd. American Depositary Shares Representing 0.5 Common Shares	American Depositary Shares	NGM	12(g)	0001331588	000-51643
PXLW	Pixelworks, Inc. Common Stock	Common Stock	NGM	12(g)	0001040161	000-30269
PZZI	Pizza Inn, Inc. Common Stock	Common Stock	NCM	12(g)	0000718332	000-12919
PLSB	Placer Sierra Bancshares Common Stock	Common Stock	NGS	12(g)	0001279410	000-50652
PLNR	Planar Systems, Inc. Common Stock	Common Stock	NGM	12(g)	0000722392	000-23018
LGBT	PlanetOut, Inc. Common Stock	Common Stock	NGM	12(g)	0001287258	000-50879
TUTR	PLATO Learning Inc. Common Stock	Common Stock	NGM	12(g)	0000893965	000-20842
PLXS	Plexus Corp. Common Stock	Common Stock	NGS	12(g)	0000785786	000-14824
PLUG	Plug Power, Inc. Common Stock	Common Stock	NGM	12(g)	0001093691	000-27527
PLBC	Plumas Bancorp (Quincy, CA) Common Stock	Common Stock	NCM	12(g)	0001168455	000-49883
PLXT	PLX Technology, Inc. Common Stock	Common Stock	NGM	12(g)	0000850579	000-25699
PMACA	PMA Capital Corporation Class A Common Stock	Common Stock	NGM	12(g)	0001041665	000-22761
PMCS	PMC - Sierra, Inc. Common Stock	Common Stock	NGS	12(g)	0000767920	000-19084
PFSL	Pocahontas Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0001051859	000-23969
POTP	Point Therapeutics Inc Common Stock	Common Stock	NCM	12(g)	0000919745	000-19410
PTSX	Point.360 Common Stock	Common Stock	NGM	12(g)	0001014733	000-21917
PNTR	Pointer Telocation Ltd. Ordinary Shares (Israel)	Ordinary Shares	NCM	12(g)	0000920532	001-13138
PTEK	PokerTek, Inc. Common Stock	Common Stock	NGM	12(g)	0001302177	000-51572
PLCM	Polycom, Inc. Common Stock	Common Stock	NGS	12(g)	0001010552	000-27978
PLMD	PolyMedica Corporation Common Stock	Common Stock	NGS	12(g)	0000878748	000-19842
PMRY	Pomeroy IT Solutions, Inc. Common Stock	Common Stock	NGM	12(g)	0000883979	000-20022
PARD	Poniard Pharmaceuticals, Inc. Common Stock	Common Stock	NCM	12(g)	0000755806	000-16614
POOL	Pool Corporation Common Stock	Common Stock	NGS	12(g)	0000945841	000-26640
POPEZ	Pope Resources Depositary Receipts of Limited Partnership Units	Depository Receipt	NGM	12(g)	0000784011	001-09035
BPOPN	Popular, Inc. 6.70% Cumulative Monthly Income Trust Preferred Securities	Other Securities	NGS	12(g)	0000763901	000-13818
BPOP	Popular, Inc. Common Stock	Common Stock	NGS	12(g)	0000763901	000-13818

Exhibit A: List of Securities whose Registration will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
BPOPO	Popular, Inc. Noncumulative Monthly Income Preferred Stock 2003 Series A	Preferred Stock	NGS	12(g)	0000763901	000-13818
BPOPM	Popular, Inc. Popular Capital Trust II - 6.125% Cumulative Monthly Income Trust Preferred Securities	Other Securities	NGS	12(g)	0000763901	000-13818
PLAY	PortalPlayer, Inc. Common Stock	Common Stock	NGS	12(g)	0001297633	000-51004
PRPX	Portec Rail Products, Inc. Common Stock	Common Stock	NGM	12(g)	0001263074	000-50543
PRAA	Portfolio Recovery Associates, Inc. Common Stock	Common Stock	NGS	12(g)	0001185348	000-50058
POSS	Possis Medical, Inc. Common Stock	Common Stock	NGS	12(g)	0000079677	000-944
POWL	Powell Industries, Inc. Common Stock	Common Stock	NGM	12(g)	0000080420	001-12488
POWI	Power Integrations, Inc. Common Stock	Common Stock	NGM	12(g)	0000833640	000-23441
PDSN	PowerDsine Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0001275816	000-50787
PWER	Power-One, Inc. Common Stock	Common Stock	NGM	12(g)	0001042825	000-29454
PWAV	Powerwave Technologies, Inc. Common Stock	Common Stock	NGS	12(g)	0001023362	000-21507
POZN	Pozen, Inc. Common Stock	Common Stock	NGM	12(g)	0001059790	000-31719
PRAI	PRA International Common Stock	Common Stock	NGS	12(g)	0001293243	000-51029
PRCS	PRAECIS PHARMACEUTICALS INCORPORATED Common Stock	Common Stock	NGM	12(g)	0001033025	000-30289
PRAN	Prana Biotechnology Ltd American Depositary Shares	American Depositary Shares	NCM	12(g)	0001131343	000-49843
PLPC	Preformed Line Products Company Common Stock	Common Stock	NGM	12(g)	0000080035	000-31164
PREM	Premier Community Bankshares Inc Common Stock	Common Stock	NCM	12(g)	0000854399	000-18868
PRXI	Premier Exhibitions, Inc. Common Stock	Common Stock	NCM	12(g)	0000796764	000-24452
PFBI	Premier Financial Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0000887919	000-20908
PFBIP	Premier Financial Bancorp, Inc. PFBI Capital Trust - 9.75% Preferred Securities	Other Securities	NGM	12(g)	0000887919	000-20908
PRWT	PremierWest Bancorp Common Stock	Common Stock	NCM	12(g)	0001102287	000-50332
PORK	Premium Standard Farms, Inc. Common Stock	Common Stock	NGS	12(g)	0001143967	000-51347
PLFE	Presidential Life Corporation Common Stock	Common Stock	NGS	12(g)	0000080124	000-05486
PRST	Presstek, Inc. Common Stock	Common Stock	NGS	12(g)	0000846876	000-17541
PBIO	Pressure BioSciences, Inc. Common Stock	Common Stock	NCM	12(g)	0000830656	000-21615
PRGX	PRG-Schultz International Inc. Common Stock	Common Stock	NGM	12(g)	0001007330	000-28000
PCLN	priceline.com Incorporated Common Stock	Common Stock	NGS	12(g)	0001075531	000-25581
PSMT	PriceSmart, Inc. Common Stock	Common Stock	NGM	12(g)	0001041803	000-22793
PNRG	PrimeEnergy Corporation Common Stock	Common Stock	NCM	12(g)	0000056868	000-07406
PNBC	Princeton National Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0000707855	000-20050
REVU	Princeton Review, Inc. (The) Common Stock	Common Stock	NGM	12(g)	0001113668	000-32469
PTNX	Printronix, Inc. Common Stock	Common Stock	NGM	12(g)	0000311505	000-09321
PRVT	Private Media Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001068084	000-25067
PVTB	PrivateBancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0000889936	000-25887
PROS	ProCentury Corporation Common Stock	Common Stock	NGM	12(g)	0001273397	000-50641
PDEX	Pro-Dex, Inc. Common Stock	Common Stock	NCM	12(g)	0000788920	000-14942
PFACP	Pro-Fac Cooperative, Inc. Class A Cumulative Preferred Stock	Preferred Stock	NCM	12(g)	0000202932	000-20539
PGLAF	Progen Industries Limited Ordinary Shares	Ordinary Shares	NCM	12(g)	0000943502	000-29228

Exhibit A: List of Securities whose Registration will be Transferred to Section 12(b)

Issue Symbol	Issuer Name	Issue Type	Nasdaq Market Segment	Nasdaq Rule	CIK	SEC File No.
PGNX	Progenics Pharmaceuticals Inc. Common Stock	Common Stock	NGM	12(g)	0000835887	000-23143
PROG	Programmer's Paradise, Inc. Common Stock	Common Stock	NCM	12(g)	0000945983	000-26408
PRGS	Progress Software Corporation Common Stock	Common Stock	NGS	12(g)	0000876167	000-19417
PGIC	Progressive Gaming International Corporation Common Stock	Common Stock	NGM	12(g)	0000912241	000-22752
PSEC	Prospect Energy Corporation Common Stock	Common Stock	NGM	12(g)	0001287032	000-50691
PRSP	Prosperity Bancshares, Inc. Common Stock	Common Stock	NGS	12(g)	0001068851	000-25051
PTIL	Protherics plc American Depositary Shares	American Depositary Shares	NGM	12(g)	0000945725	000-51463
PBKS	Provident Bankshares Corporation Common Stock	Common Stock	NGS	12(g)	0000818969	000-16421
PCBS	Provident Community Bancshares, Inc. Common Stock	Common Stock	NGM	12(g)	0000926164	001-5735
PROV	Provident Financial Holdings, Inc. Common Stock	Common Stock	NGS	12(g)	0001010470	000-28304
PBNY	Provident New York Bancorp Common Stock	Common Stock	NGS	12(g)	0001070154	000-25233
PILL	ProxyMed, Inc. Common Stock	Common Stock	NGM	12(g)	0000906337	000-22052
PBIP	Prudential Bancorp, Inc. of Pennsylvania Common Stock	Common Stock	NGM	12(g)	0001302324	000-51214
PSBI	PSB Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0001047537	000-24601
PSBH	PSB Holdings, Inc. Common Stock	Common Stock	NGM	12(g)	0001293211	000-50970
PSIT	PSi Technologies Holdings, Inc. American Depositary Shares	American Depositary Shares	NCM	12(g)	0001106714	000-30582
PSDV	pSivida Limited American Depository Shares	American Depositary Shares	NGM	12(g)	0001314102	000-51122
PSSI	PSS World Medical Inc. Common Stock	Common Stock	NGS	12(g)	0000920527	000-23832
PSYS	Psychiatric Solutions, Inc. Common Stock	Common Stock	NGS	12(g)	0000829608	000-20488
PULB	Pulaski Financial Corporation Common Stock	Common Stock	NGS	12(g)	0001062438	000-24571
PCYO	Pure Cycle Corporation Common Stock	Common Stock	NCM	12(g)	0000276720	000-08814
PVFC	PVF Capital Corp. Common Stock	Common Stock	NCM	12(g)	0000928592	000-24948
PWEI	PW Eagle Inc. Common Stock	Common Stock	NGM	12(g)	0000852426	000-18050
PMID	Pyramid Breweries, Inc. Common Stock	Common Stock	NGM	12(g)	0001001917	000-27116
QEPC	Q.E.P. Co., Inc. Common Stock	Common Stock	NGM	12(g)	0001017815	000-21161
QADI	QAD Inc. Common Stock	Common Stock	NGS	12(g)	0001036188	000-22823
QCCO	QC Holdings, Inc. Common Stock	Common Stock	NGM	12(g)	0001289505	000-50840
QCRH	QCR Holdings, Inc. Common Stock	Common Stock	NCM	12(g)	0000906465	000-22208
QGEN	Qiagen N.V. Ordinary Shares	Ordinary Shares	NGS	12(g)	0001015820	000-28564
XING	Qiao Xing Universal Telephone, Inc. Common Stock	Common Stock	NGM	12(g)	0001051846	000-29946
QLGC	QLogic Corporation Common Stock	Common Stock	NGS	12(g)	0000918386	000-23298
QLTI	QLT Inc. Common Shares	Common Stock	NGS	12(g)	0000827809	000-17082
QMED	QMed Inc. Common Stock	Common Stock	NCM	12(g)	0000729213	000-11411
QSND	QSound Labs, Inc. Common Shares	Common Stock	NCM	12(g)	0000840518	000-17212
QFAB	Quaker Fabric Corporation Common Stock	Common Stock	NGM	12(g)	0000103341	000-22199
QCOM	QUALCOMM Incorporated Common Stock	Common Stock	NGS	12(g)	0000804328	000-19528
QLTY	Quality Distribution, Inc. Common Stock	Common Stock	NGM	12(g)	0000922863	000-24180
QSII	Quality Systems, Inc. Common Stock	Common Stock	NGS	12(g)	0000708818	000-13801
QBAK	Qualstar Corporation Common Stock	Common Stock	NGM	12(g)	0000758938	000-30083
QNTAP	Quanta Capital Holdings Ltd. Series A Preferred Shares	Preferred Stock	NGM	12(g)	0001264242	001-32138
QTWW	Quantum Fuel Systems Technologies Worldwide, Inc. COMMON STOCK	Common Stock	NGM	12(g)	0001166380	000-49629

Exhibit A: List of Securities whose Registration will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
QRCP	Quest Resource Corporation Common Stock	Common Stock	NGM	12(g)	0000775351	000-17371
QSFT	Quest Software, Inc. Common Stock	Common Stock	NGS	12(g)	0001088033	000-26937
QUIK	QuickLogic Corporation Common Stock	Common Stock	NGM	12(g)	0000882508	000-22671
QDEL	Quidel Corporation Common Stock	Common Stock	NGM	12(g)	0000353569	000-10961
QGLY	Quigley Corporation (The) Common Stock	Common Stock	NGM	12(g)	0000868278	000-21617
QMAR	Quintana Maritime Limited Common Stock	Common Stock	NGM	12(g)	0001325098	000-51412
QUIP	Quipp, Inc. Common Stock	Common Stock	NGM	12(g)	0000796577	000-14870
QUIX	Quixote Corporation Common Stock	Common Stock	NGM	12(g)	0000032870	000-7903
QVDX	Quovadx Inc. Common Stock	Common Stock	NGM	12(g)	0001094561	000-29273
RACK	Rackable Systems, Inc. Common Stock	Common Stock	NGS	12(g)	0001316625	000-51333
RADI	Rada Electronics Industries Limited Ordinary Shares	Ordinary Shares	NCM	12(g)	0000761238	000-15375
RDCM	Radcom Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0001016838	000-29452
RADS	Radiant Systems, Inc. Common Stock	Common Stock	NGM	12(g)	0000845818	000-22065
RTSX	Radiation Therapy Services, Inc. Common Stock, par value $0.0001 per share	Common Stock	NGS	12(g)	0001056904	000-50802
RADA	Radica Games Limited Common Stock	Common Stock	NGM	12(g)	0000919642	000-23696
ROIA	Radio One, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0001041657	000-25969
ROIAK	Radio One, Inc. Class D Common Stock	Common Stock	NGM	12(g)	0001041657	000-25969
RSYS	RadiSys Corporation Common Stock	Common Stock	NGS	12(g)	0000873044	000-26844
RVSN	RADVision Ltd. Ordinary Shares	Ordinary Shares	NGS	12(g)	0001105519	000-29871
RDWR	Radware Ltd. Ordinary Shares	Ordinary Shares	NGS	12(g)	0001094366	000-30324
RADN	Radyne Corporation Common Stock	Common Stock	NGS	12(g)	0000718573	000-11685
RPFG	Rainier Pacific Financial Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001243800	000-50362
RDTA	Raining Data Corporation Common Stock	Common Stock	NCM	12(g)	0000820738	000-16449
RMKR	Rainmaker Systems, Inc. Common Stock	Common Stock	NCM	12(g)	0001094007	000-28009
RAME	RAM Energy Resources, Inc. Common Stock	Common Stock	NCM	12(g)	0001282648	000-50682
RAMEU	RAM Energy Resources, Inc. Units	Unit	NCM	12(g)	0001282648	000-50682
RAMEW	RAM Energy Resources, Inc. Warrant 5/11/2008	Warrant	NCM	12(g)	0001282648	000-50682
RAMR	RAM Holdings Ltd. Common Shares	Common Stock	NGM	12(g)	0001352713	001-32864
RMBS	Rambus, Inc. Common Stock	Common Stock	NGS	12(g)	0000917273	000-22339
RMTR	Ramtron International Corporation Common Stock	Common Stock	NGM	12(g)	0000849502	000-17739
RAND	Rand Capital Corporation Common Stock ($0.10 Par Value)	Common Stock	NCM	12(g)	0000081955	811-01825
GOLD	Randgold Resources Limited American Depositary Shares	American Depositary Shares	NGS	12(g)	0001175580	000-49888
RARE	RARE Hospitality International Inc. Common Stock	Common Stock	NGS	12(g)	0000883976	000-19924
RAVN	Raven Industries, Inc. Common Stock	Common Stock	NGS	12(g)	0000082166	000-3136
ROLL	RBC Bearings Incorporated Common Stock	Common Stock	NGM	12(g)	0001324948	000-51486
RCRC	RC2 Corporation Common Stock	Common Stock	NGS	12(g)	0001034239	000-22635
RCMT	RCM Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0000700841	001-10245
RCNI	RCN Corporation Common Stock New .	Common Stock	NGS	12(g)	0001041858	000-22825
RNWK	RealNetworks, Inc. Common Stock	Common Stock	NGS	12(g)	0001046327	000-23137
RHAT	Red Hat, Inc. Common Stock	Common Stock	NGS	12(g)	0001087423	000-26281
RRGB	Red Robin Gourmet Burgers, Inc. Common Stock	Common Stock	NGS	12(g)	0001171759	000-49916

Exhibit A: List of Securities whose Regi[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
RBAK	Redback Networks Inc. Common Stock	Common Stock	NGS	12(g)	0001081290	000-25853
REDE	RedEnvelope, Inc. Common Stock	Common Stock	NGM	12(g)	0001236038	000-50387
HOOK	Redhook Ale Brewery, Incorporated Common Stock	Common Stock	NGM	12(g)	0000892222	000-26542
REDF	Rediff.com India Limited American Depositary Shares	American Depositary Shares	NCM	12(g)	0001103783	000-30735
RGNC	Regency Energy Partners LP Common Units Representing Limited Partner Interests	Limited Partnership	NGM	12(g)	0001338613	000-51757
RTIX	Regeneration Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0001100441	000-31271
REGN	Regeneron Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0000872589	000-19034
RGCI	Regent Communications, Inc. Common Stock	Common Stock	NGM	12(g)	0000913015	000-15392
RNHDA	Reinhold Industries, Inc. Class A Common Stock	Common Stock	NCM	12(g)	0000862255	000-18434
RELV	Reliv' International, Inc. Common Stock	Common Stock	NGS	12(g)	0000768710	001-11768
RLRN	Renaissance Learning, Inc. Common Stock	Common Stock	NGS	12(g)	0001030484	000-22187
RNST	Renasant Corporation Common Stock	Common Stock	NGS	12(g)	0000715072	000-12154
RNVS	Renovis, Inc. Common Stock	Common Stock	NGM	12(g)	0001118361	000-50564
RCII	Rent-A-Center Inc. Common Stock	Common Stock	NGS	12(g)	0000933036	000-25370
RENT	Rentrak Corporation Common Stock	Common Stock	NGM	12(g)	0000800458	000-15159
RDYN	Replidyne, Inc. Common Stock	Common Stock	NGM	12(g)	0001180145	000-52082
RGEN	Repligen Corporation Common Stock	Common Stock	NGM	12(g)	0000730272	000-14656
RPRX	Repros Therapeutics Inc. Common Stock	Common Stock	NCM	12(g)	0000897075	000-21198
RJET	Republic Airways Holdings, Inc. Common stock	Common Stock	NGS	12(g)	0001159154	000-49697
RBNCP	Republic Bancorp Inc. Capital Trust I - 8.60% Cumulative Trust Preferred Securities	Other Securities	NGS	12(g)	0000813808	000-15734
RBNC	Republic Bancorp Inc. Common Stock	Common Stock	NGS	12(g)	0000813808	000-15734
RBCAA	Republic Bancorp, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0000921557	000-24649
RUTX	Republic Companies Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001320092	000-51455
FRBK	Republic First Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0000834285	000-17007
RSCR	Res-Care, Inc. Common Stock	Common Stock	NGS	12(g)	0000776325	000-20372
REFR	Research Frontiers Incorporated Common Stock	Common Stock	NCM	12(g)	0000793524	001-09399
RIMM	Research in Motion Limited Common Stock	Common Stock	NGS	12(g)	0001070235	000-29898
REXI	Resource America, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0000083402	000-04408
RECN	Resources Connection, Inc. Common Stock	Common Stock	NGS	12(g)	0001084765	000-32113
RESP	Respironics, Inc. Common Stock	Common Stock	NGS	12(g)	0000780434	000-16723
RSTO	Restoration Hardware, Inc. Common Stock	Common Stock	NGM	12(g)	0000863821	000-24261
REST	Restore Medical, Inc. Common Stock	Common Stock	NGM	12(g)	0001350620	000-51998
RTLX	Retalix Ltd. Ordinary Shares	Ordinary Shares	NGS	12(g)	0001064060	000-29742
RTRSY	Reuters Group PLC American Depositary Shares	American Depositary Shares	NGS	12(g)	0001056084	000-26579
RFIL	RF Industries, Inc. Common Stock	Common Stock	NCM	12(g)	0000740664	000-13301
RFMD	RF Micro Devices, Inc. Common Stock	Common Stock	NGS	12(g)	0000911160	000-22511
RFMI	RF Monolithics, Inc. Common Stock	Common Stock	NGM	12(g)	0000922204	000-24414
RGCO	RGC Resources Inc. Common Stock	Common Stock	NGM	12(g)	0001069533	000-26591
RELL	Richardson Electronics, Ltd. Common Stock	Common Stock	NGM	12(g)	0000355948	000-12906
RICK	Rick's Cabaret International, Inc. Common Stock	Common Stock	NCM	12(g)	0000935419	000-26958

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
RIGL	Rigel Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0001034842	000-29889
RNOW	RightNow Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0001111247	000-31321
RIMG	Rimage Corporation Common Stock	Common Stock	NGS	12(g)	0000892482	000-20728
RVEP	Rio Vista Energy Partners L.P. Common Units representing limited partner interests	Limited Partnership	NGM	12(g)	0001260828	000-50394
RITT	RIT Technologies Ltd. Common Stock	Common Stock	NCM	12(g)	0001041844	000-29360
RITA	RITA Medical Systems, Inc. Common Stock	Common Stock	NGM	12(g)	0001056421	000-30959
RIVR	River Valley Bancorp. Common Stock	Common Stock	NCM	12(g)	0001015593	000-21765
RVSB	Riverview Bancorp Inc Common Stock	Common Stock	NGS	12(g)	0001041368	000-22957
ROCM	Rochester Medical Corporation Common Stock	Common Stock	NGM	12(g)	0000868368	000-18933
ROAC	Rock of Ages Corporation Class A Common Stock	Common Stock	NGM	12(g)	0000084581	000-29464
ROFO	Rockford Corporation Common Stock	Common Stock	NGM	12(g)	0000828064	000-30138
RCKB	Rockville Financial, Inc. Common Stock	Common Stock	NGS	12(g)	0001311131	000-51239
RMTI	Rockwell Medical Technologies, Inc. Common Stock	Common Stock	NCM	12(g)	0001041024	000-23661
RCKY	Rocky Brands, Inc. Common Stock	Common Stock	NGS	12(g)	0000895456	000-21026
RMCF	Rocky Mountain Chocolate Factory, Inc. Common Stock	Common Stock	NGM	12(g)	0000785815	000-14749
RSTI	Rofin-Sinar Technologies, Inc. Common Stock	Common Stock	NGS	12(g)	0001019361	000-21377
ROMA	Roma Financial Corporation Common Stock	Common Stock	NGS	12(g)	0001355823	000-52000
ROME	Rome Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0001088144	000-27481
RONC	Ronson Corporation Common Stock	Common Stock	NCM	12(g)	0000084919	001-1031
ROSE	Rosetta Resources Inc. Common Stock	Common Stock	NGS	12(g)	0001340282	000-1340282
ROST	Ross Stores, Inc. Common Stock	Common Stock	NGS	12(g)	0000745732	000-14678
ROHI	Rotech Healthcare Inc Common Stock	Common Stock	NGM	12(g)	0001175108	000-50940
RBPAA	Royal Bancshares of Pennsylvania, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0000922487	000-26366
RGLD	Royal Gold, Inc. Common Stock	Common Stock	NGS	12(g)	0000085535	000-5664
ROYL	Royale Energy, Inc. Common Stock	Common Stock	NGM	12(g)	0000864839	000-22750
RSAS	RSA Security, Inc. Common Stock	Common Stock	NGS	12(g)	0000932064	000-25120
RTWI	RTW, Inc.	Common Stock	NGM	12(g)	0000915781	000-25508
RUBO	Rubio's Restaurants, Inc. Common Stock	Common Stock	NGM	12(g)	0001082423	000-26125
RTEC	Rudolph Technologies, Inc. Common Stock	Common Stock	NGS	12(g)	0001094392	000-27965
RCCC	Rural Cellular Corporation Class A Common Stock	Common Stock	NGM	12(g)	0000869561	000-27416
RURL	Rural/Metro Corporation Common Stock	Common Stock	NCM	12(g)	0000906326	000-22056
RBNF	Rurban Financial Corp Common Stock	Common Stock	NGM	12(g)	0000767405	000-13507
RUSHB	Rush Enterprises, Inc. Class B	Common Stock	NGS	12(g)	0001012019	000-20797
RUSHA	Rush Enterprises, Inc. COMMON STOCK CL A	Common Stock	NGS	12(g)	0001012019	000-20797
RUTH	Ruth's Chris Steak House, Inc. Common Stock	Common Stock	NGS	12(g)	0001324272	000-51485
RYAAY	Ryanair Holdings plc American Depositary Shares	American Depositary Shares	NGS	12(g)	0001038683	000-29304
RYAN	Ryan's Restaurant Group, Inc. Common Stock	Common Stock	NGS	12(g)	0000355622	000-10943
STBA	S&T Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0000719220	000-12508
SYBT	S.Y. Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0000835324	000-17262
SONE	S1 Corporation Common Stock	Common Stock	NGM	12(g)	0001063254	000-24931
SABA	Saba Software, Inc. Common Stock	Common Stock	NGM	12(g)	0001070380	000-30221

Exhibit A: List of Securities whose Reg[redacted]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
SAFC	SAFECO Corporation Common Stock	Common Stock	NGS	12(g)	0000086104	001-06563
SFNT	SafeNet Inc Common Stock	Common Stock	NGS	12(g)	0000850313	000-20634
SAFT	Safety Insurance Group, Inc. Common Stock	Common Stock	NGS	12(g)	0001172052	000-50070
SFLK	SAFLINK Corporation Common Stock	Common Stock	NCM	12(g)	0000847555	000-20270
SAIA	Saia, Inc. Common Stock	Common Stock	NGS	12(g)	0001177702	000-49983
SFUN	Saifun Semiconductors Ltd. Ordinary Shares	Ordinary Shares	NGS	12(g)	0001297627	000-51581
SALM	Salem Communications Corporation Class A Common Stock	Common Stock	NGM	12(g)	0001050606	000-26497
SLXP	Salix Pharmaceuticals, Ltd. Common Stock	Common Stock	NGM	12(g)	0001009356	000-23265
SMHG	Sanders Morris Harris Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001071341	000-30066
SAFM	Sanderson Farms, Inc. Common Stock	Common Stock	NGS	12(g)	0000812128	000-16567
SNDK	SanDisk Corporation Common Stock	Common Stock	NGS	12(g)	0001000180	000-26734
SNDS	Sands Regent (The) Common Stock	Common Stock	NCM	12(g)	0000753899	000-14050
SASR	Sandy Spring Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0000824410	000-19065
SGMO	Sangamo BioSciences, Inc. Common Stock	Common Stock	NGM	12(g)	0001001233	000-30171
SANM	Sanmina-SCI Corporation Common Stock	Common Stock	NGS	12(g)	0000897723	000-21272
SNTS	Santarus, Inc. Common Stock	Common Stock	NGM	12(g)	0001172480	000-50651
SPNS	Sapiens International Corporation N.V. Common Shares	Common Stock	NCM	12(g)	0000885740	000-20181
SAPE	Sapient Corporation Common Stock	Common Stock	NGS	12(g)	0001008817	000-28074
SATC	SatCon Technology Corporation Common Stock	Common Stock	NGM	12(g)	0000889423	001-11512
SAVB	Savannah Bancorp, Inc. (The) Common Stock	Common Stock	NGM	12(g)	0000860519	000-18560
SVVS	SAVVIS, Inc. Common Stock	Common Stock	NCM	12(g)	0001058444	000-29375
SBAC	SBA Communications Corporation Common Stock	Common Stock	NGS	12(g)	0001034054	000-30110
SBEI	SBE, Inc. Common Stock	Common Stock	NCM	12(g)	0000087050	000-08419
SCIX	Scailex Corporation Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0000315816	000-12332
SCSC	ScanSource, Inc. Common Stock	Common Stock	NGS	12(g)	0000918965	000-26926
SCBT	SCBT Financial Corporation Common Stock	Common Stock	NGS	12(g)	0000764038	001-12669
SMIT	Schmitt Industries, Inc. Common Stock	Common Stock	NCM	12(g)	0000922612	000-23996
SCHN	Schnitzer Steel Industries, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0000912603	000-22496
SCHL	Scholastic Corporation Common Stock	Common Stock	NGS	12(g)	0000866729	000-19860
SCHS	School Specialty, Inc. Common Stock	Common Stock	NGS	12(g)	0001055454	000-24385
SCLN	SciClone Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0000880771	000-19825
SCRX	Sciele Pharma, Inc. Common Stock	Common Stock	NGS	12(g)	0001106773	000-30123
SGMS	Scientific Games Corp Class A Common Stock	Common Stock	NGS	12(g)	0000750004	000-13063
SCIL	Scientific Learning Corporation Common Stock	Common Stock	NGM	12(g)	0001042173	000-24547
STIZ	Scientific Technologies, Incorporated Common Stock	Common Stock	NGM	12(g)	0000708250	000-12254
SCMM	SCM Microsystems, Inc. Common Stock	Common Stock	NGM	12(g)	0001036044	000-22689
SCOX	SCO Group, Inc. (The) Common Stock	Common Stock	NCM	12(g)	0001102542	000-29911
SCOP	Scopus Video Networks Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0001342575	000-51654
SEAB	SeaBright Insurance Holdings, Inc. Common Stock	Common Stock	NGS	12(g)	0001267201	000-51124
SEAC	SeaChange International, Inc. Common Stock	Common Stock	NGM	12(g)	0001019671	000-21393
SBCF	Seacoast Banking Corporation of Florida Common Stock	Common Stock	NGS	12(g)	0000730708	000-13660
SHLD	Sears Holdings Corporation Common Stock	Common Stock	NGS	12(g)	0001310067	000-51217

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
SGEN	Seattle Genetics, Inc. Common Stock	Common Stock	NGM	12(g)	0001060736	000-32405
SCUR	Secure Computing Corporation Common Stock	Common Stock	NGS	12(g)	0001001916	000-27074
SBKC	Security Bank Corporation Common Stock	Common Stock	NGS	12(g)	0000925464	000-23261
SNFCA	Security National Financial Corporation Class A Common Stock	Common Stock	NGM	12(g)	0000318673	000-09341
SEIC	SEI Investments Company Common Stock	Common Stock	NGS	12(g)	0000350894	000-10200
SCSS	Select Comfort Corporation Common Stock	Common Stock	NGS	12(g)	0000827187	000-25121
SLTC	Selectica, Inc. Common Stock	Common Stock	NGM	12(g)	0001090908	000-29637
SIGI	Selective Insurance Group, Inc. Common Stock	Common Stock	NGS	12(g)	0000230557	000-08641
SMTL	Semitool, Inc. Common Stock	Common Stock	NGM	12(g)	0000934550	000-25424
SMTC	Semtech Corporation Common Stock	Common Stock	NGM	12(g)	0000088941	001-6395
SENEA	Seneca Foods Corp. Class A Common Stock	Common Stock	NGM	12(g)	0000088948	000-01989
SENEB	Seneca Foods Corp. Class B Common Stock	Common Stock	NGM	12(g)	0000088948	000-01989
SNMX	Senomyx, Inc. Common Stock	Common Stock	NGM	12(g)	0001123979	000-50791
SGHL	Sentigen Holding Corp. Common Stock	Common Stock	NCM	12(g)	0000864890	000-18700
SNTO	Sento Corporation Common Stock	Common Stock	NCM	12(g)	0000004317	000-06425
SEPR	Sepracor Inc. Common Stock	Common Stock	NGS	12(g)	0000877357	000-19410
SQNM	Sequenom, Inc. Common Stock	Common Stock	NGM	12(g)	0001076481	000-29101
SERV	Servidyne, Inc. Common Stock	Common Stock	NGM	12(g)	0000001923	000-10146
SVBI	Severn Bancorp Inc (Md) Common Stock	Common Stock	NCM	12(g)	0000868271	000-49731
SFCC	SFBC International, Inc. Common Stock	Common Stock	NGS	12(g)	0001089542	000-31273
SGXP	SGX Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0001125603	000-51745
SHMR	Shamir Optical Industry Ltd. Common Shares	Ordinary Shares	NGM	12(g)	0001317362	000-51183
SNDA	Shanda Interactive Entertainment Limited American Depositary Shares	American Depositary Shares	NGS	12(g)	0001278308	000-50705
SHRP	Sharper Image Corporation Common Stock	Common Stock	NGM	12(g)	0000811696	000-15827
SHEN	Shenandoah Telecommunications Co Common Stock	Common Stock	NGS	12(g)	0000354963	000-09881
SHLO	Shiloh Industries, Inc. Common Stock	Common Stock	NGM	12(g)	0000904979	000-21964
SHPGY	Shire plc American Depositary Shares	American Depositary Shares	NGS	12(g)	0000936402	000-29630
SCVL	Shoe Carnival, Inc. Common Stock	Common Stock	NGS	12(g)	0000895447	000-21360
SHOE	Shoe Pavilion, Inc Common Stock	Common Stock	NGM	12(g)	0001051009	000-23669
SHBI	Shore Bancshares Inc Common Stock	Common Stock	NCM	12(g)	0001035092	000-22345
SHBK	Shore Financial Corporation Common Stock	Common Stock	NGM	12(g)	0001045690	000-23847
SHFL	Shuffle Master, Inc. Common Stock	Common Stock	NGS	12(g)	0000718789	000-20820
SIFI	SI Financial Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001292580	000-50801
SINT	SI International, Inc. common stock	Common Stock	NGS	12(g)	0001143363	000-50080
SIEB	Siebert Financial Corp. Common Stock	Common Stock	NGM	12(g)	0000065596	000-05703
BSRR	Sierra Bancorp Common Stock	Common Stock	NGS	12(g)	0001130144	000-33063
SWIR	Sierra Wireless, Inc. Common Stock	Common Stock	NGM	12(g)	0001111863	000-30718
SIFY	Sify Limited American Depositary Shares	American Depositary Shares	NGM	12(g)	0001094324	000-27663
SIGA	SIGA Technologies Inc. Common Stock	Common Stock	NCM	12(g)	0001010086	000-23047
SIGM	Sigma Designs, Inc. Common Stock	Common Stock	NGM	12(g)	0000790715	000-15116
SIAL	Sigma-Aldrich Corporation Common Stock	Common Stock	NGS	12(g)	0000090185	000-08135

Exhibit A: List of Securities whose Regi[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issuer Market Segment	Registration Type	CIK	File Number
SGTL	Sigmatel, Inc. Common Stock	Common Stock	NGS	12(g)	0001043639	000-50391
SGMA	SigmaTron International, Inc. Common Stock	Common Stock	NCM	12(g)	0000915358	000-23248
SLGN	Silgan Holdings, Inc. Common Stock	Common Stock	NGS	12(g)	0000849869	000-22117
SILC	Silicom Ltd Ordinary Shares	Ordinary Shares	NCM	12(g)	0000916793	000-23288
SIMG	Silicon Image, Inc. Common Stock	Common Stock	NGS	12(g)	0001003214	000-26887
SLAB	Silicon Laboratories, Inc. Common Stock	Common Stock	NGS	12(g)	0001038074	000-29823
SIMO	Silicon Motion Technology Corporation American Depositary Shares	American Depositary Shares	NGM	12(g)	0001329394	000-51380
SSTI	Silicon Storage Technology, Inc. Common Stock	Common Stock	NGM	12(g)	0000855906	000-26944
SPIL	Siliconware Precision Industries Company, Ltd. American Depositary Shares	American Depositary Shares	NGS	12(g)	0001111759	000-30702
SSRI	Silver Standard Resources, Inc Common Stock	Common Stock	NGM	12(g)	0000921638	000-26424
SSTR	Silverstar Holdings Ltd Common Shares	Common Stock	NCM	12(g)	0001003390	000-27494
SIMC	Simclar, Inc. Common Stock	Common Stock	NCM	12(g)	0000764039	000-14659
SFNC	Simmons First National Corporation Class A Common Stock	Common Stock	NGS	12(g)	0000090498	000-06253
STEC	SimpleTech Inc Common Stock	Common Stock	NGM	12(g)	0001102741	000-31623
SINA	sina.com Ordinary Shares	Ordinary Shares	NGS	12(g)	0001094005	000-30698
SBGI	Sinclair Broadcast Group, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0000912752	000-26076
SMDI	Sirenza Microdevices, Inc. Common Stock	Common Stock	NGM	12(g)	0001103777	000-30615
SIRF	SiRF Technology Holdings, Inc. Common Stock	Common Stock	NGS	12(g)	0001163943	000-50669
SIRI	Sirius Satellite Radio Inc. Common Stock	Common Stock	NGS	12(g)	0000908937	000-24710
RNAI	Sirna Therapeutics, Inc. Common Stock	Common Stock	NGM	12(g)	0000892112	000-27914
SIRO	Sirona Dental Systems, Inc. Common Stock	Common Stock	NGS	12(g)	0001014507	000-22673
SKIL	SkillSoft plc American Depositary Shares	American Depositary Shares	NGM	12(g)	0000940181	000-25674
SECDP	Sky Financial Group, Inc. - Second Bancorp Capital Trust I - 9.00% Cumulative Trust Preferred Securities	Other Securities	NGS	12(g)	0000855876	000-18209
SKYF	Sky Financial Group, Inc. Common Stock	Common Stock	NGS	12(g)	0000855876	000-18209
SKYE	SkyePharma PLC American Depositary Shares	American Depositary Shares	NGM	12(g)	0001018117	000-29860
SKYW	SkyWest, Inc. Common Stock	Common Stock	NGS	12(g)	0000793733	000-14719
SWKS	Skyworks Solutions, Inc. Common Stock	Common Stock	NGS	12(g)	0000004127	001-5560
SFBC	Slade's Ferry Bancorp Common Stock	Common Stock	NCM	12(g)	0000857499	000-23904
WINS	SM&A Common Stock	Common Stock	NGM	12(g)	0001050031	000-23585
SMOD	SMART Modular Technologies, Inc. Ordinary Shares	Ordinary Shares	NGS	12(g)	0001326973	000-51771
SWHC	Smith & Wesson Holding Corp Common Stock	Common Stock	NGS	12(g)	0001092796	000-29015
SWRG	Smith & Wollensky Restaurant Group, Inc. (The) Common Stock	Common Stock	NGM	12(g)	0001137047	001-16505
SMSI	Smith Micro Software, Inc. Common Stock	Common Stock	NCM	12(g)	0000948708	000-26536
SMTB	Smithtown Bancorp Inc Common Stock	Common Stock	NCM	12(g)	0000747345	000-13314
SMXC	Smithway Motor Xpress Corp. Class A Common Stock	Common Stock	NCM	12(g)	0000941914	000-20793
SMTX	SMTC Corporation Common Stock	Common Stock	NGM	12(g)	0001108320	000-31051
SSCCP	Smurfit-Stone Container Corporation 7% Series A Cumulative Exchangeable Redeemable Convertible Preferred Stock	Preferred Stock	NGS	12(g)	0000919226	000-23876
SSCC	Smurfit-Stone Container Corporation Common Stock	Common Stock	NGS	12(g)	0000919226	000-23876

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
SCKT	Socket Communications, Inc. Common Stock	Common Stock	NGM	12(g)	0000944075	001-13810
SOHU	Sohu.com Inc. Common Stock	Common Stock	NGS	12(g)	0001104188	000-30961
SLXA	Solexa, Inc. Common Stock	Common Stock	NGM	12(g)	0000913275	000-22570
SMTS	Somanetics Corporation Common Stock	Common Stock	NGM	12(g)	0000704328	000-19095
SOMX	Somaxon Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0001339455	000-51665
SMRA	Somera Communications, Inc. Common Stock	Common Stock	NGM	12(g)	0001094243	000-27843
SOMH	Somerset Hills Bancorp Common Stock	Common Stock	NCM	12(g)	0001189396	000-50055
SOMHW	Somerset Hills Bancorp warrants to purchase one share of common stock	Warrant	NCM	12(g)	0001189396	000-50055
SNSTA	Sonesta International Hotels Corporation Class A Common Stock	Common Stock	NGM	12(g)	0000091741	000-09032
SONC	Sonic Corp. Common Stock	Common Stock	NGS	12(g)	0000868611	000-18859
SOFO	Sonic Foundry, Inc. Common Stock	Common Stock	NGM	12(g)	0001029744	001-14007
SNCI	Sonic Innovations, Inc. Common Stock	Common Stock	NGM	12(g)	0001105982	000-30335
SNIC	Sonic Solutions Common Stock	Common Stock	NGS	12(g)	0000916235	000-23190
SNWL	SonicWALL, Inc. Common Stock	Common Stock	NGM	12(g)	0001093885	000-27723
SONO	SonoSite, Inc. Common Stock	Common Stock	NGM	12(g)	0001055355	000-23791
SONT	Sontra Medical Corporation Common Stock	Common Stock	NCM	12(g)	0001031927	000-23017
SONS	Sonus Networks, Inc. Common Stock	Common Stock	NGS	12(g)	0001105472	000-30229
SNUS	SONUS Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0000949858	000-26866
SORL	SORL Auto Parts, Inc. Common Stock	Common Stock	NCM	12(g)	0000714284	000-11991
TSFG	South Financial Group Inc. (The) Common Stock	Common Stock	NGS	12(g)	0000797871	000-15083
SSFC	South Street Financial Corporation Common Stock	Common Stock	NGM	12(g)	0001014964	000-21083
SOCB	Southcoast Financial Corporation Common Stock	Common Stock	NGM	12(g)	0001083689	000-25933
SCMF	Southern Community Financial Corporation Common Stock	Common Stock	NGS	12(g)	0001159427	000-33227
SCMFO	Southern Community Financial Corporation Southern Community Capital Trust II - % Cumulative Trust Preferred Securities	Other Securities	NGS	12(g)	0001159427	000-33227
SMBC	Southern Missouri Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0000916907	000-23406
SBSI	Southside Bancshares, Inc. Common Stock	Common Stock	NGS	12(g)	0000705432	000-12247
OKSB	Southwest Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0000914374	000-23064
SWWC	Southwest Water Company Common Stock	Common Stock	NGS	12(g)	0000092472	000-08176
SPAB	SPACEHAB, Incorporated Common Stock	Common Stock	NCM	12(g)	0001001907	000-27206
SPAN	Span-America Medical Systems, Inc. Common Stock	Common Stock	NGM	12(g)	0000718924	000-11392
SBSA	Spanish Broadcasting System, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0000927720	000-27823
SPSN	Spansion Inc. Class A Common Stock	Common Stock	NGS	12(g)	0001322705	000-51666
SGRP	SPAR Group, Inc. Common Stock	Common Stock	NCM	12(g)	0001004989	000-27824
SPAR	Spartan Motors, Inc. Common Stock	Common Stock	NGS	12(g)	0000743238	000-13611
SPTN	Spartan Stores, Inc. Common Stock	Common Stock	NGM	12(g)	0000877422	000-31127
HDTV	SpatiaLight, Inc. Common Stock	Common Stock	NCM	12(g)	0000881468	000-19828
SUAI	Specialty Underwriters' Alliance, Inc. Common Stock	Common Stock	NGM	12(g)	0001297568	000-50891
SLNK	SpectraLink Corporation Common Stock	Common Stock	NGS	12(g)	0000894268	000-28180
SPNC	Spectranetics Corporation (The) Common Stock	Common Stock	NGM	12(g)	0000789132	000-19711

Exhibit A: List of Securities whose Reg[redacted]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	Sec File #
SPEC	Spectrum Control, Inc. Common Stock	Common Stock	NGM	12(g)	0000092769	000-08796
SPPI	Spectrum Pharmaceuticals, Inc.Common Stock	Common Stock	NGM	12(g)	0000831547	000-28782
SSPI	Spectrum Signal Processing Inc. Common Stock	Common Stock	NCM	12(g)	0000884455	000-19906
SPDE	Speedus Corp. Common Stock	Common Stock	NCM	12(g)	0001002520	000-27582
SPEX	Spherix Incorporated Common Stock	Common Stock	NGM	12(g)	0000012239	000-05576
SPIR	Spire Corporation Common Stock	Common Stock	NGM	12(g)	0000731657	000-12742
SPCHB	Sport Chalet, Inc. Class B Common Stock	Common Stock	NGM	12(g)	0000892907	000-20736
SPCHA	Sport Chalet, Inc. Common Stock Class A	Common Stock	NGM	12(g)	0000892907	000-20736
SPOR	Sport-Haley, Inc. Common Stock	Common Stock	NGM	12(g)	0000892653	001-12888
SGDE	Sportsman's Guide, Inc. (The) Common Stock	Common Stock	NGS	12(g)	0000791450	000-15767
SPSS	SPSS Inc. Common Stock	Common Stock	NGS	12(g)	0000869570	000-22194
STRC	SRI/Surgical Express, Inc. Common Stock	Common Stock	NGM	12(g)	0001014041	000-20997
SRSL	SRS Labs, Inc. Common Stock	Common Stock	NGM	12(g)	0001016470	000-21123
SJOE	St Joseph Capital Corp Common Stock	Common Stock	NCM	12(g)	0001015856	000-50219
STAA	STAAR Surgical Company Common Stock	Common Stock	NGM	12(g)	0000718937	000-11634
STGSW	STAGE STORES INC NEW Stage Stores Inc Warrants A	Warrant	NGM	12(g)	0000006885	000-21011
STGSZ	STAGE STORES INC NEW Stage Stores Inc Warrants B	Warrant	NGM	12(g)	0000006885	000-21011
STAK	Staktek Holdings, Inc. Common Stock	Common Stock	NGM	12(g)	0000866830	000-50553
STMP	Stamps.com Inc. Common Stock ($0.001 Par Value)	Common Stock	NGM	12(g)	0001082923	000-26427
SMSC	Standard Microsystems Corporation Common Stock	Common Stock	NGS	12(g)	0000093384	000-07422
STAN	Standard Parking Corporation common stock	Common Stock	NGM	12(g)	0001059262	000-50796
STLY	Stanley Furniture Company, Inc. Common Stock	Common Stock	NGS	12(g)	0000797465	000-14938
SPLS	Staples, Inc. Common Stock	Common Stock	NGS	12(g)	0000791519	000-17586
STRZ	Star Buffet, Inc. Common Stock	Common Stock	NCM	12(g)	0001043156	000-23099
STSI	Star Scientific, Inc. Common Stock	Common Stock	NGM	12(g)	0000776008	000-15324
SBUX	Starbucks Corporation Common Stock	Common Stock	NGS	12(g)	0000829224	000-20322
STFC	State Auto Financial Corporation Common Stock	Common Stock	NGS	12(g)	0000874977	000-19289
STBC	State Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0000723458	000-14874
SNBI	State National Bancshares, Inc. Common Stock	Common Stock	NGM	12(g)	0001332626	000-51548
STTS	STATS ChipPAC Ltd. American Depositary Shares	American Depositary Shares	NGS	12(g)	0001101873	000-29103
GASS	StealthGas, Inc. Common Stock	Common Stock	NGM	12(g)	0001328919	000-51559
STLD	Steel Dynamics, Inc. Common Stock	Common Stock	NGS	12(g)	0001022671	000-21719
STTX	Steel Technologies Inc. Common Stock	Common Stock	NGS	12(g)	0000771790	000-14061
SCLD	SteelCloud Inc. Common Stock	Common Stock	NCM	12(g)	0001058027	000-24015
SMRT	Stein Mart, Inc. Common Stock	Common Stock	NGS	12(g)	0000884940	000-20052
STNR	Steiner Leisure Limited Common Shares	Common Stock	NGS	12(g)	0001018946	000-28972
STEL	Stellent, Inc. Common Stock	Common Stock	NGM	12(g)	0000867347	000-19817
STEM	StemCells, Inc. Common Stock	Common Stock	NGM	12(g)	0000883975	000-19871
STEN	STEN Corporation Common Stock	Common Stock	NCM	12(g)	0000350557	000-18785
STXS	Stereotaxis, Inc. Common Stock	Common Stock	NGM	12(g)	0001289340	000-50884
SRCL	Stericycle, Inc. Common Stock	Common Stock	NGS	12(g)	0000861878	000-21229
SBIB	Sterling Bancshares, Inc. Common Stock	Common Stock	NGS	12(g)	0000891098	000-20750

Exhibit A: List of Securities whose Regi[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
SBIBN	Sterling Bancshares, Inc. Sterling Bancshares Capital Trust III _% Trust Preferred Securities	Other Securities	NGS	12(g)	0000891098	000-20750
STRL	Sterling Construction Company Inc Common Stock	Common Stock	NGS	12(g)	0000874238	000-19450
SLFI	Sterling Financial Corporation Common Stock	Common Stock	NGS	12(g)	0000811671	000-16276
STSA	Sterling Financial Corporation Common Stock	Common Stock	NGS	12(g)	0000891106	000-20800
SHOO	Steven Madden, Ltd. Common Stock	Common Stock	NGS	12(g)	0000913241	000-23702
STEI	Stewart Enterprises, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0000878522	001-15449
STKR	StockerYale Inc. Common Stock	Common Stock	NGM	12(g)	0000094538	000-27372
SNSA	Stolt-Nielsen S.A. American Depositary Shares	American Depositary Shares	NGS	12(g)	0000831980	000-16977
STON	StoneMor Partners L.P. Common Unit Rep Limited Partnership Interests	Limited Partnership	NGM	12(g)	0001286131	000-50910
STGN	Stratagene Corporation Common Stock	Common Stock	NGM	12(g)	0001108674	000-50786
SDIX	Strategic Diagnostics Inc. Common Stock	Common Stock	NGM	12(g)	0000911649	000-68440
STRD	Strategic Distribution, Inc. Common Stock	Common Stock	NGM	12(g)	0000073822	000-05228
STXN	Stratex Networks Inc Common Stock	Common Stock	NGM	12(g)	0000812703	000-15895
STLW	Stratos International, Inc. Common Stock	Common Stock	NGM	12(g)	0001111721	000-30869
STRT	Strattec Security Corporation Common Stock	Common Stock	NGM	12(g)	0000933034	000-25150
STRS	Stratus Properties, Inc. Common Stock	Common Stock	NGM	12(g)	0000885508	000-19989
STRA	Strayer Education, Inc. Common Stock	Common Stock	NGS	12(g)	0001013934	000-21039
STRM	Streamline Health Solutions, Inc. Common Stock	Common Stock	NCM	12(g)	0001008586	000-28132
FUEL	Streicher Mobile Fueling, Inc. Common Stock	Common Stock	NCM	12(g)	0001024452	000-21825
SUBK	Suffolk Bancorp Common Stock	Common Stock	NGS	12(g)	0000754673	000-13580
SUMX	Summa Industries Common Stock	Common Stock	NGM	12(g)	0000062262	001-7755
SBIT	Summit Bancshares, Inc. Common Stock	Common Stock	NGM	12(g)	0000745344	000-11986
SBGA	Summit Bank Corporation Common Stock	Common Stock	NGM	12(g)	0000820067	000-21267
SMMF	Summit Financial Group, Inc. Common Stock	Common Stock	NCM	12(g)	0000811808	000-16587
SUMT	SumTotal Systems, Inc. Common Stock	Common Stock	NGM	12(g)	0001269132	000-50640
SNBC	Sun Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0001017793	000-20957
SUNH	Sun Healthcare Group, Inc. Common Stock	Common Stock	NGM	12(g)	0000904978	000-49663
SNHY	Sun Hydraulics Corporation Common Stock	Common Stock	NGS	12(g)	0001024795	000-21835
SUNW	Sun Microsystems, Inc. Common Stock	Common Stock	NGS	12(g)	0000709519	000-15086
SDAY	SUNDAY Communications Limited American Depositary Shares	American Depositary Shares	NGM	12(g)	0001106952	000-30590
SNSS	Sunesis Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0001061027	000-51531
STKL	SunOpta, Inc. Common Stock	Common Stock	NGS	12(g)	0000351834	000-09989
SPWR	SunPower Corporation Class A Common Stock	Common Stock	NGM	12(g)	0000867773	000-51593
SUNN	Suntron Corporation Common Stock	Common Stock	NCM	12(g)	0001160513	000-49651
SUPVA	Super Vision International, Inc. Class A Common Stock	Common Stock	NCM	12(g)	0000917523	000-23590
SCON	Superconductor Technologies Inc. Common Stock	Common Stock	NCM	12(g)	0000895665	000-21074
SUPG	SuperGen, Inc. Common Stock	Common Stock	NGM	12(g)	0000919722	000-27628
SUPR	Superior Bancorp Common Stock	Common Stock	NGM	12(g)	0001065298	000-25033
SPSX	Superior Essex Inc Common Stock	Common Stock	NGS	12(g)	0001271193	000-50514
SWSI	Superior Well Services, Inc. Common Stock	Common Stock	NGS	12(g)	0001323715	000-51435

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
SPPR	Supertel Hospitality, Inc. Common Stock	Common Stock	NGM	12(g)	0000929545	000-25060
SPPRP	Supertel Hospitality, Inc. Series A Convertible Preferred Stock	Preferred Stock	NGM	12(g)	0000929545	000-25060
SUPX	Supertex, Inc. Common Stock	Common Stock	NGS	12(g)	0000730000	000-12718
SPRT	Support.com, Inc. Common Stock	Common Stock	NGS	12(g)	0001104855	000-30901
SURW	SureWest Communications Common Stock	Common Stock	NGM	12(g)	0000943117	000-29660
SRDX	SurModics, Inc. Common Stock	Common Stock	NGS	12(g)	0000924717	000-23837
SUSQ	Susquehanna Bancshares, Inc. Common Stock	Common Stock	NGS	12(g)	0000700863	000-10674
STRN	Sutron Corporation Common Stock	Common Stock	NCM	12(g)	0000728331	000-12227
SIVBO	SVB Capital II Cumulative Trust Preferred Securities	Other Securities	NGS	12(g)	0000719739	000-15637
SIVB	SVB Financial Group Common Stock	Common Stock	NGS	12(g)	0000719739	000-15637
SWFT	Swift Transportation Co., Inc. Common Stock	Common Stock	NGS	12(g)	0000863557	000-18605
SCMR	Sycamore Networks, Inc. Common Stock	Common Stock	NGM	12(g)	0001092367	000-27273
SYKE	Sykes Enterprises, Incorporated Common Stock	Common Stock	NGS	12(g)	0001010612	000-28274
SYMC	Symantec Corporation Common Stock	Common Stock	NGS	12(g)	0000849399	000-17781
SMBI	Symbion, Inc. Common Stock	Common Stock	NGS	12(g)	0001091312	000-50574
SYMM	Symmetricom, Inc. Common Stock	Common Stock	NGM	12(g)	0000082628	000-02287
SMMX	Symyx Technologies, Inc. Common Stock	Common Stock	NGS	12(g)	0001095330	000-27765
SYGR	Synagro Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0000895565	000-21054
SYNL	Synalloy Corporation Common Stock	Common Stock	NGM	12(g)	0000095953	000-19687
SYNA	Synaptics Incorporated Common Stock $0.001 Par Value	Common Stock	NGS	12(g)	0000817720	000-49602
SNCR	Synchronoss Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0001131554	000-52049
SURG	Synergetics USA, Inc. Common Stock	Common Stock	NCM	12(g)	0000836429	000-51602
SYNX	SYNERGX SYSTEMS INC	Common Stock	NCM	12(g)	0000823130	000-17580
SYBR	Synergy Brands Inc. Common Stock	Common Stock	NCM	12(g)	0000870228	000-19409
SYNF	Synergy Financial Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001263766	000-50467
ELOS	Syneron Medical Ltd. Ordinary Shares	Ordinary Shares	NGS	12(g)	0001291361	000-50867
SNPS	Synopsys, Inc. Common Stock	Common Stock	NGS	12(g)	0000883241	000-19807
SYNO	Synovis Life Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0000780127	000-13907
SYNP	Synplicity, Inc. Common Stock	Common Stock	NGM	12(g)	0001027362	000-31545
BRLC	Syntax-Brillian Corporation Common Stock	Common Stock	NGM	12(g)	0001232229	000-50289
SYNT	Syntel, Inc. Common Stock	Common Stock	NGS	12(g)	0001040426	000-22903
SYNM	Syntroleum Corporation Common Stock	Common Stock	NGM	12(g)	0001029023	000-21911
SYNMZ	Syntroleum Corporation Warrants (Expire 5/26/2008)	Warrant	NGM	12(g)	0001029023	000-21911
SYNMW	Syntroleum Corporation Warrants 11/4/2007	Warrant	NGM	12(g)	0001029023	000-21911
SYPR	Sypris Solutions, Inc. Common Stock	Common Stock	NGM	12(g)	0000864240	000-24020
SXCI	Systems Xcellence Inc. Common Stock	Common Stock	NGM	12(g)	0001363851	000-52073
TROW	T. Rowe Price Group, Inc. Common Stock	Common Stock	NGS	12(g)	0001113169	000-32191
TTES	T-3 Energy Services Inc Common Stock	Common Stock	NGM	12(g)	0000879884	000-19580
TAIT	Taitron Components Incorporated Class A Common Stock	Common Stock	NCM	12(g)	0000942126	000-25844
TTWO	Take-Two Interactive Software, Inc. Common Stock	Common Stock	NGS	12(g)	0000946581	000-29230
TLEO	Taleo Corporation Class A Common Stock	Common Stock	NGM	12(g)	0001134203	000-51299
TALK	Talk America Holdings Inc. Common Stock	Common Stock	NGS	12(g)	0000948545	000-26728

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
TALX	TALX Corporation Common Stock	Common Stock	NGS	12(g)	0000917524	000-21465
TBAC	Tandy Brands Accessories, Inc. Common Stock	Common Stock	NGM	12(g)	0000869487	000-18927
TNOX	Tanox, Inc. Common Stock	Common Stock	NGM	12(g)	0001099414	000-30231
TPPH	Tapestry Pharmaceuticals, Inc. Common Stock	Common Stock	NCM	12(g)	0000891504	000-24320
TRGT	Targacept, Inc. Common Stock	Common Stock	NGM	12(g)	0001124105	000-51173
TGEN	Targeted Genetics Corporation Common Stock	Common Stock	NCM	12(g)	0000921114	000-23930
TARO	Taro Pharmaceutical Industries Ltd. Ordinary Shares	Ordinary Shares	NGS	12(g)	0000906338	000-22286
TARR	Tarragon Corporation Common Stock	Common Stock	NGS	12(g)	0001038217	000-22999
TAGS	Tarrant Apparel Group Common Stock	Common Stock	NGM	12(g)	0000944948	000-26430
TASR	TASER International, Inc. Common Stock	Common Stock	NGS	12(g)	0001069183	001-16391
TSTY	Tasty Baking Company Common Stock	Common Stock	NGM	12(g)	0000096412	000-50369
TATTF	TAT Technologies Ltd. Ordinary Shares	Ordinary Shares	NCM	12(g)	0000808439	000-16050
TAYC	Taylor Capital Group, Inc. Common Stock	Common Stock	NGS	12(g)	0001025536	000-50035
TAYCP	Taylor Capital Group, Inc. Cumulative Trust Preferred Securities	Other Securities	NGS	12(g)	0001025536	000-50035
TAYD	Taylor Devices, Inc. Common Stock	Common Stock	NCM	12(g)	0000096536	000-03498
TBWC	TB Wood's Corporation Common Stock	Common Stock	NGM	12(g)	0001000227	001-14182
TBSI	TBS International Limited Class A Common Stock	Common Stock	NGM	12(g)	0001065648	000-51368
TCLP	TC PipeLines, LP Common Units representing Limited Partner Interests	Limited Partnership	NGS	12(g)	0001075607	000-26091
AMTD	TD Ameritrade Holding Corporation Common Stock	Common Stock	NGS	12(g)	0001173431	000-22163
TFIN	Team Financial, Inc. Common Stock	Common Stock	NGM	12(g)	0001082484	000-26335
TFINP	Team Financial, Inc. Team Financial Capital Trust I - 9.50% Cumulative Trust Preferred Securities	Other Securities	NGM	12(g)	0001082484	000-26335
TSTF	TeamStaff, Inc. Common Stock	Common Stock	NGM	12(g)	0000785557	000-18492
TECD	Tech Data Corporation Common Stock	Common Stock	NGS	12(g)	0000790703	000-14625
TECH	Techne Corporation Common Stock	Common Stock	NGS	12(g)	0000842023	000-17272
TICC	Technology Investment Capital Corp. Common Stock	Common Stock	NGS	12(g)	0001259429	000-50398
TRCI	Technology Research Corporation Common Stock	Common Stock	NGM	12(g)	0000741556	000-13763
TSCC	Technology Solutions Company Common Stock	Common Stock	NGM	12(g)	0000877645	000-19433
TEAM	TechTeam Global, Inc. Common Stock	Common Stock	NGM	12(g)	0000805054	000-16284
TWLL	Techwell, Inc. COMMON STOCK	Common Stock	NGM	12(g)	0001171529	000-52014
TECUA	Tecumseh Products Company Class A Common Stock	Common Stock	NGM	12(g)	0000096831	000-00452
TECUB	Tecumseh Products Company Class B Common Stock	Common Stock	NGM	12(g)	0000096831	000-00452
TGALD	Tegal Corporation New Common Stock	Common Stock	NCM	12(g)	0000931059	000-26824
TKLC	Tekelec Common Stock	Common Stock	NGM	12(g)	0000790705	000-15135
TELOZ	TEL Offshore Trust Units of Beneficial Interest	Units/Benif Int	NCM	12(g)	0000097148	000-06910
TSYS	TeleCommunication Systems, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0001111665	000-30821
TFONY	Telefonos de Mexico SA de CV Ser A Spons ADR American Depositary Shares	American Depositary Shares	NCM	12(g)	0000866213	001-32741
TELN	Telenor ASA American Depositary Shares	American Depositary Shares	NGS	12(g)	0001126113	000-31054
TTEC	TeleTech Holdings, Inc. Common Stock	Common Stock	NGS	12(g)	0001013880	000-21055
TELK	Telik, Inc. Common Stock	Common Stock	NGM	12(g)	0001109196	000-31265

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Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
TLAB	Tellabs, Inc. Common Stock	Common Stock	NGS	12(g)	0000317771	000-09692
WRLS	Telular Corporation Common Stock	Common Stock	NGM	12(g)	0000915324	000-23212
TLVT	Telvent GIT, S.A. Ordinary Shares	Ordinary Shares	NGM	12(g)	0001257803	000-50991
TMCV	Temecula Valley Bancorp Inc. (CA) Common Stock	Common Stock	NGS	12(g)	0001172678	000-49844
TNCC	Tennessee Commerce Bancorp, Inc. (TN) Common Stock	Common Stock	NGM	12(g)	0001323033	000-51281
TRBM	Terabeam, Inc. Common Stock	Common Stock	NCM	12(g)	0000712511	000-29053
TRCA	Tercica, Inc. Common Stock	Common Stock	NGM	12(g)	0001262175	000-50461
TESOF	Tesco Corporation Common Stock	Common Stock	NGM	12(g)	0001022705	000-28778
TESS	TESSCO Technologies Incorporated Common Stock	Common Stock	NGM	12(g)	0000927355	000-24746
TSRA	Tessera Technologies, Inc. Common Stock	Common Stock	NGS	12(g)	0001261694	000-50460
TTEK	Tetra Tech, Inc. Common Stock	Common Stock	NGS	12(g)	0000831641	000-19655
TEVA	Teva Pharmaceutical Industries Limited American Depositary Shares	American Depositary Shares	NGS	12(g)	0000818686	000-16174
TCBI	Texas Capital Bancshares, Inc. Common Stock	Common Stock	NGS	12(g)	0001077428	000-30533
TRBS	Texas Regional Bancshares, Inc. Class A Voting Common Stock	Common Stock	NGS	12(g)	0000787648	000-14517
TXRH	Texas Roadhouse, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0001289460	000-50972
TXUI	Texas United Bancshares Common Stock	Common Stock	NGM	12(g)	0001169238	000-49928
THRD	TF Financial Corporation Common Stock	Common Stock	NGM	12(g)	0000921051	000-24168
ARTL	The Aristotle Corporation Common Stock	Common Stock	NCM	12(g)	0000790071	000-14669
ARTLP	The Aristotle Corporation Series I $6.00 convertible voting cumulative 11% Preferred Stock	Preferred Stock	NCM	12(g)	0000790071	000-14669
TBBK	The Bancorp Inc Common Stock	Common Stock	NGM	12(g)	0001295401	000-51018
TBHS	The Bank Holdings, Inc. Common Stock	Common Stock	NCM	12(g)	0001234383	000-50645
TXCO	The Exploration Company Common Stock	Common Stock	NCM	12(g)	0000313395	000-09120
PRSC	The Providence Service Corporation Common Stock	Common Stock	NGS	12(g)	0001220754	000-50364
NCTY	The9 Limited American Depository Shares	American Depositary Shares	NGM	12(g)	0001296774	000-51053
THRX	Theravance, Inc. Common Stock	Common Stock	NGM	12(g)	0001080014	000-30319
TWAV	Therma-Wave, Inc. Common Stock	Common Stock	NGM	12(g)	0000828119	000-26911
KOOL	THERMOGENESIS Corp. Common Stock	Common Stock	NCM	12(g)	0000811212	000-16375
TSCM	TheStreet.com, Inc. Common Stock ($0.01 Par Value)	Common Stock	NGM	12(g)	0001080056	000-25779
TWTI	Third Wave Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0001120438	000-31745
TGIS	Thomas Group, Inc. Common Stock	Common Stock	NCM	12(g)	0000900017	000-22010
TPGI	Thomas Properties Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001283709	000-50854
TWPG	Thomas Weisel Partners Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001340354	000-51730
THOR	Thoratec Corporation Common Stock	Common Stock	NGS	12(g)	0000350907	000-49798
THQI	THQ Inc. Common Stock	Common Stock	NGS	12(g)	0000865570	000-18813
THLD	Threshold Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0001183765	000-51136
TIBB	TIB Financial Corporation Common Stock	Common Stock	NGS	12(g)	0001013796	000-21329
TIBX	TIBCO Software, Inc. Common Stock	Common Stock	NGS	12(g)	0001085280	000-26579
TONE	TierOne Corporation Common Stock	Common Stock	NGS	12(g)	0001170605	000-50015
TIII	TII Network Technologies, Inc. Common Stock	Common Stock	NCM	12(g)	0000277928	001-08048
TSBK	Timberland Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0001046050	000-23333

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
TWTC	Time Warner Telecom Inc. Class A Common Stock	Common Stock	NGS	12(g)	0001057758	000-30218
TIVO	TiVo Inc. Common Stock	Common Stock	NGM	12(g)	0001088825	000-27141
TLCV	TLC Vision Corporation Common Stock	Common Stock	NGM	12(g)	0001010610	000-29302
TLGD	Tollgrade Communications, Inc. Common Stock	Common Stock	NGS	12(g)	0001002531	000-27312
TOMO	Tom Online Inc. ADS	American Depositary Shares	NGS	12(g)	0001263288	000-50631
TOPT	TOP Tankers, Inc. Common Stock	Common Stock	NGS	12(g)	0001296484	000-50859
TOPP	Topps Company, Inc. (The) Common Stock	Common Stock	NGS	12(g)	0000812076	000-15817
TORM	TOR Minerals International Inc Common Stock	Common Stock	NCM	12(g)	0000842295	000-17321
TRGL	Toreador Resources Corporation Common Stock	Common Stock	NGM	12(g)	0000098720	000-02517
TOFC	Tower Financial Corporation Common Stock	Common Stock	NGM	12(g)	0001072847	000-25287
TWGP	Tower Group, Inc. Common Stock	Common Stock	NGS	12(g)	0001289592	000-50990
TSEMG	Tower Semiconductor Ltd. Debentures Convertible into Common Stock	Convertible Debenture	NCM	12(g)	0000928876	000-24790
TSEM	Tower Semiconductor Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0000928876	000-24790
TSEMW	Tower Semiconductor Ltd. Warrants - convert into one ordinary share at an exercise price of $7.50.	Warrant	NCM	12(g)	0000928876	000-24790
CLUB	Town Sports International Holdings, Inc. Common Stock	Common Stock	NGM	12(g)	0001281774	000-52013
TRAC	Track Data Corporation Common Stock	Common Stock	NGM	12(g)	0000922811	000-24634
TSCO	Tractor Supply Company Common Stock	Common Stock	NGS	12(g)	0000916365	000-23314
TRAD	TradeStation Group Inc Common Stock	Common Stock	NGS	12(g)	0001111559	000-31049
TRFC	Traffic.com, Inc. Common Stock	Common Stock	NGM	12(g)	0001097503	000-51746
TRFX	Traffix, Inc. Common Stock	Common Stock	NGM	12(g)	0001000297	000-27046
TRBR	Trailer Bridge, Inc. Common Stock	Common Stock	NCM	12(g)	0001039184	000-22837
TWMC	Trans World Entertainment Corp. Common Stock	Common Stock	NGM	12(g)	0000795212	000-14818
TACT	TransAct Technologies Incorporated Common Stock	Common Stock	NGM	12(g)	0001017303	000-21121
TSAI	Transaction Systems Architects , Inc. Common Stock	Common Stock	NGS	12(g)	0000935036	000-25346
TRNS	Transcat, Inc. Common Stock	Common Stock	NCM	12(g)	0000099302	000-03905
TRCR	Transcend Services, Inc. Common Stock	Common Stock	NCM	12(g)	0000858452	000-18217
TBIO	Transgenomic, Inc. Common Stock	Common Stock	NGM	12(g)	0001043961	000-30975
TMTA	Transmeta Corporation Common Stock	Common Stock	NGM	12(g)	0001001193	000-31803
TXCC	TranSwitch Corporation Common Stock	Common Stock	NGM	12(g)	0000944739	000-25996
TZOO	Travelzoo Inc Common Stock	Common Stock	NGS	12(g)	0001133311	000-50171
TMIC	Trend Micro Incorporated American Depositary Shares	American Depositary Shares	NGS	12(g)	0001089463	333-10486
TGIC	Triad Guaranty Inc. Common Stock	Common Stock	NGS	12(g)	0000911631	000-22342
TCBK	TriCo Bancshares Common Stock	Common Stock	NGS	12(g)	0000356171	000-10661
TRMA	Trico Marine Services, Inc. Common Stock New	Common Stock	NGM	12(g)	0000921549	000-28316
TRID	Trident Microsystems, Inc. Common Stock	Common Stock	NGM	12(g)	0000859475	000-20784
TRMB	Trimble Navigation Limited Common Stock	Common Stock	NGS	12(g)	0000864749	000-18645
TRMS	Trimeris, Inc. Common Stock	Common Stock	NGM	12(g)	0000911326	000-23155
TRIB	Trinity Biotech plc American Depositary Shares	American Depositary Shares	NGS	12(g)	0000888721	000-22320
TTPA	Trintech Group PLC American Depositary Shares	American Depositary Shares	NGM	12(g)	0001094316	000-30320
TPTH	TriPath Imaging Inc. Common Stock	Common Stock	NGM	12(g)	0001041426	000-22885

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
TCMI	Triple Crown Media, Inc. Common Stock	Common Stock	NGM	12(g)	0001333291	000-51636
TRPS	Tripos, Inc. Common Stock	Common Stock	NGM	12(g)	0000920691	000-23666
TQNT	TriQuint Semiconductor, Inc. Common Stock	Common Stock	NGS	12(g)	0000913885	000-22660
TRIS	Tri-S Security Corporation Common Stock	Common Stock	NCM	12(g)	0001304901	000-51148
TRISW	Tri-S Security Corporation Warrants Expires 2/08/2010	Warrant	NCM	12(g)	0001304901	000-51148
TZIX	TriZetto Group, Inc. (The) Common Stock	Common Stock	NGS	12(g)	0001092458	000-27501
TRMM	TRM Corporation Common Stock	Common Stock	NGM	12(g)	0000749254	000-19657
TRLG	True Religion Apparel, Inc. Common Stock	Common Stock	NGM	12(g)	0001160858	000-51483
TRMP	Trump Entertainment Resorts, Inc. Common Stock	Common Stock	NGM	12(g)	0000943320	001-13794
TRST	TrustCo Bank Corp NY Common Stock	Common Stock	NGS	12(g)	0000357301	000-10592
TRMK	Trustmark Corporation Common Stock	Common Stock	NGS	12(g)	0000036146	000-03683
TRXI	TRX, Inc. Common Stock	Common Stock	NGM	12(g)	0001103025	000-51478
TSRI	TSR, Inc. Common Stock	Common Stock	NGM	12(g)	0000098338	000-08656
TTIL	TTI Team Telecom International Ltd. Ordinary Shares	Ordinary Shares	NGM	12(g)	0001026266	000-28986
TTMI	TTM Technologies, Inc. Common Stock	Common Stock	NGS	12(g)	0001116942	000-31285
TUES	Tuesday Morning Corp. Common Stock	Common Stock	NGS	12(g)	0000878726	000-19658
TFCO	Tufco Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0000895329	000-21018
TMWD	Tumbleweed Communications Corp. Common Stock	Common Stock	NGM	12(g)	0001022509	000-26223
OVEN	TurboChef Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0000916545	001-32334
TUTS	Tut Systems, Inc. Common Stock	Common Stock	NGM	12(g)	0000878436	000-25291
TVIN	TVI Corporation Common Stock	Common Stock	NCM	12(g)	0000352079	000-10449
TVIA	TVIA, Inc. Common Stock	Common Stock	NCM	12(g)	0001109279	000-30539
TWTR	Tweeter Home Entertainment Group, Inc Common Stock	Common Stock	NGM	12(g)	0001060390	000-24091
TWIN	Twin Disc, Incorporated Common Stock	Common Stock	NGM	12(g)	0000100378	000-50987
RMIX	U.S. Concrete, Inc. Common Stock	Common Stock	NGM	12(g)	0001073429	000-26025
USEG	U.S. Energy Corp. Common Stock	Common Stock	NCM	12(g)	0000101594	000-06814
USEY	U.S. Energy Systems, Inc. Common Stock	Common Stock	NCM	12(g)	0000351917	000-10238
GROW	U.S. Global Investors, Inc. Class A Common Stock	Common Stock	NCM	12(g)	0000754811	000-13928
USHS	U.S. Home Systems, Inc. Common Stock	Common Stock	NGM	12(g)	0000844789	000-18291
USPH	U.S. Physical Therapy, Inc. Common Stock	Common Stock	NGS	12(g)	0000885978	001-11151
XPRSA	U.S. Xpress Enterprises, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0000923571	000-24806
UAUA	UAL Corporation Common Stock New	Common Stock	NGS	12(g)	0000100517	001-6033
UAPH	UAP Holding Corp. Common Stock	Common Stock	NGS	12(g)	0001279529	000-51035
UCBH	UCBH Holdings, Inc. Common Stock	Common Stock	NGS	12(g)	0001061580	000-24947
UFPT	UFP Technologies, Inc. Common Stock	Common Stock	NCM	12(g)	0000914156	001-12648
ULCM	Ulticom, Inc. Common Stock	Common Stock	NGM	12(g)	0001103184	000-30121
ULTI	Ultimate Software Group, Inc. (The) Common Stock	Common Stock	NGM	12(g)	0001016125	000-24347
UCTT	Ultra Clean Holdings, Inc. Common Stock	Common Stock	NGS	12(g)	0001275014	000-50646
ULBI	Ultralife Batteries, Inc. Common Stock	Common Stock	NGM	12(g)	0000875657	000-20852
UTEK	Ultratech, Inc. Common Stock	Common Stock	NGM	12(g)	0000909791	000-22248
UMBF	UMB Financial Corporation Common Stock	Common Stock	NGS	12(g)	0000101382	000-04887
UMPQ	Umpqua Holdings Corporation Common Stock	Common Stock	NGS	12(g)	0001077771	000-25597

Exhibit A: List of Securities whose Reg[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issuer Market Segment	Registration Basis	CIK	File Number
UARM	Under Armour, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0001336917	001-10635
UNCA	Unica Corporation Common Stock	Common Stock	NGM	12(g)	0001138804	000-51461
UNAM	Unico American Corporation Common Stock	Common Stock	NGM	12(g)	0000100716	000-03978
UBSH	Union Bankshares Corporation Common Stock	Common Stock	NGS	12(g)	0000883948	000-20293
UDRL	Union Drilling, Inc. Common Stock	Common Stock	NGM	12(g)	0001133260	000-51630
UBCD	UnionBancorp, Inc Common Stock	Common Stock	NGM	12(g)	0001019650	000-28846
INDM	United America Indemnity, Ltd. Class A Common Stock	Common Stock	NGM	12(g)	0001263813	000-50511
UAHC	United American Healthcare Corporation Common Stock	Common Stock	NCM	12(g)	0000867963	001-11638
UBCP	United Bancorp, Inc. Common Stock	Common Stock	NCM	12(g)	0000731653	000-16540
UBOH	United Bancshares, Inc. Common Stock	Common Stock	NGM	12(g)	0001087456	000-29283
UBSI	United Bankshares, Inc. Common Stock	Common Stock	NGS	12(g)	0000729986	000-13322
UCBA	United Community Bancorp Common Stock	Common Stock	NGM	12(g)	0001344970	000-51800
UCBI	United Community Banks, Inc. Common Stock	Common Stock	NGS	12(g)	0000857855	000-21656
UCFC	United Community Financial Corp. Common Stock	Common Stock	NGS	12(g)	0000707886	000-24399
UBNK	United Financial Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0001319572	000-51369
UBMT	United Financial Corp Common Stock	Common Stock	NGM	12(g)	0001011309	000-28080
UHCP	United Heritage Corporation Common Stock	Common Stock	NCM	12(g)	0000354567	000-9997
UNFI	United Natural Foods, Inc. Common Stock	Common Stock	NGS	12(g)	0001020859	000-21531
UNTD	United Online, Inc. Common Stock	Common Stock	NGS	12(g)	0001142701	000-33367
UPFC	United PanAm Financial Corporation Common Stock	Common Stock	NGS	12(g)	0001049231	000-24051
URGI	United Retail Group, Inc. Common Stock	Common Stock	NGM	12(g)	0000881905	000-19774
UBFO	United Security Bancshares Common Stock	Common Stock	NGS	12(g)	0001137547	000-32897
USBI	United Security Bancshares, Inc. Common Stock	Common Stock	NCM	12(g)	0000717806	000-14549
USLM	United States Lime & Minerals, Inc. Common Stock	Common Stock	NGM	12(g)	0000082020	000-04197
USTR	United Stationers Inc. Common Stock	Common Stock	NGS	12(g)	0000355999	000-10653
USPI	United Surgical Partners International, Inc. Common Stock	Common Stock	NGS	12(g)	0001101723	000-32837
UTHR	United Therapeutics Corporation Common Stock	Common Stock	NGS	12(g)	0001082554	000-26301
UNTY	Unity Bancorp, Inc. Common Stock	Common Stock	NGM	12(g)	0000920427	000-24893
UHCO	Universal American Financial Corp. Common Stock	Common Stock	NGS	12(g)	0000709878	001-08506
UEIC	Universal Electronics Inc. Common Stock	Common Stock	NGS	12(g)	0000101984	000-21044
UFPI	Universal Forest Products, Inc. Common Stock	Common Stock	NGS	12(g)	0000912767	000-22684
USAP	Universal Stainless & Alloy Products, Inc. Common Stock	Common Stock	NGM	12(g)	0000931584	000-25032
UACL	Universal Truckload Services, Inc. Common Stock	Common Stock	NGM	12(g)	0001308208	000-51142
UNIB	University Bancorp Inc Michigan Common Stock	Common Stock	NCM	12(g)	0000811211	000-16023
UVSP	Univest Corporation of Pennsylvania Common Stock	Common Stock	NGS	12(g)	0000102212	000-07617
URBN	Urban Outfitters, Inc. Common Stock	Common Stock	NGS	12(g)	0000912615	000-16999
ULGX	Urologix, Inc. Common Stock	Common Stock	NGM	12(g)	0000882873	000-28414
CLEC	US LEC Corp. Class A Common Stock	Common Stock	NGM	12(g)	0001054290	000-24061
USMO	USA Mobility, Inc. Common Stock	Common Stock	NGS	12(g)	0001289945	000-51027
USAK	USA Truck, Inc. Common Stock	Common Stock	NGS	12(g)	0000883945	000-19858
USNA	USANA Health Sciences Inc. Common Stock	Common Stock	NGS	12(g)	0000896264	000-21116
USIH	USI Holdings Corporation Common Stock	Common Stock	NGS	12(g)	0001102643	000-50041

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
UTMD	Utah Medical Products, Inc. Common Stock	Common Stock	NGM	12(g)	0000706698	000-11178
UTIW	UTi Worldwide Inc. Ordinary Shares	Ordinary Shares	NGS	12(g)	0001124827	000-31869
UTSI	UTStarcom, Inc. Common Stock	Common Stock	NGS	12(g)	0001030471	000-29661
LNUX	VA Software Corporation Common Stock	Common Stock	NGM	12(g)	0001096199	000-28369
VAIL	Vail Banks, Inc. Common Stock	Common Stock	NGM	12(g)	0001035770	000-25081
VLNC	Valence Technology, Inc. Common Stock	Common Stock	NCM	12(g)	0000885551	000-20028
VLTS	Valentis, Inc. Common Stock	Common Stock	NCM	12(g)	0000932352	000-22987
VLRX	Valera Pharmaceuticals, Inc. Common Stock	Common Stock	NGM	12(g)	0001305409	000-51768
VLLY	Valley Bancorp Common Stock	Common Stock	NGM	12(g)	0001295334	000-50950
VYFC	Valley Financial Corporation Common Stock	Common Stock	NCM	12(g)	0000921590	000-28342
VALU	Value Line, Inc. Common Stock	Common Stock	NGM	12(g)	0000717720	000-11306
VCLK	ValueClick, Inc. Common Stock	Common Stock	NGS	12(g)	0001080034	000-30135
VVTV	ValueVision Media, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0000870826	000-20243
VNDA	Vanda Pharmaceuticals Inc. Common Stock	Common Stock	NGM	12(g)	0001347178	000-51863
VSEA	Varian Semiconductor Equipment Associates, Inc. Common Stock	Common Stock	NGS	12(g)	0001079023	000-25395
VARI	Varian, Inc. Common Stock	Common Stock	NGS	12(g)	0001079028	000-25393
VSTY	Varsity Group, Inc. Common Stock	Common Stock	NGM	12(g)	0001069502	000-28977
VDSI	VASCO Data Security International, Inc. Common Stock	Common Stock	NCM	12(g)	0001044777	000-24389
VASC	Vascular Solutions, Inc. Common Stock	Common Stock	NGM	12(g)	0001030206	000-27605
VSGN	Vasogen Inc. Common Shares	Common Stock	NGM	12(g)	0001042018	000-29350
WOOF	VCA Antech, Inc. Common Stock	Common Stock	NGS	12(g)	0000817366	001-16783
VECO	Veeco Instruments Inc. Common Stock	Common Stock	NGS	12(g)	0000103145	000-16244
VEXP	Velocity Express Corporation New Common Stock	Common Stock	NCM	12(g)	0001002902	000-28452
VMSI	Ventana Medical Systems, Inc. Common Stock	Common Stock	NGS	12(g)	0000893160	000-20931
VRGY	Verigy Ltd. Ordinary Shares	Ordinary Shares	NGS	12(g)	0001352341	000-52038
VRNT	Verint Systems Inc. Common Stock	Common Stock	NGM	12(g)	0001166388	000-49790
VRSN	VeriSign, Inc. Common Stock	Common Stock	NGS	12(g)	0001014473	000-23593
VNLS	Vernalis plc American Depositary Shares	American Depositary Shares	NGM	12(g)	0000851616	000-20104
VSNT	Versant Corporation Common Stock	Common Stock	NCM	12(g)	0000865917	000-28540
VRSO	Verso Technologies, Inc. Common Stock	Common Stock	NCM	12(g)	0000797448	000-22190
VRTX	Vertex Pharmaceuticals Incorporated Common Stock	Common Stock	NGS	12(g)	0000875320	000-19319
VERT	VerticalNet, Inc. Common Stock	Common Stock	NCM	12(g)	0001043946	000-25269
VTRU	Vertrue Incorporated Common Stock	Common Stock	NGS	12(g)	0001020996	000-21527
VRTA	Vestin Realty Mortgage I, Inc. Common Stock	Common Stock	NGM	12(g)	0001328300	000-51964
VRTB	Vestin Realty Mortgage II, Inc. Common Stock	Common Stock	NGS	12(g)	0001327603	000-51892
VIAC	ViaCell, Inc. Common Stock	Common Stock	NGM	12(g)	0001114529	000-51110
VSAT	ViaSat, Inc. Common Stock	Common Stock	NGS	12(g)	0000797721	000-21767
VICL	Vical Incorporated Common Stock	Common Stock	NGM	12(g)	0000819050	000-21088
VICR	Vicor Corporation Common Stock	Common Stock	NGS	12(g)	0000751978	000-18277
VIDE	Video Display Corporation Common Stock	Common Stock	NGM	12(g)	0000758743	000-13394
VWPT	Viewpoint Corporation Common Stock	Common Stock	NGM	12(g)	0000919794	000-27168

Exhibit A: List of Securities whose Regi[redacted]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
VIGN	Vignette Corporation Common Stock	Common Stock	NGM	12(g)	0001042185	000-25375
VISG	Viisage Technology, Inc. Common Stock	Common Stock	NGM	12(g)	0001018332	000-21559
VBFC	Village Bank and Trust Financial Corp. Common Stock	Common Stock	NCM	12(g)	0001290476	000-50765
VLGEA	Village Super Market, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0000103595	000-02633
VIMC	Vimicro International Corporation American Depository Shares	American Depositary Shares	NGM	12(g)	0001341088	000-51606
VNBC	Vineyard National Bancorp Common Stock	Common Stock	NGS	12(g)	0000840256	000-20862
VION	Vion Pharmaceuticals Inc. Common Stock	Common Stock	NCM	12(g)	0000944522	000-26534
VIRL	Virage Logic Corporation Common Stock	Common Stock	NGM	12(g)	0001050776	000-31089
VBAC	Virbac Corporation Common Stock	Common Stock	NCM	12(g)	0000922814	000-24312
VCBI	Virginia Commerce Bancorp Common Stock	Common Stock	NGS	12(g)	0001099305	000-28635
VFGI	Virginia Financial Group Inc Common Stock	Common Stock	NGS	12(g)	0001036070	000-22283
VPHM	ViroPharma Incorporated Common Stock	Common Stock	NGS	12(g)	0000946840	000-21699
VSCP	VirtualScopics, Inc. Common Stock	Common Stock	NCM	12(g)	0001307752	000-52018
VRYA	ViryaNet Ltd. Ordinary Shares	Ordinary Shares	NCM	12(g)	0001119744	000-31513
EICU	Visicu, Inc. Common Stock	Common Stock	NGM	12(g)	0001166463	000-51865
VSCI	Vision-Sciences, Inc. Common Stock	Common Stock	NCM	12(g)	0000894237	000-20970
VSTA	VistaCare Common Stock	Common Stock	NGM	12(g)	0000787030	000-50118
VPRT	VistaPrint Limited Common Stock	Common Stock	NGS	12(g)	0001262976	000-51539
VTAL	Vital Images, Inc. Common Stock	Common Stock	NGM	12(g)	0000912888	000-22229
VITL	Vital Signs, Inc. Common Stock	Common Stock	NGS	12(g)	0000865846	000-18793
VSTH	VitalStream Holdings, Inc. Common Stock	Common Stock	NCM	12(g)	0000789851	001-10013
VTNC	Vitran Corporation, Inc. Common Stock	Common Stock	NGM	12(g)	0000946823	000-26256
VITR	Vitria Technology, Inc. Common Stock	Common Stock	NGM	12(g)	0001050808	000-27207
VVUS	VIVUS, Inc. Common Stock	Common Stock	NGM	12(g)	0000881524	000-23490
VNUS	VNUS Medical Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0001040666	000-50988
VOCL	VocalTec Communications Ltd. Ordinary shares	Ordinary Shares	NCM	12(g)	0001005699	000-27648
VOCS	Vocus, Inc. Common Stock	Common Stock	NGM	12(g)	0001329919	000-51644
VTEK	Vodavi Technology, Inc. Common Stock	Common Stock	NCM	12(g)	0000949491	000-26912
VOLC	Volcano Corporation Common Stock	Common Stock	NGM	12(g)	0001137567	000-52045
VLCM	Volcom, Inc. Common Stock	Common Stock	NGS	12(g)	0001324570	000-51382
VLTR	Volterra Semiconductor Corporation Common Stock	Common Stock	NGM	12(g)	0001050550	000-50857
VOXW	Voxware, Inc. Common Stock	Common Stock	NCM	12(g)	0000933454	000-21403
VSEC	VSE Corporation Common Stock	Common Stock	NGM	12(g)	0000102752	000-03676
VYYO	Vyyo, Inc. Common Stock	Common Stock	NGM	12(g)	0001104730	000-30189
WBPRN	W Holding Company Incorporated 2001 Series C 7.60% Non-Cumulative Monthly Income Preferred Stock	Preferred Stock	NGM	12(g)	0001084887	000-27377
WBPRK	W Holding Company Incorporated 2003 Series G Non-Cumulative Preferred Stock	Preferred Stock	NGM	12(g)	0001084887	000-27377
WBPRJ	W Holding Company Incorporated 2004 Series H Non-Cumulative Preferred Sock	Preferred Stock	NGM	12(g)	0001084887	000-27377
WBPRO	W Holding Company Incorporated 7.25% 1999 Series B Noncumulative Monthly Income Preferred Stock	Preferred Stock	NGM	12(g)	0001084887	000-27377

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
WBPRM	W Holding Company Incorporated 7.40% Noncumulative Monthly Income Preferred Stock, 2001 Series D	Preferred Stock	NGM	12(g)	0001084887	000-27377
WBPRL	W Holding Company Incorporated Series E Preferred Stock	Preferred Stock	NGM	12(g)	0001084887	000-27377
WBPRZ	W Holding Company Incorporated Series F Preferred Stock	Preferred Stock	NGM	12(g)	0001084887	000-27377
WBNK	Waccamaw Bankshares Inc Common Stock	Common Stock	NCM	12(g)	0001144686	000-32985
WACLY	Wacoal Holdings Corporation American Depositary Shares	American Depositary Shares	NCM	12(g)	0000104040	000-11743
WRNC	Warnaco Group Inc (The) Common Stock	Common Stock	NGS	12(g)	0000801351	001-10857
WRES	Warren Resources, Inc. Common Stock	Common Stock	NGM	12(g)	0000892986	000-33275
WARR	Warrior Energy Service Corporation New Common Stock	Common Stock	NGM	12(g)	0000839871	000-18754
WWVY	Warwick Valley Telephone Company Common Stock	Common Stock	NGM	12(g)	0000104777	000-11174
WBCO	Washington Banking Company Common Stock	Common Stock	NGS	12(g)	0001058690	000-24503
WFSL	Washington Federal, Inc. Common Stock	Common Stock	NGS	12(g)	0000936528	000-25454
WGII	Washington Group International, Inc. Common Stock	Common Stock	NGS	12(g)	0000906469	001-12054
DIMEZ	Washington Mutual, Inc. Dime Bancorp Litigation Tracking Warrant	Other Securities	NGM	12(g)	0000933136	001-14667
WASH	Washington Trust Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0000737468	000-13091
WWIN	Waste Industries USA, Inc. Common Stock	Common Stock	NGM	12(g)	0001125845	000-31050
WSII	Waste Services, Inc. Common Stock	Common Stock	NGM	12(g)	0001065736	000-25955
WGRD	WatchGuard Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0001062019	000-26819
WAUW	Wauwatosa Holdings, Inc. Common Stock	Common Stock	NGS	12(g)	0001329517	000-51507
WAVXD	Wave Systems Corp. Class A New Common Stock	Common Stock	NGM	12(g)	0000919013	000-24752
WVCM	Wavecom S.A. American Depositary Shares	American Depositary Shares	NGM	12(g)	0001085763	000-30078
WAYN	Wayne Savings Bancshares Inc. Common Stock	Common Stock	NGM	12(g)	0001036030	000-23433
WCAA	WCA Waste Corporation Common Stock	Common Stock	NGM	12(g)	0001282398	000-50808
WDFC	WD-40 Company Common Stock	Common Stock	NGS	12(g)	0000105132	000-06936
WWWW	Web.com, Inc. Common Stock	Common Stock	NGM	12(g)	0000854460	000-17932
WEBX	WebEx Communications, Inc. Common Stock	Common Stock	NGS	12(g)	0001109935	000-30849
WBMD	WebMD Health Corp. Class A Common Stock	Common Stock	NGS	12(g)	0001326583	000-51547
WEBM	webMethods, Inc. Common Stock	Common Stock	NGM	12(g)	0001035096	001-15681
WBSN	Websense, Inc. Common Stock	Common Stock	NGS	12(g)	0001098277	000-30093
WSSI	WebSideStory, Inc. Common Stock	Common Stock	NGM	12(g)	0001091158	000-31613
WSPI	Website Pros, Inc. Common Stock	Common Stock	NGM	12(g)	0001095291	000-51595
WBSTP	Webster Financial Corporation Series B 8.625% Cumulative	Preferred Stock	NGM	12(g)	0001047865	000-23513
WZEN	Webzen Inc American Depositary Shares	American Depositary Shares	NGM	12(g)	0001266467	000-50476
WGNR	Wegener Corporation Common Stock	Common Stock	NCM	12(g)	0000715073	000-11003
WERN	Werner Enterprises, Inc. Common Stock	Common Stock	NGS	12(g)	0000793074	000-14690
WSBC	WesBanco, Inc. Common Stock	Common Stock	NGS	12(g)	0000203596	000-08467
WTBA	West Bancorporation Common Stock	Common Stock	NGM	12(g)	0001166928	000-49677
WCBO	West Coast Bancorp Common Stock	Common Stock	NGS	12(g)	0000717059	000-10997
WSTC	West Corporation Common Stock	Common Stock	NGS	12(g)	0001024657	000-21771
WMAR	West Marine, Inc. Common Stock	Common Stock	NGM	12(g)	0000912833	000-22512
WSTF	Westaff Inc. Common Stock	Common Stock	NGM	12(g)	0000931911	000-24990

Exhibit A: List of Securities whose Regi[redacted]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
WEDX	Westaim Corporation (The) Common Stock	Common Stock	NGM	12(g)	0001108828	000-30600
WABC	Westamerica Bancorporation Common Stock	Common Stock	NGS	12(g)	0000311094	001-09383
WBKC	WestBank Corporation Common Stock	Common Stock	NGM	12(g)	0000742070	000-12784
WSTL	Westell Technologies, Inc. Class A Common Stock	Common Stock	NGS	12(g)	0001002135	000-27266
WTSLA	Wet Seal, Inc. (The) Class A Common Stock	Common Stock	NGM	12(g)	0000863456	000-18632
WEYS	Weyco Group, Inc. Common Stock	Common Stock	NGM	12(g)	0000106532	000-09068
WGNB	WGNB Corp. Common Stock	Common Stock	NCM	12(g)	0001115568	000-30805
WPSC	Wheeling-Pittsburgh Corporation Common Stock	Common Stock	NGM	12(g)	0000941738	000-50300
WEDC	White Electronic Designs Corporation Common Stock	Common Stock	NGM	12(g)	0000013606	001-04817
WTNY	Whitney Holding Corporation Common Stock	Common Stock	NGS	12(g)	0000106926	000-01026
WHIT	Whittier Energy Corporation Common Stock	Common Stock	NGM	12(g)	0001108520	000-30598
WFMI	Whole Foods Market, Inc. Common Stock	Common Stock	NGS	12(g)	0000865436	000-19797
WTHN	WiderThan Co., Ltd. American Depositary Shares	American Depositary Shares	NGM	12(g)	0001342167	000-51631
OATS	Wild Oats Markets, Inc. Common Stock	Common Stock	NGM	12(g)	0000909990	000-21577
WVVI	Willamette Valley Vineyards, Inc. Common Stock	Common Stock	NCM	12(g)	0000838875	000-21522
WMSI	Williams Industries, Inc. Common Stock	Common Stock	NCM	12(g)	0000107294	000-08190
WLSC	Williams Scotsman International, Inc. Common Stock	Common Stock	NGS	12(g)	0000923144	000-51521
WLFC	Willis Lease Finance Corporation Common Stock	Common Stock	NGM	12(g)	0001018164	000-28774
WLFCP	Willis Lease Finance Corporation Series A Preferred Shares	Preferred Stock	NGM	12(g)	0001018164	000-28774
WGBC	Willow Grove Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0001163428	000-25191
WIBC	Wilshire Bancorp, Inc. Common Stock	Common Stock	NGS	12(g)	0001285224	000-50923
WLSN	Wilsons The Leather Experts Inc. Common Stock	Common Stock	NGM	12(g)	0001016607	000-21543
WIND	Wind River Systems, Inc. Common Stock	Common Stock	NGS	12(g)	0000833829	000-21342
WINA	Winmark Corporation Common Stock	Common Stock	NGM	12(g)	0000908315	000-22012
WTFC	Wintrust Financial Corporation Common Stock	Common Stock	NGS	12(g)	0001015328	000-21923
WTFCP	Wintrust Financial Corporation Wintrust Capital Trust I - 9.0% Cumulative Trust Preferred Securities	Other Securities	NGS	12(g)	0001015328	000-21923
WFII	Wireless Facilities, Inc. Common Stock	Common Stock	NGS	12(g)	0001069258	000-27231
WITS	Witness Systems, Inc. Common Stock	Common Stock	NGS	12(g)	0001097338	000-29335
WJCI	WJ Communications, Inc. Common Stock	Common Stock	NGM	12(g)	0000105006	000-31337
WDHD	Woodhead Industries, Inc. Common Stock	Common Stock	NGS	12(g)	0000108215	000-05971
WGOV	Woodward Governor Company Common Stock	Common Stock	NGS	12(g)	0000108312	000-08408
WRLD	World Acceptance Corporation Common Stock	Common Stock	NGS	12(g)	0000108385	000-19599
WHRT	World Heart Corporation Ordinary Shares (Canada)	Ordinary Shares	NGM	12(g)	0001024520	000-28882
WGAT	Worldgate Communications, Inc. Common Stock	Common Stock	NCM	12(g)	0001030058	000-25755
WRSP	WorldSpace, Inc. Common Stock	Common Stock	NGM	12(g)	0001315054	000-51466
WPCS	WPCS International, Inc. Common Stock	Common Stock	NCM	12(g)	0001086745	000-26277
WPPGY	WPP Group plc American Depositary Shares	American Depositary Shares	NGS	12(g)	0000806968	000-16350
WPTE	WPT Enterprises, Inc. Common Stock	Common Stock	NGM	12(g)	0001283843	000-50848
WMGI	Wright Medical Group, Inc. Common Stock	Common Stock	NGS	12(g)	0001137861	000-32883
WSFS	WSFS Financial Corporation Common Stock	Common Stock	NGS	12(g)	0000828944	000-16668
WSCI	WSI Industries Inc. Common Stock	Common Stock	NCM	12(g)	0000104897	000-00619

Exhibit A: List of Securities whose Regi[redacted]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
WVFC	WVS Financial Corp. Common Stock	Common Stock	NGM	12(g)	0000910679	000-22444
WYNN	Wynn Resorts, Limited Common stock	Common Stock	NGS	12(g)	0001174922	000-50028
XATA	XATA Corporation Common Stock	Common Stock	NCM	12(g)	0000854398	000-27166
XGEN	Xenogen Corporation Common Stock	Common Stock	NGM	12(g)	0001116449	000-32239
XNPT	XenoPort, Inc. Common Stock	Common Stock	NGM	12(g)	0001130591	000-51329
XETA	XETA Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0000742550	000-16231
XLNX	Xilinx, Inc. Common Stock	Common Stock	NGS	12(g)	0000743988	000-18548
XMSR	XM Satellite Radio Holdings Inc. Class A Common Stock	Common Stock	NGS	12(g)	0001091530	000-27441
XOMA	XOMA Ltd. Common Stock	Common Stock	NGM	12(g)	0000791908	000-14710
XRIT	X-Rite, Incorporated Common Stock	Common Stock	NGS	12(g)	0000790818	000-14800
XTLB	XTL Biopharmaceuticals Ltd. American Depositary Shares	American Depositary Shares	NGM	12(g)	0001023549	000-51310
XRTX	Xyratex Ltd. Common Shares	Common Stock	NGS	12(g)	0001284823	000-50800
YHOO	Yahoo! Inc. Common Stock	Common Stock	NGS	12(g)	0001011006	000-28018
YAKC	Yak Communications, Inc. Common Stock	Common Stock	NGM	12(g)	0001084544	000-33471
YANB	Yardville National Bancorp Common Stock	Common Stock	NGS	12(g)	0000787849	000-26086
YORW	York Water Company (The) Common Stock	Common Stock	NGS	12(g)	0000108985	000-00690
UBET	Youbet.com, Inc. Common Stock	Common Stock	NCM	12(g)	0000814055	000-26015
YBTVA	Young Broadcasting, Inc. Class A Common Stock	Common Stock	NGM	12(g)	0000929144	000-25042
YDNT	Young Innovations, Inc. Common Stock	Common Stock	NGS	12(g)	0000949874	000-23213
YRCW	YRC Worldwide, Inc. Common Stock	Common Stock	NGS	12(g)	0000716006	000-12255
ZANE	Zanett Inc. Common Stock	Common Stock	NCM	12(g)	0001133872	000-27068
ZRBA	Zareba Systems, Inc. Common Stock	Common Stock	NCM	12(g)	0000104987	000-01388
ZBRA	Zebra Technologies Corporation Class A Common Stock	Common Stock	NGS	12(g)	0000877212	000-19406
ZVXI	Zevex International, Inc. Common Stock	Common Stock	NGM	12(g)	0000827056	001-12965
ZHNE	Zhone Technologies, Inc. Common Stock	Common Stock	NGM	12(g)	0001101680	000-50263
ZICA	Zi Corporation Common Stock	Common Stock	NGM	12(g)	0000922658	000-24018
ZILA	Zila, Inc. Common Stock	Common Stock	NGM	12(g)	0000827156	000-17521
ZILG	ZiLOG, Inc. New Common Stock	Common Stock	NGM	12(g)	0000319450	001-13748
ZION	Zions Bancorporation Common Stock (No Par Value)	Common Stock	NGS	12(g)	0000109380	000-02610
ZIPR	ZipRealty, Inc. Common Stock	Common Stock	NGM	12(g)	0001142512	000-51002
ZIXI	Zixlt Corporation Common Stock	Common Stock	NGM	12(g)	0000855612	000-17995
ZOLL	Zoll Medical Corporation Common Stock	Common Stock	NGS	12(g)	0000887568	000-20225
ZOLT	Zoltek Companies, Inc. Common Stock	Common Stock	NGM	12(g)	0000890923	000-20600
ZOMX	Zomax Incorporated Common Stock	Common Stock	NGM	12(g)	0001010788	000-28426
ZONS	Zones Inc. Common Stock	Common Stock	NGM	12(g)	0001013786	000-28488
ZOOM	Zoom Technologies, Inc. Common Stock	Common Stock	NCM	12(g)	0000822708	000-18672
ZRAN	Zoran Corporation Common Stock	Common Stock	NGS	12(g)	0001003022	000-27246
ZUMZ	Zumiez Inc. Common Stock	Common Stock	NGS	12(g)	0001318008	000-51300
ZIGO	Zygo Corporation Common Stock	Common Stock	NGS	12(g)	0000730716	000-12944
ZGEN	ZymoGenetics, Inc. Common Stock	Common Stock	NGM	12(g)	0001129425	000-33489
ADRA	BLDRS Index Funds Trust BLDRS Asia 50 ADR Index Fund	Other Securities	NGM	12(g)(2)(B)	0001169717	811-21057

Exhibit A: List of Securities whose Regi[illegible]n will be Transferred to Section 12(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #
ADRD	BLDRS Index Funds Trust BLDRS Developed Markets 100 ADR Index Fund	Other Securities	NGM	12(g)(2)(B)	0001169717	811-21057
ADRE	BLDRS Index Funds Trust BLDRS Emerging Markets 50 ADR Index Fund	Other Securities	NGM	12(g)(2)(B)	0001169717	811-21057
ADRU	BLDRS Index Funds Trust BLDRS Europe 100 ADR Index Fund	Other Securities	NGM	12(g)(2)(B)	0001169717	811-21057
CSQ	Calamos Strategic Total Return Common Stock	Shares of Beneficial Interest	NGS	12(g)(2)(B)	0001275214	811-21484
ONEQ	Fidelity Nasdaq Composite Index Tracking Stock	Other Securities	NGM	12(g)(2)(B)	0000205323	811-2546
QTEC	First Trust NASDAQ - 100-Technology Sector Index Fund	Other Securities	NGM	12(g)(2)(B)	0001329377	001-32621
QQEW	First Trust NASDAQ-100 Equal Weighted Index Fund	Other Securities	NGM	12(g)(2)(B)	0001329377	001-32621
CUBA	Herzfeld Caribbean Basin Fund, Inc. (The) Common Stock	Common Stock	NCM	12(g)(2)(B)	0000880406	811-06445
JHFT	John Hancock Financial Trends Fund, Inc. Common Stock	Common Stock	NGS	12(g)(2)(B)	0000852954	811-05734
QQQQ	Nasdaq-100 Trust, Series I Nasdaq-100 Shares	Other Securities	NGM	12(g)(2)(B)	0001067839	811-08947
JLA	Nuveen Equity Premium Advantage Fund Nuveen Equity Premium Advantage Fund Common Shares of Beneficial Interest	Shares of Beneficial Interest	NGM	12(g)(2)(B)	0001320492	811-21731
JPZ	Nuveen Equity Premium Income Fund Nuveen Equity Income Premium Fund Shares of Beneficial Interest	Shares of Beneficial Interest	NGM	12(g)(2)(B)	0001298699	811-21619
JSN	Nuveen Equity Premium Opportunity Fund Nuveen Equity Premiun Opportunity Fund Shares of Beneficial Interest	Shares of Beneficial Interest	NGM	12(g)(2)(B)	0001308658	811-21674
FUND	Royce Focus Trust, Inc. Common Stock	Common Stock	NGS	12(g)(2)(B)	0000825202	811-05379
PEFX	S&P 500 Protected Equity Fund, Inc. (The) Common Stock	Common Stock	NGS	12(g)(2)(B)	0001090431	811-9479
WSCC	Waterside Capital Corporation Common Stock	Common Stock	NCM	12(g)(2)(B)	0000924095	811-8387

Exhibit B: List of Securities of Issuers that have Elected to Opt-Out of Requested Relief

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Registration Type	CIK	SEC File #

None

Exhibit C: List of Securities Exempt from Section 12(g) Registration under Section 12(g)(2)(G) and Rule 12g3-2(b)

Issue Symbol	Issue Name	Issue Type	Issue Market Segment	Exemption Type	CIK	SEC File #
AAUK	Anglo American plc American Depositary Shares	American Depositary Shares	NCM	12g3-2(b)	0001088370	82-97
DAIEY	Dai'ei, Inc. American Depositary Shares	American Depositary Shares	NCM	12g3-2(b)	0000800167	82-230
FUJIY	Fuji Photo Film Co., Ltd. American Depositary Shares	American Depositary Shares	NCM	12g3-2(b)	0000800365	82-00078
HSVLY	Highveld Steel and Vanadium Corporation Limited American Depositary Shares	American Depositary Shares	NCM	12g3-2(b)	0000800630	82-596
NSANY	Nissan Motor Co., Ltd. American Depositary Shares	American Depositary Shares	NCM	12g3-2(b)	0000800937	82-207
REXMY	Rexam, Plc American Depositary Shares	American Depositary Shares	NCM	12g3-2(b)	0000013522	82-00004
STOSY	Santos, Ltd. American Depositary Shares (Australia)	American Depositary Shares	NCM	12g3-2(b)	0000800861	82-34
SANYY	Sanyo Electric Co., Ltd. American Depositary Shares	American Depositary Shares	NCM	12g3-2(b)	0000800863	82-264
VELCF	Velcro Industries N.V. Common Stock	Common Stock	NCM	12g3-2(b)	0000802100	82-145
ANAT	American National Insurance Company Common Stock	Common Stock	NGS	12(g)(2)(G)		
KCLI	Kansas City Life Insurance Company Common Stock	Common Stock	NCM	12(g)(2)(G)	0000054473	002-40764
NWLIA	National Western Life Insurance Company Class A Common Stock	Common Stock	NGS	12(g)(2)(G)	0000070684	002-17039
UFCS	United Fire & Casualty Company Common Stock	Common Stock	NGS	12(g)(2)(G)	0000101199	002-39621

SECURITIES AND EXCHANGE COMMISSION
Release No. 34-54241

July 31, 2006

In the Matter of the Application of the Nasdaq Stock Market, Inc. and the NASDAQ Stock Market LLC for an Exemption from Section 12(a) Allowing Trading of Certain Unregistered Securities

I. Introduction

On January 13, 2006, the Commission approved the application of the Nasdaq Stock Market, Inc. ("Nasdaq") to register one of its subsidiaries, the NASDAQ Stock Market LLC ("Nasdaq Exchange") as a national securities exchange.[1] Prior to Nasdaq's submission of the application to become an exchange, Nasdaq was a wholly-owned subsidiary of the National Association of Securities Dealers, Inc. ("NASD") that operated as an interdealer quotation system. Historically under NASD rules, a company's securities were eligible for listing on Nasdaq if the security was registered under either Section 12(g)[2] or Section 12(b)[3] of the Securities Exchange Act of 1934 ("Exchange Act").[4] However, in certain circumstances, NASD rules also permitted the trading of securities that are exempt from registration under Section 12(g) of the Exchange Act.

Among other exempt securities, NASD rules allow the trading of any security of an insurance company that is exempt from registration under Section 12(g)(2)(G) of the Exchange

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[1] See Release No. 34-53128 (January 13, 2006) [71 FR 3550].

[2] 15 U.S.C. 78l(g).

[3] 15 U.S.C. 78l(b).

[4] 15 U.S.C. 78a et seq.

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Act[5] and the securities of certain foreign private issuers that are exempt from Section 12(g) registration pursuant to Exchange Act Rule 12g3-2(b).[6]

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[5] 15 U.S.C. 78l(g)(2)(G). Section 12(g)(2)(G) provides that any security issued by an insurance company is exempt from registration if all of the following conditions are met:

- Such insurance company is required to and does file an annual statement with the Commissioner of Insurance (or other officer or agency performing a similar function) of its domiciliary State, and such annual statement conforms to that prescribed by the National Association of Insurance Commissioners or in the determination of such State commissioner, officer or agency substantially conforms to that so prescribed.

- Such insurance company is subject to regulation by its domiciliary State of proxies, consents, or authorizations in respect of securities issued by such company and such regulation conforms to that prescribed by the National Association of Insurance Commissioners.

- After July 1, 1966, the purchase and sales of securities issued by such insurance company by beneficial owners, directors, or officers of such company are subject to regulation (including reporting) by its domiciliary State substantially in the manner provided in Section 16.

[6] 17 CFR 240.12g3-2(b). Rule 12g3-2(b)(1) states:

> Securities of any foreign private issuer shall be exempt from section 12(g) of the Act if the issuer, or a government official or agency of the country of the issuer's domicile or in which it is incorporated or organized:
>
> (i) Shall furnish to the Commission whatever information in each of the following categories the issuer since the beginning of its last fiscal year (A) has made or is required to make public pursuant to the law of the country of its domicile or in which it is incorporated or organized, (B) has filed or is required to file with a stock exchange on which its securities are traded and which was made public by such exchange, or (C) has distributed or is required to distribute to its security holders;
>
> (ii) Shall furnish to the Commission a list identifying the information referred to in paragraph (b)(1)(i) of this section and stating when and by whom it is required to be made public, filed with any such exchange, or distributed to security holders;
>
> (iii) Shall furnish to the Commission, during each subsequent fiscal year, whatever information is made public as described in paragraphs (b)(1)(i)(A), (B) or (C) of this section promptly after such information is made or required to be made public as described therein;
>
> (iv) Shall, promptly after the end of any fiscal year in which any changes occur in the kind of information required to be published as referred to in the list furnished under paragraph (b)(1)(ii) of this section or any subsequent list, furnish to the Commission a revised list reflecting such changes; and
>
> (v) Shall furnish to the Commission in connection with the initial submission the following information to the extent known or which can be obtained without unreasonable effort or expense: the number of holders of each class of equity securities resident in the United States, the amount and percentage of each class of outstanding equity securities held by residents in the United States, the circumstances in which such securities were acquired, and the date and circumstances of the most recent public distribution of securities by the issuer or an affiliate thereof.

Once the Nasdaq Exchange begins to operate as a national securities exchange, Section 12(a) of the Exchange Act[7] would prohibit any Nasdaq Exchange member, broker, or dealer from effecting any transaction in any security, other than an "exempted security" as defined in Section 3(a)(12) of the Exchange Act,[8] on the Nasdaq Exchange, unless the security is registered under Section 12(b) of the Exchange Act. There are no exemptions from Section 12(b) registration afforded to insurance companies and foreign private issuers that correspond to the exemptions available to these issuers under Section 12(g)(2)(G) of the Exchange Act and Exchange Act Rule 12g3-2(b). Accordingly, the securities of these issuers would need to be registered under Section 12(b) of the Exchange Act before transactions in those securities could be effected by Nasdaq Exchange members, brokers and dealers, consistent with Section 12(a) on the Nasdaq Exchange, absent the exemption provided by this order.

II. Request by Nasdaq and the Nasdaq Exchange for an Exemption from Section 12(a) of the Exchange Act

On July 31, 2006, the Commission received an application (the "Nasdaq Application")[9] from the Nasdaq and the Nasdaq Exchange for an exemption pursuant to Section 36 of the Exchange Act,[10] in accordance with the procedures set forth in Exchange Act Rule 0-12.[11] Section 36 of the Exchange Act gives the Commission the authority to exempt any person, security or transaction from any Exchange Act provision by rule, regulation or order, to the extent that the exemption is necessary or appropriate in the public interest and

[7] 15 U.S.C. 78l(a).

[8] 15 U.S.C. 78c(a)(12).

[9] Letter from Edward S. Knight to Nancy M. Morris (July 31, 2006). The Nasdaq Application is included in accompanying Release No. 34-54240 (July 31, 2006).

[10] 15 U.S.C. 78mm.

[11] 17 CFR 240.0-12. Exchange Act Rule 0-12 sets forth procedures for filing applications for orders for exemptive relief pursuant to Section 36.

consistent with the protection of investors. Nasdaq and the Nasdaq Exchange have requested a three-year exemption from Section 12(a) of the Exchange Act, with respect to transactions in securities of the issuers listed in Exhibit C to the Nasdaq Application that are currently exempt from registration under Section 12(g) of the Exchange Act. According to Nasdaq and the Nasdaq Exchange, the securities of four insurance companies and nine foreign private issuers currently are trading on Nasdaq in reliance on these exemptions.[12]

An exemption from Section 12(a) would permit Nasdaq Exchange members and brokers or dealers to effect transactions in these securities on the Nasdaq Exchange without registration under Section 12(b) of the Exchange Act. Nasdaq and the Nasdaq Exchange believe that the three-year period will provide these issuers with adequate time to complete the Section 12(b) registration process and prepare financial statements should they choose to continue to have their securities traded on the Nasdaq Exchange after expiration of the three-year period. Under the terms of the requested exemption, the insurance companies would have to continue to satisfy the conditions set forth in Section 12(g)(2)(G) of the Exchange Act and the foreign private issuers would have to remain in compliance with the conditions set forth in Exchange Act Rule 12g3-2(b) to qualify for the exemption.

Prior to submitting this request, Nasdaq and the Nasdaq Exchange notified the insurance companies and the foreign private issuers of their plan to request a Section 12(a) exemption on the issuers' behalf and allowed each issuer that did not wish to be the subject of the request to opt-out of the process. Nasdaq and the Nasdaq Exchange provided these issuers a period of 10 business days to notify Nasdaq of an opt-out preference. The issuers that chose to opt-out from the request are listed in Exhibit B to the Nasdaq Application.

[12] See the Nasdaq Application.

III. Order Granting Nasdaq's Application for an Exemption Pursuant to Section 36 of the Exchange Act

We believe that exempting Nasdaq Exchange members, brokers and dealers for a limited time from the requirements of Section 12(a) regarding the trading of the securities listed in Exhibit C to the Nasdaq Application is necessary and appropriate in the public interest, and is consistent with the protection of investors in order to afford these issuers time to comply with the Section 12(b) registration requirements. As represented by Nasdaq and the Nasdaq Exchange in their request, immediate registration under Section 12(b) could force these issuers to withdraw from Nasdaq, consequently depriving U.S. investors of the accustomed market for the securities of those issuers and, in some cases, potentially reducing the depth and liquidity of the market for these securities. We believe that a three-year exemption will serve the public interest by minimizing any unnecessary disruptions that could result from the sudden withdrawal of these securities from Nasdaq, thereby potentially exposing investors in these securities to a less liquid market, absence of market surveillance by an exchange, and delays in execution of transfers.

We concur with Nasdaq and the Nasdaq Exchange that the requested three-year exemption period is appropriate and will provide the affected issuers with sufficient transition time to register their securities.[13] Until the expiration of the exemption granted by this Order, Nasdaq Exchange members, brokers and dealers will be permitted to effect transactions in the securities subject to this exemption so long as the issuers of these securities continue to satisfy the conditions of Section 12(g)(2)(G) of the Exchange Act or Exchange Act Rule 12g3-2(b), whichever is applicable.

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[13] Issuers whose securities are exempt from Section 12(g) under Section 12(g)(2)(G) of the Exchange Act or Exchange Act Rule 12g3-2(b) would be required to prepare and file a registration statement on Form 10 for domestic companies or Form 20-F for foreign private issuers. Under Form 20-F, foreign private issuers would have to restate their financial statements in accordance with U.S. generally accepted accounting principles, or provide a reconciliation of their primary financial statements to U.S. GAAP, for at least two fiscal years. Thus, the three year period would give these issuers sufficient time to prepare the required financial statements should they choose to continue to have their securities traded on the Nasdaq Exchange.

Accordingly, IT IS ORDERED pursuant to Section 36 of the Exchange Act that, under the terms and conditions set forth below, a Nasdaq Exchange member, broker or dealer may effect a transaction on the Nasdaq Exchange in a security of an issuer listed in Exhibit C to the Nasdaq Application that has not been registered under Section 12(b) of the Exchange Act without violating Section 12(a) of the Exchange Act. This exemption shall take effect on August 1, 2006, the same date as the start of Nasdaq Exchange's operation, and shall expire on August 1, 2009.

This exemption is limited to the securities of the issuers listed in Exhibit C to the Nasdaq Application and is conditioned on the continued satisfaction of the conditions set forth in Section 12(g)(2)(G) of the Exchange Act with respect to the securities of the insurance companies, or Exchange Act Rule 12g3-2(b) with respect to the securities of the foreign private issuers. As specified in the Nasdaq Application, Nasdaq will verify the satisfaction of these conditions. In addition, this exemption does not extend to any other section or provision of the Exchange Act.

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

Nancy M. Morris

Nancy M. Morris
Secretary

Commissioner Atkins Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8726 / July 31, 2006

SECURITIES EXCHANGE ACT OF 1934
Release No. 54246 / July 31, 2006

INVESTMENT ADVISERS ACT OF 1940
Release No. 2539 / July 31, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2470 / July 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12179

In the Matter of **LAWRENCE A. STOLER, CPA,** **Respondent.**	**ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS PURSUANT TO RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE AND CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, AND SECTION 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940**

I.

On February 9, 2006, the Securities and Exchange Commission ("Commission") instituted public administrative and cease-and-desist proceedings, pursuant to Rule 102(e) of the Commission's Rules of Practice, Section 8A of the Securities Act of 1933 ("Securities Act"), Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Lawrence A. Stoler ("Stoler" or "Respondent").[1]

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

II.

In connection with 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 prior to a hearing pursuant to the Commission's Rules of Practice, 17 C.F.R. §201.100 et seq., 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 Making Findings and Imposing Remedial Sanctions Pursuant to Rule 102(e) of the Commission's Rules of Practice and Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, and Section 203(k) of the Investment Advisers Act of 1940 ("Order"), as set forth below.

III.

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

A. SUMMARY

1. This proceeding concerns Stoler's improper professional conduct in the audits of the 2000 annual financial statements of three hedge funds – Lipper Convertibles, L.P. ("Convertibles"), Lipper Convertibles Series II, L.P. ("Series II"), and Lipper Fixed Income Fund, L.P. ("Fixed Income") (collectively, the "Funds") – managed by Lipper Holdings, LLC ("Lipper Holdings"). Stoler was the engagement partner on the 2000 audits and prior years' audits.

2. From at least 1998 until his resignation in January 2002, the Funds' portfolio manager, Edward J. Strafaci ("Strafaci") intentionally overstated the value of the convertible bonds and convertible preferred stock in which the Funds were invested. As a result, investors and prospective investors received materially false statements about the Funds' value and performance. Strafaci's inflated valuations were reflected in Fund offering materials and in periodic reports to investors, including audited year-end financial statements. Because Convertibles and Series II were registered broker-dealers, their annual audited financial statements were also filed with the Commission pursuant to Section 17 of the Exchange Act and Rule 17a-5(d) thereunder.

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in unethical or improper professional conduct.

[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.

3. As a result of Strafaci's fraud, the Funds were revalued and then dissolved. Just weeks after Strafaci's resignation, and following a review of his valuations, the Funds reported to their investors that their partner capital accounts in Convertibles, Series II and Fixed Income were being written down by approximately 40%, 15% and 22%, respectively, from their previously reported values. Largely as a result of Strafaci's overvaluation, Convertibles, the largest of the Funds, lost approximately $350 million of its reported partners' capital from December 31, 2000, the date of its last audited financial statements, to December 31, 2001. The analysis performed in connection with the Funds' dissolution revealed that the partners' capital of Convertibles as reported in those audited financial statements was overstated by approximately 49%. Strafaci admitted his wrongdoing, pleading guilty to criminal securities fraud charges.

4. Throughout Strafaci's fraud, the Funds' year-end financial statements were audited by PricewaterhouseCoopers LLP ("PwC"). PwC's audit reports on the Funds' 2000 financial statements were unqualified and stated that the financial statements were prepared in conformity with generally accepted accounting principles ("GAAP"), and had been audited in accordance with generally accepted auditing standards ("GAAS"). Those audit reports were provided to investors and prospective investors. In fact, the Funds' 2000 financial statements were not prepared in conformity with GAAP and had not been audited in accordance with GAAS.

5. Stoler's conduct in the 2000 audits did not accord with GAAS. The 2000 audits produced substantial evidence that Strafaci had grossly overstated the value of the Funds' investments, but Stoler disregarded or failed to apprise himself of that evidence. The 2000 audit workpapers show that the Funds were substantially overvalued in comparison to prices the audit team obtained from three independent sources: the Funds' prime brokers, Bloomberg Information Services ("Bloomberg"), and a broker-dealer that provided quotes for eight securities – seven of which were significantly lower than Strafaci's values -- as part of a flawed "confirmation" process. Stoler did not question why Strafaci's values were significantly higher than those independent prices. Instead, he blindly relied on results of a flawed "confirmation" process. Under Stoler's supervision, the audits amounted to a mechanical execution of tests, without real regard for the results of those tests. In sum, Stoler failed to exercise due professional care and professional skepticism, failed to obtain sufficient competent evidential matter to support PwC's unqualified opinions, and failed to adequately supervise the work of assistants.

6. Stoler's conduct in the Funds' 2000 audits was highly unreasonable within the meaning of Rule 102(e)(1)(iv)(B)(1). Accordingly, Stoler engaged in improper professional conduct within the meaning of Rule 102(e)(1)(ii). In addition, by virtue of his conduct, Stoler was a cause of violations of certain provisions of the Securities, Exchange, and Advisers Acts committed by the Funds, Strafaci, and/or Lipper Holdings.

B. RESPONDENT

7. **Lawrence A. Stoler** was an audit partner at PwC from 1980 until he retired in 2002. Stoler was the engagement partner on the Funds' 2000 audits and on the audits from the late-1980s until the Funds' collapse in early 2002, except for two years in the mid-1990s, when he served as the concurring partner. During the relevant period, Stoler was a certified public accountant licensed to practice in New York and New Jersey. Upon retirement, he allowed his CPA licenses to lapse and is not currently licensed as an accountant. Stoler is 61 years old and resides in Allendale, New Jersey.

C. OTHER RELEVANT PERSONS AND ENTITIES

8. **PwC** is a Delaware limited liability partnership with its principal place of business in New York City. PwC (and its predecessor, Price Waterhouse LLP ("Price Waterhouse")) served as the Funds' auditor from 1989 until their collapse in early 2002.

9. **The Funds** - Convertibles, Series II, and Fixed Income - were hedge funds organized as limited partnerships; none was registered or required to be registered under the Investment Company Act of 1940. Convertibles (formerly known as Lipco Partners, L.P. and, under prior management, Cohen, Feit & Co.) was established in 1985, Series II was established in 1998, and Fixed Income was established in 1993. At all relevant times, Convertibles and Series II were registered with the Commission as broker-dealers and were members of the NASD. Convertibles and Series II primarily invested in convertible securities – bonds or preferred stock convertible by the owner into shares of common stock – and generally hedged their long positions by selling short the common stock into which the bond or preferred stock was convertible. The Funds also employed leverage – borrowed money – to purchase the convertible securities, which allowed them to hold securities in an amount in excess of the equity contributed by the Funds' partners. Fixed Income invested approximately 60% of its capital in Convertibles, and thus indirectly invested in Convertibles' hedged portfolio of convertible securities. Convertibles and Fixed Income are in the process of being liquidated; Series II has been liquidated.

10. **Lipper Holdings, LLC** was a Delaware limited liability company that, during the relevant period, was the general partner for each of the Funds.[3] Lipper Holdings managed the portfolio for Convertibles and Series II. Kenneth Lipper was chairman, president and chief executive officer of Lipper Holdings.

11. **Edward J. Strafaci** was, during the relevant period, the Funds' portfolio manager and executive vice president and director of fixed income money management for Lipper & Co. From at least 1998 until January 2002, Strafaci intentionally overstated the value of the convertible

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[3] An affiliated entity, Lipper & Co. L.P. ("Lipper & Co.") managed the portion of Fixed Income's portfolio that was not invested in Convertibles and acted as placement agent for the Funds. During the relevant period, Lipper & Co. was registered with the Commission as an investment adviser and a broker-dealer.

bonds and convertible preferred stock held by the Funds, resulting in the dissemination of materially false and misleading fund valuations and performance figures to investors and prospective investors, and the filing of inaccurate reports with the Commission. On the basis of this conduct, Strafaci has been the subject of enforcement action by the Commission and a criminal prosecution. He pleaded guilty to one felony count of securities fraud for overstating the value of Convertibles' and Series II's portfolios, in United States v. Edward Strafaci, 03 Crim. 1182 (S.D.N.Y), is currently serving a seventy-two month prison sentence, and has been ordered to pay restitution of $89,282,416. In addition, Strafaci has, by consent, been enjoined from future violations of certain provisions of the securities laws in Securities and Exchange Commission v. Edward J. Strafaci, 03 Civ. 8524 (S.D.N.Y.), and barred from association with any broker, dealer, or investment adviser in Edward J. Strafaci, Exchange Act Release No. 50422 (Sept. 22, 2004).

D. FACTS

Strafaci's Overstatement of the Funds' Assets

12. Strafaci was the Funds' portfolio manager and the person to whom Lipper Holdings delegated responsibility for valuing the Funds' portfolios. The Funds' audited financial statements represented that securities held by the Funds were "valued at market."

13. On January 14, 2002, Strafaci abruptly left Lipper Holdings, purportedly to start his own money-management firm. Shortly after his departure, Lipper Holdings reviewed his valuations and concluded that they were not within a reasonable range of the securities' actual market values for December 31, 2001. In late-February 2002, Lipper Holdings announced that the partners' capital of Convertibles, Series II, and Fixed Income were being written down by approximately 40%, 15%, and 22%, respectively. Shortly thereafter, Lipper Holdings announced that it had decided to dissolve the Funds and by March 26, 2002, it had liquidated most of the Funds' investments. In a November 2002 report, counsel retained by the Funds to conduct an independent investigation into the Funds' valuation practices (the "Special Counsel") concluded that since at least January 1, 1996 (or, with respect to Series II, at least January 1, 1999), Strafaci's valuations were inconsistent with the Funds' stated valuation policies and procedures and "[could] not be supported by any rational basis."

14. In October 2002, Lipper Holdings commenced court proceedings to liquidate the Funds. In connection with the liquidation proceedings, Lipper Holdings directed an independent consultant ("Consultant") "to determine a reasonable method of determining the investors' ownership interest . . . without significant use of the 'market values' of the securities held by the Fund as contemporaneously reported in the Fund's records." The Consultant revalued the Funds' convertible securities based on prices obtained from one of two commercial pricing services, or the Funds' prime brokers.[4] On that basis, the Consultant revalued long positions of Convertibles and Series II, with the resulting impact on partners' capital as follows:

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[4] The term "prime broker" as used in this order refers to a broker-dealer that provides services to hedge funds, money managers and others, such as preparing daily account

Values for Convertibles as of December 31, 2000
(in millions)

	Per Audited Financials	As Revalued	Difference
Long Positions	$2,297.8	$2,017.0	$280.8 (12.2%)
Partners' Capital	$ 568.7	$ 287.9	$280.8 (49.4%)

Values for Series II as of December 31, 2000
(in millions)

	Per Audited Financials	As Revalued	Difference
Long Positions	$186.9	$175.3	$11.6 (6.2%)
Partners' Capital	$ 82.9	$ 71.3	$11.6 (14.0%)

15. As revalued by the Consultant, the partners' capital of Convertibles as of December 31, 1999 and December 31, 1998 was, respectively, 34% and 36% less than had been reported in the Fund's audited financial statements.

The 2000 Audits

16. Price Waterhouse was first hired as Convertibles' independent accountant in 1989. Lipper Holdings selected Price Waterhouse in part because of its touted expertise with respect to hedge funds and valuation of hard-to-price securities. By the time of the 2000 audits, PwC was the auditor for all the Funds and several other affiliated entities, including several registered investment companies, and Stoler had been the engagement or concurring partner on the Funds' audits for approximately ten years.

17. As the engagement partner on the 2000 audits, Stoler was responsible for ensuring that the audits were conducted in accordance with GAAS, and was required, among other things, to supervise the work of subordinate members of the audit team to ensure that the audit work was adequately performed and supported the conclusions presented in PwC's reports on the financial statements.

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statements, clearing and settlement of securities transactions, financing or leverage, and custodial services. On December 31, 2000, the Funds dealt with seven prime brokers, sometimes also referred to as "clearing brokers" or "custodians."

18. In the 2000 audit of Strafaci's valuation of the Funds' convertible securities[5] – the most critical part of the audits – Stoler failed to act in accordance with GAAS. He failed to exercise due care and appropriate professional skepticism, obtain sufficient competent evidential matter, or adequately supervise the work of assistants.

Stoler Was Aware of the Funds' Internal Control Weaknesses

19. At the time of the 2000 audits, Stoler knew that the Funds' internal control weaknesses called for heightened scrutiny of the valuation of their investments. The audit team had observed in prior audits that the internal controls in place with respect to valuation were inadequate and that the Funds' investments were valued by Strafaci without oversight. The workpapers for the Funds' 1996 and 1997 audits noted this internal control weakness, stating:

> [d]ue to the complexity of the process all pricing work is performed by the front office (Ed Strafaci with assistance from [a Fund trader].) There is no formal review of the marks external of the front office, because of a lack of technical knowledge (convertible arbitrage securities). In order to have proper segregation of duties, the pricing function should be monitored in a Middle/Back Office capacity by a party outside the front office (Product Control, Accounting). Point to be considered for inclusion in letter to management.

20. In addition, during the planning of the 2000 audits, the audit team noted that the Funds had certain internal control weaknesses. The team prepared a risk analysis, referred to internally as a "FRISK" analysis, for the Funds, which Stoler approved. That analysis identified the Funds' "management governance and oversight of management" as a "high risk" area, as had the FRISK analysis for the Funds' 1999 audits. PwC never sent a management letter concerning the inadequacy of the Funds' internal controls regarding valuation.

The Audit Work on the Valuation of the Funds' Investments

21. The procedures performed by the audit team to audit the valuation of the Funds' investments are identified in the audit workpapers. According to the workpapers, the basis for the values for the convertibles securities was "quotes received from approximately six brokers" that Strafaci traded with. The workpapers, however, do not include either the quotes that were supposedly the source of Strafaci's values or any indication that the audit team reviewed those quotes.

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[5] Convertibles' long securities positions consisted of forty-seven convertible preferreds and seventy convertible bonds. Series II's long positions consisted of smaller positions in some of those securities. For its audits of Series II and Fixed Income, the audit team took no separate steps to test the valuation of the convertible securities in which those funds were invested, directly in the case of Series II and indirectly in the case of Fixed Income.

22. Although the audit team did not obtain the quotes that supposedly supported Strafaci's values, it did obtain from the Funds' prime brokers the statements of the Funds' accounts as of December 31, 2000. These statements listed market values for the convertible securities held by the Funds. According to the workpapers, the audit team's analysis of the prime broker statements revealed that Strafaci's valuation of the convertible bonds and preferreds held by Convertibles exceeded the prime brokers' valuation of those securities by approximately $274 million, or 13.5%. Stoler did not discuss this material difference with anyone at Lipper Holdings, and the workpapers do not indicate how the audit team resolved this difference. This difference, moreover, ignored the impact of leverage on the portfolio. Had the audit team considered the effect of leverage, it would have seen that the prime brokers' prices indicated that Convertibles' partners' capital was overstated by approximately 48%. The workpapers do not reflect any consideration of the impact of the Funds' leverage on the differences produced by the prime broker test.

23. According to the workpapers, the audit team also used "Bloomberg to obtain an independent price for 65% of the total market value of positions held at 12/31/00." The Bloomberg prices then were compared to Strafaci's values and "any significant variances" were to be noted. Any Bloomberg prices that were "greater than 2% of what Lipper Convertibles has recorded" were to be "independently confirmed" by "directly contact[ing]" the brokers with whom Convertibles traded and from whom Strafaci purportedly obtained the quotes on which he based his values for the securities "so that they may confirm the price of the positions."

24. The Bloomberg comparison indicated, and the workpapers noted, that the tested portion of Convertibles portfolio was overstated by approximately 12.9%. Strafaci's values for thirty-four of the forty-four convertible bonds and nineteen of the twenty convertible preferreds tested differed by 2% or more from the corresponding Bloomberg prices, with Strafaci's values being higher for all but four securities. Strafaci's values for almost half of the preferreds exceeded the Bloomberg prices by 20% or more, and his values for almost half of the bonds exceeded the Bloomberg prices by 5% or more. Had the audit team taken leverage into account, it would have seen that the Bloomberg test indicated that Convertibles' partners' capital was overstated by approximately 34.4%. The workpapers do not reflect any consideration of the impact of the Funds' leverage on the differences produced by the Bloomberg test.

25. The audit program called for the team to further test the valuation of securities for which Strafaci's value differed from Bloomberg's price by more than 2% by asking the broker-dealers from whom Strafaci had purportedly obtained the quotes that were the basis for his values to "confirm the prices of the positions."

26. To perform this test, a junior auditor sent faxes to institutional salespeople at five broker-dealers asking them to "please verify that the attached schedule of broker quotes as of 12/31/00 were [sic] provided by you to Lipper Convertibles," by signing the schedules "for our records," and faxing them back. The faxes contained no further instruction or explanation. The attached schedules listed the fifty-four securities as to which Strafaci's value had differed from Bloomberg's price by more than 2%, with Strafaci's value listed next to each security. Each

salesperson received the same list of fifty-four securities, regardless of whether his firm traded in, or previously provided a quote to the Fund for, a particular security.

27. Of the five broker-dealer "confirmations" obtained by the audit team, four were faxed back with the salesperson's signature on the schedule and without any notation or comment (the so-called "clean confirmations"). Only one was returned with any indication that the salesperson had actually reviewed any of the values. That "confirmation," from Broker A, was unsigned and noted a bid-ask range next to Strafaci's value for eight of the fifty-four securities listed. For seven of the eight, Strafaci's value was significantly higher than even the ask-side price provided by Broker A.

28. The confirmation process was flawed in several significant respects. For example, although the audit team asked the salespeople to verify "that the attached schedule of broker quotes . . . were [sic] provided by you to Lipper Convertibles," the attached schedule was not a schedule of quotes that the broker-dealer had provided but rather was a schedule prepared by the audit team, listing Strafaci's values for the securities. The faxes did not ask the salespeople to provide quotes for the specified securities or ask them to attest to the reasonableness of the values listed on the schedules. As a result, except for Broker A, there is no evidence in the workpapers that the salespeople who returned signed confirmations had actually ascertained the broker-dealer's quote or valued the security. In addition, each broker-dealer's salesperson was asked to "confirm" values for a large number of securities (fifty-four), without regard to whether the firm made a market in the securities. These flaws made the confirmation process unreliable.

The Evaluation of the Audit Evidence

29. The workpapers show the substantial gap between Strafaci's values and the prices the audit team obtained from the independent sources. For example, the audit team obtained prices from Bloomberg for the Chiquita $3.75, MGC Comm., Loral and Intermedia 144a securities held by Convertibles. The Bloomberg prices were, respectively, 88.5%, 78.9%, 64.8% and 63.2% lower than the Strafaci's values. The differences between Strafaci's values and the independent prices for these four securities and selected other examples are shown below:

Security	Strafaci Value	Bloomberg Price	Prime Broker Price	Broker A Confirm Average*
Chiquita $3.75	$31.00	$3.56	$3.56	n/a
Human Genome 5%	157.00	138.02	138.00	122.56
Human Genome 3.75%	100.00	83.88	84.00	81.06
Intermedia 144a	33.00	12.15	9.99	n/a
Liberty Media	90.00	68.08	66.50	67.37
Loral	31.22	11.00	12.60	n/a
MGC Comm.	35.54	7.50	7.50	n/a
United Global Comm.	39.00	15.88	15.88	n/a

* Represents average of bid/ask range provide by Broker A.

30. The prime broker prices, the Bloomberg prices, and the quotes obtained from Broker A all constituted evidence that Strafaci's values were significantly higher than market prices or fair value. Other than stating "no exceptions were noted," the workpapers contain no indication as to how the audit team evaluated that evidence. Thus, the workpapers do not document the basis for the unqualified audit reports PwC issued on the Funds' financial statements.

31. The evidence obtained by the audit team was insufficient to support Strafaci's values or PwC's unqualified audit reports. Most of that evidence indicated that Strafaci's valuation of the Funds' assets was substantially overstated, as discussed at paragraphs 22-24 and 29 above. The "clean" confirmations were insufficient to support that valuation because they were unreliable, as discussed at paragraphs 26-28 above.

32. Stoler ignored, discounted, or failed to apprise himself of, the evidence produced by the audit tests and the flaws in the confirmation process discussed above. Thus, he failed to exercise due professional care and maintain an attitude of professional skepticism, failed to obtain sufficient competent evidential matter concerning the valuation of the Funds' assets, and failed to adequately supervise the assistants working on the audit.

33. The workpapers for the 1998 and 1999 audits – on which Stoler was also the engagement partner – reflect similar failures to exercise professional skepticism and obtain competent evidential matter to support Strafaci's valuation of the Funds' assets and PwC's unqualified reports on the Funds' financial statements. In the 1998 audits, for example, the confirmation process produced broker-dealer quotes lower than Strafaci's values, which suggested that his values were substantially overstated. The only documented consideration of the results of the confirmation process indicates that the audit team simply accepted Strafaci's self-serving explanation for why his values were higher, without taking any steps to test that explanation.

Stoler Signed Unqualified Audit Reports

34. On February 26, 2001, Stoler, on behalf of PwC, signed Reports of Independent Accountants for each Fund stating, in part, that in PwC's opinion the Fund's "statements of financial condition, including the condensed schedule of investments, and the related statements of . . . changes in partners' capital . . . present fairly, in all material respects, the financial position of," the Fund, at December 31, 2000. The audit reports further stated that the financial statements were presented in conformity with GAAP and that PwC's audit had been conducted in accordance with GAAS.

35. On March 1, 2001, as required by Section 17 of the Exchange Act and Rule 17a-5 thereunder, Convertibles and Series II filed their audited annual financial statements with the Commission, which included PwC's reports on the financial statements. Also included were PwC's supplemental reports describing any material inadequacies found since the date of the

previous audit (commonly referred to as "internal control reports"). The internal control reports, which Stoler signed on behalf of PwC, stated in part:

> A material weakness is a condition in which the design or operation of one or more of the specific internal control components does not reduce to a relatively low level the risk that error or fraud in amounts that would be material in relation to the employees in the normal course of performing their assigned functions. However, we noted no matters involving internal control, including procedures for safeguarding securities, that we consider to be material weaknesses as defined above.

36. The Funds' long securities were not valued in conformity with GAAP because, among other reasons, Strafaci valued the convertible bonds and convertible preferred stock in which the Funds were invested at prices higher than readily available market prices. Moreover, the Funds failed to maintain supporting documentation for Strafaci's valuation. Accordingly, the Funds' 2000 financial statements were not presented in conformity with GAAP. In addition, the audits of the financial statements were not conducted in accordance with GAAS and the internal control reports filed by Convertibles and Series II were inaccurate.

E. Violations by the Funds, Strafaci, and Lipper Holdings

37. Strafaci, a senior official of the Funds and Lipper Holdings, caused those entities to make materially misleading statements to investors in the offer or sale, and in connection with the purchase or sale, of interests in the Funds, concerning the value and performance of the Funds, and the method by which the Funds' portfolio securities were valued. Interests in the Funds were securities within the meaning of Section 2(a)(1) of the Securities Act. Investors and potential investors in the Funds were, respectively, clients and potential clients under the Advisers Act and are referred to herein as "investors/clients" and "prospective investors/clients." The Funds' audited financial statements for the year ended December 31, 2000 were disseminated to investors/clients and prospective investors/clients, along with PwC's unqualified audit reports on those statements. PwC's unqualified audit reports on those statements gave comfort to investors/clients, among others, that the Funds were being properly valued. Investors/clients who received those audited financial statements were solicited to make, and in some cases made, investments or additional investments in the Funds.

38. Strafaci's conduct, which is attributable to the Funds and Lipper Holdings, in the offer and sale of interests in the Funds violated, among other provisions, Sections 17(a)(2) and (3) of the Securities Act, in that Strafaci, the Funds, and Lipper Holdings directly and indirectly, by the use of the means or instruments of transportation or communication in, or the means or instrumentalities of, interstate commerce, or by use of the mails, in the offer or sale of interests in the Funds: (a) obtained money or property by means of untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (b) engaged in transactions, practices and courses of business which operated or would have operated as a fraud or deceit upon

purchasers of interests in the Funds. In addition, by virtue of Strafaci's fraudulent valuations, Lipper Holdings violated Section 206(2) of the Advisers Act in that it engaged in acts, practices or courses of business which operated as a fraud or deceit upon clients and prospective clients. Scienter is not required to establish violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act or Section 206(2) of the Advisers Act. Steadman v. SEC, 603 F.2d 1126, 1133 (5th Cir. 1979).

39. Section 17 of the Exchange Act and Rule 17a-5(d) thereunder generally require registered broker-dealers to file with the Commission, among other things, audited financial statements on an annual basis. Pursuant to paragraph (g)(1) of Rule 17a-5, the audit "shall be made in accordance with [GAAS]," and "shall include a review of the accounting system, the internal accounting controls and procedures for safeguarding securities." Further, pursuant to paragraph (j) of that Rule, a registered broker-dealer must file, "concurrently with its annual audit report, a supplemental report by the accountant describing any material inadequacies found to have existed since the date of the previous audit." Pursuant to paragraph (g)(3) of that Rule, the term "material inadequacy" includes "a material inadequacy in the accounting system, internal accounting controls, and procedures for safeguarding securities [. . .] which has contributed substantially to or, if appropriate action is not taken, could reasonably be expected to [. . .] result in material misstatements in the broker's or dealer's financial statements." Implicit in the requirement that a registered broker-dealer file an audited annual financial report is the requirement that the information contained in those reports be accurate. See Nikko Securities Co. International, Inc., Exchange Act Release No. 32331 (May 19, 1993). Because the audits of Convertibles' and Series II's financial statements were not conducted in accordance with GAAS and because the internal controls reports they filed were inaccurate, Convertibles and Series II violated Section 17 of the Exchange Act and Rule 17a-5 thereunder.

F. Applicable GAAS

40. Under GAAS, an auditor must exercise due professional care in performing the audits of financial statements and preparing the audit reports.[6] "Due professional care" requires, among other things, that auditors: (a) exercise due professional care in the planning and performance of the audit, and professional skepticism in assessing audit evidence; and (b) obtain sufficient competent evidential matter through inspection, observation, inquiries, and confirmations to afford a reasonable basis for their opinions regarding financial statements under audit. AU 230, 230.07 & 326.01. The requirement to obtain sufficient competent evidential matter dictates that the evidence obtained through the audit "be sufficient for the auditor to form conclusions concerning the validity of the individual assertions embodied in the components of financial statements." AU 326.13. The auditor should "consider relevant evidential matter regardless of

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[6] During the relevant period, GAAS was embodied in various Statements on Auditing Standards ("SAS"), as well as the Codification of Statements of Auditing Standards ("AU"), both issued by the Auditing Standards Board of the American Institute of Certified Public Accountants. The citations herein are to the Codification in effect at the time of the 2000 audits.

whether it appears to corroborate or contradict the assertions in the financial statements." AU 326.25.

41. GAAS further requires that audits be adequately planned and assistants be properly supervised. AU 311.01. Supervision includes keeping informed of problems encountered, assuring that the work of subordinates is properly performed, and assuring that the audit work supports the conclusions reached. AU 311.11 & 311.13. One factor to be considered in planning an audit is "[c]onditions that may require extension or modification of audit tests." AU 311.03. Moreover, "[t]he auditor's understanding of internal control may heighten or mitigate the auditor's concern about the risk of material misstatement." AU 312.16. Accordingly, GAAS requires auditors to evaluate whether the audited entity's controls that address identified risks of material misstatement due to fraud have been suitably designed and used to assess these risks. AU 316.21-.25. Among the risk factors indicative of possible misstatements due to fraud are: (1) management compensation that is based in significant part on incentives, the value of which is contingent; and (2) inadequate monitoring of significant controls. AU 316.16-.19.

G. Findings

42. In the 2000 audits, Stoler failed to comply with GAAS because he did not exercise due professional care and professional skepticism, obtain sufficient competent evidential matter to support the auditor's opinion on the financial statements, or adequately supervise the work of assistants. In those audits, he ignored, discounted, or failed to apprise himself of, the substantial audit evidence that Strafaci's values for the Funds' investments were not presented in accordance with GAAP and were materially overstated, and the flaws in the process that produced the "clean" confirmations. In light of his awareness of the inadequacies of the Funds' internal controls on valuation, and Strafaci's and Lipper Holdings' incentive compensation, Stoler's deviations from GAAS were highly unreasonable.

43. By engaging in the conduct described above in the 2000 audits, Stoler engaged in improper professional conduct within the meaning of Rule 102(e)(1)(ii) of the Commission's Rules of Practice because his conduct constituted negligent conduct within the meaning of Rule 102(e)(1)(iv)(B)(1), consisting of a single instance of highly unreasonable conduct that resulted in a violation of applicable professional standards in circumstances in which Stoler knew, or should have known, that heightened scrutiny was warranted.

44. By engaging in the conduct described above in the 2000 audits, Stoler was a cause of Strafaci's and the Funds' violations of Sections 17(a)(2) and (3) of the Securities Act, Lipper Holdings' violations of Section 206(2) of the Advisers Act, and Convertibles' and Series II's violations of Section 17 of the Exchange Act and Rule 17a-5 thereunder, because he knew or should have known that his failure to conduct and supervise an audit that conformed to GAAS and his approval of, and signature on, unqualified audit reports on the Funds' 2000 financial statements, and the internal controls reports, would contribute to those violations, including the Funds' and Lipper Holdings' false representations to investors/clients and prospective

investors/client about the Funds' value and performance and Convertibles' and Series II's filings of inaccurate annual audited financial reports.

IV.

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

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

A. Stoler shall cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and (3) of the Securities Act and Section 206(2) of the Advisers Act, and from causing any violations and any future violations of Section 17 of the Exchange Act and Rule 17a-5 thereunder.

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

C. After one year from the date of this order, Stoler 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 Stoler'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) Stoler, 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) Stoler, 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 the Stoler's or the firm's quality control system that would indicate that the Stoler will not receive appropriate supervision;

(c) Stoler 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) Stoler 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 Stoler 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 Stoler'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

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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

PAUL S. ATKINS, COMMISSIONER

ROEL C. CAMPOS, COMMISSIONER

ANNETTE NAZARETH, COMMISSIONER

KATHLEEN L. CASEY, COMMISSIONER

2 Documents

Chairman Cox and Commissioner Campos Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 54219 / July 26, 2006

INVESTMENT COMPANY ACT OF 1940
Release No. 27428 / July 26, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12382

In the Matter of **ROBERT P. HETZER,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTIONS 15(b) AND 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, in the public interest and for the protection of investors that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 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 Robert P. Hetzer ("Hetzer" 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 over 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 Sections 15(b) and 21C of the

Securities Exchange Act 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 Respondent's Offer, the Commission finds[1] that:

Summary

1. This is a proceeding against Hetzer, a former senior vice president in charge of mutual fund trading at Fiserv Securities, Inc. ("FSI"), a registered broker-dealer. Between January 2001 and October 2002, Hetzer engaged in late trading of mutual funds for his own benefit in personal accounts he opened while employed by FSI. He entered more than 800 mutual fund trades in his personal accounts after 4:00 p.m. ET, and as late as 5:30 p.m., and improperly received the current day's net asset value ("NAV"). In order to conduct this late trading, Hetzer misused FSI's system which was intended to permit trade entry after 4:00 p.m. ET only in limited circumstances involving errors, other technical problems and legitimate delays in processing orders. By virtue of his conduct, Hetzer violated and/or aided and abetted and caused violations of the antifraud and mutual fund pricing provisions of the federal securities laws.

Respondent and Relevant Entity

2. **Hetzer**, age 47, resides in Hollywood Beach, Florida. From April 2000 until November 2002, when his position was eliminated, he was the senior vice president of FSI's Mutual Fund Department. Prior to FSI, Respondent had worked in the mutual fund sector of the securities industry in a variety of capacities since 1979. Respondent holds no securities industry licenses.

3. **FSI**, located in Philadelphia, Pennsylvania, registered with the Commission as a broker-dealer in October 1983. During the relevant time period, FSI provided securities clearing services for hundreds of introducing brokers.

Background – Late Trading

4. Rule 22c-1(a) under the Investment Company Act requires any registered investment company issuing redeemable securities, its principal underwriter, any dealers in its shares, and any person designated in the fund's prospectus as authorized to consummate transactions in securities issued by the fund to sell and redeem fund shares at a price based on the current NAV next computed after receipt of an order to buy or redeem. Mutual funds generally determine the NAV of mutual fund shares as of 4:00 p.m. ET. In these circumstances, orders received by the entities identified in Rule 22c-1 before 4:00 p.m. ET must be executed at the

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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.

price determined as of 4:00 p.m. ET that day. Orders received by these entities after 4:00 p.m. ET must be executed at the price determined as of 4:00 p.m. ET the next trading day. Mutual fund prospectuses typically identify the time as of which the NAV is determined for purposes of pricing fund shares for purchases and redemptions.

5. "Late trading" refers to the practice of placing orders to buy or redeem mutual fund shares after the time as of which a mutual fund has calculated its NAV (usually as of the close of trading at 4:00 p.m. ET), but receiving the price based on the prior NAV already determined as of 4:00 p.m. ET. Late trading enables the trader to attempt to profit from market events that occur after 4:00 p.m. ET but that are not reflected in that day's price. In particular, the late trader may obtain an advantage – at the expense of the other shareholders of the mutual fund – when he learns of market moving information and is able to purchase (or redeem) mutual fund shares at prices set before the market moving information was released. Late trading violates Rule 22c-1(a) under the Investment Company Act and harms shareholders by diluting the value of their shares.

Respondent's Late Trading

6. In November 2000 and January 2001, respectively, Respondent opened a retail trading account and an IRA account at FSI, and began trading in mutual funds in these accounts. Between January 2001 and October 2002, Hetzer engaged in 1,106 mutual fund transactions through which he earned profits of $917,000.

7. Of the total trades, 855 trades were entered in Respondent's personal accounts after 4:00 p.m. ET, and as late as 5:30 p.m., and received that day's NAV. Respondent's late trading resulted in dilution to the mutual funds he traded and thus harm to mutual fund shareholders. In order to receive the current day's NAV for trades entered after 4:00 p.m. ET, Hetzer and others acting at his direction manually substituted, in FSI's electronic order system, the current day's NAV for the next day's NAV.

8. As part of his responsibilities at FSI, Hetzer had direct access to FSI's computerized trade-processing system. This system automatically processed mutual fund orders at the current day's price at 4:00 p.m. ET. Under limited circumstances, such as in the event of technical problems, including input errors, and legitimate delays in processing orders, certain members of FSI's staff could manually enter trades after 4:00 p.m. ET and substitute the current day's NAV for the next day's NAV. This process was intended to be used as an exception process.

9. Respondent, however, intentionally input or directed the input of a majority of his mutual fund trades after the close of the market, and thus misused FSI's system. Specifically, on 855 occasions, Respondent and others acting at his direction entered his trades between 4:00 and 5:30 p.m. ET and manually substituted the current day's NAV for the next day's NAV. In essence, Hetzer took the exception process and made it his standard operating procedure.

10. The mutual funds which accepted Hetzer's late trades had no way of knowing that these trades were, in fact, entered after 4:00 p.m. ET. To the contrary, Hetzer simply entered his

trades into FSI's system as though his orders had appropriately been entered prior to 4:00 p.m. ET.

11. In addition, Respondent caused FSI to violate its dealer agreements with mutual funds by entering his trades after 4:00 p.m. ET. FSI's dealer agreements contained provisions obligating FSI to comply with all of the terms of the funds' prospectuses, including provisions regarding the time for submitting trades. Most dealer agreements contained some version of the following provision:

> You are to offer and sell such shares only at the public offering price which shall be currently in effect, in accordance with the terms of the then current prospectus of the Funds.

12. Respondent knew or was reckless in not knowing that what he was doing was improper. Specifically, Respondent knew or was reckless in not knowing that the FSI system was not intended to allow for the substitution of the current day's NAV for the next day's NAV for trades entered after 4:00 p.m. ET except in the limited circumstances referenced above.

Violations

13. As a result of the conduct described above, Respondent willfully violated 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.

14. As a result of the conduct described above, Respondent willfully aided and abetted and caused violations of Rule 22c-1(a) under the Investment Company Act, which prohibits registered investment companies issuing any redeemable security, persons designated in such issuer's prospectus as authorized to consummate transactions in such security, and any principal underwriter of, or dealer in any such security from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value which is next computed after receipt of an order to purchase or redeem.

Undertakings

In determining whether to accept the Offer, the Commission has considered the following undertakings by Hetzer:

15. Ongoing Cooperation. Respondent shall cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in this Order. In connection with such cooperation, Hetzer has undertaken:

a. To produce, without service of a notice or subpoena, any and all documents and other information reasonably requested by the Commission's staff;

b. To be interviewed by the Commission's staff at such times as the staff reasonably may request and to appear and testify truthfully and completely without service of a

notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and

c. That in connection with any testimony of Respondent to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, Respondent:

i. Agrees that any such notice or subpoena for his appearance and testimony may be served by regular mail on his counsel, Guy Petrillo, Esq., Dechert LLP, 30 Rockefeller Plaza, New York, NY 10112-2200; and

ii. Agrees that any such notice or subpoena for his appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

IV.

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

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Hetzer shall cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent Hetzer shall cease and desist from causing any violations and any future violations of Rule 22c-1(a) under the Investment Company Act.

C. Respondent Hetzer be, and hereby is barred from association with any broker or dealer, and is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter, with the right to reapply for association after three (3) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

D. Any reapplication for association by Respondent Hetzer 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.

E. IT IS FURTHER ORDERED that Respondent Hetzer shall, within 30 days of the entry of this Order, pay disgorgement and prejudgment interest in the total amount of $528,020 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 Robert P. Hetzer 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 Daniel M. Hawke, Securities and Exchange Commission, Philadelphia District Office, Mellon Independence Center, 701 Market Street, Suite 2000, Philadelphia, PA 19106.

F. IT IS FURTHER ORDERED that Respondent Hetzer shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of $100,000 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 Robert P. Hetzer 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 Daniel M. Hawke, Securities and Exchange Commission, Philadelphia District Office, Mellon Independence Center, 701 Market Street, Suite 2000, Philadelphia, PA 19106.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Chairman Cox and Commissioner Campos Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
July 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12386

In the Matter of **WARREN LAMMERT, LARS SODERBERG, AND LANCE NEWCOMB** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, 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 8A of the Securities Act of 1933 ("Securities Act"), Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act") against Warren Lammert ("Lammert"), and Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act against Lance Newcomb ("Newcomb"), and Lars Soderberg ("Soderberg") (collectively, the "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

Introduction

1. This matter involves improper market timing and frequent trading in certain mutual funds (the "Funds") managed by Janus Capital Management, LLC ("JCM"). "Market timing" includes (a) frequent buying and selling of shares of the same mutual fund or (b) buying or selling mutual fund shares in order to exploit inefficiencies in mutual fund pricing. Market

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timing, while not illegal per se, can harm other mutual fund shareholders because it can dilute the value of their shares, if the market timer is exploiting pricing inefficiencies, or disrupt the management of the mutual fund's investment portfolio and can cause the targeted mutual fund to incur costs borne by other shareholders to accommodate frequent buying and selling of shares by the market timer.

JCM Prospectuses

2. The prospectuses for each of the Funds contained statements concerning frequent trading and market timing which are illustrated below.

a. Each of the Funds had at least one prospectus that expressly stated that JCM "does not permit frequent trading or market timing" in the Funds. For example, the Janus Mercury Fund (the "Mercury Fund") prospectus contained the following disclosure in its Exchanges section:

> The exchange privilege is not intended as a vehicle for short-term or excessive trading. The Fund does not permit frequent trading or market timing. Excessive exchanges of Shares disrupt portfolio management and drive Fund expenses higher. A Fund may suspend or terminate your exchange privilege if you engage in an excessive pattern of exchanges.

b. In addition, the prospectuses for the Janus retail funds, which included the Mercury Fund, stated that investors were limited to four exchanges out of a fund per calendar year. For example, the general prospectus for the Janus equity funds, which included the Mercury Fund, contained the following disclosure in its Exchange Policies section:

> You may make four exchanges out of each Janus fund (exclusive of Systematic Exchanges) per calendar year. These limits are designed to deter short-term trading.

c. Moreover, the prospectuses for the Funds further disclosed that the funds were "not intended for market timing or excessive trading." For example, the general prospectus for the Janus equity funds, which included the Mercury Fund, contained the following disclosure in its Excessive Trading Policy section:

> Frequent trades in your account or accounts controlled by you can disrupt portfolio investment strategies and increase Fund expenses for all Fund shareholders. The Funds are not intended for market timing or excessive trading. To deter these activities, the Funds or their agents may temporarily or permanently suspend or terminate exchange privileges of any investor who makes more than four exchanges out of a Fund in a calendar year and bar future purchases into the Fund by such investor. In addition, the Funds or their agents also may reject any purchase orders (including exchange

purchases) by any investor or group of investors indefinitely for any reason, including, in particular, purchase orders that they believe are attributable to market timers or are otherwise excessive or potentially disruptive to the Fund

Orders placed by investors in violation of the exchange limits or the excessive trading policies or by investors that the Fund believes are market timers may be revoked or cancelled by a Fund on the next business day after receipt of the order. For transactions placed directly with the Funds, the Funds may consider the trading history of accounts under common ownership or control for the purpose of enforcing these policies. Transactions placed through the same financial intermediary on an omnibus basis may be deemed part of a group for the purpose of this policy and may be rejected in whole or in part by a Fund.

3. One of the reasons the prospectuses for the Funds limited frequent trading and market timing was that frequent trading and market timing can be detrimental to other shareholders. JCM actively monitored trading in the Funds and took steps to enforce the frequent trading and market timing prohibition in the Funds' prospectuses, including barring investors from the Funds.

Respondents

4. Warren Lammert was the portfolio manager for the Janus Mercury Fund from its inception in 1993 until he left JCM in March 2003. Lammert is 44 years old and now lives in Massachusetts.

5. Lars Soderberg was an executive vice president and managing director in sales at JCM from early 2002 until he resigned from JCM in July 2004. Soderberg was a vice president and director in sales at JCM from August 1995 to early 2002. At all relevant times Soderberg was a registered representative associated with Janus Distributors, Inc., a broker-dealer registered with the Commission. Soderberg is 47 years old and a resident of Denver, Colorado.

6. Lance Newcomb was an assistant vice president and regional sales director for JCM from June 1998 until he left JCM on August 1, 2003. At all relevant times Newcomb was a registered representative associated with Janus Distributors, Inc., a broker-dealer registered with the Commission. Newcomb is 38 years old and a resident of Castle Rock, Colorado.

Related Entity

7. Janus Capital Management LLC, a Delaware limited liability company with headquarters in Denver, Colorado, was at all relevant times an investment adviser registered with the Commission.

Trautman Wasserman Arrangement

8. In or about November 2001, Lammert entered into an arrangement with the brokerage firm Trautman Wasserman ("Trautman"). The arrangement allowed Trautman's customers to trade $50 million in the Mercury Fund pursuant to a so called "asset allocation model" which involved market timing and frequent trading.

9. In November 2001, Trautman's customers began trading the Mercury Fund, and Newcomb became the day-to-day sales representative servicing the Trautman account for JCM.

10. In January 2002, JCM's operations group identified Trautman as an excessive trader and, consistent with JCM's normal procedures, sent a letter requesting that the firm through which Trautman excessively traded suspend Trautman's trading privileges. After Trautman contacted Newcomb about the letter, Newcomb advised JCM's operations group that Lammert had authorized Trautman's customers to trade in excess of the Mercury Fund's four exchange annual limit. As a result of Newcomb's instruction, the operations group stopped monitoring Trautman's trading activity.

11. On or about March 11, 2002, Soderberg, at Lammert's request, began communicating with Trautman about other Janus funds in which Trautman's customers could trade using their asset allocation model. Trautman was particularly interested in funds holding international securities. Soderberg and Newcomb eventually made arrangements for Trautman's customers to trade several other Funds, including the Janus Advisor International Growth Fund and the Janus Advisor Worldwide Fund. Soderberg and Newcomb never informed the portfolio managers for the other Funds that Trautman's customers were trading these Funds.

12. During the summer of 2002, Soderberg became concerned about the extent of trading by Trautman's customers in certain Funds holding international securities and he instructed Newcomb to prohibit Trautman's customers from trading in those Funds. However, after a telephone conversation with Trautman, Soderberg reversed his decision and permitted Trautman's customers to continue trading in all but one of the Funds holding international securities. Soderberg established new limits, which still exceeded the four exchange annual limit, for Trautman's trading in the Funds holding international securities and these new limits were not disclosed in the relevant prospectuses.

13. Shortly after Soderberg's decision to allow Trautman's customers to continue trading in the Funds holding international securities, JCM's operations group notified Newcomb that Trautman's customers had exceeded Soderberg's new trading limits. Soderberg was also advised that his limits had been exceeded by Trautman, but did nothing. Newcomb informed the operations group at this time that he would assume responsibility for monitoring the trading activity of Trautman's customers, but in fact, Newcomb did not monitor the trading by Trautman's customers from this point forward. Trautman's customers continued to frequently trade the Funds using its asset allocation model without further intervention by anyone at JCM through the summer of 2003.

14. Trautman's customers maintained substantial assets in Janus funds while they were trading the Funds. In fact, by the summer of 2003, Trautman's customers had as much as $260 million invested in Janus funds, though they were typically trading no more than $5 to $10 million in and out of each of the Funds.

15. Between November 2001 and September 2003 Trautman's customers made approximately 266 purchases in and approximately 269 redemptions (or exchanges) out of the Funds totaling approximately $2.6 billion. This trading violated the prospectus disclosure set forth in paragraph 2 above.

Brean Murray Arrangement

16. In or about September 2002, Lammert entered into an arrangement with the brokerage firm Brean Murray & Co., Inc. ("Brean") that allowed a customer of Brean to trade the Mercury Fund in excess of the four exchange annual limitation. Lammert approved Brean's customer to trade the Mercury Fund with $50 million or 1% of the assets in the Mercury Fund, knowing that Brean intended to make as many as three trades per month in the Fund. As a condition of the arrangement, Brean's customer agreed to make a long-term investment of $25 million (i.e., 50 percent of the size of the trading capacity) in a Janus money market fund. Newcomb required the long-term investment from Brean's customer in exchange for the right to trade the Mercury Fund under the arrangement.

17. Shortly thereafter, Brean's customer made a long-term investment of $25 million in a Janus money market fund and began to frequently trade the Mercury Fund with $50 million.

18. By mid-November 2002, Lammert became concerned about the size of some of the trades by Brean's customer relative to his cash position in the Mercury Fund. Lammert was initially inclined to prohibit Brean from further trading in his fund. However, after having a conversation with a Brean broker, Lammert agreed to allow Brean's customer to continue trading the Mercury Fund, but reduced the trading capacity from $50 million to $5 million. At the same time, Brean's customer, in turn, reduced its long-term investment in the Janus money-market fund from $25 million to $2.5 million.

19. Between October 2002 and June 2003, Brean's customer made approximately 53 purchases in and approximately 54 redemptions (or exchanges) out of the Mercury Fund totaling approximately $453 million. This trading violated the prospectus disclosure set forth in paragraph 2 above.

Failure to Disclose the Arrangements and Role of Respondents in False Prospectus Disclosure

20. At no time did the Respondents notify the Funds' shareholders or the board of trustees of the Funds that JCM was permitting Trautman's and Brean's customers to market time and frequently trade the Funds while otherwise routinely enforcing the four exchange limitation in these Funds with respect to trading by other customers. Nor did JCM or the Respondents

disclose JCM's potential conflict of interest as a result of the increased assets under management and advisory fees that the arrangements generated for JCM.

21. JCM routinely circulated a redlined version of new or revised prospectuses to portfolio managers and senior salespersons for review and comment. Lammert and Soderberg regularly received copies of prospectuses for this purpose and thereby participated in the drafting of prospectuses that were materially false and misleading because Lammert and Soderberg knew that the arrangement with Trautman and Brean were contrary to the statements in the Funds' prospectuses concerning market timing and frequent trading. Newcomb, as a salesman of the Funds, was obligated to understand the prospectus disclosure for investment products he sold for JCM. He therefore knew or was reckless in not knowing that the arrangements with Trautman and Brean were contrary to the statements in the Funds' prospectuses concerning market timing and frequent trading.

Violations

22. As a result of the conduct described above, Lammert (i) willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, or, in the alternative, willfully aided and abetted and caused JCM's violations of these provisions, and (ii) willfully aided and abetted and caused JCM's violations of Sections 206(1) and 206(2) of the Advisers Act. Specifically, Lammert allowed two improper trading arrangements whereby Trautman and Brean were permitted to engage in market timing notwithstanding a prohibition on market timing in the Funds' prospectuses, and he failed to disclose the arrangements and JCM's conflict of interest.

23. As a result of the conduct described above, Soderberg (i) willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, or, in the alternative, willfully aided and abetted and caused JCM's violations of these provisions, and (ii) willfully aided and abetted and caused JCM's violations of Sections 206(1) and 206(2) of the Advisers Act. Specifically, Soderberg allowed an improper trading arrangement whereby Trautman was permitted to engage in market timing notwithstanding a prohibition on market timing in the Funds' prospectuses, and he failed to disclose the arrangements and JCM's conflict of interest.

24. As a result of the conduct described above, Newcomb (i) willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, or, in the alternative, willfully aided and abetted and caused JCM's violations of these provisions, and (ii) willfully aided and abetted and caused JCM's violations of Sections 206(1) and 206(2) of the Advisers Act. Specifically, Newcomb allowed two improper trading arrangements whereby Trautman and Brean were permitted to engage in market timing notwithstanding a prohibition on market timing in the Funds' prospectuses, and he failed to disclose the arrangements and JCM's conflict of interest.

25. As a result of the conduct described above, Lammert and Soderberg willfully aided and abetted and caused JCM's violations of Section 34(b) of the Investment Company Act

in that Lammert and Soderberg made an untrue statement of material fact in a registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Investment Company Act, or omitted to state therein any fact necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading.

26. As a result of the conduct described above, Newcomb, an affiliated person of an affiliated person of the timed Funds, willfully aided and abetted and caused JCM's violations of Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder, in that, while acting as a principal, Newcomb participated in and effected transactions in connection with joint arrangements in which the Funds were participants without filing an application with the Commission and obtaining a Commission order approving the transactions. Specifically, Newcomb allowed Brean to market time the Mercury Fund in exchange for placing longer term assets in a money market fund managed by JCM, through which JCM realized additional advisory fees.

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 Respondents Soderberg and Newcomb pursuant to Section 15(b)(6) of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Respondents Lammert, Soderberg and Newcomb pursuant to Section 203(f) of the Advisers Act, including, but not limited to, civil penalties pursuant to Section 203(i) of the Advisers Act;

D. What, if any, remedial action is appropriate in the public interest against Respondents Lammert, Soderberg and Newcomb pursuant to Section 9(b) of the Investment Company Act, including, but not limited to, civil penalties pursuant to Section 9(d) of the Investment Company Act;

E. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Section 203(k) of the Advisers Act, and Section 9(f) of the Investment Company Act Respondents Lammert and Soderberg 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 206(1) and (2) of the Advisers Act, and Section 34(b) of the Investment Company Act; and

F. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Section 203(k) of the Advisers Act, and Section 9(f) of the Investment Company Act Respondent Newcomb 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 206(1) and (2) of the Advisers Act, and Section 17(d) of the Investment Company Act and Rule 17d-1 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, 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