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 **March 2010,** 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:

MARY L. SCHAPIRO, CHAIRMAN

KATHLEEN L. CASEY, COMMISSIONER

ELISSE B. WALTER, COMMISSIONER

LUIS A. AGUILAR, COMMISSIONER

TROY A. PAREDES, COMMISSIONER

(61 Documents)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

May 12, 2009

In the Matter of **Fortel, Inc., now known as Envit Capital 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 Fortel, Inc., now known as Envit Capital Group, Inc., because it has not filed any periodic reports since the period ended June 30, 2002.

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

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on May 12, 2009, through 11:59 p.m. EDT on May 26, 2009.

By the Commission.

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
May 12, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13465

In the Matter of	
Fortel, Inc., now known as Envit Capital Group, Inc.,	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**
Respondent.	

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") against Fortel, Inc., now known as Envit Capital Group, Inc. ("Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Fortel, Inc., now known as Envit Capital Group, Inc. (CIK No. 731647) is a Delaware corporation formerly located in Fremont, California and now located in Boston, Massachusetts, with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Respondent 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 June 30, 2002. On March 17, 2003, Respondent filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of California, which was converted into a Chapter 7 petition on May 7, 2003, and was terminated on March 17, 2006. During 2008, Respondent changed its corporate domicile from California to Delaware by merging into a Delaware corporation of the same name (Fortel, Inc.). On June 20, 2008, Respondent changed its name in the Delaware Secretary of State's records to Envit Capital Group, Inc. On June 27, 2008, Respondent filed a Form 15-12G with the Commission in an apparent attempt to deregister its securities. That form was not

effective. Respondent's securities are currently quoted on the Pink Sheets operated by Pink OTC Markets Inc. under the symbol "ECGP."

B. DELINQUENT PERIODIC FILINGS

2. Respondent is delinquent in its periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1). In particular, it has not filed a periodic report with the Commission since 2002.

3. A delinquency letter sent to Respondent by the Division of Corporation Finance to the address on file with the Commission requesting compliance with its periodic filing obligations was returned undelivered. The Respondent also did not file any periodic report after the delinquency letter was sent.

4. Section 13(a) of the Exchange Act and the rules promulgated thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act to file with the Commission current and accurate information in periodic reports. 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).

5. As a result of the foregoing, Respondent failed to comply with Section 13(a) of the Exchange Act 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 Respondent an opportunity to establish any defenses to such allegations; and

B. Whether it is necessary or 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 Respondent 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 Respondent 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 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 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 Respondent 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.

Elizabeth M. Murphy
Secretary

Attachment

Appendix 1

Chart of Delinquent Filings

Fortel, Inc., now known as Envit

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Fortel, Inc., now known as Envit	*10-K*	09/30/02	12/30/02	Not filed	77
	10-Q	12/31/02	02/14/03	Not filed	75
	10-Q	03/31/03	05/15/03	Not filed	72
	10-Q	06/30/03	08/14/03	Not filed	69
	10-K	09/30/03	12/29/03	Not filed	65
	10-Q	12/31/03	02/17/04	Not filed	63
	10-Q	03/31/04	05/17/04	Not filed	60
	10-Q	06/30/04	08/16/04	Not filed	57
	10-K	09/30/04	12/29/04	Not filed	53
	10-Q	12/31/04	02/14/05	Not filed	51
	10-Q	03/31/05	05/16/05	Not filed	48
	10-Q	06/30/05	08/15/05	Not filed	45
	10-K	09/30/05	12/29/05	Not filed	41
	10-Q	12/31/05	02/14/06	Not filed	39
	10-Q	03/31/06	05/15/06	Not filed	36
	10-Q	06/30/06	08/14/06	Not filed	33
	10-K	09/30/06	12/29/06	Not filed	29
	10-Q	12/31/06	02/14/07	Not filed	27
	10-Q	03/31/07	05/15/07	Not filed	24
	10-Q	06/30/07	08/14/07	Not filed	21
	10-K	09/30/07	12/31/07	Not filed	17
	10-Q	12/31/07	02/14/08	Not filed	15
	10-Q	03/31/08	05/15/08	Not filed	12
	10-Q	06/30/08	08/14/08	Not filed	9
	10-K	09/30/08	12/29/08	Not filed	5
	10-Q	12/31/08	02/14/09	Not filed	3
Total Filings Delinquent	26				

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

February 19, 2010

IN THE MATTER OF	:	
	:	
ELECTRONIC GAME CARD, 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 Electronic Game Card, Inc. ("EGMI") because of questions regarding the accuracy of assertions by EGMI, and by others, in financial disclosures to investors concerning, among other things, the company's assets.

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

THEREFORE, IT IS ORDERED, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EST, on February 19, 2010, through 11:59 p.m. EST, on March 4, 2010.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

March 1, 2010

IN THE MATTER OF PRIMEGEN ENERGY CORP. 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 PrimeGen Energy Corporation ("PrimeGen") because of questions regarding the accuracy of publicly disseminated information concerning, among other things, the company's current financial condition, management, and business operations. PrimeGen is quoted on the Pink Sheets under the symbol "PGNE."

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. EST, on March 1, 2010, through 11:59 p.m. EST, on March 12, 2010.

By the Commission.

Elizabeth M. Murphy
Secretary

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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-61605/March 1, 2010]

Order Making Fiscal Year 2010 Mid-Year Adjustment to the Fee Rates Applicable Under Sections 31(b) and (c) of the Securities Exchange Act of 1934

I. Background

Section 31 of the Securities Exchange Act of 1934 ("Exchange Act") requires each national securities exchange and national securities association to pay transaction fees to the Commission.[1] Specifically, Section 31(b) requires each national securities exchange to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities transacted on the exchange.[2] Section 31(c) requires each national securities association to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities transacted by or through any member of the association other than on an exchange.[3]

Sections 31(j)(1) and (3) require the Commission to make annual adjustments to the fee rates applicable under Sections 31(b) and (c) for each of the fiscal years 2003 through 2011, and one final adjustment to fix the fee rates for fiscal year 2012 and beyond.[4] Section 31(j)(2) requires the Commission, in certain circumstances, to make a mid-year adjustment to the fee rates in fiscal years 2002 through 2011.[5] The annual and mid-year adjustments are designed to adjust the fee rates in a given fiscal year so that, when applied to the aggregate dollar volume of sales for the fiscal year, they are reasonably likely to produce total fee collections under Section

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1 15 U.S.C. 78ee.

2 15 U.S.C. 78ee(b).

3 15 U.S.C. 78ee(c).

4 15 U.S.C. 78ee(j)(1) and (j)(3).

5 15 U.S.C. 78ee(j)(2).

31 equal to the "target offsetting collection amount" specified in Section 31(l)(1) for that fiscal year.[6] For fiscal year 2010, the target offsetting collection amount is $1,161,000,000.[7]

II. Determination of the Need for a Mid-Year Adjustment in Fiscal 2010

Under Section 31(j)(2) of the Exchange Act, the Commission must make a mid-year adjustment to the fee rates under Sections 31(b) and (c) in fiscal year 2010 if it determines, based on the actual aggregate dollar volume of sales during the first five months of the fiscal year, that the baseline estimate $84,822,877,437,603 is reasonably likely to be 10% (or more) greater or less than the actual aggregate dollar volume of sales for fiscal year 2010.[8] To make this determination, the Commission must estimate the actual aggregate dollar volume of sales for fiscal year 2010.

Based on data provided by the national securities exchanges and the national securities association that are subject to Section 31,[9] the actual aggregate dollar volume of sales during the first four months of fiscal year 2010 was $19,531,642,600,905.[10] Using these data and a methodology for estimating the aggregate dollar amount of sales for the remainder of fiscal year

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6 15 U.S.C. 78ee(l)(1).

7 See id.

8 The amount $84,822,877,437,603 is the baseline estimate of the aggregate dollar amount of sales for fiscal year 2010 calculated by the Commission in its Order Making Fiscal 2010 Annual Adjustments to the Fee Rates Applicable Under Section 6(b) of the Securities Act of 1933 and Sections 13(e), 14(g), 31(b) and 31(c) of the Securities Exchange Act of 1934, Rel. No. 33-9030 (April 30, 2009), 74 FR 21018 (May 6, 2009).

9 The Financial Industry Regulatory Authority, Inc. ("FINRA") and each exchange are required to file a monthly report on Form R31 containing dollar volume data on sales of securities subject to Section 31. The report is due on the 10th business day following any month in which the exchange or association has covered sales.

10 Although Section 31(j)(2) indicates that the Commission should determine the actual aggregate dollar volume of sales for fiscal 2010 "based on the actual aggregate dollar volume of sales during the first 5 months of such fiscal year," data are only available for the first four months of the fiscal year as of the date the Commission is required to issue this order, i.e., March 1, 2010. Dollar volume data on sales of securities subject to Section 31 for February 2010 will not be available from the exchanges and FINRA for several weeks.

2010 (developed after consultation with the Congressional Budget Office and the OMB),[11] the Commission estimates that the aggregate dollar amount of sales for the remainder of fiscal year 2010 to be $43,755,155,427,595. Thus, the Commission estimates that the actual aggregate dollar volume of sales for all of fiscal year 2010 will be $63,286,798,028,500.

Because the baseline estimate of $84,822,877,437,603 is more than 10% greater than the $63,286,798,028,500 estimated actual aggregate dollar volume of sales for fiscal year 2010, Section 31(j)(2) of the Exchange Act requires the Commission to issue an order adjusting the fee rates under Sections 31(b) and (c).

III. Calculation of the Uniform Adjusted Rate

Section 31(j)(2) specifies the method for determining the mid-year adjustment for fiscal 2010. Specifically, the Commission must adjust the rates under Sections 31(b) and (c) to a "uniform adjusted rate that, when applied to the revised estimate of the aggregate dollar amount of sales for the remainder of fiscal year 2010, is reasonably likely to produce aggregate fee collections under Section 31 (including fees collected during such 5-month period and assessments collected under Section 31(d)) that are equal to $1,161,000,000."[12] In other words, the uniform adjusted rate is determined by subtracting fees collected prior to the effective date of the new rate and assessments collected under Section 31(d) during all of fiscal year 2010 from $1,161,000,000, which is the target offsetting collection amount for fiscal year 2010. That

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[11] See Appendix A.

[12] 15 U.S.C. 78ee(j)(2). The term "fees collected" is not defined in Section 31. Because national securities exchanges and national securities associations are not required to pay the first installment of Section 31 fees for fiscal 2010 until March 15, the Commission will not "collect" any fees in the first five months of fiscal 2010. See 15 U.S.C. 78ee(e). However, the Commission believes that, for purposes of calculating the mid-year adjustment, Congress, by stating in Section 31(j)(2) that the "uniform adjusted rate . . . is reasonably likely to produce aggregate fee collections under Section 31 . . . that are equal to [$1,161,000,000]," intended the Commission to include the fees that the Commission will collect based on transactions in the six months before the effective date of the mid-year adjustment.

difference is then divided by the revised estimate of the aggregate dollar volume of sales for the remainder of the fiscal year following the effective date of the new rate.

The Commission estimates that it will collect $598,633,917 in fees for the period prior to the effective date of the mid-year adjustment and $18,611 in assessments on round turn transactions in security futures products during all of fiscal year 2010. Using the methodology referenced in Part II above, the Commission estimates that the aggregate dollar volume of sales for the remainder of fiscal year 2010 following the effective date of the new rate will be $33,260,374,276,849. This amount reflects more recent information on the dollar amount of sales of securities than was available at the time of the setting of the initial fee rate for fiscal year 2010, and indicates a significant reduction in sales. Based on these estimates, and employing the mid-year adjustment mechanism established by statute, the uniform adjusted rate must be adjusted to $16.90 per million of the aggregate dollar amount of sales of securities.[13] The aggregate dollar amount of sales of securities subject to Section 31 fees is illustrated in Appendix A.

IV. Effective Date of the Uniform Adjusted Rate

Section 31(j)(4)(B) of the Exchange Act provides that a mid-year adjustment shall take effect on April 1 of the fiscal year in which such rate applies. Therefore, the exchanges and the national securities association that are subject to Section 31 fees must pay fees under Sections 31(b) and (c) at the uniform adjusted rate of $16.90 per million for sales of securities transacted on April 1, 2010, and thereafter until the annual adjustment for fiscal 2011 is effective.

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[13] The calculation is as follows: ($1,161,000,000 - $598,633,917 - $18,611)/$33,260,374,276,849 = $0.0000169080. Round this result to the seventh decimal point, yielding a rate of $16.90 per million.

V. Conclusion

Accordingly, pursuant to Section 31 of the Exchange Act,[14]

IT IS HEREBY ORDERED that each of the fee rates under Sections 31(b) and (c) of the Exchange Act shall be $16.90 per $1,000,000 of the aggregate dollar amount of sales of securities subject to these sections effective April 1, 2010.

By the Commission.

Elizabeth M. Murphy
Secretary

[14] 15 U.S.C. 78ee.

APPENDIX A

A. Baseline estimate of the aggregate dollar amount of sales.

First, calculate the average daily dollar amount of sales (ADS) for each month in the sample (January 2000 - January 2010). The data obtained from the exchanges and FINRA are presented in Table A. The monthly aggregate dollar amount of sales from all exchanges and FINRA is contained in column C.

Next, calculate the change in the natural logarithm of ADS from month-to-month. The average monthly change in the logarithm of ADS over the entire sample is 0.004 and the standard deviation 0.125. Assume the monthly percentage change in ADS follows a random walk. The expected monthly percentage growth rate of ADS is 1.2 percent.

Now, use the expected monthly percentage growth rate to forecast total dollar volume. For example, one can use the ADS for January 2010 ($245,357,654,413) to forecast ADS for February 2010 ($248,264,845,054 = $245,357,654,413 x 1.012).[15] Multiply by the number of trading days in February 2010 (19) to obtain a forecast of the total dollar volume for the month ($4,717,032,056,030). Repeat the method to generate forecasts for subsequent months.

The forecasts for total dollar volume are in column G of Table A. The following is a more formal (mathematical) description of the procedure:

1. Divide each month's total dollar volume (column C) by the number of trading days in that month (column B) to obtain the average daily dollar volume (ADS, column D).

2. For each month t, calculate the change in ADS from the previous month as $\Delta_t = \log (ADS_t / ADS_{t-1})$, where log (x) denotes the natural logarithm of x.

3. Calculate the mean and standard deviation of the series $\{\Delta_1, \Delta_2, \ldots, \Delta_{120}\}$. These are given by $\mu = 0.004$ and $\sigma = 0.125$, respectively.

4. Assume that the natural logarithm of ADS follows a random walk, so that Δ_s and Δ_t are statistically independent for any two months s and t.

5. Under the assumption that Δ_t is normally distributed, the expected value of ADS_t / ADS_{t-1} is given by $\exp (\mu + \sigma^2/2)$, or on average $ADS_t = 1.012 \times ADS_{t-1}$.

6. For February 2010, this gives a forecast ADS of 1.012 × $245,357,654,413 = $248,264,845,054. Multiply this figure by the 19 trading days in February 2010 to obtain a total dollar volume forecast of $4,717,032,056,030.

7. For March 2010, multiply the February 2010 ADS forecast by 1.012 to obtain a forecast ADS of $251,206,482,379. Multiply this figure by the 23 trading days in March 2010 to obtain a total dollar volume forecast of $5,777,749,094,716.

[15] The value 1.012 has been rounded. All computations are done with the unrounded value.

8. Repeat this procedure for subsequent months.

B. Using the forecasts from A to calculate the new fee rate.

1. Determine the aggregate dollar volume of sales between 10/1/09 and 1/14/10 to be $16,715,256,569,641. Multiply this amount by the fee rate of $25.70 per million dollars in sales during this period and get $429,582,094 in actual fees collected during 10/1/09 and 1/14/10. Determine the actual and projected aggregate dollar volume of sales between 1/15/10 and 3/31/10 to be $13,311,167,182,011. Multiply this amount by the fee rate of $12.70 per million dollars in sales during this period and get an estimate of $169,051,823 in actual and projected fees collected during 1/15/10 and 3/31/10.

2. Estimate the amount of assessments on security futures products collected during 10/1/09 and 9/30/10 to be $18,611 by summing the amounts collected through January 2010 of $5,684 with projections of a 1.2% monthly increase in subsequent months.

3. Determine the projected aggregate dollar volume of sales between 4/1/10 and 9/30/10 to be $33,260,374,276,849.

4. The rate necessary to collect the target $1,161,000,000 in fee revenues is then calculated as: ($1,161,000,000 - $429,582,094 -$169,051,823 - $18,611) ÷ $33,260,374,276,849 = 0.0000169080.

5. Round the result to the seventh decimal point, yielding a rate of 0.0000169000 (or $16.90 per million).

Table A. Estimation of baseline of the aggregate dollar amount of sales.
(Methodology developed in consultation with the Office of Management and Budget and the Congressional Budget Office.)

Fee rate calculation.

a. Baseline estimate of the aggregate dollar amount of sales, 10/1/09 to 1/14/10 ($Millions)	16,715,257
b. Baseline estimate of the aggregate dollar amount of sales, 1/15/00 to 3/31/10 ($Millions)	13,311,167
c. Baseline estimate of the aggregate dollar amount of sales, 4/1/00 to 9/30/10 ($Millions)	33,260,374
d. Estimated collections in assessments on security futures products in FY 2010 ($Millions)	0.019
e. Implied fee rate (($1,161,000,000 - 0.0000257*a - 0.0000127*b - d) /c)	$16.90

Data

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Dollar Amount of Sales	(D) Average Daily Dollar Amount of Sales (ADS)	(E) Change in LN of ADS	(F) Forecast ADS	(G) Forecast Aggregate Dollar Amount of Sales
Jan-00	20	3,057,831,397,113	152,891,569,856	-		
Feb-00	20	2,973,119,888,063	148,655,994,403	-0.028		
Mar-00	23	4,135,152,366,234	179,789,233,315	0.190		
Apr-00	19	3,174,694,525,687	167,089,185,562	-0.073		
May-00	22	2,649,273,207,318	120,421,509,424	-0.328		
Jun-00	22	2,883,513,997,781	131,068,818,081	0.085		
Jul-00	20	2,804,753,395,361	140,237,669,768	0.068		
Aug-00	23	2,720,788,395,832	118,295,147,645	-0.170		
Sep-00	20	2,930,188,809,012	146,509,440,451	0.214		
Oct-00	22	3,485,926,307,727	158,451,195,806	0.078		
Nov-00	21	2,795,778,876,887	133,132,327,471	-0.174		
Dec-00	20	2,809,917,349,851	140,495,867,493	0.054		
Jan-01	21	3,143,501,125,244	149,690,529,774	0.063		
Feb-01	19	2,372,420,523,286	124,864,238,068	-0.181		
Mar-01	22	2,554,419,085,113	116,109,958,414	-0.073		
Apr-01	20	2,324,349,507,745	116,217,475,387	0.001		
May-01	22	2,353,179,388,303	106,962,699,468	-0.083		
Jun-01	21	2,111,922,113,236	100,567,719,678	-0.062		
Jul-01	21	2,004,384,034,554	95,446,858,788	-0.052		
Aug-01	23	1,803,565,337,795	78,415,884,252	-0.197		
Sep-01	15	1,573,484,946,383	104,898,996,426	0.291		
Oct-01	23	2,147,238,873,044	93,358,211,871	-0.117		
Nov-01	21	1,939,427,217,518	92,353,677,025	-0.011		
Dec-01	20	1,921,098,738,113	96,054,936,906	0.039		
Jan-02	21	2,149,243,312,432	102,344,919,640	0.063		
Feb-02	19	1,928,830,595,585	101,517,399,768	-0.008		
Mar-02	20	2,002,216,374,514	100,110,818,726	-0.014		
Apr-02	22	2,062,101,866,506	93,731,903,023	-0.066		
May-02	22	1,985,859,756,557	90,266,352,571	-0.038		
Jun-02	20	1,882,185,380,609	94,109,269,030	0.042		
Jul-02	22	2,349,564,490,189	106,798,385,918	0.126		
Aug-02	22	1,793,429,904,079	81,519,541,095	-0.270		
Sep-02	20	1,518,944,367,204	75,947,218,360	-0.071		
Oct-02	23	2,127,874,947,972	92,516,302,086	0.197		
Nov-02	20	1,780,816,458,122	89,040,822,906	-0.038		
Dec-02	21	1,561,092,215,646	74,337,724,555	-0.180		
Jan-03	21	1,723,698,830,414	82,080,896,686	0.099		
Feb-03	19	1,411,722,405,357	74,301,179,229	-0.100		
Mar-03	21	1,699,581,267,718	80,932,441,320	0.085		
Apr-03	21	1,759,751,025,279	83,797,667,870	0.035		
May-03	21	1,871,390,985,678	89,113,856,461	0.062		
Jun-03	21	2,122,225,077,345	101,058,337,016	0.126		
Jul-03	22	2,100,812,973,956	95,491,498,816	-0.057		
Aug-03	21	1,766,527,686,224	84,120,366,011	-0.127		
Sep-03	21	2,063,584,421,939	98,265,924,854	0.155		
Oct-03	23	2,331,850,083,022	101,384,786,218	0.031		
Nov-03	19	1,903,726,129,859	100,196,112,098	-0.012		
Dec-03	22	2,066,530,151,383	93,933,188,699	-0.065		

Jan-04	20	2,390,942,905,678	119,547,145,284	0.241		
Feb-04	19	2,177,765,594,701	114,619,241,826	-0.042		
Mar-04	23	2,613,808,754,550	113,643,858,893	-0.009		
Apr-04	21	2,418,663,760,191	115,174,464,771	0.013		
May-04	20	2,259,243,404,459	112,962,170,223	-0.019		
Jun-04	21	2,112,826,072,876	100,610,765,375	-0.116		
Jul-04	21	2,209,808,376,565	105,228,970,313	0.045		
Aug-04	22	2,033,343,354,640	92,424,697,938	-0.130		
Sep-04	21	1,993,803,487,749	94,943,023,226	0.027		
Oct-04	21	2,414,599,088,108	114,980,908,958	0.191		
Nov-04	21	2,577,513,374,160	122,738,732,103	0.065		
Dec-04	22	2,673,532,981,863	121,524,226,448	-0.010		
Jan-05	20	2,581,847,200,448	129,092,360,022	0.060		
Feb-05	19	2,532,202,408,589	133,273,810,978	0.032		
Mar-05	22	3,030,474,897,226	137,748,858,965	0.033		
Apr-05	21	2,906,386,944,434	138,399,378,306	0.005		
May-05	21	2,697,414,503,460	128,448,309,689	-0.075		
Jun-05	22	2,825,962,273,624	128,452,830,619	0.000		
Jul-05	20	2,604,021,263,875	130,201,063,194	0.014		
Aug-05	23	2,846,115,585,965	123,744,155,912	-0.051		
Sep-05	21	3,009,640,645,370	143,316,221,208	0.147		
Oct-05	21	3,279,847,331,057	156,183,206,241	0.086		
Nov-05	21	3,163,453,821,548	150,640,658,169	-0.036		
Dec-05	21	3,090,212,715,561	147,152,986,455	-0.023		
Jan-06	20	3,573,372,724,766	178,668,636,238	0.194		
Feb-06	19	3,314,259,849,456	174,434,728,919	-0.024		
Mar-06	23	3,807,974,821,564	165,564,122,677	-0.052		
Apr-06	19	3,257,478,138,851	171,446,217,834	0.035		
May-06	22	4,206,447,844,451	191,202,174,748	0.109		
Jun-06	22	3,995,113,357,316	181,596,061,696	-0.052		
Jul-06	20	3,339,658,009,357	166,982,900,468	-0.084		
Aug-06	23	3,410,187,280,845	148,269,012,211	-0.119		
Sep-06	20	3,407,409,863,673	170,370,493,184	0.139		
Oct-06	22	3,980,070,216,912	180,912,282,587	0.060		
Nov-06	21	3,933,474,986,969	187,308,332,713	0.035		
Dec-06	20	3,715,146,848,695	185,757,342,435	-0.008		
Jan-07	20	4,263,986,570,973	213,199,328,549	0.138		
Feb-07	19	3,946,799,860,532	207,726,308,449	-0.026		
Mar-07	22	5,245,051,744,090	238,411,442,913	0.138		
Apr-07	20	4,274,665,072,437	213,733,253,622	-0.109		
May-07	22	5,172,568,357,522	235,116,743,524	0.095		
Jun-07	21	5,586,337,010,802	266,016,048,133	0.123		
Jul-07	21	5,938,330,480,139	282,777,641,911	0.061		
Aug-07	23	7,713,644,229,032	335,375,836,045	0.171		
Sep-07	19	4,805,676,596,099	252,930,347,163	-0.282		
Oct-07	23	6,499,651,716,225	282,593,552,879	0.111		
Nov-07	21	7,176,290,763,989	341,728,131,619	0.190		
Dec-07	20	5,512,903,594,564	275,645,179,728	-0.215		
Jan-08	21	7,997,242,071,529	380,821,051,025	0.323		
Feb-08	20	6,139,080,448,887	306,954,022,444	-0.216		
Mar-08	20	6,767,852,332,381	338,392,616,619	0.098		
Apr-08	22	6,150,017,772,735	279,546,262,397	-0.191		
May-08	21	6,080,169,766,807	289,531,893,657	0.035		
Jun-08	21	6,962,199,302,412	331,533,300,115	0.135		
Jul-08	22	8,104,256,787,805	368,375,308,537	0.105		
Aug-08	21	6,106,057,711,009	290,764,652,905	-0.237		
Sep-08	21	8,156,991,919,103	388,428,186,624	0.290		
Oct-08	23	8,644,538,213,244	375,849,487,532	-0.033		
Nov-08	19	5,727,998,341,833	301,473,596,939	-0.221		
Dec-08	22	5,176,041,317,640	235,274,605,347	-0.248		
Jan-09	20	4,670,249,433,806	233,512,471,690	-0.008		
Feb-09	19	4,771,470,184,048	251,130,009,687	0.073		
Mar-09	22	5,885,594,284,780	267,527,012,945	0.063		
Apr-09	21	5,123,665,205,517	243,984,057,406	-0.092		
May-09	20	5,086,717,129,965	254,335,856,498	0.042		
Jun-09	22	5,271,742,782,609	239,624,671,937	-0.060		
Jul-09	22	4,659,599,245,583	211,799,965,708	-0.123		
Aug-09	21	4,582,102,295,783	218,195,347,418	0.030		

Sep-09	21	4,929,211,335,509	234,724,349,310	0.073		
Oct-09	22	5,410,071,946,836	245,912,361,220	0.047		
Nov-09	20	4,770,994,671,867	238,549,733,593	-0.030		
Dec-09	22	4,688,780,548,360	213,126,388,562	-0.113		
Jan-10	19	4,661,795,433,843	245,357,654,413	0.141		
Feb-10	19				248,264,845,054	4,717,032,056,030
Mar-10	23				251,206,482,379	5,777,749,094,716
Apr-10	21				254,182,974,538	5,337,842,465,308
May-10	20				257,194,734,520	5,143,894,690,405
Jun-10	22				260,242,180,205	5,725,327,964,515
Jul-10	21				263,325,734,426	5,529,840,422,940
Aug-10	22				266,445,825,024	5,861,808,150,529
Sep-10	21				269,602,884,912	5,661,660,583,153

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61607A / March 1, 2010

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3116A / March 1, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13797

In the Matter of **GERARD A. M. OPRINS, CPA,** **and** **WENDY McNEELEY, CPA,** **Respondents.**	**CORRECTED ORDER INSTITUTING PUBLIC ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 4C OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative proceedings be, and hereby are, instituted against Gerard A. M. Oprins, CPA ("Oprins") and Wendy McNeeley, CPA ("McNeeley") (collectively "Respondents") pursuant to Section 4C[1] of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(ii) of the Commission's Rules of Practice to determine whether Respondents engaged in improper professional conduct.[2]

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[1] Section 4C provides, in relevant part, that: "The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder."

[2] Rule 102(e)(1)(ii) provides, in pertinent part, that: "The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in unethical or improper professional conduct."

II.

After an investigation, the Division of Enforcement and the Office of the Chief Accountant allege that:

Summary

1. These proceedings arise out of the Respondents' improper professional conduct during Ernst & Young LLP's ("Ernst & Young") independent audits of the 2004 financial statements for AA Capital Partners, Inc. ("AA Capital"), an investment adviser registered with the Commission, and the AA Capital Equity Fund ("Equity Fund"), one of AA Capital's affiliated private equity funds. During the audits, Oprins, the engagement partner, and McNeeley, the manager, learned that AA Capital's president, director and co-owner, John Orecchio ("Orecchio"), purportedly had borrowed $1.92 million in funds belonging to AA Capital's clients between May and December 2004 to pay a personal tax liability arising from his ownership interest in AA Capital's private equity funds. In fact, Orecchio had invented the story about the so-called "tax loan" to conceal his ongoing misappropriation of client assets for his personal use. Despite learning about the "tax loan" during the audits, Oprins and McNeeley failed to review the transaction in accordance with Generally Accepted Auditing Standards ("GAAS"). Instead of properly evaluating the "tax loan" as a related party transaction, Oprins and McNeeley relied solely upon dubious and unsubstantiated information obtained from AA Capital's chief financial officer, Mary Beth Stevens ("Stevens"). As a result, Oprins and McNeeley caused Ernst & Young to issue unqualified audit reports for AA Capital's and the Equity Fund's 2004 financial statements even though Orecchio's purported "tax loan" was not adequately disclosed in conformity with General Accepted Accounting Principles ("GAAP") and Ernst & Young's audits were not conducted in accordance with GAAS. Accordingly, Oprins' and McNeeley's conduct constituted improper professional conduct within the meaning of Rules 102(e)(1)(ii) and (iv).

Respondents

2. **Gerard A. M. Oprins**, CPA, age 50, is a resident of Glen Ellyn, Illinois. Oprins has been licensed as a CPA in Illinois since August 1995. Oprins was first employed in Ernst & Young's audit department in 1982 and became a partner in Ernst &Young's Financial Services practice group in 1995. Oprins' employment with Ernst & Young ended in April of 2009.

3. **Wendy McNeeley**, CPA, age 33, is a resident of Tinley Park, Illinois. McNeeley passed the CPA examination in Illinois in November 1998 and obtained her CPA license in March 2007. McNeeley was employed as an audit manager in the financial services group of Ernst & Young from September 2004 until July 2006. McNeeley currently works for another auditing firm with offices in Chicago, Illinois.

Other Relevant Parties

4. **AA Capital Partners, Inc.** is a Delaware corporation headquartered in Chicago, Illinois. Since 2002, AA Capital has been registered with the Commission as an investment

adviser. Between 2003 and 2005, AA Capital solicited and obtained investment management agreements with six union clients, five of which were union pension funds. By mid-2004, AA Capital managed approximately $141 million on behalf of these clients and invested the clients' money in four affiliated private equity funds. Of these four private equity funds, the Equity Fund was by far the largest with over $131 million in assets during 2004. On September 8, 2006, the Commission filed an emergency action against AA Capital and Orecchio, SEC v. AA Capital Partners, Inc. and John A. Orecchio, Case No. 06-C-4859 (N.D. Ill.), seeking temporary, preliminary and permanent injunctive relief against them based on AA Capital's violations and Orecchio's aiding and abetting of violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"). On September 12, 2006, the U.S. District Court for the Northern District of Illinois appointed W. Scott Porterfield of the law firm Barack Ferrazzano Kirschbaum & Nagelberg LLP as the receiver over AA Capital.

5. **John Orecchio**, age 41, is a resident of Arlington Heights, Illinois. Orecchio co-founded AA Capital in February 2002 and acted as its president and managing director from at least April 2002 until August 30, 2006 when his employment was terminated. Orecchio is a defendant in SEC v. AA Capital Partners, Inc. and John A. Orecchio. Orecchio also has been charged with one count of wire fraud and one count of embezzling funds owned by an employee pension benefit plan in a criminal information filed in the U.S. District Court for the Northern District of Illinois captioned United States v. John A. Orecchio.

6. **Mary Beth Stevens**, age 39, is a resident of Lincoln, Illinois. Stevens joined AA Capital as an accountant after it began operating in 2002. Shortly thereafter, Stevens became AA Capital's chief financial officer. In 2004, Stevens also became AA Capital's chief compliance officer. She continued in these roles until her employment was terminated in September 2006. Stevens has been named as a respondent in the Matter of Mary Beth Stevens, (Admin. Proc. File No. 3-13553).

7. **Ernst & Young LLP** is the United States arm of a global network of professional services firms that provide assurance, tax, transaction and advisory services throughout the world. Auditors from Ernst & Young's office in Chicago, Illinois conducted audits of AA Capital's and its affiliated private equity funds' financial statements for AA Capital's fiscal years 2002, 2003, 2004 and 2005.[3] Ernst & Young also provided tax services to AA Capital and its affiliated private equity funds during the same time period.

Orecchio's Misappropriation of Client Funds

8. Shortly after he co-founded AA Capital in 2002, Orecchio began spending lavishly on travel and entertainment to build up AA Capital's advisory business, regularly entertaining clients in Detroit, Michigan and Las Vegas, Nevada. In August 2003, Orecchio began a relationship with a woman who performed at a Detroit strip club. Between 2003 and 2006, Orecchio spent substantial amounts of money on his mistress and her family.

[3] Ernst & Young did not complete its audits of AA Capital's or the affiliated private equity funds' 2005 financial statements.

9. Starting in 2004, Orecchio began siphoning money from AA Capital's client trust accounts to fund his lavish lifestyle. Between 2004 and September 2006, Orecchio misappropriated more than $23 million in client funds, including at least $5.7 million under the guise of a purported "tax loan."

10. In May 2004, Orecchio told Stevens that he owed a significant amount of money to the Internal Revenue Service based on his ownership interest in one of AA Capital's affiliated private equity funds and a failure by Ernst & Young to timely file certain tax returns. Orecchio told Stevens that he needed to borrow money to pay his taxes. At Orecchio's direction, Stevens withdrew $602,150 from AA Capital's client trust accounts and then wired the money to Orecchio's personal bank account.

11. Between May and December 2004, Stevens made three additional disbursements to Orecchio to pay his purported tax liability. During 2004, Orecchio received a total of four separate disbursements under the guise of the "tax loan" totaling approximately $1.92 million. All of the disbursements consisted of funds withdrawn from AA Capital's client trust accounts. On three of the four occasions, Stevens withdrew the requested funds from the client trust accounts, deposited them into AA Capital's main bank account and then wired them to Orecchio's personal bank account. On the fourth occasion, Stevens transferred the funds from the client trust accounts through the Equity Fund's bank account to Orecchio's personal bank account.

12. Orecchio's claims that he needed a "tax loan" for $1.92 million and that he had made payments of $1.92 million in estimated taxes to the Internal Revenue Service were false. In reality, Orecchio only owed approximately $25,000 to the Internal Revenue Service based on his ownership interest in the private equity fund and the failure to timely file the tax returns. Instead of using the funds to make payments to the Internal Revenue Service, Orecchio used the money to maintain a lavish lifestyle for himself and his mistress.

13. Orecchio continued to request funds from Stevens from time to time to pay his purported tax liability until October 2005. Stevens ultimately made at least 20 separate disbursements to Orecchio or other payees designated by Orecchio for a total "tax loan" of over $5.7 million.

14. Orecchio never signed any loan documentation for his purported "tax loan" and never agreed to repay the "tax loan" with interest.

Ernst & Young's Audits of the 2004 Financial Statements

15. In March 2005, AA Capital engaged Ernst & Young to conduct independent audits of AA Capital's and its affiliated private equity funds' 2003 and 2004 financial statements. As part of the engagement, AA Capital requested that Ernst & Young complete the audits and issue its audit reports on the financial statements by June 30, 2005, so that AA Capital could provide the

Equity Fund's financial statement reports to its clients in time for the clients to prepare their tax returns.[4]

16. Ernst & Young's audit team conducted their onsite work for the audits of the 2004 financial statements in May and June 2005. The seven-member audit team included McNeeley, as the audit manager, Oprins, as the engagement partner, an independent review partner, two senior auditors and two staff members. McNeeley, as the audit manager, was responsible for planning the audits, leading the onsite work and reviewing any work performed by the junior members of the audit team. Oprins, as the engagement partner, was responsible for the overall supervision of the audits.

17. While conducting the onsite work for the audits, the audit team reviewed an accounts receivable spreadsheet prepared by Stevens that included disbursements made by AA Capital and its private equity funds during 2004. During their review, the audit team noticed that the accounts receivable spreadsheet listed four sizeable disbursements to Orecchio described as "John – tax payment." McNeeley and an audit team member then discussed these disbursements with Stevens. The notes of this conversation in the audit workpapers state:

> Per conversation with Mary Beth Stevens, CFO, all of the Funds held under AA Capital, Inc. had not finalized their audits, tax filings, and therefore John Orecchio (managing member) did not have a final tax return draft that included taxable income w/set figures. Therefore he had to estimate his tax liability & made a payment to the IRS for 1,921,050. . . . The 1,921,050 is essentially a loan to John Orecchio. Mary Beth Stevens expects to receive payment from either Mr. Orecchio or the IRS after taxes are finalized.

As noted in the audit workpapers, the audit team observed that the Equity Fund had established a receivable due from AA Capital for the amount of Orecchio's "tax loan" and that AA Capital had established both a reciprocal payable due to the Equity Fund and a receivable due from Orecchio for the $1.92 million "tax loan."

18. Stevens further told McNeeley that she believed that Orecchio's "tax loan" would be repaid within calendar year 2005, but did not produce any documentation that supported her belief.

19. Oprins was made aware of the purported "tax loan" and the explanation provided to the audit team by Stevens during his review of the audit workpapers.

20. After learning about Orecchio's purported "tax loan," Oprins and McNeeley failed properly to evaluate the transaction or require other audit team members to do so. The audit team did not obtain any documentation reflecting Orecchio's tax liability or the terms of the "tax loan." They did not discuss the "tax loan" with Orecchio. They did not take steps to confirm Stevens' statements that Orecchio "made a payment to the IRS for $1,921,050" or that the "tax loan" would

[4] AA Capital's investment management agreements with its clients and the Equity Fund's limited partnership agreement required AA Capital to provide audited financial statements to its clients each year.

be repaid by Orecchio or the IRS during 2005. They did not take steps to assess the collectability of the "tax loan." They also failed to discuss Orecchio's tax liability with their colleagues in Ernst & Young's tax department who prepared the tax filings for AA Capital and its affiliated private equity funds.

21. Oprins and McNeeley also failed to scrutinize Orecchio's "tax loan," or require other audit team members to do so, in light of several red flags that the audit team encountered related to Orecchio's spending habits. Included among these red flags were other payments to Orecchio listed in the accounts receivable spreadsheet. At least 26 of these other payments, totaling over $1.44 million, were allegedly made to reimburse Orecchio for fees and expenses. Many of these payments were in large, round dollar amounts and included notations such as "Amex-John" or "John" without any additional detail.

22. In June 2005, after the audit team finished its field work for the audits of AA Capital's and the Equity Fund's 2004 financial statements, Ernst & Young issued unqualified audit opinions on the financial statements. Oprins authorized the issuance of these reports, each of which falsely stated that the 2004 financial statements issued by AA Capital and the Equity Fund were presented in conformity with GAAP and that Ernst & Young had conducted its audits of those financial statements in accordance with GAAS.

23. Oprins and McNeeley allowed Ernst & Young to issue an unqualified audit opinion for the Equity Fund's 2004 financial statements even though the financial statements did not properly identify Orecchio's "tax loan" as a related party transaction with Orecchio, and did not disclose the parties to the transaction, the nature of the transaction or its terms as required by GAAP. Instead, the Equity Fund's financial statements falsely presented the "tax loan" as a balance sheet asset described as "[a]ccounts receivable from AA Capital" in the amount of $1,921,150 and did not make any reference to Orecchio. Although the "tax loan" constituted a related party transaction, the notes to the Equity Fund's financial statements did not include a note describing any related party transactions and did not discuss the "tax loan." The Equity Fund's 2004 financial statements also did not disclose the possible risk that the "tax loan" would not be repaid in whole or in part.

24. Similarly, Oprins and McNeeley allowed Ernst & Young to issue an unqualified audit opinion for AA Capital's 2004 financial statements even though the financial statements did not properly identify Orecchio's "tax loan" as a related party transaction with Orecchio and did not disclose the parties to the transaction, the nature of the transaction or its terms as required by GAAP.[5] Instead, AA Capital's balance sheet combined the "tax loan" with several other assets described as "[a]ccounts receivable from affiliates" in the amount of $2,251,107. Although AA Capital's financial statements included a note concerning related party transactions, this note only further described $264,176 in other expenses and did not include any information about Orecchio's "tax loan."

[5] Although AA Capital's 2004 financial statements were prepared on a tax basis rather than a GAAP basis, GAAS requires auditors to apply essentially the same auditing criteria to non-GAAP-based financial statements.

Oprins' and McNeeley's Improper Professional Conduct

25. The "applicable professional standards" for accountants practicing before the Commission include, but are not limited to, GAAP and GAAS.

26. As the engagement partner and engagement manager, Oprins and McNeeley were responsible for ensuring that Ernst & Young's audits of AA Capital's and the Equity Fund's 2004 financial statements were conducted in accordance with GAAS. Oprins and McNeeley failed to conduct themselves in accordance with GAAS by failing to obtain sufficient competent evidential matter with respect to Orecchio's purported "tax loan," failing to exercise due professional care in connection with the audits and failing to render accurate audit reports. In addition, Oprins violated GAAS by failing properly to supervise the audits.

27. Oprins and McNeeley failed to obtain sufficient competent evidential matter about Orecchio's purported "tax loan" during Ernst & Young's audits of AA Capital's and the Equity Fund's 2004 financial statements. Although Oprins and McNeeley identified Orecchio's "tax loan" as a related party transaction, they failed to apply heightened scrutiny or perform any additional audit steps to evaluate it. Instead, Oprins and McNeeley relied upon Stevens' unsupported assertions and documentation about Orecchio's purported "tax loan" as sufficient evidential matter.

28. Oprins and McNeeley also failed to exercise due professional care during the audits. As discussed above, Oprins and McNeeley failed to exercise professional skepticism in relying upon Stevens' unsupported assertions and documentation about Orecchio's "tax loan" despite several red flags that should have caused them to further scrutinize the "tax loan."

29. Oprins and McNeeley also caused Ernst & Young to fail to render accurate audit reports. Ernst & Young's audit reports inaccurately represented that AA Capital's and the Equity Fund's 2004 financial statements were free of material misstatements and that Ernst & Young's audits were performed in accordance with GAAS. In fact, AA Capital's and the Equity Fund's financial statements were not free of material misstatements because they failed to provide any meaningful information about the nature of Orecchio's "tax loan" or properly to present it as a related party transaction with Orecchio. Ernst & Young's audits were not performed in accordance with GAAS because the audit team failed to take steps to assess the collectability of the "tax loan" and failed to obtain sufficient competent evidential matter about Orecchio's "tax loan."

30. Oprins further failed properly to supervise Ernst & Young's audits of AA Capital's and the Equity Fund's 2004 financial statements. Even though Oprins was made aware of Orecchio's "tax loan," he never required the audit team to obtain the minimal information necessary to evaluate it as a related party transaction.

Violations

As a result of the conduct described above, Respondents Oprins and McNeeley engaged in improper professional conduct as defined in Section 4C of the Exchange Act and Rule 102(e)(1)(ii)

and (iv), in that their conduct constituted (A) intentional or knowing conduct, including reckless conduct, that resulted in a violation of applicable professional standards, or in the alternative, (B) negligent conduct, consisting of a single instance of highly unreasonable conduct that resulted in a violation of applicable professional standards in circumstances in which Respondents knew, or should have known, that heightened scrutiny was warranted.

III.

In view of the allegations made by the Division of Enforcement and the Office of the Chief Accountant, the Commission deems it appropriate that public administrative proceedings be instituted to determine:

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

B. What, if any, remedial action is appropriate against Respondents Oprins and McNeeley pursuant to Rule 102(e) of the Commission's Rules of Practice, including, but not limited to, censure and/or denying, temporarily or permanently, the privilege of appearing or practicing before the Commission.

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 Oprins and McNeeley shall file their answers 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 Oprins and McNeeley 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 the Respondents 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 upon the Respondents in accordance with the provisions of Rule 141 of the Commission's Rules of Practice, 17 C.F.R. § 201.141.

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.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61622 / March 2, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13798

In the Matter of

Biokey ID, Inc.,
Bionet Technologies, Inc.,
Biscayne Apparel, Inc.,
Bizcom U.S.A., Inc.,
Blackstocks Development Corp.
(n/k/a Sunburst Holding Corp.),
Bluestone Holding Corp.,
Brandt Technologies, Inc.,
Brendle's, Inc.,
BTR Realty, Inc., and
Buckeye Communications, 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") against Respondents Biokey ID, Inc., Bionet Technologies, Inc., Biscayne Apparel, Inc., Bizcom U.S.A., Inc., Blackstocks Development Corp. (n/k/a Sunburst Holding Corp.), Bluestone Holding Corp., Brandt Technologies, Inc., Brendle's, Inc., BTR Realty, Inc., and Buckeye Communications, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Biokey ID, Inc. (CIK No. 1242388) is a dissolved Florida corporation located in Plantation, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Biokey 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 July 31, 2004, which reported a net loss of $7,800 for the prior six months.

2. Bionet Technologies, Inc. (CIK No. 799723) is a permanently revoked Nevada corporation located in Juniper, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Bionet Technologies 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 October 31, 2000, which reported a net loss of $252,097 for the prior three months.

3. Biscayne Apparel, Inc. (CIK No. 088706) is a dissolved Florida corporation located in Clinton, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Biscayne Apparel is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 1998, which reported a net loss of $18,843,000 for the prior twelve months. On February 5, 1999, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Southern District of New York, and the case was terminated on December 13, 2001.

4. Bizcom U.S.A., Inc. (CIK No. 1023997) is a dissolved Florida corporation located in Fort Lauderdale, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Bizcom USA 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 March 31, 2005, which reported a net loss of $692,267 for the prior nine months.

5. Blackstocks Development Corp. (n/k/a Sunburst Holding Corp.) (CIK No. 1176135) is a Delaware corporation located in Charlotte, North Carolina with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Blackstocks Development 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, 2004, which reported a net loss of $227,849 for the prior nine months.

6. Bluestone Holding Corp. (CIK No. 877050) is a void Delaware corporation located in Montgomery Village, Maryland with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Bluestone Holding 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 $6,598,000 for the prior three months. As of February 22, 2010, the company's stock (symbol "BSHC") was traded on the over-the-counter markets.

7. Brandt Technologies, Inc. (CIK No. 896771) is a dissolved New York corporation located in Windsor, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Brandt is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 1996, which reported a net loss of $3,684,755 for the prior twelve months.

8. Brendle's, Inc. (CIK No. 791851) is a dissolved North Carolina corporation located in Elkin, North Carolina with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Brendle's 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 October 26, 1996, which reported a net loss of $22,944,000 for the prior nine months. On April 16, 1996, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Middle District of North Carolina, and the case was terminated on February 13, 2001.

9. BTR Realty, Inc. (CIK No. 15019) is a merged Maryland corporation located in Linthicum, Maryland with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). BTR 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 June 30, 2003.

10. Buckeye Communications, Inc. (CIK No. 822822) is a void Delaware corporation located in White Plains, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Buckeye 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 March 31, 1995, which reported a net loss of $752,295 for the prior three months.

B. DELINQUENT PERIODIC FILINGS

11. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, 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.

12. 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 and Rule 13a-13 requires issuers to file quarterly reports.

13. 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 registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

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, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any 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.

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9110 / March 2, 2010

SECURITIES EXCHANGE ACT OF 1934
Release No. 61623 / March 2, 2010

INVESTMENT ADVISERS ACT OF 1940
Release No. 2991 / March 2, 2010

INVESTMENT COMPANY ACT OF 1940
Release No. 29165 / March 2, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13683

In the Matter of	:	**ORDER MAKING FINDINGS AND IMPOSING A CEASE-AND-DESIST ORDER AND REMEDIAL SANCTIONS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940 AS TO S4 CAPITAL, LLC**
S4 Capital, LLC and Sharath Sury	:	
Respondents	:	

I.

On November 12, 2009, the Securities and Exchange Commission ("Commission") instituted administrative and cease-and-desist proceedings 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(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against S4 Capital, LLC ("S4 Capital" or "Respondent").

II.

Respondent has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Making Findings and Imposing a Cease-and-Desist Order and Remedial Sanctions Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 ("Order"), as set forth below.

III.

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

Respondents

1. S4 Capital, L.L.C. (formerly known as Chicago Analytic Capital Management, LLC and Valence Capital Group, LLC) is a Delaware Limited Liability Company located in Chicago, Illinois. It has been registered with the Commission as an investment adviser since March 2000.

2. Sharath M. Sury ("Sury"), 37 years old, is a resident of Chicago, Illinois. Sury has been the CEO and majority owner of S4 Capital since 2001. Sury has held Series 3, 7, and 63 licenses since 1995. Sury is currently a registered representative associated with Chicago Analytic Trading Company.

Facts

3. From December 2005 to February 2006, Sury caused an unregistered hedge fund managed by S4 Capital to engage in undisclosed, unhedged, high-risk trading, primarily in Google stock options, which resulted in substantial losses to the fund. During this period, Sury failed to disclose to investors in the hedge fund with whom S4 Capital had investment advisory

[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.

agreements, that Sury was engaging in risky, unhedged trading that was contrary to the investment strategy described in the hedge fund's private placement memorandum and their personal investment objectives and that the fund was suffering mounting losses. Sury also sent certain investors emails that lulled them into believing that their investments were profitable and failed to disclose the risky trading and related losses. In total, Sury's undisclosed high-risk trading caused the Hedged Equity Fund to lose all of its assets, totaling approximately $12 million, in about two months.

4. From February 2003 through April 2006, S4 Capital actively managed two unregistered hedge funds: the CACM Core Equity Fund, L.P. d/b/a/ Hedged Equity Fund, L.P. ("Hedged Equity Fund") and the CACM Market Neutral Fund, L.P. ("Market Neutral Fund") (collectively the "Funds"). S4 Capital was the general partner and the investment adviser to these Funds, which were limited partnerships. Sury assisted in the drafting of the Funds' offering materials and acted as the primary portfolio manager of the Funds. At the beginning of 2005, the Funds' trader left S4 Capital, and Sury also became the trader for the Funds.

5. In March 2003, Sury solicited Investors A, a husband and wife, to enter into an investment advisory relationship with S4 Capital. Sury created an S4 Capital investor supervision agreement and an investment policy statement for these investors. The investment policy statement stated that the Investors A risk tolerance was low, that they shared a clear aversion to downside risks, and that portfolio losses greater than 10% were generally unacceptable. The investment policy statement further provided that S4 Capital would pursue "a prudent blend of capital preservation, liquidity, stable tax-exempt income generation and modest inflation-adjusted capital preservation" and "consistent acceptable rates of return without a significant or meaningful deterioration of principal." Sury, through S4 Capital, recommended that the Investors A money be invested in fixed income securities and conservative hedged investments, using "absolute return" strategies that would protect against downside risk and provide liquidity. Based on the investment supervision agreement and policy statement, Investors A invested approximately $40 million with S4 Capital.

6. In the Fall of 2005, after experiencing a period of low returns on their original investments with S4 Capital, Investors A informed S4 Capital's President that they wanted to withdraw their money, totaling $51.9 million, from S4 Capital and invest it elsewhere.

7. At the end of November 2005, Sury and S4 Capital's President met with Investors A in an attempt to retain them as S4 Capital clients. During this meeting, Sury gave a PowerPoint presentation to Investors A and provided five investment options. Sury recommended that Investors A invest in what was presented as a "barbell" investment approach. Sury described this investment approach as a continuation of Investors A diversified portfolio, which limited volatility, limited downside loss, increased transparency, and increased liquidity. This investment strategy was to be comprised of a stable source of capital preservation through investments in the bond market and a source of capital growth through investments in hedged

equities. For this latter aspect of the proposed strategy, Sury recommended the Hedged Equity Fund.

8. Investors A were also provided with a copy of the Hedged Equity Fund's private placement memorandum, which stated that the fund's investment objective was "to provide investors with participation in equity markets with reduced exposure to the markets overall volatility" and that the fund would "seek superior overall relative rates of returns by limiting downside risks through hedging or reduced equity exposure and actively participating in the upside through increased market exposure." It further stated that the fund's investment approach was "to manage a diversified portfolio of U.S. common stocks, equity index securities and equity options in order to be highly correlated to the broad movements in the U.S. stock market on the upside and less correlated on the downside," that "the investment will be closely monitored on an ongoing basis for continued positive momentum," and that [p]ositions will be eliminated when they no longer exhibit positive characteristics."

9. Sury's oral and written statements to Investors A did not truthfully describe his investment management of the Hedged Equity Fund.

10. Beginning in at least October 2005, Sury, through S4 Capital, used risky and unhedged trading strategies for the Hedged Equity Fund and the Market Neutral Fund, causing them to experience an enormous amount of volatility.

11. In 2005, S4 Capital's Operations and Compliance Officer ("OCO") prepared internal periodic "flash reports" of the Hedged Equity Fund's performance. The OCO distributed these reports several times a week via email to Sury, among others. The flash reports included a "risk metrics" section which provided a comparison of the volatility of the Hedged Equity Fund's performance to the volatility of general market indices, including the S&P 500 index. The November 23, 2005 flash report stated that the Hedged Equity Fund's volatility for the preceding 30 trading days, 60 trading days, and year had been 77.35%, 93.26%, and 59.12%, respectively. In contrast, the S&P 500 index volatility was reported as having been 12.02%, 11.18%, and 10.53%, respectively, for those same time periods.

12. In addition, on October 20, 2005, Sury placed at least 77% of the Market Neutral Fund's equity and approximately 9% of the Hedged Equity Fund's equity in unhedged, Google options that were expiring in just two days. These trades were levered positions which were extremely risky and far from being market neutral. Sury's trades were in effect a wager that Google's third quarter earnings would be higher than analysts' expectations. At the end of the trading day on October 20, 2005, Google announced third quarter revenues of $1.578 billion and earnings per share of $1.32. Analysts had previously forecasted revenues for the quarter of $892 million and earnings per share of $1.25. On October 21, 2005, Sury sold the Google options, realizing a 241% gain for the Funds. While Sury's trading strategy had produced large returns, the strategy was extremely risky and inconsistent with the Funds' stated investment strategies.

13. After completing the October trades in unhedged, Google options, S4 Capital ceased trading for the Hedged Equity Fund. S4 Capital also began closing down the Market Neutral Fund.

14. Sury knew that the Hedged Equity Fund's portfolio was far more volatile than the S&P 500 index. He also knew that, as expressed in Investors A's investment policy statement, portfolio losses greater than 10% were generally unacceptable. Sury nonetheless advised Investors A to invest in the Hedged Equity Fund, the historical volatility of which vastly exceeded a 10% downside risk level, and concealed from Investors A the historical and contemporaneous risks and volatility of the Hedged Equity Fund.

15. At the beginning of December 2005, based on the representations that they received, Investors A transferred approximately $8.25 million of the $51.9 million they had invested with S4 Capital to the Hedged Equity Fund. They also left the remainder of their investment with S4 Capital in bonds, cash, cash equivalents, and non-affiliated, third-party funds.

16. On November 30, 2005, the Hedged Equity Fund had a balance of approximately $3.73 million. Investors A investment in the Hedged Equity Fund thus more than tripled the size of the Fund.

17. Prior to Investors A investment in the Hedged Equity Fund, six trusts had invested approximately $4 million in the Hedged Equity Fund in 2003. These Trusts were all managed by the same trustee, Investor B. Investor B was also an investment advisory client of S4 Capital. Before Investor B made these investments in the Hedged Equity Fund, Sury had created an investment policy statement stating that Investor B's investment objective was to pursue a long-term growth and income strategy, while achieving an expected return of 4-7%. Investor B wanted moderate capital appreciation with capital preservation. Sury also provided Investor B with the Hedged Equity Fund's private placement memorandum, which contained the representations discussed above.

18. Contrary to the representations made in the Hedged Equity Fund's private placement memorandum and Sury's oral presentations to Investors A, Sury, through S4 Capital, continued to cause the Hedged Equity Fund to engage primarily in high-risk stock and options day-trading, including trading in Google stock and options. Sury failed to disclose this extremely risky trading and the fund's mounting losses resulting from his risky trading to Investors A and B.

19. Sury also sent Investors A several emails that falsely reassured them that the Hedged Equity fund's investments were consistent with the Fund's and Investors A investment objectives and/or that their investments were profitable.

20. On December 30, 2005, the Hedged Equity Fund had incurred more than $1.5 million in realized and unrealized trading losses in December. Instead of disclosing these losses, Sury, on December 30, 2005, sent an email to Investors A reiterating that their investment strategy was a "barbell" approach consisting of capital preservation in the bond market and capital growth through hedged equities.

21. By January 11, 2006, Investors A had earned no profits from the Hedged Equity Fund, which remained in a deficit position. Despite the fund's poor performance, Sury sent Investors A another email on January 11, 2006 stating "I am planning to begin hedging your equities exposure . . . Best to take some of our (early) profits off the table."

22. In mid-January 2006, S4 Capital's Chief Compliance Officer met with S4 Capital's President and told him that Sury should immediately stop trading unhedged, Google options in the Hedged Equity Fund because Investors A would never tolerate such losses. S4 Capital's President also confronted Sury about his risky trading. Nevertheless, Sury, through S4 Capital, continued to take increasingly large, unhedged positions in Google options in hopes that Google would report positive fourth quarter earnings.

23. By January 18, 2006, the Hedged Equity Fund had lost nearly $4.8 million. However, on January 18, 2006, Sury sent Investors A another email which stated, among other things, that their investment strategy "continues to be a prudent course."

24. On January 20, 2006, Google's stock experienced a sharp price decline as a result of news that the U.S. Justice Department had sued Google to compel the production of documents and that Yahoo, one of Google's direct competitors, had announced that it had missed analysts' expectations for the fourth quarter of 2005. After receiving this negative news, rather than disclosing the resulting losses, Sury, on January 20, 2006, instead sent Investors A an email stating "Today has seen some extraordinary activity. . . I think there is some merit to begin considering an allocation to equities . . . Indeed, putting on collared hedge positions would be a very prudent move at present, especially if we begin to see better earnings reports in the coming weeks...I'm hopeful that you will find the current strategy more rewarding in the long term than the more defensive strategy we used to protect your portfolio in the past 18 months." By the close of trading on Friday, January 20, 2006, Sury's trading caused the Hedged Equity Fund to realize losses of approximately $3,137,640 when a total of 4,418 Google call contracts expired worthless.

25. On January 22, 2005, S4 Capital's President confronted Sury and told him that the trading losses were unacceptable, and demanded to know why Sury placed the majority of the Hedged Equity Fund's assets in Google options. Sury admitted to S4 Capital's President that he was hoping for better than expected fourth quarter earnings for Google and he was trying to mirror his trading in unhedged, Google options in the Market Neutral Fund and Hedged Equity Fund on October 20, 2005 which resulted in a 241% gain for the Funds.

26. On January 23, 2006, the Hedged Equity Fund lost an additional $1,989,095 when Sury sold a total of 3,300 February Google calls purchased between January 18, 2006 and January 20, 2006. The risky trading and these losses were not disclosed to Investors A and B.

27. As a result of Sury's unhedged, high-risk trading strategy, S4 Capital and the Hedged Equity Fund incurred a $4,202,555 margin call on January 25, 2006. By this time, the Hedged Equity Fund had lost approximately $7.2 million due to the significant losses it had suffered and did not have sufficient capital to meet this margin call. As a result, Sury and S4 Capital's President, through S4 Capital, caused the Market Neutral Fund to loan $4,205,000 to the Hedged Equity Fund in order to meet the margin call. Sury and S4 Capital's President caused the Hedged Equity Fund to execute a promissory note for this loan. The note was guaranteed by the assets of the Hedged Equity Fund and S4 Capital. However, at that time, the Hedged Equity Fund and S4 Capital had insufficient assets to make this guarantee, and the Hedged Equity Fund immediately defaulted on the promissory note, which was due the next day.

28. As of January 31, 2006, the Hedged Equity Fund held positions with an aggregate market value of $9,729,115. This $9,729,115 included the $4,205,000 loaned from the Market Neutral Fund. After the close of trading that same day, Google announced that it had missed analysts' expectations and Google's stock price declined sharply thereafter. At the close of trading on January 31, 2006, the Hedged Equity Fund owned $7,855,700 worth of net long Google call options representing nearly 81% of the portfolio's total value. Sury and S4 Capital used over $2 million of the Market Neutral Fund's loan to establish these positions.

29. On February 1, 2006, as the value of Google rapidly declined, Sury began liquidating the Google options held in the Hedged Equity Fund. By February 3, 2006, all of the remaining positions in the Hedged Equity Fund were liquidated. Between February 3, 2006 and February 7, 2006, Sury, through S4 Capital, used all of the available cash from the sale of the Google options positions to repay approximately $3,913,000 to the Market Neutral Fund from the Hedged Equity Fund, and Sury repaid the remainder of the loan from his personal assets.

30. Sury's undisclosed high-risk trading caused the Hedged Equity Fund to lose all of its assets, totaling approximately $12 million, in about two months time. Approximately $11.6 million, or nearly 95%, of these losses were the result of Sury's trades in Google stock and options.

Violations

31. As a result of the conduct described above, S4 Capital willfully violated Section 17(a) of the Securities Act, 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.

32. As a result of the conduct described above, S4 Capital willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibits any investment adviser from, directly or indirectly, employing any device, scheme or artifice to defraud any client or prospective client and engaging in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.

Undertakings

33. Respondent S4 Capital undertakes to ensure that Sury will have no association with S4 Capital, its subsidiaries, or any entities owned or controlled by or in which S4 Capital has an ownership interest during the period that Sury is barred from association with any broker, dealer, or investment adviser, and 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.

34. Respondent S4 Capital undertakes to wind down its operations and to file a Form ADV-W within six months from the date of the entry of this Order.

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, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, and Sections 203(e), (k), and (i) of the Advisers Act, and Section 9(d) of the Investment Company Act it is hereby ORDERED that:

A. Respondent S4 Capital shall cease and desist from committing or causing any violations and any future violations of 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.

B. Respondent S4 Capital is censured.

C. Based upon Respondent's sworn representations in its Statement of Financial Condition dated December 15, 2009 and other documents submitted to the Commission, the Commission is not imposing a penalty against Respondent S4 Capital.

D. 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 Respondent

provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of a penalty should not be ordered; (3) contest 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.

E. Respondent S4 Capital shall comply with the undertaking enumerated in Section III.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9111 / March 2, 2010

SECURITIES EXCHANGE ACT OF 1934
Release No. 61624 / March 2, 2010

INVESTMENT ADVISERS ACT OF 1940
Release No. 2992 / March 2, 2010

INVESTMENT COMPANY ACT OF 1940
Release No. 29166 / March 2, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13683

In the Matter of	:	**ORDER MAKING FINDINGS AND IMPOSING A CEASE-AND-DESIST ORDER AND REMEDIAL SANCTIONS 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 SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940 AS TO SHARATH SURY**
S4 Capital, LLC and Sharath Sury	:	
Respondents	:	

I.

On November 12, 2009, the Securities and Exchange Commission ("Commission") instituted administrative and cease-and-desist proceedings pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b)(6) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Sharath Sury ("Sury" or "Respondent").

II.

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 Making Findings and Imposing a Cease-and-Desist Order and Remedial Sanctions Pursuant to Section 8A of the Securities Act of 1933, Sections and 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 Section 9(b) of the Investment Company Act of 1940 ("Order"), as set forth below.

III.

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

Respondents

1. S4 Capital, L.L.C. (formerly known as Chicago Analytic Capital Management, LLC and Valence Capital Group, LLC) is a Delaware Limited Liability Company located in Chicago, Illinois. It has been registered with the Commission as an investment adviser since March 2000.

2. Sharath M. Sury ("Sury"), 37 years old, is a resident of Chicago, Illinois. Sury has been the CEO and majority owner of S4 Capital since 2001. Sury has held Series 3, 7, and 63 licenses since 1995. Sury is currently a registered representative associated with Chicago Analytic Trading Company.

Facts

3. From December 2005 to February 2006, Sury caused an unregistered hedge fund managed by S4 Capital to engage in undisclosed, unhedged, high-risk trading, primarily in Google stock options, which resulted in substantial losses to the fund. During this period, Sury failed to disclose to investors in the hedge fund with whom S4 Capital had investment advisory

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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.

agreements, that Sury was engaging in risky, unhedged trading that was contrary to the investment strategy described in the hedge fund's private placement memorandum and their personal investment objectives and that the fund was suffering mounting losses. Sury also sent certain investors emails that lulled them into believing that their investments were profitable and failed to disclose the risky trading and related losses. In total, Sury's undisclosed high-risk trading caused the Hedged Equity Fund to lose all of its assets, totaling approximately $12 million, in about two months.

4. From February 2003 through April 2006, S4 Capital actively managed two unregistered hedge funds: the CACM Core Equity Fund, L.P. d/b/a/ Hedged Equity Fund, L.P. ("Hedged Equity Fund") and the CACM Market Neutral Fund, L.P. ("Market Neutral Fund") (collectively the "Funds"). S4 Capital was the general partner and the investment adviser to these Funds, which were limited partnerships. Sury assisted in the drafting of the Funds' offering materials and acted as the primary portfolio manager of the Funds. At the beginning of 2005, the Funds' trader left S4 Capital, and Sury also became the trader for the Funds.

5. In March 2003, Sury solicited Investors A, a husband and wife, to enter into an investment advisory relationship with S4 Capital. Sury created an S4 Capital investor supervision agreement and an investment policy statement for these investors. The investment policy statement stated that the Investors A risk tolerance was low, that they shared a clear aversion to downside risks, and that portfolio losses greater than 10% were generally unacceptable. The investment policy statement further provided that S4 Capital would pursue "a prudent blend of capital preservation, liquidity, stable tax-exempt income generation and modest inflation-adjusted capital preservation" and "consistent acceptable rates of return without a significant or meaningful deterioration of principal." Sury, through S4 Capital, recommended that the Investors A money be invested in fixed income securities and conservative hedged investments, using "absolute return" strategies that would protect against downside risk and provide liquidity. Based on the investment supervision agreement and policy statement, Investors A invested approximately $40 million with S4 Capital.

6. In the Fall of 2005, after experiencing a period of low returns on their original investments with S4 Capital, Investors A informed S4 Capital's President that they wanted to withdraw their money, totaling $51.9 million, from S4 Capital and invest it elsewhere.

7. At the end of November 2005, Sury and S4 Capital's President met with Investors A in an attempt to retain them as S4 Capital clients. During this meeting, Sury gave a PowerPoint presentation to Investors A and provided five investment options. Sury recommended that Investors A invest in what was presented as a "barbell" investment approach. Sury described this investment approach as a continuation of Investors A diversified portfolio, which limited volatility, limited downside loss, increased transparency, and increased liquidity. This investment strategy was to be comprised of a stable source of capital preservation through investments in the bond market and a source of capital growth through investments in hedged

equities. For this latter aspect of the proposed strategy, Sury recommended the Hedged Equity Fund.

8. Investors A were also provided with a copy of the Hedged Equity Fund's private placement memorandum, which stated that the fund's investment objective was "to provide investors with participation in equity markets with reduced exposure to the markets overall volatility" and that the fund would "seek superior overall relative rates of returns by limiting downside risks through hedging or reduced equity exposure and actively participating in the upside through increased market exposure." It further stated that the fund's investment approach was "to manage a diversified portfolio of U.S. common stocks, equity index securities and equity options in order to be highly correlated to the broad movements in the U.S. stock market on the upside and less correlated on the downside," that "the investment will be closely monitored on an ongoing basis for continued positive momentum," and that [p]ositions will be eliminated when they no longer exhibit positive characteristics."

9. Sury's oral and written statements to Investors A did not truthfully describe his investment management of the Hedged Equity Fund.

10. Beginning in at least October 2005, Sury, through S4 Capital, used risky and unhedged trading strategies for the Hedged Equity Fund and the Market Neutral Fund, causing them to experience an enormous amount of volatility.

11. In 2005, S4 Capital's Operations and Compliance Officer ("OCO") prepared internal periodic "flash reports" of the Hedged Equity Fund's performance. The OCO distributed these reports several times a week via email to Sury, among others. The flash reports included a "risk metrics" section which provided a comparison of the volatility of the Hedged Equity Fund's performance to the volatility of general market indices, including the S&P 500 index. The November 23, 2005 flash report stated that the Hedged Equity Fund's volatility for the preceding 30 trading days, 60 trading days, and year had been 77.35%, 93.26%, and 59.12%, respectively. In contrast, the S&P 500 index volatility was reported as having been 12.02%, 11.18%, and 10.53%, respectively, for those same time periods.

12. In addition, on October 20, 2005, Sury placed at least 77% of the Market Neutral Fund's equity and approximately 9% of the Hedged Equity Fund's equity in unhedged, Google options that were expiring in just two days. These trades were levered positions which were extremely risky and far from being market neutral. Sury's trades were in effect a wager that Google's third quarter earnings would be higher than analysts' expectations. At the end of the trading day on October 20, 2005, Google announced third quarter revenues of $1.578 billion and earnings per share of $1.32. Analysts had previously forecasted revenues for the quarter of $892 million and earnings per share of $1.25. On October 21, 2005, Sury sold the Google options, realizing a 241% gain for the Funds. While Sury's trading strategy had produced large returns, the strategy was extremely risky and inconsistent with the Funds' stated investment strategies.

13. After completing the October trades in unhedged, Google options, S4 Capital ceased trading for the Hedged Equity Fund. S4 Capital also began closing down the Market Neutral Fund.

14. Sury knew that the Hedged Equity Fund's portfolio was far more volatile than the S&P 500 index. He also knew that, as expressed in Investors A's investment policy statement, portfolio losses greater than 10% were generally unacceptable. Sury nonetheless advised Investors A to invest in the Hedged Equity Fund, the historical volatility of which vastly exceeded a 10% downside risk level, and concealed from Investors A the historical and contemporaneous risks and volatility of the Hedged Equity Fund.

15. At the beginning of December 2005, based on the representations that they received, Investors A transferred approximately $8.25 million of the $51.9 million they had invested with S4 Capital to the Hedged Equity Fund. They also left the remainder of their investment with S4 Capital in bonds, cash, cash equivalents, and non-affiliated, third-party funds.

16. On November 30, 2005, the Hedged Equity Fund had a balance of approximately $3.73 million. Investors A investment in the Hedged Equity Fund thus more than tripled the size of the Fund.

17. Prior to Investors A investment in the Hedged Equity Fund, six trusts had invested approximately $4 million in the Hedged Equity Fund in 2003. These Trusts were all managed by the same trustee, Investor B. Investor B was also an investment advisory client of S4 Capital. Before Investor B made these investments in the Hedged Equity Fund, Sury had created an investment policy statement stating that Investor B's investment objective was to pursue a long-term growth and income strategy, while achieving an expected return of 4-7%. Investor B wanted moderate capital appreciation with capital preservation. Sury also provided Investor B with the Hedged Equity Fund's private placement memorandum, which contained the representations discussed above.

18. Contrary to the representations made in the Hedged Equity Fund's private placement memorandum and Sury's oral presentations to Investors A, Sury, through S4 Capital, continued to cause the Hedged Equity Fund to engage primarily in high-risk stock and options day-trading, including trading in Google stock and options. Sury failed to disclose this extremely risky trading and the fund's mounting losses resulting from his risky trading to Investors A and B.

19. Sury also sent Investors A several emails that falsely reassured them that the Hedged Equity fund's investments were consistent with the Fund's and Investors A investment objectives and/or that their investments were profitable.

20. On December 30, 2005, the Hedged Equity Fund had incurred more than $1.5 million in realized and unrealized trading losses in December. Instead of disclosing these losses, Sury, on December 30, 2005, sent an email to Investors A reiterating that their investment strategy was a "barbell" approach consisting of capital preservation in the bond market and capital growth through hedged equities.

21. By January 11, 2006, Investors A had earned no profits from the Hedged Equity Fund, which remained in a deficit position. Despite the fund's poor performance, Sury sent Investors A another email on January 11, 2006 stating "I am planning to begin hedging your equities exposure . . . Best to take some of our (early) profits off the table."

22. In mid-January 2006, S4 Capital's Chief Compliance Officer met with S4 Capital's President and told him that Sury should immediately stop trading unhedged, Google options in the Hedged Equity Fund because Investors A would never tolerate such losses. S4 Capital's President also confronted Sury about his risky trading. Nevertheless, Sury, through S4 Capital, continued to take increasingly large, unhedged positions in Google options in hopes that Google would report positive fourth quarter earnings.

23. By January 18, 2006, the Hedged Equity Fund had lost nearly $4.8 million. However, on January 18, 2006, Sury sent Investors A another email which stated, among other things, that their investment strategy "continues to be a prudent course."

24. On January 20, 2006, Google's stock experienced a sharp price decline as a result of news that the U.S. Justice Department had sued Google to compel the production of documents and that Yahoo, one of Google's direct competitors, had announced that it had missed analysts' expectations for the fourth quarter of 2005. After receiving this negative news, rather than disclosing the resulting losses, Sury, on January 20, 2006, instead sent Investors A an email stating "Today has seen some extraordinary activity. . . I think there is some merit to begin considering an allocation to equities . . . Indeed, putting on collared hedge positions would be a very prudent move at present, especially if we begin to see better earnings reports in the coming weeks...I'm hopeful that you will find the current strategy more rewarding in the long term than the more defensive strategy we used to protect your portfolio in the past 18 months." By the close of trading on Friday, January 20, 2006, Sury's trading caused the Hedged Equity Fund to realize losses of approximately $3,137,640 when a total of 4,418 Google call contracts expired worthless.

25. On January 22, 2005, S4 Capital's President confronted Sury and told him that the trading losses were unacceptable, and demanded to know why Sury placed the majority of the Hedged Equity Fund's assets in Google options. Sury admitted to S4 Capital's President that he was hoping for better than expected fourth quarter earnings for Google and he was trying to mirror his trading in unhedged, Google options in the Market Neutral Fund and Hedged Equity Fund on October 20, 2005 which resulted in a 241% gain for the Funds.

26. On January 23, 2006, the Hedged Equity Fund lost an additional $1,989,095 when Sury sold a total of 3,300 February Google calls purchased between January 18, 2006 and January 20, 2006. The risky trading and these losses were not disclosed to Investors A and B.

27. As a result of Sury's unhedged, high-risk trading strategy, S4 Capital and the Hedged Equity Fund incurred a $4,202,555 margin call on January 25, 2006. By this time, the Hedged Equity Fund had lost approximately $7.2 million due to the significant losses it had suffered and did not have sufficient capital to meet this margin call. As a result, Sury and S4 Capital's President, through S4 Capital, caused the Market Neutral Fund to loan $4,205,000 to the Hedged Equity Fund in order to meet the margin call. Sury and S4 Capital's President caused the Hedged Equity Fund to execute a promissory note for this loan. The note was guaranteed by the assets of the Hedged Equity Fund and S4 Capital. However, at that time, the Hedged Equity Fund and S4 Capital had insufficient assets to make this guarantee, and the Hedged Equity Fund immediately defaulted on the promissory note, which was due the next day.

28. As of January 31, 2006, the Hedged Equity Fund held positions with an aggregate market value of $9,729,115. This $9,729,115 included the $4,205,000 loaned from the Market Neutral Fund. After the close of trading that same day, Google announced that it had missed analysts' expectations and Google's stock price declined sharply thereafter. At the close of trading on January 31, 2006, the Hedged Equity Fund owned $7,855,700 worth of net long Google call options representing nearly 81% of the portfolio's total value. Sury and S4 Capital used over $2 million of the Market Neutral Fund's loan to establish these positions.

29. On February 1, 2006, as the value of Google rapidly declined, Sury began liquidating the Google options held in the Hedged Equity Fund. By February 3, 2006, all of the remaining positions in the Hedged Equity Fund were liquidated. Between February 3, 2006 and February 7, 2006, Sury, through S4 Capital, used all of the available cash from the sale of the Google options positions to repay approximately $3,913,000 to the Market Neutral Fund from the Hedged Equity Fund, and Sury repaid the remainder of the loan from his personal assets.

30. Sury's undisclosed high-risk trading caused the Hedged Equity Fund to lose all of its assets, totaling approximately $12 million, in about two months time. Approximately $11.6 million, or nearly 95%, of these losses were the result of Sury's trades in Google stock and options.

Violations

31. As a result of the conduct described above, Sury willfully violated Section 17(a) of the Securities Act, 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.

32. As a result of the conduct described above, Sury willfully aided and abetted and caused S4 Capital's violations of Sections 206(1) and 206(2) of the Advisers Act, which prohibits any investment adviser from, directly or indirectly, employing any device, scheme or artifice to defraud any client or prospective client and engaging in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.

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, pursuant to Section 8A of the Securities Act, Sections 15(b)(6), 21B, and 21C of the Exchange Act, and Sections 203(f), (k), and (i) of the Advisers Act, and Section 9(d) of the Investment Company Act it is hereby ORDERED that:

A. Respondent Sury shall cease and desist from committing or causing any violations and any future violations 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.

B. Respondent Sury be, and hereby is barred from association with any broker, dealer, or investment adviser 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 two (2) years to the appropriate self-regulatory organization, or if there is none, to the Commission;

C. Any reapplication for association by the Respondent Sury 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 of 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. Respondent Sury shall pay a civil penalty in the amount of $130,000 to the United States Treasury. Payment shall be made in the following installments: Respondent shall pay $32,500 within 30 days of the issuance of this Order. Respondent shall then make three payments of $32,500 each, which payments must be hand-delivered or post-marked no later than

May 31, 2010, September 30, 2010, and with the last payment to be made no later than 364 days after issuance of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payments shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Sharath Sury 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 Timothy L. Warren, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Chicago, IL 60604.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61625 / March 2, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13800

In the Matter of **Warrior Fund LLC,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

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) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Warrior Fund LLC ("Respondent" or "Warrior").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

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

Summary

In this matter, Warrior operated as an unregistered broker-dealer as a result of its master/sub-account arrangement with a number of day traders.[2] Warrior established a master account at a registered broker-dealer using pooled funds primarily contributed by its manager and primary owner, but also provided by day trader members Warrior recruited. Warrior opened sub-accounts under the master account for each trader to track his or her individual day trading. From 2003 through 2007, Warrior earned most of its income from transactional charges on its day traders' trading and the payments Warrior received from the branch office of Warrior's broker-dealer based on Warrior's volume of trading. This master/sub-account structure allowed Warrior to offer day trading services to persons whose accounts were not margined on an individual basis and to profit from the individuals' day trading.

Respondent

1. Warrior Fund LLC is a Texas limited liability company formed in 2002 that is managed by its primary investor. A self-described private equity firm, in 2007 Warrior had approximately 75 members, each of whom day traded through sub-accounts established under Warrior's master account at a registered broker-dealer, which cleared Warrior's trades. Warrior is not registered with the Commission as a broker or dealer. In August 2008, Warrior ceased operations.

Facts

2. Warrior solicited day traders to open accounts with Warrior by word-of-mouth and through its web site, which promoted the advantages the company affords day traders. Warrior's web site specifically highlighted the enhanced leverage, execution platform, support team and potential 100% payout of trading profits that Warrior offered. The day trading services Warrior provided included the trading programs necessary to place securities orders and route those orders into the market electronically, as well as research and analytical software, training, technical support, and administrative services.

3. Orders for Warrior's day trader members were placed through Warrior's master account, and Warrior's broker-dealer linked those trades to each sub-account for accounting purposes. Warrior's broker-dealer provided a single monthly statement to Warrior. Warrior provided

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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 in this or any other proceeding.

[2] NASD Rules define "day trading" generally as the purchasing and selling or the selling and purchasing of the same security on the same day in a margin account. NASD Rule 2520(f)(8)(B)(i).

monthly profit-and-loss statements for each sub-account. In addition, sub-account holders received on-line access to sub-account trading activity and trading charges from Warrior's broker-dealer.

4. The day traders contributed various amounts to Warrior, ranging from $100 to $200,000. These deposits were pooled in Warrior's master account. The vast majority of Warrior's trading funds, however, were contributed by its managing member. Historically, only about 5% of Warrior's day traders have made initial deposits into their sub-accounts of as much as $25,000, which is the minimum account equity required for pattern day traders who are customers of registered broker-dealers.[3]

5. At Warrior's instruction, its broker-dealer placed individualized trading limitations on the sub-accounts created under Warrior's master account. Warrior determined particularized trading parameters and margin restrictions for each sub-account based on its evaluation of the sub-account holders' experience and success in day trading. The trading parameters and margin restrictions that Warrior established were unrelated to the sub-account holder's equity in Warrior. Warrior frequently authorized its day trading members to trade using leverage far in excess of the amounts they otherwise would have been permitted to trade through registered broker-dealers. It did so by allowing traders to trade against the equity of the entire pooled account, rather than the equity in the individual traders' sub-account.[4]

6. The experienced and active day traders, which constituted about half of Warrior's members, kept 99% or 100% of their trading profits above the amount of fees they paid on trades. Other less experienced or active traders paid Warrior 30% of profits above fees.

7. From May 2003 through December 2007, Warrior received transaction-based compensation for the trading and other services it provided member sub-account holders. Warrior charged sub-accounts fees ranging from $.0025 to $.0055 per share. Warrior's broker-dealer charged Warrior transaction fees at rates which varied based on total monthly trading volume, but the monthly fees charged to Warrior were less than the total fees charged to sub-accounts by Warrior.

8. The broker-dealer's branch office also returned a portion of its commission revenues to Warrior as compensation for the business volume Warrior generated. This payment reflected the branch office and Warrior's agreement to establish, on a post-hoc basis, a pre-negotiated trading rate lower than the one the broker-dealer charged Warrior. From May 2003 through December 2007,

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[3] NASD Rules define "pattern day trader" as a customer who executes four or more day trades within five business days, except if the number of day trades is 6% or less of total trades for the five business day period. NASD Rule 2520(f)(8)(B)(ii). NASD rules require broker-dealers to ensure that every pattern day trader maintains minimum equity of $25,000 in the trader's account at all times. NASD Rule 2520(f)(8)(B)(iv)(a).

[4] FINRA has established a day trading buying power limitation by requiring broker-dealers to restrict the margin available to day traders: "Whenever day trading occurs in a customer's margin account the special maintenance margin required for the day trades in equity securities shall be 25% of the cost of all the day trades made during the day." (the 4:1 leverage limitation) NASD Rule 2520(f)(8)(B)(iii). *See also* NYSE Rule 431(f)(8)(B)(iii). By allowing Warrior's day traders to trade based on the margin available to the pooled equity in the master account, Warrior's master/sub-account arrangement increased the leverage available to the day traders above the 4:1 leverage limitation. The registered broker-dealer through which Warrior cleared applied the day trading rules only to Warrior's master account, not to the sub-accounts.

Warrior earned the majority of its income from (a) the excess of transaction-based fees charged to sub-accounts over the net transaction-based fees the broker-dealer charged to Warrior, and (b) the payments Warrior received from the branch office based on Warrior's volume of trading.

Legal Conclusions

9. Subject to limited exemptions, none of which apply in this matter, Section 15(a)(1) of the Exchange Act makes it unlawful for any broker or dealer "to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered" in accordance with Section 15(b) of the Exchange Act. Scienter is not required in order to prove a violation of Section 15(a)(1).[5]

10. Section 3(a)(4) of the Exchange Act defines a "broker" as a person, including a company,[6] engaged in the business of effecting transactions in securities for the account of others. A person acts as a broker if it regularly "participates in securities transactions at key points in the chain of distribution."[7] Actions indicating that a person is "effecting" securities transactions include soliciting investors; handling customer funds and securities; participating in the order-taking or order-routing process; and extending or arranging for the extension of credit in connection with a securities transaction. A key factor indicating that a person is "engaged in the business" is the receipt of transaction-based compensation.[8]

11. As a result of the conduct described above, Warrior willfully violated Section 15(a)(1) of the Exchange Act by operating as an unregistered broker through the master/sub-account arrangement described above.[9] In particular, Warrior recruited day trader members to open accounts with Warrior and received transaction-based compensation for providing day trading services, including access to programs to place and route securities orders, to its sub-account holders. In

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[5] *SEC v. Interlink Data Network*, U.S. Distr. LEXIS 20163 (C.D. Cal. 1993).

[6] *See* Section 3(a)(9) of the Exchange Act, 15 U.S.C. 78c(a)(9).

[7] *Massachusetts Financial Services, Inc. v. Securities Investor Protection Corp.*, 411 F.Supp. 411, 415 (D. Mass.), *affirmed*, 545 F.2d 754 (1st Cir. 1976); *John A. Carley*, Release No. 34-57246 (Jan. 31, 2008).

[8] *See, e.g.*, Release No. 34-22172 (June 27, 1985), 50 FR 27946 (July 9, 1985), at Section II.B (discussing the role of transaction-based compensation in determining whether associated persons of an issuer are deemed to be brokers). *See also SEC v. Corporate Relations Group, Inc.*, 2003 U.S. Dist. LEXIS 24925, at *56 (M.D. Fla. Mar. 28, 2003); *SEC v. Hansen*, 1984 U.S. Dist. LEXIS 17835, at *26 (S.D.N.Y. April 6, 1984). While receipt of transaction-based compensation in connection with participation in securities transactions is sufficient to show a person is engaged in the business of effecting transactions in securities, transaction-based compensation is not a necessary element to determine whether someone is a broker. Receipt of other forms of compensation in conjunction with regular participation in securities transactions may also indicate that a person is engaged in the business.

[9] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

addition, Warrior handled its members' funds, which were used for securities transactions, and granted leverage to its members by allowing sub-account holders to trade against the equity of the entire pooled account.

IV.

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

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Warrior cease and desist from committing or causing any violations and any future violations of Section 15(a)(1) of the Exchange Act;

B. Respondent Warrior is censured; and

C. Respondent Warrior shall, within 21 days of the entry of this Order, pay disgorgement of $124,901, prejudgment interest of $21,483.00 and a civil money penalty in the amount of $75,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C 3717. 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 Warrior Fund LLC 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 Stephen J. Korotash, Esq., Associate Regional Director, Fort Worth Regional Office, 801 Cherry Street, 19th Floor, Fort Worth, Texas, 76102.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

Commissioner Walter not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61631 / March 2, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13801

In the Matter of **FRANCESCO RUSCIANO,** **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 Francesco Rusciano ("Respondent" or "Rusciano").

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 15(b) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, as set forth below.

III.

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

1. Francesco Rusciano, a U.S. citizen and resident of Stamford, Connecticut, was the fund manager for Ponta Negra Fund I, LLC and Ponta Negra Offshore Fund I, Ltd. He was also the General Manager for Ponta Negra Group, LLC. Before forming the entities, Rusciano

held Series 7 and 63 securities licenses and was a registered representative associated with UBS Securities, LLC, a broker-dealer registered with the Commission, from 2003 to 2006.

2. Rusciano recently settled charges brought by the Board of Governors of the Federal Reserve System arising from alleged misconduct during his employment at UBS. *See* Consent Order of Prohibition Pursuant to Section 8(e) of the Federal Deposit Insurance Act, as Amended, 12 U.S.C. § 1818(e), and Consent Order of Assessment of a Civil Money Penalty Pursuant to FDI Act Section 8(i)(2), 12 U.S.C. § 1818(i)(2), In the Matter of Francesco Rusciano, Docket Nos. 2009-007-I-E and 2009-007-I-CMP.

3. On February 3, 2010, a federal district court entered an agreed final judgment of permanent injunction against Rusciano, permanently enjoining him from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action styled *Securities and Exchange Commission v. Ponta Negra Fund I, LLC et al,* Civ. Action No. 1:09-cv-324-SS, in the United States District Court for the Western District of Texas (Austin Division).

4. The Commission's complaint alleged that, in connection with the sale of interests in hedge funds under Regulation 506 of the Securities Act of 1933, Rusciano misrepresented Ponta Negra's monthly and yearly performance results, overstated the amount of assets under management and misrepresented his historical trading success at UBS.

IV.

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

Accordingly, it is hereby ORDERED:

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

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

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

March 3, 2010

In the Matter of **Corridor Communications Corp.,** **International Cosmetics Marketing Co.,** **PNV, Inc.,** **Questron Technology, Inc.** **(n/k/a Quti Corp.),** **Tapistron International, Inc.,** **Telscape International, Inc.** **(n/k/a Scapetel Debtor, Inc.), and** **Universal Beverages Holdings Corp.,** **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 Corridor Communications 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 International Cosmetics Marketing Co. because it has not filed any periodic reports since the period ended March 31, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of PNV, 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 Questron Technology, Inc. (n/k/a Quti Corp.) because it has not filed any periodic reports since the period ended September 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tapistron International, Inc. because it has not filed any periodic reports since the period ended April 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Telscape International, Inc. (n/k/a Scapetel Debtor, Inc.) because it has not filed any periodic reports since the period ended December 31, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Universal Beverages Holdings Corp. because it has not filed any periodic reports since the period ended September 30, 2003.

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 securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on March 3, 2010, through 11:59 p.m. EDT on March 16, 2010.

By the Commission.

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61638 / March 3, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13805

In the Matter of **Corridor Communications Corp.,** **International Cosmetics Marketing Co.,** **PNV, Inc.,** **Pre-Cell Solutions, Inc.,** **Questron Technology, Inc.** **(n/k/a Quti Corp.),** **Tapistron International, Inc.,** **Telscape International, Inc.,** **(n/k/a Scapetel Debtor, Inc.), and** **Universal Beverages Holdings Corp.,** **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") against Respondents Corridor Communications Corp., International Cosmetics Marketing Co., PNV, Inc., Pre-Cell Solutions, Inc., Questron Technology, Inc. (n/k/a Quti Corp.), Tapistron International, Inc., Telscape International, Inc. (n/k/a Scapetel Debtor, Inc.), and Universal Beverages Holdings Corp.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Corridor Communications Corp. ("CORR")[1] (CIK No. 1069389) is a void Delaware corporation located in Miami Beach, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). CORR 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, 2004, which reported a net loss of $4,247,570 for the prior nine months. As of February 26, 2010, the common stock of CORR was quoted on the Pink Sheets operated by Pink OTC Markets Inc. ("Pink Sheets"), had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. International Cosmetics Marketing Co. ("SASN") (CIK No. 1097339) is a dissolved Florida corporation located in Boca Raton, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). SASN 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 March 31, 2003, which reported a net loss of $849,227 for the prior nine months. As of February 26, 2010, the common stock of SASN was quoted on the Pink Sheets, had four market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. PNV, Inc. ("PNVNQ") (CIK No. 1045828) is a void Delaware corporation located in Coral Springs, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). PNVNQ 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 a net loss of $18,237,068 for the prior three months. On December 20, 2000, PNVNQ filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Southern District of Florida, which was terminated on February 28, 2003.. As of February 26, 2010, the common stock of PNVNQ was quoted on the Pink Sheets, had four market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. Pre-Cell Solutions, Inc. ("TDCM") (CIK No. 801451) is a Colorado corporation located in Melbourne, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). TDCM 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 January 31, 2001, which reported a net loss of $5,615,178 for the prior nine months. As of February 26, 2010, the common stock of TDCM was traded on the over-the-counter markets.

5. Questron Technology, Inc. (n/k/a Quti Corp.) ("QUSTQ") (CIK No. 732152) is a delinquent Delaware corporation located in Boca Raton, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). QUSTQ is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a

[1]The short form of each issuer's name is also its stock symbol.

Form 10-Q for the period ended September 30, 2001, which reported a net loss of $4,117,000 for the prior nine months. On February 3, 2002, QUSTQ filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Delaware, which was still pending as of March 1, 2010.. As of February 26, 2010, the common stock of QUSTQ was quoted on the Pink Sheets, had three market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

6. Tapistron International, Inc. ("TAPI") (CIK No. 800193) is a dissolved Georgia corporation located in Ringgold, Georgia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). TAPI 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 April 30, 2001, which reported a net loss of $1,250,525 for the prior nine months. On July 2, 2001, TAPI filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Eastern District of Tennessee which was terminated on January 4, 2005.. As of February 26, 2010, the common stock of TAPI was quoted on the Pink Sheets, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

7. Telscape International, Inc. (n/k/a Scapetel Debtor, Inc.) ("TSCPQ") (CIK No. 925928) is a forfeited Texas corporation located in Roswell, Georgia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). TSCPQ is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 2000, which reported a net loss of $68,236,413 for the prior year. On April 27, 2001, TSCPQ filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Delaware, which was terminated on December 14, 2004.. As of February 26, 2010, the common stock of TSCPQ was quoted on the Pink Sheets, had three market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

8. Universal Beverages Holdings Corp. ("UVBV") (CIK No. 1057909) is a Florida corporation located in Jacksonville Beach, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). UVBV 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, 2003, which reported a net loss of $942,320 for the prior nine months. As of February 26, 2010, the common stock of UVBV was quoted on the Pink Sheets, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

9. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, 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.

10. 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, and Rule 13a-13 requires issuers to file quarterly reports.

11. 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 hereof 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 registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

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, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any 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 permitted by the Commission Rules of Practice.

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.

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61637 / March 3, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13804

In the Matter of **Amalgamated Explorations, Inc.,** **Areawide Cellular, Inc.,** **Genomed, Inc.,** **Global Maintech Corp.,** **Military Resale Group, Inc.,** **Verado Holdings, Inc., and** **World Transport Authority, 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") against Respondents Amalgamated Explorations, Inc., Areawide Cellular, Inc., Genomed, Inc., Global Maintech Corp., Military Resale Group, Inc., Verado Holdings, Inc., and World Transport Authority, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Amalgamated Explorations, Inc. ("AXPL")[1] (CIK No. 1019382) is a Colorado corporation located in Denver, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). AXPL 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 March 31, 2000, which reported a net loss of $819,866 for the prior six months. As of February 26, 2010, the common stock of AXPL

[1]The short form of each issuer's name is also its stock symbol.

was quoted on the Pink Sheets operated by Pink OTC Markets, Inc. ("Pink Sheets"), had four market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. Areawide Cellular, Inc. ("AWCL") (CIK No. 1092233) is a void Delaware corporation located in Buffalo Grove, Illinois with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). AWCL 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, 2002, which reported a net loss of $3,183,333 for the prior nine months. On April 4, 2003, AWCL filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of Illinois, which was converted to a Chapter 7 petition, and was terminated on April 22, 2009. As of February 26, 2010, the common stock of AWCL was quoted on the Pink Sheets, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Genomed, Inc. ("GMED") (CIK No. 1169417) is a Florida corporation located in St. Louis, Missouri with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). GMED 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 March 31, 2005, which reported a net loss of $346,919 for the prior three months. As of February 26, 2010, the common stock of GMED was quoted on the Pink Sheets, had eleven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. Global Maintech Corp. ("GBMT") (CIK No. 783738) is a Minnesota corporation located in Bloomington, Minnesota with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). GBMT 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 December 31, 2002. As of February 26, 2010, the common stock of GBMT was quoted on the Pink Sheets, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. Military Resale Group, Inc. ("MYRL") (CIK No. 1088436) is a New York corporation located in Colorado Springs, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). MYRL 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, 2004, which reported a net loss of $1,199,008 for the prior nine months. As of February 26, 2010, the common stock of MYRL was quoted on the Pink Sheets, had nine market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

6. Verado Holdings, Inc. ("VRDOQ") (CIK No. 1061583) is a delinquent Delaware corporation located in Greenwood Village, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). VRDOQ 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, 2001, which reported a net loss of $167,663,000 for the prior nine months. On February 15, 2002,

VRDOQ filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Delaware, which was still pending as of March 1, 2010. As of February 26, 2010, the common stock of VRDOQ was quoted on the Pink Sheets, had nine market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

7. World Transport Authority, Inc. ("WTAI") (CIK No. 1028130) is an Alberta corporation located in Cheyenne, Wyoming with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). WTAI 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 March 31, 2004, which reported a net loss of $260,066 for the prior nine months. As of February 26, 2010, the common stock of WTAI was quoted on the Pink Sheets, had nine market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

8. As discussed in more detail above, all of the respondents are delinquent in their periodic filings with the Commission, 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.

9. 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, and Rule 13a-13 requires domestic issuers to file quarterly reports.

10. 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 hereof 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 registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

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, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any 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 permitted by the Commission Rules of Practice.

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.

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

March 3, 2010

In the Matter of **Amalgamated Explorations, Inc.,** **Areawide Cellular, Inc.,** **Genomed, Inc.,** **Global Maintech Corp.,** **Military Resale Group, Inc.,** **Verado Holdings, Inc., and** **World Transport Authority, 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 Amalgamated Explorations, Inc. because it has not filed any periodic reports since the period ended March 31, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Areawide Cellular, 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 Genomed, Inc. because it has not filed any periodic reports since the period ended March 31, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Global Maintech Corp. because it has not filed any periodic reports since the period ended December 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Military Resale Group, Inc. 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 Verado Holdings, Inc. because it has not filed any periodic reports since the period ended September 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of World Transport Authority, Inc. because it has not filed any periodic reports since the period ended March 31, 2004.

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 securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on March 3, 2010, through 11:59 p.m. EDT on March 16, 2010.

By the Commission.

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2993 / March 3, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13806

In the Matter of **REZA SALEH,** **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 Reza Saleh ("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. Saleh, age 53, is a resident of Richardson, Texas. From at least 2006 until the present, Saleh has been associated with an investment adviser registered with the Commission (the "Investment Adviser").

2. On January 11, 2010, an agreed permanent injunction was entered by consent against Saleh, permanently enjoining him from future violations of Section 10(b) and 14(e) of the Securities Exchange Act of 1934, and Rules 10b-5 and 14e-3 thereunder, in the civil action entitled Securities and Exchange Commission v. Reza Saleh et al., Civil Action Number 3:09-CV-01778-M, in the United States District Court for the Northern District of Texas.

3. The Commission's complaint in the civil action alleges that Saleh illegally traded on material, nonpublic information about a tender offer and that he learned the information during the course of his duties for the Investment Adviser.

IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 203(f) of the Advisers Act, Respondent Saleh 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.

Elizabeth M. Murphy
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. 61636 / March 3, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13803

In the Matter of	
Planet Earth Recycling, Inc., Potomac Energy Corp., Power Plus Corp. (n/k/a PPC Capital Corp.), Precision Plastics Molding, Inc., Presidio Oil Co. (n/k/a Encana Oil & Gas (USA), Inc.), Press Realty Advisors Corp., Prism Group, Inc., Promotional Concepts, Inc. (a/k/a Tartam, Inc.), Purcell Energy Ltd. (n/k/a Point North Energy Ltd. and f/k/a Belair Energy Corp.),	**ORDER INSTITUTING ADMINISTRATIVE 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") against Respondents Planet Earth Recycling, Inc., Potomac Energy Corp., Power Plus Corp. (n/k/a PPC Capital Corp.), Precision Plastics Molding, Inc., Presidio Oil Co. (n/k/a Encana Oil & Gas (USA), Inc.), Press Realty Advisors Corp., Prism Group, Inc., Promotional Concepts, Inc. (a/k/a Tartam, Inc.), and Purcell Energy Ltd. (n/k/a Point North Energy Ltd. and f/k/a Belair Energy Corp.).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Planet Earth Recycling, Inc. (CIK No. 1083722) is a revoked Nevada corporation located in Langley, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Planet Earth 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 March 31, 2001. As of February 22, 2010, the company's stock (symbol "PERI") was traded on the over-the-counter markets.

2. Potomac Energy Corp. (CIK No. 316643) is a suspended Oklahoma corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Potomac 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, 2000, which reported a net loss of $379,301 for the prior nine months.

3. Power Plus Corp. (n/k/a PPC Capital Corp.) (CIK No. 853444) is an Alberta corporation located in Markham, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Power Plus 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 April 30, 2000, which reported a net loss of $151,362 for the prior three months. As of August 28, 2009, the company's stock (symbol "PRPS") was traded on the over-the-counter markets.

4. Precision Plastics Molding, Inc. (CIK No. 1133145) is a revoked Nevada corporation located in Mesa, Arizona with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Precision Plastics 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 $86,227 for the prior three months.

5. Presidio Oil Co. (n/k/a Encana Oil & Gas (USA), Inc.) (CIK No. 80134) is a merged out Delaware corporation located in Englewood, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Presidio 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, 1996, which reported a net loss of over $17.7 million for the prior nine months.

6. Press Realty Advisors Corp. (CIK No. 1110441) is a revoked Nevada corporation located in Salt Lake City, Utah with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Press Realty 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 March 31, 2001, which reported a net loss of $283,556 for the prior nine months.

7. Prism Group, Inc. (CIK No. 856981) is a dissolved Florida corporation located in Woodinville, Washington with a class of securities registered with the Commission

pursuant to Exchange Act Section 12(g). Prism Group 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 June 30, 1996, which reported a net loss of over $1.5 million for the prior six months.

8. Promotional Concepts, Inc. (a/k/a Tartam, Inc.) (CIK No. 1122153) is a permanently revoked Nevada corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Promotional Concepts 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 March 31, 2001, which reported a net loss of $16,110 for the prior three months.

9. Purcell Energy, Ltd. (n/k/a Point North Energy Ltd.) (CIK No. 1268518) (f/k/a Belair Energy Corp.) (CIK No. 856065) is an Alberta corporation located in Calgary, Alberta, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Purcell is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended December 31, 2002, which reported a net loss of over $25 million for the prior twelve months.

B. DELINQUENT PERIODIC FILINGS

10. 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.

11. 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 and Rule 13a-13 requires domestic issuers to file quarterly reports. Rule 13a-16 requires foreign private issuers to furnish quarterly and other reports to the Commission under cover of Form 6-K if they make or are required to make the information public under the laws of the jurisdiction of their domicile or in which they are incorporated or organized; if they file or are required to file information with a stock exchange on which their securities are traded and the information was made public by the exchange; or if they distribute or are required to distribute information to their security holders.

12. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 or 13a-16 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 registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

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, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any 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.

Elizabeth M. Murphy
Secretary

Attachment

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Appendix 1

Chart of Delinquent Filings
Planet Earth Recycling, Inc., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Planet Earth Recycling, Inc.					
	10-KSB	06/30/01	09/28/01	Not filed	102
	10-QSB	09/30/01	11/14/01	Not filed	100
	10-QSB	12/31/01	02/14/02	Not filed	97
	10-QSB	03/31/02	05/15/02	Not filed	94
	10-KSB	06/30/02	09/30/02	Not filed	90
	10-QSB	09/30/02	11/14/02	Not filed	88
	10-QSB	12/31/02	02/14/03	Not filed	85
	10-QSB	03/31/03	05/15/03	Not filed	82
	10-KSB	06/30/03	09/29/03	Not filed	78
	10-QSB	09/30/03	11/14/03	Not filed	76
	10-QSB	12/31/03	02/17/04	Not filed	73
	10-QSB	03/31/04	05/17/04	Not filed	70
	10-KSB	06/30/04	09/28/04	Not filed	66
	10-QSB	09/30/04	11/15/04	Not filed	64
	10-QSB	12/31/04	02/14/05	Not filed	61
	10-QSB	03/31/05	05/16/05	Not filed	58
	10-KSB	06/30/05	09/28/05	Not filed	54
	10-QSB	09/30/05	11/14/05	Not filed	52
	10-QSB	12/31/05	02/14/06	Not filed	49
	10-QSB	03/31/06	05/15/06	Not filed	46
	10-KSB	06/30/06	09/28/06	Not filed	42
	10-QSB	09/30/06	11/14/06	Not filed	40
	10-QSB	12/31/06	02/14/07	Not filed	37
	10-QSB	03/31/07	05/15/07	Not filed	34
	10-KSB	06/30/07	09/28/07	Not filed	30
	10-QSB	09/30/07	11/14/07	Not filed	28
	10-QSB	12/31/07	02/14/08	Not filed	25
	10-QSB	03/31/08	05/15/08	Not filed	22
	10-KSB	06/30/08	09/29/08	Not filed	18
	*10-Q**	09/30/08	11/14/08	Not filed	16
	*10-Q**	12/31/08	02/17/09	Not filed	13
	*10-Q**	03/31/09	05/15/09	Not filed	10
	*10-K**	06/30/09	09/28/09	Not filed	6

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	*10-Q**	09/30/09	11/16/09	Not filed	4
	*10-Q**	12/31/09	02/16/10	Not filed	
Total Filings Delinquent	**35**				
Potomac Energy Corp.					
	10-KSB	12/31/00	04/02/01	Not filed	107
	10-QSB	03/31/01	05/15/01	Not filed	106
	10-QSB	06/30/01	08/14/01	Not filed	103
	10-QSB	09/30/01	11/14/01	Not filed	100
	10-KSB	12/31/01	04/01/02	Not filed	95
	10-QSB	03/31/02	05/15/02	Not filed	94
	10-QSB	06/30/02	08/14/02	Not filed	91
	10-QSB	09/30/02	11/14/02	Not filed	88
	10-KSB	12/31/02	03/31/03	Not filed	84
	10-QSB	03/31/03	05/15/03	Not filed	82
	10-QSB	06/30/03	08/14/03	Not filed	79
	10-QSB	09/30/03	11/14/03	Not filed	76
	10-KSB	12/31/03	03/30/04	Not filed	72
	10-QSB	03/31/04	05/17/04	Not filed	70
	10-QSB	06/30/04	08/16/04	Not filed	67
	10-QSB	09/30/04	11/15/04	Not filed	64
	10-KSB	12/31/04	03/31/05	Not filed	60
	10-QSB	03/31/05	05/16/05	Not filed	58
	10-QSB	06/30/05	08/15/05	Not filed	55
	10-QSB	09/30/05	11/14/05	Not filed	52
	10-KSB	12/31/05	03/31/06	Not filed	48
	10-QSB	03/31/06	05/15/06	Not filed	46
	10-QSB	06/30/06	08/14/06	Not filed	43
	10-QSB	09/30/06	11/14/06	Not filed	40
	10-KSB	12/31/06	04/02/07	Not filed	35
	10-QSB	03/31/07	05/15/07	Not filed	34
	10-QSB	06/30/07	08/14/07	Not filed	31
	10-QSB	09/30/07	11/14/07	Not filed	28
	10-KSB	12/31/07	03/31/08	Not filed	24
	*10-Q**	03/31/08	05/15/08	Not filed	22
	*10-Q**	06/30/08	08/14/08	Not filed	19
	*10-Q**	09/30/08	11/14/08	Not filed	16

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	*10-K**	12/31/08	04/01/09	Not filed	11
	*10-Q**	03/31/09	05/15/09	Not filed	10
	*10-Q**	06/30/09	08/14/09	Not filed	7
	*10-Q**	09/30/09	11/16/09	Not filed	4
Total Filings Delinquent	**36**				
Power Plus Corp. (n/k/a PPC Capital Corp.)					
	10-Q	07/31/00	09/14/00	Not filed	114
	10-K	10/31/00	12/15/00	Not filed	111
	10-Q	01/31/01	05/01/01	Not filed	106
	10-Q	04/30/01	06/14/01	Not filed	105
	10-Q	07/31/01	09/14/01	Not filed	102
	10-K	10/31/01	12/17/01	Not filed	99
	10-Q	01/31/02	05/01/02	Not filed	94
	10-Q	04/30/02	06/14/02	Not filed	93
	10-Q	07/31/02	09/16/02	Not filed	90
	10-K	10/31/02	12/16/02	Not filed	87
	10-Q	01/31/03	05/01/03	Not filed	82
	10-Q	04/30/03	06/16/03	Not filed	81
	10-Q	07/31/03	09/15/03	Not filed	78
	10-K	10/31/03	12/15/03	Not filed	75
	10-Q	01/31/04	04/30/04	Not filed	71
	10-Q	04/30/04	06/14/04	Not filed	69
	10-Q	07/31/04	09/14/04	Not filed	66
	10-K	10/31/04	12/15/04	Not filed	63
	10-Q	01/31/05	05/02/05	Not filed	58
	10-Q	04/30/05	06/14/05	Not filed	57
	10-Q	07/31/05	09/14/05	Not filed	54
	10-K	10/31/05	12/15/05	Not filed	51
	10-Q	01/31/06	05/01/06	Not filed	46
	10-Q	04/30/06	06/14/06	Not filed	45
	10-Q	07/31/06	09/14/06	Not filed	42
	10-K	10/31/06	12/15/06	Not filed	39
	10-Q	01/31/07	05/01/07	Not filed	34
	10-Q	04/30/07	06/14/07	Not filed	33
	10-Q	07/31/07	09/14/07	Not filed	30
	10-K	10/31/07	12/17/07	Not filed	27

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-Q	01/31/08	04/30/08	Not filed	23
	10-Q	04/30/08	06/16/08	Not filed	21
	10-Q	07/31/08	09/15/08	Not filed	18
	10-K	10/31/08	12/15/08	Not filed	15
	10-Q	01/31/09	03/17/09	Not filed	12
	10-Q	04/30/09	06/15/09	Not filed	9
	10-Q	07/31/09	09/14/09	Not filed	6
	10-K	10/31/09	01/29/10	Not filed	2
Total Filings Delinquent	**38**				
Precision Plastics Molding, Inc.					
	10-QSB	12/31/01	02/14/02	Not filed	97
	10-QSB	03/31/02	05/15/02	Not filed	94
	10-KSB	06/30/02	09/30/02	Not filed	90
	10-QSB	09/30/02	11/14/02	Not filed	88
	10-QSB	12/31/02	02/14/03	Not filed	85
	10-QSB	03/31/03	05/15/03	Not filed	82
	10-KSB	06/30/03	09/29/03	Not filed	78
	10-QSB	09/30/03	11/14/03	Not filed	76
	10-QSB	12/31/03	02/17/04	Not filed	73
	10-QSB	03/31/04	05/17/04	Not filed	70
	10-KSB	06/30/04	09/28/04	Not filed	66
	10-QSB	09/30/04	11/15/04	Not filed	64
	10-QSB	12/31/04	02/14/05	Not filed	61
	10-QSB	03/31/05	05/16/05	Not filed	58
	10-KSB	06/30/05	09/28/05	Not filed	54
	10-QSB	09/30/05	11/14/05	Not filed	52
	10-QSB	12/31/05	02/14/06	Not filed	49
	10-QSB	03/31/06	05/15/06	Not filed	46
	10-KSB	06/30/06	09/28/06	Not filed	42
	10-QSB	09/30/06	11/14/06	Not filed	40
	10-QSB	12/31/06	02/14/07	Not filed	37
	10-QSB	03/31/07	05/15/07	Not filed	34
	10-KSB	06/30/07	09/28/07	Not filed	30
	10-QSB	09/30/07	11/14/07	Not filed	28
	10-QSB	12/31/07	02/14/08	Not filed	25

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-QSB	03/31/08	05/15/08	Not filed	22
	10-KSB	06/30/08	09/29/08	Not filed	18
	*10-Q**	09/30/08	11/14/08	Not filed	16
	*10-Q**	12/31/08	02/17/09	Not filed	13
	*10-Q**	03/31/09	05/15/09	Not filed	10
	*10-K**	06/30/09	09/28/09	Not filed	6
	*10-Q**	09/30/09	11/16/09	Not filed	4
	*10-Q**	12/31/09	02/16/10	Not filed	
Total Filings Delinquent	**32**				
Presidio Oil Co. (n/k/a Encana Oil & Gas (USA), Inc.)					
	10-K	12/31/96	03/31/97	Not filed	156
	10-Q	03/31/97	05/15/97	Not filed	154
	10-Q	06/30/97	08/14/97	Not filed	151
	10-Q	09/30/97	11/14/97	Not filed	148
	10-K	12/31/97	03/31/98	Not filed	144
	10-Q	03/31/98	05/15/98	Not filed	142
	10-Q	06/30/98	08/14/98	Not filed	139
	10-Q	09/30/98	11/16/98	Not filed	136
	10-K	12/31/98	03/31/99	Not filed	132
	10-Q	03/31/99	05/17/99	Not filed	130
	10-Q	06/30/99	08/16/99	Not filed	127
	10-Q	09/30/99	11/15/99	Not filed	124
	10-K	12/31/99	03/30/00	Not filed	120
	10-Q	03/31/00	05/15/00	Not filed	118
	10-Q	06/30/00	08/14/00	Not filed	115
	10-Q	09/30/00	11/14/00	Not filed	112
	10-K	12/31/00	04/02/01	Not filed	107
	10-Q	03/31/01	05/15/01	Not filed	106
	10-Q	06/30/01	08/14/01	Not filed	103
	10-Q	09/30/01	11/14/01	Not filed	100
	10-K	12/31/01	04/01/02	Not filed	95
	10-Q	03/31/02	05/15/02	Not filed	94
	10-Q	06/30/02	08/14/02	Not filed	91
	10-Q	09/30/02	11/14/02	Not filed	88
	10-K	12/31/02	03/31/03	Not filed	84

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-Q	03/31/03	05/15/03	Not filed	82
	10-Q	06/30/03	08/14/03	Not filed	79
	10-Q	09/30/03	11/14/03	Not filed	76
	10-K	12/31/03	03/30/04	Not filed	72
	10-Q	03/31/04	05/17/04	Not filed	70
	10-Q	06/30/04	08/16/04	Not filed	67
	10-Q	09/30/04	11/15/04	Not filed	64
	10-K	12/31/04	03/31/05	Not filed	60
	10-Q	03/31/05	05/16/05	Not filed	58
	10-Q	06/30/05	08/15/05	Not filed	55
	10-Q	09/30/05	11/14/05	Not filed	52
	10-K	12/31/05	03/31/06	Not filed	48
	10-Q	03/31/06	05/15/06	Not filed	46
	10-Q	06/30/06	08/14/06	Not filed	43
	10-Q	09/30/06	11/14/06	Not filed	40
	10-K	12/31/06	04/02/07	Not filed	35
	10-Q	03/31/07	05/15/07	Not filed	34
	10-Q	06/30/07	08/14/07	Not filed	31
	10-Q	09/30/07	11/14/07	Not filed	28
	10-K	12/31/07	03/31/08	Not filed	24
	10-Q	03/31/08	05/15/08	Not filed	22
	10-Q	06/30/08	08/14/08	Not filed	19
	10-Q	09/30/08	11/14/08	Not filed	16
	10-K	12/31/08	04/01/09	Not filed	11
	10-Q	03/31/09	05/15/09	Not filed	10
	10-Q	06/30/09	08/14/09	Not filed	7
	10-Q	09/30/09	11/16/09	Not filed	4
Total Filings Delinquent	**52**				
Press Realty Advisors Corp.					
	10-K	06/30/01	09/28/01	Not filed	102
	10-Q	09/30/01	11/14/01	Not filed	100
	10-Q	12/31/01	02/14/02	Not filed	97
	10-Q	03/31/02	05/15/02	Not filed	94
	10-K	06/30/02	09/30/02	Not filed	90
	10-Q	09/30/02	11/14/02	Not filed	88
	10-Q	12/31/02	02/14/03	Not filed	85

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-Q	03/31/03	05/15/03	Not filed	82
	10-K	06/30/03	09/29/03	Not filed	78
	10-Q	09/30/03	11/14/03	Not filed	76
	10-Q	12/31/03	02/17/04	Not filed	73
	10-Q	03/31/04	05/17/04	Not filed	70
	10-K	06/30/04	09/28/04	Not filed	66
	10-Q	09/30/04	11/15/04	Not filed	64
	10-Q	12/31/04	02/14/05	Not filed	61
	10-Q	03/31/05	05/16/05	Not filed	58
	10-K	06/30/05	09/28/05	Not filed	54
	10-Q	09/30/05	11/14/05	Not filed	52
	10-Q	12/31/05	02/14/06	Not filed	49
	10-Q	03/31/06	05/15/06	Not filed	46
	10-K	06/30/06	09/28/06	Not filed	42
	10-Q	09/30/06	11/14/06	Not filed	40
	10-Q	12/31/06	02/14/07	Not filed	37
	10-Q	03/31/07	05/15/07	Not filed	34
	10-K	06/30/07	09/28/07	Not filed	30
	10-Q	09/30/07	11/14/07	Not filed	28
	10-Q	12/31/07	02/14/08	Not filed	25
	10-Q	03/31/08	05/15/08	Not filed	22
	10-K	06/30/08	09/29/08	Not filed	18
	10-Q	09/30/08	11/14/08	Not filed	16
	10-Q	12/31/08	02/17/09	Not filed	13
	10-Q	03/31/09	05/15/09	Not filed	10
	10-K	06/30/09	09/28/09	Not filed	6
	10-Q	09/30/09	11/16/09	Not filed	4
	10-Q	12/31/09	02/16/10	Not filed	
Total Filings Delinquent	**35**				
Prism Group, Inc.					
	10-QSB	09/30/96	11/14/96	Not filed	160
	10-KSB	12/31/96	03/31/97	Not filed	156
	10-QSB	03/31/97	05/15/97	Not filed	154
	10-QSB	06/30/97	08/14/97	Not filed	151
	10-QSB	09/30/97	11/14/97	Not filed	148
	10-KSB	12/31/97	03/31/98	Not filed	144
	10-QSB	03/31/98	05/15/98	Not filed	142

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-QSB	06/30/98	08/14/98	Not filed	139
	10-QSB	09/30/98	11/16/98	Not filed	136
	10-KSB	12/31/98	03/31/99	Not filed	132
	10-QSB	03/31/99	05/17/99	Not filed	130
	10-QSB	06/30/99	08/16/99	Not filed	127
	10-QSB	09/30/99	11/15/99	Not filed	124
	10-KSB	12/31/99	03/30/00	Not filed	120
	10-QSB	03/31/00	05/15/00	Not filed	118
	10-QSB	06/30/00	08/14/00	Not filed	115
	10-QSB	09/30/00	11/14/00	Not filed	112
	10-KSB	12/31/00	04/02/01	Not filed	107
	10-QSB	03/31/01	05/15/01	Not filed	106
	10-QSB	06/30/01	08/14/01	Not filed	103
	10-QSB	09/30/01	11/14/01	Not filed	100
	10-KSB	12/31/01	04/01/02	Not filed	95
	10-QSB	03/31/02	05/15/02	Not filed	94
	10-QSB	06/30/02	08/14/02	Not filed	91
	10-QSB	09/30/02	11/14/02	Not filed	88
	10-KSB	12/31/02	03/31/03	Not filed	84
	10-QSB	03/31/03	05/15/03	Not filed	82
	10-QSB	06/30/03	08/14/03	Not filed	79
	10-QSB	09/30/03	11/14/03	Not filed	76
	10-KSB	12/31/03	03/30/04	Not filed	72
	10-QSB	03/31/04	05/17/04	Not filed	70
	10-QSB	06/30/04	08/16/04	Not filed	67
	10-QSB	09/30/04	11/15/04	Not filed	64
	10-KSB	12/31/04	03/31/05	Not filed	60
	10-QSB	03/31/05	05/16/05	Not filed	58
	10-QSB	06/30/05	08/15/05	Not filed	55
	10-QSB	09/30/05	11/14/05	Not filed	52
	10-KSB	12/31/05	03/31/06	Not filed	48
	10-QSB	03/31/06	05/15/06	Not filed	46
	10-QSB	06/30/06	08/14/06	Not filed	43
	10-QSB	09/30/06	11/14/06	Not filed	40
	10-KSB	12/31/06	04/02/07	Not filed	35
	10-QSB	03/31/07	05/15/07	Not filed	34
	10-QSB	06/30/07	08/14/07	Not filed	31
	10-QSB	09/30/07	11/14/07	Not filed	28
	10-KSB	12/31/07	03/31/08	Not filed	24

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	*10-Q**	03/31/08	05/15/08	Not filed	22
	*10-Q**	06/30/08	08/14/08	Not filed	19
	*10-Q**	09/30/08	11/14/08	Not filed	16
	*10-K**	12/31/08	04/01/09	Not filed	11
	*10-Q**	03/31/09	05/15/09	Not filed	10
	*10-Q**	06/30/09	08/14/09	Not filed	7
	*10-Q**	09/30/09	11/16/09	Not filed	4
Total Filings Delinquent	**53**				
Promotional Concepts, Inc. (a/k/a Tartam, Inc.)					
	10-QSB	06/30/01	08/14/01	Not filed	103
	10-QSB	09/30/01	11/14/01	Not filed	100
	10-KSB	12/31/01	04/01/02	Not filed	95
	10-QSB	03/31/02	05/15/02	Not filed	94
	10-QSB	06/30/02	08/14/02	Not filed	91
	10-QSB	09/30/02	11/14/02	Not filed	88
	10-KSB	12/31/02	03/31/03	Not filed	84
	10-QSB	03/31/03	05/15/03	Not filed	82
	10-QSB	06/30/03	08/14/03	Not filed	79
	10-QSB	09/30/03	11/14/03	Not filed	76
	10-KSB	12/31/03	03/30/04	Not filed	72
	10-QSB	03/31/04	05/17/04	Not filed	70
	10-QSB	06/30/04	08/16/04	Not filed	67
	10-QSB	09/30/04	11/15/04	Not filed	64
	10-KSB	12/31/04	03/31/05	Not filed	60
	10-QSB	03/31/05	05/16/05	Not filed	58
	10-QSB	06/30/05	08/15/05	Not filed	55
	10-QSB	09/30/05	11/14/05	Not filed	52
	10-KSB	12/31/05	03/31/06	Not filed	48
	10-QSB	03/31/06	05/15/06	Not filed	46
	10-QSB	06/30/06	08/14/06	Not filed	43
	10-QSB	09/30/06	11/14/06	Not filed	40
	10-KSB	12/31/06	04/02/07	Not filed	35
	10-QSB	03/31/07	05/15/07	Not filed	34
	10-QSB	06/30/07	08/14/07	Not filed	31
	10-QSB	09/30/07	11/14/07	Not filed	28

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-KSB	12/31/07	03/31/08	Not filed	24
	*10-Q**	03/31/08	05/15/08	Not filed	22
	*10-Q**	06/30/08	08/14/08	Not filed	19
	*10-Q**	09/30/08	11/14/08	Not filed	16
	*10-K**	12/31/08	04/01/09	Not filed	11
	*10-Q**	03/31/09	05/15/09	Not filed	10
	*10-Q**	06/30/09	08/14/09	Not filed	7
	*10-Q**	09/30/09	11/16/09	Not filed	4
Total Filings Delinquent	**34**				
Purcell Energy Ltd. (n/k/a Point North Energy Ltd. and f/k/a Belair Energy Corp.)					
	20-F	12/31/03	06/30/04	Not filed	69
	20-F	12/31/04	06/30/05	Not filed	57
	20-F	12/31/05	06/30/06	Not filed	45
	20-F	12/31/06	07/02/07	Not filed	32
	20-F	12/31/07	06/30/08	Not filed	21
	20-F	12/31/08	06/30/09	Not filed	9
Total Filings Delinquent	**6**				

* Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, have been removed from the federal securities laws. *See* Release No. 34-56994 (Dec. 19, 2007). The removal took effect over a transition period that concluded on March 15, 2009. All reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB are now required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than $75 million in public equity float as of the end of its most recently completed second fiscal quarter) have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

Commissioner Walter not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61635 / March 3, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13802

In the Matter of **Verint Systems Inc.,** **Respondent.**	**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") against Verint Systems Inc. ("Verint" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

A. Verint Systems Inc. (CIK No. 0001166388) is a Delaware corporation based in Melville, New York. Verint's common stock is registered with the Commission pursuant to Exchange Act Section 12(g) and is quoted on the "Pink Sheets" under the symbol "VRNT" or "VRNT.PK". Verint is required to file reports pursuant to Section 13(a) of the Exchange Act.

B. Section 13(a) of the Exchange Act and the rules promulgated thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act 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).

C. Verint is delinquent in its periodic filings with the Commission.

D. Verint has not filed an annual report on either Form 10-K or Form 10-KSB since April 25, 2005, or quarterly reports on either Form 10-Q or Form 10-QSB since December 12, 2005.

E. As a result of the foregoing, Verint has failed to comply with Section 13(a) of the Exchange Act 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 pursuant to Section 12(j) of the Exchange Act to determine:

A. Whether the allegations in Section II hereof are true and, in connection therewith, to afford the Respondent 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 Respondent identified in Section II hereof 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, as provided by Rule 200 of the Commission's Rules of Practice [17 C.F.R. § 201.200], 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 the Respondent shall file an Answer to the allegations contained in this Order Instituting Proceedings within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice [17 C.F.R. § 201.220].

If the 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 the 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 the Respondent personally or by certified mail.

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.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61649; File No. PCAOB-2009-01)

March 4, 2010

Public Company Accounting Oversight Board; Order Approving Proposed Amendment to Board Rules Relating to Inspections

I. Introduction

On July 2, 2009, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission") a proposed rule amendment (PCAOB-2009-01) pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act") relating to the Board's rules governing inspections of registered public accounting firms. Notice of the proposed rule amendment was published in the Federal Register on November 25, 2009.[1] The Commission did not receive any comment letters relating to the proposed rule amendment. For the reasons discussed below, the Commission is granting approval of the proposed rule amendment.

II. Description

The PCAOB's proposed rule amendment would add paragraph (g) to existing PCAOB Rule 4003, Frequency of Inspections, to give the Board the ability to postpone, for up to three years, the current 2009 deadline for the first inspection of 49 non-U.S. firms that are located in 24 jurisdictions in which the Board has not conducted an inspection prior to 2009. As discussed further below, under the proposed rule amendment, the Board would conduct these inspections in each of the years from 2009 through 2012 according to a sequencing based on the U.S. market capitalization of the

[1] See SEC Release No. 34-61032 (November 19, 2009); 74 FR 61722 (November 25, 2009).

aforementioned 49 firms' issuer audit clients. The proposed rule amendment does not affect inspection frequency requirements concerning any other first inspections or concerning any second, or later, inspections of a firm. Further, the proposed amendment itself does not limit the PCAOB's authority to conduct inspections at any time and does not affect registered firms' obligations under the Act.

Pursuant to the requirements of Section 107(b) of the Act and Section 19(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), the Commission published the proposed rule amendment for public comment on November 25, 2009.

III. Discussion of Comments

The Commission did not receive any comment letters relating to the proposed rule amendment.

IV. Discussion

Section 104 of the Act requires the PCAOB to conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with the Act, the rules of the PCAOB, the rules of the Commission, and professional standards, in connection with its performance of audits, issuance of audit reports, and related maters involving issuers. Under current PCAOB rules, the PCAOB must conduct an inspection annually of each firm that issued audit reports for more than 100 issuers in the previous calendar year; and must conduct an inspection once every three years of each firm that, during any of the three prior calendar years, issued an audit report for at least one but not more than 100 issuers, or that played a substantial role in the preparation or furnishing of an audit report for at least one

issuer.[2] The Act authorizes the PCAOB, by rule and with SEC approval, to adjust these frequency requirements if the Board finds that different inspection schedules are consistent with the purpose of the Act, the public interest, and the protection of investors.[3]

As described by the PCAOB, there were 49 non-U.S. registered firms that, by virtue of when they first issued audit reports after registering with the PCAOB, the Board was required to inspect for the first time by the end of 2009, and that were located in 24 jurisdictions where the Board had not conducted any inspections to date.[4] The Board indicated that these inspections were not conducted because of issues that relate primarily to the coordination of inspections with local authorities and the resolution of potential conflicts of law.[5]

In summarizing its rationale for the necessity of the proposed rule amendment, the Board noted its belief that most of the aforementioned 24 jurisdictions have or soon will have a local auditor oversight authority with which the Board would seek to work toward cooperative arrangements before conducting inspections, and noted its concerns about proceeding as if such cooperative arrangements and other necessary steps could be completed for all 24 jurisdictions in time to conduct the required inspections by the end of 2009.[6] To address these concerns, the Board adopted and submitted to the

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[2] See PCAOB Rule 4003.

[3] See Section 104(b)(2) of the Act [15 U.S.C. 7214(b)].

[4] See PCAOB Release No. 2009-003 (June 25, 2009).

[5] Ibid.

[6] Ibid.

Commission for approval the proposed rule amendment, new paragraph (g) to Rule 4003, to allow it to defer these inspections for up to three years.

In the Commission's publication of the proposed rules for comment, the notice indicated the following:

> In determining the schedule for completion of the inspections subject to new paragraph (g), the Board will implement its proposal to sequence these 49 inspections such that certain minimum thresholds will be satisfied in each of the years from 2009 to 2012. The minimum thresholds relate to U.S. market capitalization of firms' issuer audit clients. The Board will begin by ranking the 49 firms according to the total U.S. market capitalization of a firm's foreign private issuer audit clients. Working from the top of the list (highest U.S. market capitalization total) down, the 49 firms will be distributed over 2009 to 2012 such that, at a minimum, the following criteria are satisfied:
>
> - by the end of 2009, the Board will inspect firms whose combined issuer audit clients' U.S. market capitalization constitutes at least 35 percent of the aggregate U.S. market capitalization of the audit clients of all 49 firms;
> - by the end of 2010, the Board will inspect firms whose combined issuer audit clients' U.S. market capitalization constitutes at least 90 percent of that aggregate;
> - by the end of 2011, the Board will inspect firms whose combined issuer audit clients' U.S. market capitalization constitutes at least 99.9 percent of that aggregate; and
> - the Board will inspect the remaining firms in 2012.
>
> In addition to meeting those market capitalization thresholds, the Board also will satisfy certain criteria concerning the number of those 49 firms that will be inspected in each year. Specifically, the Board will conduct at least four of the 49 inspections in 2009, at least 11 more in 2010, and at least 14 more in 2011. (footnotes omitted)

On February 3, 2010, the PCAOB released new and updated information about the status of its inspections of registered non-U.S. accounting firms, including reporting on the PCAOB's progress in meeting the above target thresholds.[7] Specifically, the

[7] See http://pcaobus.org/News/Releases/Pages/02032010_Progress_IntlInspections.aspx. The PCAOB also noted that that it intends to update its progress report semiannually to reflect information current as of June 30 and December 31.

PCAOB reported that, as of December 31, 2009, the PCAOB had inspected five firms that would meet the proposed Rule 4003(g) criteria for deferral. However, the PCAOB inspected only two of the four firms that the PCAOB had scheduled for inspection in 2009 based on their clients' U.S. market capitalization. As a result, the PCAOB did not meet the target threshold for U.S. market capitalization for 2009. The PCAOB was unable to conduct the inspections of the remaining two firms it intended to inspect in 2009 because, on the basis of asserted restrictions under non-U.S. law, access to information necessary to conduct the inspections was denied.

The PCAOB also reported that discussions are continuing with the relevant authorities in the affected jurisdictions in an effort to resolve their objections to PCAOB inspections. We agree that the PCAOB should continue to work toward cooperative arrangements with the appropriate local auditor oversight authorities where it is reasonably likely that appropriate cooperative arrangements can be obtained.[8] We also recognize that formalization and finalization of such arrangements take time. However, as the Board has acknowledged, inspection is the cornerstone of the Board's regulatory oversight of audit firms.[9] Public companies and investors rely on the integrity of the auditing work performed by firms registered with the PCAOB, and the salutary effects of briefly delaying inspection of certain of these firms decrease as the period of delay increases or there no longer appears to be a reasonable possibility of reaching appropriate cooperative arrangements.

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[8] Cf., PCAOB Release 2009-003 (June 25, 2009) (expressing the view that "There is long-term value in accepting a limited delay in inspections to continue working toward cooperative arrangements where it appears reasonably possible to reach them.").

[9] See, PCAOB Release 2009-003 (June 25, 2009) (stating that "[I]nspection is the Board's primary tool of oversight.").

Accordingly, we encourage the PCAOB to continue to work with deliberate speed with its foreign counterparts to finalize these cooperative arrangements. We continue to expect the PCAOB to satisfy its announced inspection schedule for 2010-2012.[10] We also direct the PCAOB to work closely with Commission staff in the PCAOB's ongoing discussions with relevant authorities and efforts to meet its non-US audit firm inspection schedule.[11]

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed amendment of the Board's rules governing inspections of registered public accounting firms are consistent with the requirements of the Act and the securities laws and are necessary or appropriate in the public interest or for the protection of investors.

IT IS THEREFORE ORDERED, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that the proposed rule amendment (File No. PCAOB 2009-01) be and hereby is approved.

By the Commission.

Elizabeth M. Murphy
Secretary

[10] As part of its semiannual disclosures, the PCAOB also discloses a list of those registered firms where inspections have not been completed by the PCAOB, even though more than four years have passed since the end of the calendar year in which the firm first issued an auditor report while registered with the PCAOB.

[11] Separately, in the Commission's order approving the PCAOB's budget and annual accounting support fee for calendar year 2010, the Commission directed the PCAOB to include in its quarterly reports to the Commission information about the timing of the PCAOB's international inspection program and updates on the PCAOB's efforts to establish cooperative arrangements with respective non-U.S. authorities for inspections required in those countries. See SEC Release No. 34-61212 (December 22, 2009); 74 FR 68875 (December 29, 2009).

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61661 / March 5, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13809

In the Matter of **PHILLIP D'HEDOUVILLE,** **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 Phillip D'Hedouville ("D'Hedouville" 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 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 Respondent's Offer, the Commission finds that:

1. D'Hedouville, age 41, resides in Galloway Township, New Jersey. From August 2006 until December 2007, D'Hedouville was a registered representative with the Atlantic City, New Jersey branch office of Brecek & Young Advisors, Inc., a broker-dealer registered with the Commission. On December 20, 2007, Brecek & Young terminated its association with D'Hedouville.

2. On July 30, 2009, D'Hedouville pled guilty to one count of mail fraud in violation of Title 18 United States Code, Sections 1341 and 1342, and one count of money laundering in violation of Title 18 United States Code, Section 1957 before the United States District Court for the District of New Jersey, in *United States v. Phillip D'Hedouville*, 1:09 CR-00567-JBS (July 30, 2009). In his plea, D'Hedouville also agreed to make full restitution to his victims and criminal forfeiture of at least $1,226,541.26.

3. The counts of the criminal information to which D'Hedouville pled guilty alleged, among other things, that from August 2006 through January 2008, D'Hedouville, acting knowingly and intentionally, devised and engaged in a scheme in which he defrauded his customers of at least $1.2 million by representing to them that they could obtain better investment returns if they withdrew their money from their retirement accounts and enabled him to use that money to make investments in the stock market. Instead, D'Hedouville admitted that he used the proceeds for his own personal use. In addition, D'Hedouville used the United States mail and interstate commerce to send brokerage account applications as part of his scheme to defraud investors.

IV.

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

Accordingly, it is hereby ORDERED:

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

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

customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61662; File No. S7-05-09)

March 5, 2010

ORDER EXTENDING TEMPORARY EXEMPTIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934 IN CONNECTION WITH REQUEST OF ICE TRUST U.S. LLC RELATED TO CENTRAL CLEARING OF CREDIT DEFAULT SWAPS, AND REQUEST FOR COMMENTS

I. Introduction

The Securities and Exchange Commission ("Commission") has taken multiple actions[1] designed to address concerns related to the market in credit default swaps ("CDS").[2] The over-

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[1] See generally Securities Exchange Act Release No. 60372 (Jul. 23, 2009), 74 FR 37748 (Jul. 29, 2009) (temporary exemptions in connection with CDS clearing by ICE Clear Europe Limited); Securities Exchange Act Release No. 60373 (Jul. 23, 2009), 74 FR 37740 (Jul. 29, 2009) (temporary exemptions in connection with CDS clearing by Eurex Clearing AG); Securities Exchange Act Release No. 59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009) and Securities Exchange Act Release No. 61164 (Dec. 14, 2009), 74 FR 67258 (Dec. 18, 2009) (temporary exemptions in connection with CDS clearing by Chicago Mercantile Exchange Inc.); Securities Exchange Act Release No. 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009) (hereinafter, the "March 2009 ICE Trust Order") and Securities Exchange Act Release No. 61119 (Dec. 4, 2009), 74 FR 65554 (Dec. 10, 2009) (hereinafter, the "December 2009 ICE Trust Order," collectively with the March 2009 ICE Trust Order, the "2009 ICE Trust Orders") (temporary exemptions in connection with CDS clearing by ICE US Trust LLC (now "ICE Trust U.S. LLC")); Securities Exchange Act Release No. 59164 (Dec. 24, 2008), 74 FR 139 (Jan. 2, 2009) (temporary exemptions in connection with CDS clearing by LIFFE A&M and LCH.Clearnet Ltd.) and other Commission actions discussed in several of these orders.

In addition, we have issued interim final temporary rules that provide exemptions under the Securities Act of 1933 and the Securities Exchange Act of 1934 for CDS to facilitate the operation of one or more central counterparties for the CDS market. See Securities Act Release No. 8999 (Jan. 14, 2009), 74 FR 3967 (Jan. 22, 2009) (initial approval); Securities Act Release No. 9063 (Sep. 14, 2009), 74 FR 47719 (Sep. 17, 2009) (extension until Nov. 30, 2010).

Further, the Commission has provided temporary exemptions in connection with Sections 5 and 6 of the Securities Exchange Act of 1934 for transactions in CDS. See Securities Exchange Act Release No. 59165 (Dec. 24, 2008), 74 FR 133 (Jan. 2, 2009) (initial exemption); Securities Exchange Act Release No. 60718 (Sep. 25, 2009), 74 FR 50862 (Oct. 1, 2009) (extension until Mar. 24, 2010).

[2] A CDS is a bilateral contract between two parties, known as counterparties. The value of this financial contract is based on underlying obligations of a single entity ("reference entity") or on a particular security or other debt obligation, or an index of several such entities, securities, or obligations. The obligation of a seller to make payments under a CDS contract is triggered by a default or other credit event as to such entity or entities or such security or securities. Investors may use CDS for a variety of reasons, including to offset or insure against risk in their fixed-income portfolios, to take positions in

the-counter ("OTC") market for CDS has been a source of particular concern to us and other financial regulators, and we have recognized that facilitating the establishment of central counterparties ("CCPs") for CDS can play an important role in reducing the counterparty risks inherent in the CDS market, and thus can help mitigate potential systemic impact. We have therefore found that taking action to help foster the prompt development of CCPs, including granting temporary conditional exemptions from certain provisions of the federal securities laws, is in the public interest.[3]

The Commission's authority over the OTC market for CDS is limited. Specifically, Section 3A of the Securities Exchange Act of 1934 ("Exchange Act") limits the Commission's authority over swap agreements, as defined in Section 206A of the Gramm-Leach-Bliley Act.[4] For those CDS that are swap agreements, the exclusion from the definition of security in Section 3A of the Exchange Act, and related provisions, will continue to apply. The Commission's action today does not affect these CDS, and this Order does not apply to them. For those CDS that are not swap agreements ("non-excluded CDS"), the Commission's action today provides temporary conditional exemptions from certain requirements of the Exchange Act.

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bonds or in segments of the debt market as represented by an index, or to take positions on the volatility in credit spreads during times of economic uncertainty.

Growth in the CDS market has coincided with a significant rise in the types and number of entities participating in the CDS market. CDS were initially created to meet the demand of banking institutions looking to hedge and diversify the credit risk attendant to their lending activities. However, financial institutions such as insurance companies, pension funds, securities firms, and hedge funds have entered the CDS market.

[3] See generally actions referenced in note 1, supra.

[4] 15 U.S.C. 78c-1. Section 3A excludes both a non-security-based and a security-based swap agreement from the definition of "security" under Section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10). Section 206A of the Gramm-Leach-Bliley Act defines a "swap agreement" as "any agreement, contract, or transaction between eligible contract participants (as defined in section 1a(12) of the Commodity Exchange Act . . .) . . . the material terms of which (other than price and quantity) are subject to individual negotiation." 15 U.S.C. 78c note.

The Commission believes that using well-regulated CCPs to clear transactions in CDS provides a number of benefits by helping to promote efficiency and reduce risk in the CDS market, by contributing to the goal of market stability, and by requiring maintenance of records of CDS transactions that would aid the Commission's efforts to prevent and detect fraud and other abusive market practices.[5]

In the 2009 ICE Trust Orders, the Commission provided temporary conditional exemptions to ICE Trust U.S. LLC ("ICE Trust") and certain other parties to permit ICE Trust to clear and settle CDS transactions.[6] The current exemptions are scheduled to expire on March 7, 2010, and ICE Trust has requested that the Commission extend those exemptions.[7]

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5 See generally actions referenced in note 1, supra.

6 For purposes of this Order, "Cleared CDS" means a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to ICE Trust, that is offered only to, purchased only by, and sold only to eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), and in which: (i) the reference entity, the issuer of the reference security, or the reference security is one of the following: (A) an entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available; (B) a foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States; (C) a foreign sovereign debt security; (D) an asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or (E) an asset-backed security issued or guaranteed by the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac") or the Government National Mortgage Association ("Ginnie Mae"); or (ii) the reference index is an index in which 80 percent or more of the index's weighting is comprised of the entities or securities described in subparagraph (i). See definition in paragraph III.(f)(1) of this Order. As discussed above, the Commission's action today does not affect CDS that are swap agreements under Section 206A of the Gramm-Leach-Bliley Act. See text at note 4, supra.

7 See Letter from Kevin McClear, ICE Trust, to Elizabeth Murphy, Secretary, Commission, Mar. 5, 2010 ("March 2010 Request").

Based on the facts presented and the representations made by ICE Trust,[8] and for the reasons discussed in this Order and subject to certain conditions, the Commission is extending each of the existing exemptions connected with CDS clearing by ICE Trust: the temporary conditional exemption granted to ICE Trust from clearing agency registration under Section 17A of the Exchange Act solely to perform the functions of a clearing agency for certain non-excluded CDS transactions; the temporary conditional exemption of ICE Trust and certain of its clearing members from the registration requirements of Sections 5 and 6 of the Exchange Act solely in connection with the calculation of mark-to-market prices for non-excluded CDS cleared by ICE Trust; the temporary conditional exemption of eligible contract participants and others from certain Exchange Act requirements with respect to non-excluded CDS cleared by ICE Trust; the temporary exemption of ICE Trust clearing members and others from broker-dealer registration requirements and related requirements in connection with CDS clearing by ICE Trust (including clearing of customer CDS transactions); and the temporary exemption from certain Exchange Act requirements granted to registered broker-dealers. This extension is temporary, and the exemptions will expire on November 30, 2010.

II. Discussion

In its request for an extension, ICE Trust represents that, other than as discussed in its request, there have been no material changes to the operations of ICE Trust and the

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[8] See id. The exemptions we are granting today are based on all of the representations made by ICE Trust, which incorporate representations made by or on behalf of ICE Trust as part of the requests that preceded our earlier exemptions addressing CDS clearing by ICE Trust. We recognize, however, that there could be legal uncertainty in the event that one or more of the underlying representations were to become inaccurate. Accordingly, if any of these exemptions were to become unavailable by reason of an underlying representation no longer being materially accurate, the legal status of existing open positions in non-excluded CDS that previously had been cleared pursuant to the exemptions would remain unchanged, but no new positions could be established pursuant to the exemptions until all of the underlying representations were again accurate.

representations in the 2009 ICE Trust Orders remain true in all material respects.[9] These representations are discussed in detail in the December 2009 ICE Trust Order.

A. ICE Trust's CDS Clearing Activities to Date

ICE Trust has cleared proprietary CDS transactions of its clearing members since March 9, 2009, and has cleared CDS transactions involving its clearing members' clients since

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[9] See March 2010 Request, supra note 7. In its present request, ICE Trust states that, consistent with an earlier representation, it has adopted a requirement that clearing members subject to the framework are regulated by: (i) a signatory to the International Organization of Securities Commissions ("IOSCO") Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, or (ii) a signatory to a bilateral arrangement with the Commission for enforcement cooperation.

ICE Trust also states that it has commenced implementation of certain changes to the end-of-day settlement price process described in the December 2009 ICE Trust Order in connection with the clearing of single-name CDS. Specifically, ICE Trust has implemented required trading for single-name CDS on a daily basis, rather than the random-day basis that applies to index CDS, for the 100 basis point coupon for certain single-name CDS (and one tenor). As ICE Trust rolls out additional single names, it expects to include the additional single names in the required trading process. ICE Trust also anticipates including other coupons and tenors commencing in March 2010.

Under ICE Trust's process for required trading for single-name CDS on a daily basis, on each business day, ICE Trust requires trading for a set percentage (initially set at approximately 10%) of the randomly selected cleared single-name reference entities. ICE Trust applies a filter that first selects for required trading the most traded "cross points" on a curve generated for each such reference entity. ICE Trust will also apply a notional ceiling with respect to the amount of required trades in CDS on the selected reference entities for any given day. The current notional ceiling is ten million (10,000,000) dollars per single name reference entity (a reference entity includes all of the coupons and tenors). The notional ceiling for the most traded "cross point" on the tenor curve of a particular reference entity is five million (5,000,000) dollars. The notional ceilings for the other "cross points" on the tenor curve is two million five hundred thousand (2,500,000) dollars.

In addition to the procedures implementing required trades on random days for CDS indices and the required trade process described above with respect to single name CDS, ICE Trust regularly monitors the quality of the respective firm's end-of-day price submissions. On a regular basis, ICE Trust: (1) performs a statistical analysis with respect to the dispersion of price submissions; (2) reviews the number of "Advisory Trades" for each firm; and (3) reviews any instances where firms have either submitted late prices or failed to submit prices. When appropriate in the view of ICE Trust management, it contacts firms to discuss the quality of their price submissions. In addition, on a regular basis, ICE Trust management reviews the default spread widths and the daily trade results ("Advisory" and "Firm") with the ICE Trust Trading Advisory Committee and the ICE Trust Risk Committee.

December 14, 2009. As of February 11, 2010, ICE Trust had cleared approximately $3.82 trillion notional amount of CDS contracts based on indices of securities.[10]

On December 29, 2009 ICE Trust commenced clearing CDS contracts based on individual reference entities or securities. As of February 11, 2010, ICE Trust had cleared approximately $18.86 billion notional amount of CDS contracts based on individual reference entities or securities.[11]

B. Extended Temporary Conditional Exemption from Clearing Agency Registration Requirement

On December 4, 2009, in connection with its efforts to facilitate the establishment of one or more central counterparties ("CCP") for Cleared CDS, the Commission issued the December 2009 ICE Trust Order, conditionally extending the Commission's March 2009 ICE Trust Order, which conditionally exempted ICE Trust from clearing agency registration under Section 17A of the Exchange Act on a temporary basis. Subject to the conditions in the December 2009 ICE Trust Order, ICE Trust is permitted to act as a CCP for Cleared CDS by novating trades of non-excluded CDS that are securities and generating money and settlement obligations for participants without having to register with the Commission as a clearing agency. The December 2009 ICE Trust Order expires on March 7, 2010.

In the 2009 ICE Trust Orders, the Commission recognized the need to ensure the prompt establishment of ICE Trust as a CCP for CDS transactions. The Commission also recognized the need to ensure that important elements of Section 17A of the Exchange Act, which sets forth the framework for the regulation and operation of the U.S. clearance and settlement system for

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10 See https://www.theice.com/marketdata/reports/ReportCenter.shtml.

11 See https://www.theice.com/marketdata/reports/ReportCenter.shtml.

securities, apply to the non-excluded CDS market. Accordingly, the temporary exemptions in the 2009 ICE Trust Orders were subject to a number of conditions designed to enable Commission staff to monitor ICE Trust's clearance and settlement of CDS transactions.[12] Moreover, the temporary exemptions in the 2009 ICE Trust Orders in part were based on ICE Trust's representation that it met the standards set forth in the Committee on Payment and Settlement Systems ("CPSS") and IOSCO report entitled: Recommendation for Central Counterparties ("RCCP").[13] The RCCP establishes a framework that requires a CCP to have: (i) the ability to facilitate the prompt and accurate clearance and settlement of CDS transactions and to safeguard its users' assets; and (ii) sound risk management, including the ability to appropriately determine and collect clearing fund and monitor its users' trading. This framework is generally consistent with the requirements of Section 17A of the Exchange Act.

The Commission believes that continuing to facilitate the central clearing of CDS transactions – including customer CDS transactions – through a temporary conditional exemption from Section 17A will continue to provide important risk management and systemic benefits by avoiding an interruption in those CCP clearance and settlement services. Any interruption in CCP clearance and settlement services for CDS transactions would eliminate in the future the benefits ICE Trust provides to the non-excluded CDS market. Accordingly, and consistent with our findings in the 2009 ICE Trust Orders and for the reasons described herein,

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[12] See Securities Exchange Act Release No. 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009) and Securities Exchange Act Release No. 61119 (Dec. 4, 2009), 74 FR 65554 (Dec. 10, 2009).

[13] The RCCP was drafted by a joint task force ("Task Force") composed of representative members of IOSCO and CPSS and published in November 2004. The Task Force consisted of securities regulators and central bankers from 19 countries and the European Union. The U.S. representatives on the Task Force included staff from the Commission, the Federal Reserve Board, and the Commodity Futures Trading Commission.

we find pursuant to Section 36 of the Exchange Act[14] that it is necessary and appropriate in the public interest and is consistent with the protection of investors for the Commission to extend, until November 30, 2010, the relief provided from the clearing agency registration requirements of Section 17A by the 2009 ICE Trust Orders.

Our action today balances the aim of facilitating ICE Trust's continued service as a CCP for non-excluded CDS transactions with ensuring that important elements of Commission oversight are applied to the non-excluded CDS market. The temporary exemptions will permit the Commission to continue to develop direct experience with the non-excluded CDS market. During the extended exemptive period, the Commission will continue to monitor closely the impact of the CCPs on the CDS market. In particular, the Commission will seek to assure itself that ICE Trust does not act in an anticompetitive manner or indirectly facilitate anticompetitive behavior with respect to fees charged to members, the dissemination of market data, and the access to clearing services by independent CDS exchanges or CDS trading platforms.[15]

This temporary extension of the December 2009 ICE Trust Order also is designed to assure that – as represented in ICE Trust's request – information will continue to be available to market participants about the terms of the CDS cleared by ICE Trust, the creditworthiness of ICE

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[14] 15 U.S.C. 78mm. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, by rule, regulation, or order, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

[15] ICE Trust has no rule requiring an executing dealer to be a clearing member. As an operational matter, ICE Trust currently has one authorized trade processing platform for submission of client CDS transactions, ICE Link. Currently, ICE Link does not have a mechanism by which a non-member dealer could submit a transaction for clearing at ICE Trust. However, ICE Trust Clearing Rule 314 provides for open access to ICE Trust's clearing systems for all reasonably qualified execution venues and trade processing platforms. ICE Trust has represented that it remains committed to work with reasonably qualified execution venues and trade processing platforms to facilitate functionality for submission of trades by non-member dealers if there is interest in such functionality. See March 2010 Request, supra note 7.

Trust or any guarantor, and the clearance and settlement process for CDS.[16] The Commission believes continued operation of ICE Trust consistent with the conditions of this Order will facilitate the availability to market participants of information that should enable them to make better informed investment decisions and better value and evaluate their Cleared CDS and counterparty exposures relative to a market for CDS that is not centrally cleared.

This temporary extension of the December 2009 ICE Trust Order is subject to a number of conditions that are designed to enable Commission staff to continue to monitor ICE Trust's clearance and settlement of CDS transactions and help reduce risk in the CDS market. These conditions require that ICE Trust: (i) make available on its Web site its annual audited financial statements; (ii) preserve records related to the conduct of its Cleared CDS clearance and settlement services for at least five years (in an easily accessible place for the first two years); (iii) provide information relating to its Cleared CDS clearance and settlement services to the Commission and provide access to the Commission to conduct on-site inspections of facilities, records and personnel related to its Cleared CDS clearance and settlement services; (iv) notify the Commission about material disciplinary actions taken against any of its members utilizing its Cleared CDS clearance and settlement services, and about the involuntary termination of the membership of an entity that is utilizing ICE Trust's Cleared CDS clearance and settlement services; (v) provide the Commission with changes to rules, procedures, and any other material events affecting its Cleared CDS clearance and settlement services; (vi) provide the Commission with reports prepared by independent audit personnel that are generated in accordance with risk

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[16] The Commission believes that it is important in the CDS market, as in the market for securities generally, that parties to transactions should have access to financial information that would allow them to evaluate appropriately the risks relating to a particular investment and make more informed investment decisions. See generally Policy Statement on Financial Market Developments, The President's Working Group on Financial Markets, March 13, 2008, available at: http://www.treas.gov/press/releases/reports/pwgpolicystatemktturmoil_03122008.pdf.

assessment of the areas set forth in the Commission's Automation Review Policy Statements[17] and its annual audited financial statements prepared by independent audit personnel; and (vii) report all significant systems outages to the Commission.

In addition, this temporary extension of the December 2009 ICE Trust Order is conditioned on ICE Trust, directly or indirectly, making available to the public on terms that are fair and reasonable and not unreasonably discriminatory: (i) all end-of-day settlement prices and any other prices with respect to Cleared CDS that ICE Trust may establish to calculate mark-to-market margin requirements for ICE Trust clearing members; and (ii) any other pricing or valuation information with respect to Cleared CDS as is published or distributed by ICE Trust.[18]

C. Extended Temporary Conditional Exemption from Exchange Registration Requirements

When we initially provided exemptions in connection with CDS clearing by ICE Trust, we granted a temporary conditional exemption to ICE Trust from the requirements of Sections 5 and 6 of the Exchange Act, and the rules and regulations thereunder, in connection with ICE Trust's calculation of mark-to-market prices for open positions in Cleared CDS. We also temporarily exempted ICE Trust participants from the prohibitions of Section 5 to the extent that they use ICE Trust to effect or report any transaction in Cleared CDS in connection with ICE Trust's calculation of mark-to-market prices for open positions in Cleared CDS. Section 5 of the Exchange Act contains certain restrictions relating to the registration of national securities

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17 See Automated Systems of Self-Regulatory Organization, Exchange Act Release No. 27445 (November 16, 1989), File No. S7-29-89, and Automated Systems of Self-Regulatory Organization (II), Exchange Act Release No. 29185 (May 9, 1991), File No. S7-12-91.

18 As a CCP, ICE Trust collects and processes information about CDS transactions, prices, and positions. Public availability of such information can improve fairness, efficiency, and competitiveness in the market. Moreover, with pricing and valuation information relating to Cleared CDS, market participants would be able to derive information about underlying securities and indices, potentially improving the efficiency and effectiveness of the securities markets.

exchanges,[19] while Section 6 provides the procedures for registering as a national securities exchange.[20]

We granted these temporary exemptions to facilitate the establishment of ICE Trust's end-of-day settlement price process. ICE Trust had represented that in connection with its clearing and risk management process it would calculate an end-of-day settlement price for each Cleared CDS in which an ICE Trust participant has a cleared position, based on prices submitted by the participants. As part of this mark-to-market process, ICE Trust has periodically required its clearing members to execute certain CDS trades at the price at which certain quotations of the clearing members cross. ICE Trust represents that it wishes to continue periodically requiring clearing members to execute certain CDS trades in this manner.

As discussed above, we have found in general that it is necessary or appropriate in the public interest, and is consistent with the protection of investors, to facilitate continued CDS clearing by ICE Trust. Consistent with that finding – and in reliance on ICE Trust's representation that the end-of-day settlement pricing process, including the periodically required trading, is integral to its risk management – we further find that it is necessary or appropriate in the public interest, and is consistent with the protection of investors that we exercise our authority under Section 36 of the Exchange Act to extend, until November 30, 2010, ICE Trust's

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[19] In particular, Section 5 states:

> It shall be unlawful for any broker, dealer, or exchange, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce for the purpose of using any facility of an exchange . . . to effect any transaction in a security, or to report any such transactions, unless such exchange (1) is registered as a national securities exchange under section 6 of [the Exchange Act], or (2) is exempted from such registration . . . by reason of the limited volume of transactions effected on such exchange . . . .

15 U.S.C. 78e.

[20] 15 U.S.C. 78f. Section 6 of the Exchange Act also sets forth various requirements to which a national securities exchange is subject.

temporary exemption from Sections 5 and 6 of the Exchange Act in connection with its calculation of mark-to-market prices for open positions in Cleared CDS, and ICE Trust clearing members' temporary exemption from Section 5 with respect to such trading activity.

The temporary exemption for ICE Trust will continue to be subject to three conditions. First, ICE Trust must report the following information with respect to its calculation of mark-to-market prices for Cleared CDS to the Commission within 30 days of the end of each quarter, and preserve such reports during the life of the enterprise and of any successor enterprise:

- The total dollar volume of transactions executed during the quarter, broken down by reference entity, security, or index; and
- The total unit volume and/or notional amount executed during the quarter, broken down by reference entity, security, or index.

Second, ICE Trust must establish and maintain adequate safeguards and procedures to protect participants' confidential trading information. Such safeguards and procedures shall include: (a) limiting access to the confidential trading information of participants to those employees of ICE Trust who are operating the system or responsible for its compliance with this exemption or any other applicable rules; and (b) establishing and maintaining standards controlling employees of ICE Trust trading for their own accounts. ICE Trust must establish and maintain adequate oversight procedures to ensure that the safeguards and procedures established pursuant to this condition are followed.

Third, ICE Trust must comply with the conditions to the temporary exemption from Section 17A of the Exchange Act in this Order, given that this exemption is granted in the context of our goal of continuing to facilitate ICE Trust's ability to act as a CCP for non-

excluded CDS, and given ICE Trust's representation that the end-of-day settlement pricing process, including the periodically required trading, is integral to its risk management.

D. Extended Temporary Conditional General Exemption for ICE Trust and Certain Eligible Contract Participants

As we recognized when we initially provided temporary exemptions in connection with CDS clearing by ICE Trust, applying the full panoply of Exchange Act requirements to participants in transactions in non-excluded CDS likely would deter some participants from using CCPs to clear CDS transactions. We also recognized that it is important that the antifraud provisions of the Exchange Act apply to transactions in non-excluded CDS, particularly given that OTC transactions subject to individual negotiation that qualify as security-based swap agreements already are subject to those provisions.[21]

As a result, we concluded that it is appropriate in the public interest and consistent with the protection of investors to apply temporarily substantially the same framework to transactions by market participants in non-excluded CDS that applies to transactions in security-based swap agreements. Consistent with that conclusion, we temporarily exempted ICE Trust, and certain

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[21] While Section 3A of the Exchange Act excludes "swap agreements" from the definition of "security," certain antifraud and insider trading provisions under the Exchange Act explicitly apply to security-based swap agreements. See (a) paragraphs (2) through (5) of Section 9(a), 15 U.S.C. 78i(a), prohibiting the manipulation of security prices; (b) Section 10(b), 15 U.S.C. 78j(b), and underlying rules prohibiting fraud, manipulation or insider trading (but not prophylactic reporting or recordkeeping requirements); (c) Section 15(c)(1), 15 U.S.C. 78o(c)(1), which prohibits brokers and dealers from using manipulative or deceptive devices; (d) Sections 16(a) and (b), 15 U.S.C. 78p(a) and (b), which address disclosure by directors, officers and principal stockholders, and short-swing trading by those persons, and rules with respect to reporting requirements under Section 16(a); (e) Section 20(d), 15 U.S.C. 78t(d), providing for antifraud liability in connection with certain derivative transactions; and (f) Section 21A(a)(1), 15 U.S.C. 78u-1(a)(1), related to the Commission's authority to impose civil penalties for insider trading violations.

"Security-based swap agreement" is defined in Section 206B of the Gramm-Leach-Bliley Act as a swap agreement in which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

members and eligible contract participants, from a number of Exchange Act requirements, subject to certain conditions, while excluding certain enforcement-related and other provisions from the scope of the exemption.

We believe that continuing to facilitate the central clearing of CDS transactions by ICE Trust through this type of temporary exemption will provide important risk management benefits and systemic benefits. We also believe that facilitating the central clearing of customer CDS transactions, subject to the conditions in this Order, will provide an opportunity for the customers of ICE Trust clearing members to control counterparty risk.

Accordingly, pursuant to Section 36 of the Exchange Act, the Commission finds that it is necessary or appropriate in the public interest and is consistent with the protection of investors to exercise its authority to grant an exemption until November 30, 2010 from certain requirements under the Exchange Act.

As before, this temporary conditional exemption applies to ICE Trust and to any eligible contract participants[22] – including any ICE Trust clearing member – other than eligible contract participants that are self-regulatory organizations or eligible contract participants that are registered brokers or dealers.[23]

As before, under this temporary conditional exemption, and solely with respect to Cleared CDS, those persons generally are exempt from the provisions of the Exchange Act and the rules and regulations thereunder that do not apply to security-based swap agreements. Thus,

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22 This exemption in general applies to eligible contract participants, as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order, other than persons that are eligible contract participants under paragraph (C) of that section.

23 A separate temporary exemption addresses the Cleared CDS activities of registered broker-dealers. See Part II.F, infra. Solely for purposes of this Order, a registered broker-dealer, or a broker or dealer registered under Section 15(b) of the Exchange Act, does not refer to someone that would otherwise be required to register as a broker or dealer solely as a result of activities in Cleared CDS in compliance with this Order.

those persons would still be subject to those Exchange Act requirements that explicitly are applicable in connection with security-based swap agreements.[24] In addition, all provisions of the Exchange Act related to the Commission's enforcement authority in connection with violations or potential violations of such provisions would remain applicable.[25] In this way, the temporary conditional exemption would apply the same Exchange Act requirements in connection with non-excluded CDS as apply in connection with OTC credit default swaps.

Consistent with the December 2009 ICE Trust Order exemptions, this temporary conditional exemption does not extend to: the exchange registration requirements of Exchange Act Sections 5 and 6;[26] the clearing agency registration requirements of Exchange Act Section 17A; the requirements of Exchange Act Sections 12, 13, 14, 15(d), and 16;[27] the broker-dealer registration requirements of Section 15a(1)[28] and the other requirements of the Exchange Act, including paragraphs (4) and (6) of Section 15(b),[29] and the rules and regulations thereunder that

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24 See note 40, infra.

25 Thus, for example, the Commission retains the ability to investigate potential violations and bring enforcement actions in the federal courts as well as in administrative proceedings, and to seek the full panoply of remedies available in such cases.

26 These are subject to a separate temporary class exemption. See note 1, supra. A national securities exchange that effects transactions in Cleared CDS would continue to be required to comply with all requirements under the Exchange Act applicable to such transactions. A national securities exchange could form subsidiaries or affiliates that operate exchanges exempt under that order. Any subsidiary or affiliate of a registered exchange could not integrate, or otherwise link, the exempt CDS exchange with the registered exchange including the premises or property of such exchange for effecting or reporting a transaction without being considered a "facility of the exchange." See Section 3(a)(2), 15 U.S.C. 78c(a)(2).

This Order also includes a separate temporary exemption from Sections 5 and 6 in connection with the mark-to-market process of ICE Trust, discussed above, at note 19 and accompanying text.

27 15 U.S.C. 78l, 78m, 78n, 78o(d), 78p. Eligible contract participants and other persons instead should refer to the interim final temporary rules issued by the Commission. See note 1, supra.

28 15 U.S.C. 78o(a)(1).

29 Exchange Act Sections 15(b)(4) and 15(b)(6), 15 U.S.C. 78o(b)(4) and (b)(6), grant the Commission authority to take action against broker-dealers and associated persons in certain situations.

apply to a broker or dealer that is not registered with the Commission; or certain provisions related to government securities.[30]

As before, ICE Trust clearing members must be in material compliance with ICE Trust rules to be eligible for this temporary conditional exemption from Exchange Act requirements. ICE Trust clearing members that participate in the clearing of Cleared CDS transactions on behalf of other persons annually must provide a certification to ICE Trust that attests to whether the clearing member is relying on the temporary conditional exemption from broker-dealer related requirements described below.[31]

E. Conditional Temporary Exemption from Broker-Dealer Related Requirements for Certain Clearing Members of ICE Trust and Others

In the December 2009 ICE Trust Order, we granted a conditional temporary exemption from particular Exchange Act requirements to certain clearing members of ICE Trust, and to certain eligible contract participants, in connection with CDS cleared on ICE Trust. Absent an exception or exemption, persons that effect transactions in non-excluded CDS that are securities

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30 This exemption specifically does not extend to the Exchange Act provisions applicable to government securities, as set forth in Section 15C, 15 U.S.C. 78o-5, and its underlying rules and regulations. The exemption also does not extend to related definitions found at paragraphs (42) through (45) of Section 3(a), 15 U.S.C. 78c(a). The Commission does not have authority under Section 36 to issue exemptions in connection with those provisions. See Exchange Act Section 36(b), 15 U.S.C. 78mm(b).

31 To the extent we extend this temporary conditional exemption and include the same type of certification requirement, the clearing member then would annually renew the certification.

This condition requiring clearing members to convey information to ICE Trust as a repository for regulators, and other conditions of this Order that require clearing members or others to convey information (e.g., an audit report related to the clearing member's compliance with exemptive conditions) to ICE Trust, does not impose upon ICE Trust any independent duty to audit or otherwise review that information. These conditions also do not impose on ICE Trust any independent fiduciary or other obligation to any customer of a clearing member.

may be required to register as broker-dealers pursuant to Section 15(a)(1) of the Exchange Act.[32] Certain reporting and other requirements of the Exchange Act could apply to such persons, as broker-dealers, regardless of whether they are registered with the Commission.

In granting that exemption, we noted that it is consistent with our investor protection mandate to require securities intermediaries that receive or hold funds and securities on behalf of others to comply with standards that safeguard the interests of their customers.[33] We recognized, however, that requiring intermediaries that receive or hold funds and securities on behalf of customers in connection with transactions in non-excluded CDS to register as broker-dealers may deter the use of CCPs in customer CDS transactions, to the detriment of the markets and market participants generally. We concluded that those factors, along with certain representations of ICE Trust,[34] argued in favor of flexibility in applying the requirements of the

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[32] 15 U.S.C. 78o(a)(1). This section generally provides that, absent an exception or exemption, a broker or dealer that uses the mails or any means of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, any security must register with the Commission.

Section 3(a)(4) of the Exchange Act generally defines a "broker" as "any person engaged in the business of effecting transactions in securities for the account of others," but excludes certain bank securities activities. 15 U.S.C. 78c(a)(4). Section 3(a)(5) of the Exchange Act generally defines a "dealer" as "any person engaged in the business of buying and selling securities for his own account," but includes exceptions for certain bank activities. 15 U.S.C. 78c(a)(5). Exchange Act Section 3(a)(6) defines a "bank" as a bank or savings association that is directly supervised and examined by state or federal banking authorities (with certain additional requirements for banks and savings associations that are not chartered by a federal authority or a member of the Federal Reserve System). 15 U.S.C. 78c(a)(6).

[33] Registered broker-dealers are required to segregate assets held on behalf of customers from proprietary assets, because segregation will assist customers in recovering assets in the event the intermediary fails. Absent such segregation, collateral could be used by an intermediary to fund its own business, and could be attached to satisfy the intermediary's debts were it to fail. Moreover, the maintenance of adequate capital and liquidity protects customers, CCPs, and other market participants. Adequate books and records (including both transactional and position records) are necessary to facilitate day to day operations as well as to help resolve situations in which an intermediary fails and either a regulatory authority or receiver is forced to liquidate the firm. Appropriate records also are necessary to allow examiners to review for improper activities, such as insider trading or fraud.

[34] We noted that in granting the temporary exemption, we also relied on ICE Trust's representation that before offering the Non-Member Framework, it will adopt a requirement that non-U.S. clearing members subject to the framework are regulated by: (i) a signatory to the IOSCO Multilateral

Exchange Act to these intermediaries, conditioned on requiring the intermediaries to take reasonable steps to help increase the likelihood that their customers would be protected in the event the intermediary became insolvent, even if those safeguards are as not as strong as those required of registered broker-dealers.

As a result, and solely with respect to Cleared CDS, we provided a temporary conditional exemption from the broker-dealer registration requirements of Section 15(a)(1), and the other requirements of the Exchange Act (other than paragraphs (4) and (6) of Section 15(b)[35]) and the rules and regulations thereunder that apply to a broker or dealer that is not registered with the Commission, to: (i) ICE Trust clearing members other than registered broker-dealers; and (ii) any eligible contract participant, other than a registered broker-dealer, that does not receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons.[36]

That exemption was subject to a number of conditions. For ICE Trust clearing members that receive or hold funds or securities of U.S. persons (or who receive or hold funds or securities

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Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, or (ii) a signatory to a bilateral arrangement with the Commission for enforcement cooperation. We further noted that non-U.S. clearing members that do not meet these criteria would not be eligible to rely on this exemption.

[35] As noted above, see note 29, supra, Exchange Act Sections 15(b)(4) and 15(b)(6) grant the Commission authority to take action against broker-dealers and associated persons in certain situations. Accordingly, while the exemption we granted from broker-dealer requirements generally extended to persons that act as broker-dealers in the market for Cleared CDS (potentially including inter-dealer brokers that do not hold funds or securities for others), such persons may be subject to actions under Sections 15(b)(4) and (b)(6) of the Exchange Act.

In addition, such persons may be subject to actions under Exchange Act Section 15(c)(1), 15 U.S.C. 78o(c)(1), which prohibits brokers and dealers from using manipulative or deceptive devices. As noted above, Section 15(c)(1) explicitly applies to security-based swap agreements. Sections 15(b)(4), 15(b)(6) and 15(c)(1), of course, would not apply to persons subject to this exemption who do not act as broker-dealers or associated persons of broker-dealers.

[36] In some circumstances, an eligible contract participant that does not hold customer funds or securities nonetheless may act as a dealer in securities transactions, or as a broker (such as an inter-dealer broker).

of any person in the case of a U.S. clearing member) – other than for an affiliate that controls, is controlled by, or is under common control with the clearing member – in connection with Cleared CDS, these included a condition requiring the clearing member, as promptly as practicable after receipt, to transfer such funds and securities (other than those promptly returned to such other persons) to either the Custodial Client Omnibus Margin Account at ICE Trust or to an account held by a third-party custodian. Additional related conditions addressed the types of permissible arrangements for holding collateral at a third-party custodian, and permissible custodians.[37]

These conditions requiring customer collateral to be segregated from clearing members address only the initial margin that customers post in connection with Cleared CDS. In the December 2009 ICE Trust Order we noted, however, that we would evaluate the protections afforded to customers' mark-to-market profits associated with Cleared CDS positions, and consider the potential benefits of requiring clearing members to segregate customers' variation margin in connection with Cleared CDS positions.

As before, we are required to balance the goals of promoting the central clearing of customer CDS transactions against the goal of protecting customers, and to be mindful that these conditions cannot provide legal certainty that customer collateral in fact would be protected in the event an ICE Trust clearing member were to become insolvent. We believe that the segregation framework set forth in our earlier order represents a reasonable step to help protect

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[37] Other conditions of this exemption precluded the clearing of CDS transaction for natural persons, required certain risk disclosures to customers, required the clearing member also must annually provide ICE Trust with a self-assessment that it is in compliance with the requirements along with a report by the clearing member's independent third-party auditor that attests to that assessment, and required the clearing member to agree to provide the Commission with access to information related to Cleared CDS transactions.

the collateral posted by customers of ICE Trust's clearing members from the threat of loss in the event of clearing member insolvency.

Accordingly, pursuant to Section 36 of the Exchange Act, the Commission finds that it is necessary or appropriate in the public interest and is consistent with the protection of investors to exercise its authority to grant a conditional exemption until November 30, 2010, with respect to certain Exchange Act requirements related to broker-dealers.[38] As before, this exemption is available to ICE Trust clearing members other than registered broker-dealers, and to any eligible contract participant, other than a registered broker-dealer, that does not receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons.[39] As before, and solely with respect to Cleared CDS, those persons temporarily will be exempt from the broker-dealer registration requirements of Section 15(a)(1), and the other requirements of the Exchange Act (other than paragraphs (4) and (6) of Section

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[38] As before, in granting this relief we are relying on representations by ICE Trust that non-U.S. clearing members that provide their customers with access to CDS clearing on ICE Trust are regulated by: (i) a signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, or (ii) a signatory to a bilateral arrangement with the Commission for enforcement cooperation. Non-U.S. clearing members that do not meet these criteria would not be eligible to rely on this exemption.

[39] In some circumstances, an eligible contract participant that does not hold customer funds or securities nonetheless may act as a dealer in securities transactions, or as a broker (such as an inter-dealer broker).

Solely for purposes of this requirement, an eligible contract participant would not be viewed as receiving or holding funds or securities for purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons, if the other persons involved in the transaction would not be considered "customers" of the eligible contract participant under the analysis used for determining whether certain persons would be considered "customers" of a broker-dealer under Exchange Act Rule 15c3-3(a)(1). For these purposes, and for the purpose of the definition of "Cleared CDS," the terms "purchasing" and "selling" mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing the rights or obligations under, a Cleared CDS, as the context may require. This is consistent with the meaning of the terms "purchase" or "sale" under the Exchange Act in the context of security-based swap agreements. See Exchange Act Section 3A(b)(4).

15(b)) and the rules and regulation thereunder that apply to a broker or dealer that is not registered with the Commission.

As before, for all ICE Trust clearing members – regardless of whether they receive or hold customer collateral in connection with Cleared CDS – this temporary exemption is conditioned on the clearing member being in material compliance with ICE Trust's rules, as well as on the clearing member being in compliance with applicable laws and regulations relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared CDS.

Additional conditions apply to ICE Trust clearing members that receive or hold funds or securities of U.S. persons (or that receive or hold funds or securities of any person in the case of a U.S. clearing member) – other than for an affiliate that controls, is controlled by, or is under common control with the clearing member – in connection with Cleared CDS. For those ICE Trust clearing members, this temporary exemption is conditioned on the customer not being a natural person, and on the clearing member providing certain risk disclosures to the customer.[40]

In addition, under this revised temporary exemption, such clearing members must, as promptly as practical after receipt, transfer such funds and securities – other than those promptly returned to such other person – to either the Custodial Client Omnibus Margin Account at ICE Trust[41] or an account held by a third-party custodian, as described below.

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[40] The clearing member must disclose that it is not regulated by the Commission and that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply, that the insolvency law of the applicable jurisdiction may affect the customer's ability to recover funds and securities or the speed of any such recovery, and (if applicable) that non-U.S. members may be subject to an insolvency regime that is materially different from that applicable to U.S. persons.

[41] Cash collateral transferred to ICE Trust may be invested in "Eligible Custodial Assets," as defined in ICE Trust's "Custodial Asset Policies." Also, collateral transferred to ICE Trust may be held at a subcustodian.

As before, collateral that is held at a third-party custodian must either be held: (1) in the name of the customer, subject to an agreement in which the customer, the clearing member and the custodian are parties, acknowledging that the assets held therein are customer assets used to collateralize obligations of the customer to the clearing member, and that the assets held in the account may not otherwise be pledged or rehypothecated by the clearing member or the custodian; or (2) in an omnibus account for which the clearing member maintains daily records as to the amount owing to each customer, and which is subject to an agreement between the clearing member and the custodian specifying: (i) that all account assets are held for the exclusive benefit of the clearing member's customers and are being kept separate from any other accounts that the clearing member maintains with the custodian; (ii) that the account assets may not be used as security for a loan to the clearing member by the custodian, and shall be subject to no right, charge, security interest, lien, or claim of any kind in favor of the custodian or any person claiming through the custodian; and (iii) that the assets may not otherwise be pledged or rehypothecated by the clearing member or the custodian.[42] Under either approach, the third-party custodian cannot be affiliated with the clearing member.[43] Moreover, if the third-party custodian is a U.S. entity, it must be a bank (as that term is defined in Section 3(a)(6) of the

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[42] We do not contemplate that either of these approaches involving the use of a third-party custodian would interfere with the ability of a clearing member and its customer to agree as to how any return or losses earned on those assets would be distributed between the clearing member and its customer.

Also, the restriction in both approaches on the clearing member's and the custodian's ability to rehypothecate these customer funds and securities does not preclude that collateral from being transferred to ICE Trust as necessary to satisfy variation margin requirements in connection with the customer's CDS position.

[43] For purposes of the Order, an "affiliated person" of a clearing member mean any person who directly or indirectly controls a clearing member or any person who is directly or indirectly controlled by or under common control with a clearing member; ownership of 10 percent or more of an entity's common stock will be deemed prima facie control of that entity. See definition in paragraph III.(f)(2) of this Order. This standard is analogous to the standard used to identify affiliated persons of broker-dealers under Exchange Act Rule 15c3-3(a)(13), 17 CFR 240.15c3-3(a)(13).

Exchange Act), have total regulatory capital of at least $1 billion,[44] and have been approved to engage in a trust business by an appropriate regulatory agency. A custodian that is not a U.S. entity must have regulatory capital of at least $1 billion,[45] and must provide the clearing member, the customer and ICE Trust with a legal opinion providing that the account assets are subject to regulatory requirements in the custodian's home jurisdiction designed to protect, and provide for the prompt return of, custodial assets in the event of the custodian's insolvency, and that the assets held in that account reasonably could be expected to be legally separate from the clearing member's assets in the event of the clearing member's insolvency. Also, cash collateral posted with the third-party custodian may be invested in other assets, consistent with the investment policies that govern collateral held at ICE Trust.[46] Finally, a clearing member that uses a third-party custodian to hold customer collateral must notify ICE Trust of that use.

As before, to the extent there is any delay in the clearing member transferring such funds and securities to ICE Trust or a third-party custodian,[47] the clearing member must effectively segregate the collateral in a way that, pursuant to applicable law, could reasonably be expected to effectively protect the collateral from the clearing member's creditors. The clearing member

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44 In particular, custodians that are U.S. entities must have total capital, as calculated to meet the applicable requirements imposed by the entity's appropriate regulatory agency of at least $1 billion. The term "appropriate regulatory agency" is defined in Section 3(a)(34) of the Exchange Act, 15 U.S.C. 78c(a)(34).

45 Custodians that are non-U.S. entities must have total capital, as calculated to meet the applicable requirements imposed by the foreign financial regulatory authority of at least $1 billion. The term "foreign financial regulatory authority" is defined in Section 3(a)(52) of the Exchange Act, 15 U.S.C. 78c(a)(52).

46 See note 41, supra.

47 This provision is intended to address short-term technology or operational issues. ICE Trust rules require collateral to be transferred promptly on receipt, with the expectation that margin would be transferred on the same business day.

may not permit customers to "opt out" of such segregation even if applicable regulations or laws otherwise would permit such "opt out."

Also, as before, this temporary exemption is conditioned on clearing member compliance with a self-assessment and audit requirement,[48] and on the clearing member's agreement to provide the Commission with access to information related to Cleared CDS transactions.[49]

As we discussed in the December 2009 ICE Trust order, requiring clearing members that receive or hold customer collateral to satisfy such conditions will not guarantee that a customer

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[48] In particular, to facilitate compliance with the segregation practices that are required as a condition to this temporary exemption, the clearing member must annually provide ICE Trust with a self-assessment that it is in compliance with the requirements, along with a report by the clearing member's independent third-party auditor that attests to that assessment. The report must be dated the same date as the clearing member's annual audit report (but may be separate from it), and must be produced in accordance with the standards that the auditor follows in auditing the clearing member's financial statements.

As the self-assessment is intended to serve as the basis for the third-party auditor's report, we expect the self-assessment to be generally contemporaneous with that report.

[49] Specifically, to support these segregation practices and enhance the ability to detect and deter circumstances in which clearing members fail to segregate customer collateral consistent with the exemption, this temporary exemption is conditioned on the clearing member agreeing to provide the Commission with access to information related to Cleared CDS transactions. This requirement is consistent with a requirement in Exchange Act Rule 15a-6(a)(3)(i)(B), which exempts certain foreign broker-dealers from registering with the Commission. See Exchange Act Rule 15a-6(a)(3)(i)(B).

Under this condition, the clearing member would provide the Commission (upon request and subject to agreements reached between the Commission or the U.S. Government and an appropriate foreign securities authority, see Section 3(a)(50) of the Exchange Act, 15 U.S.C. 78c(a)(50)), with information or documents within the clearing member's possession, custody, or control, as well as testimony of clearing member personnel and assistance in taking the evidence of other persons, that relates to Cleared CDS transactions. If, after the clearing member has exercised its best efforts to provide this information (including requesting the appropriate governmental body and, if legally necessary, its customers), the clearing member nonetheless is prohibited from providing the information by applicable foreign law or regulations, this temporary conditional exemption would no longer be available to the clearing member.

Consistent with the discussion above as to the loss of an exemption due to an underlying representation no longer being accurate, see note 8, supra, if a clearing member were to lose the benefit of this exemption due to the failure to provide information to the Commission as the result of a prohibition by an applicable foreign law or regulation, the legal status of existing open positions in non-excluded CDS associated with those clearing members and its customers would remain unchanged, but the clearing member could not establish new CDS positions pursuant to the exemption.

would receive the return of its collateral in the event of a clearing member's insolvency, particularly in light of the fact-specific nature of the insolvency process and the multiplicity of insolvency regimes that may apply to ICE Trust's members clearing for U.S. customers. We believe, however, that these are reasonable steps for increasing the likelihood that customers would be able to access collateral in such an insolvency event. We also recognize that these customers generally may be expected to be sophisticated market participants that should be able to weigh the risks associated with entering into arrangements with intermediaries that are not registered broker-dealers, particularly in light of the disclosure required as a condition to this temporary exemption.

F. Extended Temporary General Exemption for Certain Registered Broker-Dealers

The 2009 ICE Trust Orders included limited exemptions from Exchange Act requirements to registered broker-dealers in connection with their activities involving Cleared CDS. In crafting these temporary exemptions, we balanced the need to avoid creating disincentives to the prompt use of CCPs against the critical role that certain broker-dealers play in promoting market integrity and protecting customers (including broker-dealer customers that are not involved with CDS transactions).

In light of the risk management and systemic benefits in continuing to facilitate CDS clearing by ICE Trust through targeted exemptions to registered broker-dealers, the Commission finds pursuant to Section 36 of the Exchange Act that it is necessary or appropriate in the public interest and is consistent with the protection of investors to exercise its authority to extend this

temporary registered broker-dealer exemption from certain Exchange Act requirements until November 30, 2010.[50]

Consistent with the temporary exemptions discussed above, and solely with respect to Cleared CDS, we are temporarily exempting registered broker-dealers from provisions of the Exchange Act and the rules and regulations thereunder that do not apply to security-based swap agreements. As discussed above, we are not excluding registered broker-dealers from Exchange Act provisions that explicitly apply in connection with security-based swap agreements or from related enforcement authority provisions.[51] As above, and for similar reasons, we are not exempting registered broker-dealers from: Sections 5, 6, 12(a) and (g), 13, 14, 15(b)(4), 15(b)(6), 15(d), 16 and 17A of the Exchange Act.[52]

Further we are not exempting registered broker-dealers from the following additional provisions under the Exchange Act: (1) Section 7(c),[53] regarding the unlawful extension of credit by broker-dealers; (2) Section 15(c)(3),[54] regarding the use of unlawful or manipulative devices

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50 The temporary exemptions addressed above – with regard to ICE Trust, certain clearing members and certain eligible contract participants – are not available to persons that are registered as broker-dealers with the Commission (other than those that are notice registered pursuant to Exchange Act Section 15(b)(11)). Exchange Act Section 15(b)(11) provides for notice registration of certain persons that effect transactions in security futures products. 15 U.S.C. 78o(b)(11).

51 See notes 41 and 45, supra. As noted above, broker-dealers also would be subject to Section 15(c)(1) of the Exchange Act, which prohibits brokers and dealers from using manipulative or deceptive devices, because that provision explicitly applies in connection with security-based swap agreements. In addition, to the extent the Exchange Act and any rule or regulation thereunder imposes any other requirement on a broker-dealer with respect to security-based swap agreements (e.g., requirements under Rule 17h-1T to maintain and preserve written policies, procedures, or systems concerning the broker or dealer's trading positions and risks, such as policies relating to restrictions or limitations on trading financial instruments or products), these requirements would continue to apply to broker-dealers' activities with respect to Cleared CDS.

52 We also are not exempting those members from provisions related to government securities, as discussed above.

53 15 U.S.C. 78g(c).

54 15 U.S.C. 78o(c)(3).

by broker-dealers; (3) Section 17(a),[55] regarding broker-dealer obligations to make, keep and furnish information; (4) Section 17(b),[56] regarding broker-dealer records subject to examination; (5) Regulation T,[57] a Federal Reserve Board regulation regarding extension of credit by broker-dealers; (6) Exchange Act Rule 15c3-1, regarding broker-dealer net capital; (7) Exchange Act Rule 15c3-3, regarding broker-dealer reserves and custody of securities; (8) Exchange Act Rules 17a-3 through 17a-5, regarding records to be made and preserved by broker-dealers and reports to be made by broker-dealers; and (9) Exchange Act Rule 17a-13, regarding quarterly security counts to be made by certain exchange members and broker-dealers.[58] Registered broker-dealers must comply with these provisions in connection with their activities involving non-excluded CDS because these provisions are especially important to helping protect customer funds and securities, ensure proper credit practices and safeguard against fraud and abuse.[59]

G. Solicitation of Comments

When we granted the December 2009 ICE Trust Order extending the exemptions granted in connection with CDS clearing by ICE Trust and expanding that relief to accommodate central clearing of customer CDS transactions, we requested comment on all aspects of the exemptions

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55 15 U.S.C. 78q(a).

56 15 U.S.C. 78q(b).

57 12 CFR 220.1 et seq.

58 Solely for purposes of this temporary exemption, in addition to the general requirements under the referenced Exchange Act sections, registered broker-dealers shall only be subject to the enumerated rules under the referenced Exchange Act sections.

59 Indeed, Congress directed the Commission to promulgate broker-dealer financial responsibility rules, including rules relating to custody, the use of customer securities, the use of customers' deposits or credit balances, and the establishment of minimum financial requirements.

and particularly requested comments as to the relief we granted in connection with customer clearing. We received two comments in response to this request.[60]

In connection with this Order extending the exemptions granted in connection with CDS clearing by ICE Trust, we reiterate our request for comments on all aspects of the exemptions. We particularly request comments as to whether the conditions we have placed on the relief adequately protect customer collateral from the threat posed by clearing member insolvency, whether additional conditions or requirements are appropriate to promote compliance with the requirements of the exemptions, and what, if any, additional conditions would be appropriate.

We also request comment as to whether the segregation conditions of this Order should extend to certain transfers of variation margin associated with Cleared CDS, as well as whether CDS customers are able to easily access mark-to-market profits associated with Cleared CDS. Do any practices (such as, for example, negotiated "thresholds" in credit support annexes between clearing members and customers) impede customers from demanding and receiving the timely return of such mark-to-market profits? Should the Commission condition any future exemptions on segregating the mark-to-market profits associated with Cleared CDS if they are not returned to customers within a certain amount of time following demand (subject to provisions regarding reasonable minimum transfer amounts, and provisions permitting offset against amounts owing from the customer directly to the clearing member)? Would such a condition impose significant operational or other costs that may deter the clearing of customer

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60 See Comment from Kristie L. Lovelady (Dec. 9, 2009) (requesting stronger restrictions generally); Comment from JP Morgan (Mar. 2, 2010) (opposing application of segregation conditions to variation margin transfers, and raising issues as to application of segregation conditions in the context of portfolio margining practices; both issues are the subject of additional requests for comment in this Order).

We also solicited comments earlier as part of the March 2009 ICE Trust Order, but received no comments in response to that request.

CDS transactions? Are there other factors (e.g., costs, benefits, market conditions, economic considerations, or availability of credit hedges) that may reduce the significance of any customer protection benefits provided by requiring segregation of such mark-to-market profits? We also invite comment on whether differences among CDS CCPs regarding protection of mark-to-market profits may have competitive impacts.

In addition, we request comment on how clearing members intend to comply with this Order's (and have complied with the December 2009 ICE Trust Order's) condition requiring the segregation of all margin posted by customers connected with purchasing, selling, clearing, settling or holding Cleared CDS positions – not only the gross margin required by ICE Trust rules. To what extent would clearing firms typically require certain customers to post such "excess" margin above the ICE Trust requirements in connection with Cleared CDS transactions?

Finally, to what extent do clearing members and customers seek to include Cleared CDS positions within portfolio margining calculations that include other instruments (e.g., non-cleared CDS, other OTC derivatives or securities)? If portfolio margining is used, how do clearing members allocate the total collateral required by a clearing member from a customer between the portion posted in connection with Cleared CDS (and hence subject to this Order's segregation conditions) and the portion attributable to other derivatives transactions involving that clearing member and customer? To the extent a clearing member's portfolio margin calculations include a customer's Cleared CDS positions, is it reasonable to conclude that any portion of the customer margin is not connected with Cleared CDS, and thus does not need to be segregated? Would a dealer's inclusion of Cleared CDS positions in its portfolio margin calculation interfere with the customer protection benefits of CDS clearing in the event of a dealer's insolvency? In other

words, would the dealer's cleared CDS customer positions be portable to another dealer if collateralized solely by the ICE Trust-required margin, or would the dealer's cleared CDS customers be placed at a disadvantage in an insolvency situation because of this practice? Should the Commission provide firms with further guidance regarding the inclusion of Cleared CDS in portfolio margin calculations?

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/other.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-05-09 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 Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-05-09. 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. We will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/other.shtml). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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.

III. Conclusion

IT IS HEREBY ORDERED, pursuant to Section 36(a) of the Exchange Act, that, until November 30, 2010:

(a) Exemption from Section 17A of the Exchange Act.

ICE Trust U.S. LLC ("ICE Trust") shall be exempt from Section 17A of the Exchange Act solely to perform the functions of a clearing agency for Cleared CDS (as defined in paragraph (f)(1) of this Order), subject to the following conditions:

(1) ICE Trust shall make available on its Web site its annual audited financial statements.

(2) ICE Trust shall keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other such records as shall be made or received by it relating to its Cleared CDS clearance and settlement services. These records shall be kept for at least five years and for the first two years shall be held in an easily accessible place.

(3) ICE Trust shall supply information and periodic reports relating to its Cleared CDS clearance and settlement services as may be reasonably requested by the Commission, and shall provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), records, and personnel related to ICE Trust's Cleared CDS clearance and settlement services.

(4) ICE Trust shall notify the Commission, on a monthly basis, of any material disciplinary actions taken against any of its members utilizing its Cleared CDS clearance

and settlement services, including the denial of services, fines, or penalties. ICE Trust shall notify the Commission promptly when ICE Trust involuntarily terminates the membership of an entity that is utilizing ICE Trust's Cleared CDS clearance and settlement services. Both notifications shall describe the facts and circumstances that led to ICE Trust's disciplinary action.

(5) ICE Trust shall notify the Commission of all changes to rules, procedures, and any other material events affecting its Cleared CDS clearance and settlement services, including its fee schedule and changes to risk management practices, the day before effectiveness or implementation of such rule changes or, in exigent circumstances, as promptly as reasonably practicable under the circumstances. All such rule changes will be posted on ICE Trust's Web site. Such notifications will not be deemed rule filings that require Commission approval.

(6) ICE Trust shall provide the Commission with reports prepared by independent audit personnel that are generated in accordance with risk assessment of the areas set forth in the Commission's Automation Review Policy Statements. ICE Trust shall provide the Commission (beginning in its first year of operation) with its annual audited financial statements prepared by independent audit personnel.

(7) ICE Trust shall report all significant systems outages to the Commission. If it appears that the outage may extend for 30 minutes or longer, ICE Trust shall report the systems outage immediately. If it appears that the outage will be resolved in less than 30 minutes, ICE Trust shall report the systems outage within a reasonable time after the outage has been resolved.

(8) ICE Trust, directly or indirectly, shall make available to the public on terms that are fair and reasonable and not unreasonably discriminatory: (i) all end-of-day settlement prices and any other prices with respect to Cleared CDS that ICE Trust may establish to calculate mark-to-market margin requirements for ICE Trust clearing members; and (ii) any other pricing or valuation information with respect to Cleared CDS as is published or distributed by ICE Trust.

(b) Exemption from Sections 5 and 6 of the Exchange Act

(1) ICE Trust shall be exempt from the requirements of Sections 5 and 6 of the Exchange Act and the rules and regulations thereunder in connection with its calculation of mark-to-market prices for open positions in Cleared CDS, subject to the following conditions:

(i) ICE Trust shall report the following information with respect to the calculation of mark-to-market prices for Cleared CDS to the Commission within 30 days of the end of each quarter, and preserve such reports during the life of the enterprise and of any successor enterprise:

(A) The total dollar volume of transactions executed during the quarter, broken down by reference entity, security, or index; and

(B) The total unit volume and/or notional amount executed during the quarter, broken down by reference entity, security, or index;

(ii) ICE Trust shall establish and maintain adequate safeguards and procedures to protect clearing members' confidential trading information. Such safeguards and procedures shall include:

(A) limiting access to the confidential trading information of clearing members to those employees of ICE Trust who are operating the system or responsible for its compliance with this exemption or any other applicable rules; and

(B) establishing and maintaining standards controlling employees of ICE Trust trading for their own accounts. ICE Trust must establish and maintain adequate oversight procedures to ensure that the safeguards and procedures established pursuant to this condition are followed; and

(iii) ICE Trust shall satisfy the conditions of the temporary exemption from Section 17A of the Exchange Act set forth in paragraphs (a)(1) – (8) of this Order.

(2) Any ICE Trust clearing member shall be exempt from the requirements of Section 5 of the Exchange Act to the extent such ICE Trust clearing member uses any facility of ICE Trust to effect any transaction in Cleared CDS, or to report any such transaction, in connection with ICE Trust's clearance and risk management process for Cleared CDS.

(c) Exemption for ICE Trust, ICE Trust clearing members, and certain eligible contract participants.

(1) Persons eligible. The exemption in paragraph (c)(2) is available to:

(i) ICE Trust; and

(ii) Any eligible contract participant (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a

person that is an eligible contract participant under paragraph (C) of that section)), including any ICE Trust clearing member, other than:

(A) an eligible contract participant that is a self-regulatory organization, as that term is defined in Section 3(a)(26) of the Exchange Act; or

(B) a broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof).

(2) Scope of exemption.

(i) In general. Subject to the conditions specified in paragraph (c)(3) of this subsection, such persons generally shall, solely with respect to Cleared CDS, be exempt from the provisions of the Exchange Act and the rules and regulations thereunder that do not apply in connection with security-based swap agreements. Accordingly, under this exemption, those persons remain subject to those Exchange Act requirements that explicitly are applicable in connection with security-based swap agreements (i.e., paragraphs (2) through (5) of Section 9(a), Section 10(b), Section 15(c)(1), paragraphs (a) and (b) of Section 16, Section 20(d) and Section 21A(a)(1) and the rules thereunder that explicitly are applicable to security-based swap agreements). All provisions of the Exchange Act related to the Commission's enforcement authority in connection with violations or potential violations of such provisions also remain applicable.

(ii) Exclusions from exemption. The exemption in paragraph (c)(2)(i), however, does not extend to the following provisions under the Exchange Act:

(A) Paragraphs (42), (43), (44), and (45) of Section 3(a);

(B) Section 5;

(C) Section 6;

(D) Section 12 and the rules and regulations thereunder;

(E) Section 13 and the rules and regulations thereunder;

(F) Section 14 and the rules and regulations thereunder;

(G) The broker-dealer registration requirements of Section 15(a)(1), and the other requirements of the Exchange Act (including paragraphs (4) and (6) of Section 15(b)) and the rules and regulations thereunder that apply to a broker or dealer that is not registered with the Commission;

(H) Section 15(d) and the rules and regulations thereunder;

(I) Section 15C and the rules and regulations thereunder;

(J) Section 16 and the rules and regulations thereunder; and

(K) Section 17A (other than as provided in paragraph (a)).

(3) Conditions for ICE Trust clearing members.

(i) Any ICE Trust clearing member relying on this exemption must be in material compliance with the rules of ICE Trust.

(ii) Any ICE Trust clearing member relying on this exemption that participates in the clearing of Cleared CDS transactions on behalf of other persons must annually provide a certification to ICE Trust that attests to whether the clearing member is relying on the exemption from broker-dealer related requirements set forth in paragraph (d) of this Order.

(d) Exemption from broker-dealer related requirements for ICE Trust clearing members and certain eligible contract participants.

(1) Persons eligible. The exemption in paragraph (d)(2) is available to:

(i) Any ICE Trust clearing member (other than one that is registered as a broker or dealer under Section 15(b) of the Exchange Act (other than paragraph (11) thereof)); and

(ii) Any eligible contract participant that does not receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons (other than one that is registered as a broker or dealer under Section 15(b) of the Exchange Act (other than paragraph (11) thereof)).

(2) Scope of exemption. The persons described in paragraph (d)(1) shall, solely with respect to Cleared CDS, be exempt from the broker-dealer registration requirements of Section 15(a)(1) and the other requirements of the Exchange Act (other than Sections 15(b)(4) and 15(b)(6)) and the rules and regulations thereunder that apply to a broker or dealer that is not registered with the Commission, subject to the conditions set forth in paragraph (d)(3) with respect to ICE Trust clearing members.

(3) Conditions for ICE Trust clearing members.

(i) General condition for ICE Trust clearing members. An ICE Trust clearing member relying on this exemption must be in material compliance with the rules of ICE Trust, and also must be in material compliance with applicable laws and regulations relating to capital, liquidity, and segregation of customers'

funds and securities (and related books and records provisions) with respect to Cleared CDS.

(ii) Additional conditions for ICE Trust clearing members that receive or hold customer funds or securities. Any ICE Trust clearing member that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for U.S. persons (or for any person if the clearing member is a U.S. clearing member) – other than for an affiliate that controls, is controlled by, or is under common control with the clearing member – also shall comply with the following conditions with respect to such activities:

(A) The U.S. person (or any person if the clearing member is a U.S. clearing member) for whom the clearing member receives or holds such funds or securities shall not be natural persons;

(B) The clearing member shall disclose to such U.S. person (or to any such person if the clearing member is a U.S. clearing member) that the clearing member is not regulated by the Commission and that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities held by the clearing member, that the insolvency law of the applicable jurisdiction may affect such persons' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding, and, if applicable, that non-U.S. clearing members may be subject to an insolvency regime that is materially different from that applicable to U.S. persons;

(C) As promptly as practicable after receipt, the clearing member shall transfer such funds and securities (other than those promptly returned to such other person) to:

(I) the clearing member's Custodial Client Omnibus Margin Account at ICE Trust; or

(II) an account held by a third-party custodian, subject to the following requirements:

(a) the funds and securities must be held either:

(1) in the name of a customer, subject to an agreement to which the customer, the clearing member and the custodian are parties, acknowledging that the assets held therein are customer assets used to collateralize obligations of the customer to the clearing member, and that the assets held in that account may not otherwise be pledged or rehypothecated by the clearing member or the custodian; or

(2) in an omnibus account for which the clearing member maintains a daily record as to the amount held in the account that is owed to each customer, and which is subject to an agreement between the clearing member and the custodian specifying that:

(i) all assets in that account are held for the exclusive benefit of the clearing member's customers and are being kept separate from any other accounts maintained by the clearing member with the custodian;

(ii) the assets held in that account shall at no time be used directly or indirectly as security for a loan to the clearing member by the custodian and shall be subject to no right, charge, security interest, lien, or claim of any kind in favor of the custodian or any person claiming through the custodian; and

(iii) the assets held in that account may not otherwise be pledged or rehypothecated by the clearing member or the custodian;

(b) the custodian may not be an affiliated person of the clearing member (as defined at paragraph (f)(2)); and

(1) if the custodian is a U.S. entity, it must be a bank (as that term is defined in section 3(a)(6) of the Exchange Act), have total capital, as calculated to meet the applicable requirements imposed by the entity's appropriate regulatory

agency (as defined in section 3(a)(34) of the Exchange Act), of at least $1 billion, and have been approved to engage in a trust business by its appropriate regulatory agency;

(2) if the custodian is not a U.S. entity, it must have total capital, as calculated to meet the applicable requirements imposed by the foreign financial regulatory authority (as defined in section 3(a)(52) of the Exchange Act) responsible for setting capital requirements for the entity, equating to at least $1 billion, and provide the clearing member, the customer and ICE Trust with a legal opinion providing that the assets held in the account are subject to regulatory requirements in the custodian's home jurisdiction designed to protect, and provide for the prompt return of, custodial assets in the event of the insolvency of the custodian, and that the assets held in that account reasonably could be expected to be legally separate from the clearing member's assets in the event of the clearing member's insolvency;

(c) such funds may be invested in Eligible Custodial Assets as that term is defined in ICE Trust's Custodial Asset Policies; and

(d) the clearing member must provide notice to ICE Trust that it is using the third-party custodian to hold customer collateral.

(D) To the extent there is any delay in transferring such funds and securities to the third-parties identified in paragraph (C), the clearing member shall effectively segregate the collateral in a way that, pursuant to applicable law, is reasonably expected to effectively protect such funds and securities from the clearing member's creditors. The clearing member shall not permit such persons to "opt out" of such segregation even if regulations or laws otherwise would permit such "opt out."

(E) The clearing member annually must provide ICE Trust with

(I) an assessment by the clearing member that it is in compliance with all the provisions of paragraphs (d)(3)(ii)(A) through (D) in connection with such activities, and

(II) a report by the clearing member's independent third-party auditor that attests to, and reports on, the clearing member's assessment described in paragraph (d)(3)(ii)(E)(I) and that is

(a) dated as of the same date as, but which may be separate and distinct from, the clearing member's annual audit report;

(b) produced in accordance with the auditing standards followed by the independent third party auditor in its audit of the clearing member's financial statements.

(F) The clearing member shall provide the Commission (upon request or pursuant to agreements reached between the Commission or the U.S. Government and any foreign securities authority (as defined in Section 3(a)(50) of the Exchange Act)) with any information or documents within the possession, custody, or control of the clearing member, any testimony of personnel of the clearing member, and any assistance in taking the evidence of other persons, wherever located, that the Commission requests and that relates to Cleared CDS transactions, except that if, after the clearing member has exercised its best efforts to provide the information, documents, testimony, or assistance, including requesting the appropriate governmental body and, if legally necessary, its customers (with respect to customer information) to permit the clearing member to provide the information, documents, testimony, or assistance to the Commission, the clearing member is prohibited from providing this information, documents, testimony, or assistance by applicable foreign law or regulations, then this exemption shall not longer be available to the clearing member.

(e) Exemption for certain registered broker-dealers.

A broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof) shall be exempt from the provisions of the Exchange Act and the rules

and regulations thereunder specified in paragraph (c)(2), solely with respect to Cleared CDS, except:

(1) Section 7(c);

(2) Section 15(c)(3);

(3) Section 17(a);

(4) Section 17(b);

(5) Regulation T, 12 CFR 200.1 et seq.;

(6) Rule 15c3-1;

(7) Rule 15c3-3;

(8) Rule 17a-3;

(9) Rule 17a-4;

(10) Rule 17a-5; and

(11) Rule 17a-13.

(f) Definitions.

(1) For purposes of this Order, the term "Cleared CDS" shall mean a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to ICE Trust, that is offered only to, purchased only by, and sold only to eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), and in which:

(i) the reference entity, the issuer of the reference security, or the reference security is one of the following:

(A) an entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available;

(B) a foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States;

(C) a foreign sovereign debt security;

(D) an asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or

(E) an asset-backed security issued or guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae; or

(ii) the reference index is an index in which 80 percent or more of the index's weighting is comprised of the entities or securities described in subparagraph (1).

(2) For purposes of this Order, the term "Affiliated Person of the Clearing Member" shall mean any person who directly or indirectly controls a clearing member or any person who is directly or indirectly controlled by or under common control with the clearing member. Ownership of 10 percent or more of the common stock of the relevant entity will be deemed prima facie control of that entity.

IV. Paperwork Reduction Act

Certain provisions of this Order contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995.[61] The Commission has submitted the proposed amendments to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. 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 control number.

A. Collection of Information

The Commission found it to be necessary or appropriate in the public interest and consistent with the protection of investors to grant the conditional temporary exemptions discussed in this Order until November 30, 2010. Among other things, the Order would require an ICE Trust clearing member that receives or holds customers' funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions to; (i) provide ICE Trust with certain certifications/notifications, (ii) make certain disclosures to cleared CDS customers, (iii) enter into certain agreements to protect customer assets, (iv) maintain a record of each customer's share of assets maintained in an omnibus account, and (v) obtain a separate report, as part of its annual audit report, as to its compliance with the conditions of the ICE Trust Order regarding protection of customer assets.

B. Proposed Use of Information

These collection of information requirements are designed, among other things, to inform cleared CDS customers that their ability to recover assets placed with the clearing member are dependent on the applicable insolvency regime, provide Commission staff with access to

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[61] 44 U.S.C. 3501 et seq.

information regarding whether clearing members are complying with the conditions of the ICE Trust order, and provide documentation helpful for the protection of cleared CDS customers' funds and securities.

C. Respondents

Based on conversations with industry participants, the Commission understands that approximately 12 firms may be presently engaged as CDS dealers and thus may seek to be a clearing member of ICE Trust. In addition, 8 more firms may enter into this business. Consequently, the Commission estimates that ICE Trust, like the other CCPs that clear CDS transactions, may have up to 20 clearing members.

D. Total Annual Reporting and Recordkeeping Burden

Paragraph III.(c)(3)(ii) of this Order requires any ICE Trust clearing member relying on the exemptive relief specified in paragraph (c) that participates in the clearing of cleared CDS transactions on behalf of other persons to annually provide a certification to ICE Trust that attests to whether the clearing member is relying on the exemption from broker-dealer related requirements set forth in paragraph (d) of that Order. The Commission estimates that it would take a clearing member approximately one half hour each year to complete the certification and provide it to ICE Trust, resulting in an aggregate burden of 10 hours per year for all 20 clearing members to comply with this requirement on an annual basis.[62]

Paragraph III.(d)(3)(ii)(C)(II)(d) of this Order requires that a clearing member notify ICE Trust if it is using a third-party custodian to hold customer collateral. The Commission estimates

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62 10 hours = (20 clearing members x ½ hour per clearing member). This estimate is based on burden estimates published with respect to other Commission actions that contained similar certification requirements (see e.g., Exchange Act Release No. 41661 (Jul 27, 1999) (64 FR 42012 (Aug. 3, 1999)), and the burden associated with the Year 2000 Operational Capability Requirements, including notification and certifications required by Rule 15b7-3T(e).

that it would take a clearing member approximately one half hour each year to draft a notification and provide it to ICE Trust, which would result in an aggregate burden of 10 hours per year for all 20 clearing members to comply with this requirement on an annual basis.[63]

Paragraph III.(d)(3)(ii)(B) of this Order requires an ICE Trust clearing member to disclose to its U.S. customers[64] that it is not regulated by the Commission and that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities it holds, that the insolvency law of the applicable jurisdiction may affect the customers' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding, and, if it is not a U.S. entity, that it may be subject to an insolvency regime that is materially different from that applicable to U.S. persons. The Commission believes that clearing members could use the language in the ICE Trust order that describes the disclosure that must be made as a template to draft the disclosure. Consequently the Commission estimates, based on staff experience, that it would take a clearing member approximately one hour to draft the disclosure. Further, the Commission believes clearing members will include this disclosure with other documents or agreements provided to cleared CDS customers and a clearing member may take approximately one half hour to determine how the disclosure should be integrated into those other documents or agreements, resulting in a one-time aggregate burden of 30 hours for all 20 clearing members to comply with this requirement.[65]

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63 Id.

64 If the clearing member is a U.S. entity, it must make this disclosure to all of its customers.

65 30 hours = (1 hour per clearing member to draft the disclosure + ½ hour per clearing member to determine how the disclosure should be integrated into those other documents or agreements) x 20 clearing members.

Paragraph III.(d)(3)(ii)(C)(II)(a)(1) of this Order requires that, if an ICE Trust clearing member chooses to segregate each of its customers' funds and securities in a separate account, it must obtain a tri-party agreement for each such account acknowledging that the assets held in the account are customer assets used to collateralize obligations of the customer to the clearing member, and that the assets held in the account may not otherwise be pledged or re-hypothecated by the clearing member or the custodian. Paragraph III.(d)(ii)(C)(II)(a)(2) of the ICE Trust order requires that, if an ICE Trust clearing member chooses to segregate its customers' funds and securities on an omnibus basis, it must obtain an agreement with the custodian with respect to the omnibus account acknowledging that the assets held in the account (i) are customer assets and are being kept separate from any other accounts maintained by the clearing member with the custodian, (ii) may at no time be used directly or indirectly as security for a loan to the clearing member by the custodian and shall be subject to no right, charge, security interest, lien, or claim of any kind in favor of the custodian or any person claiming through the custodian, and (iii) may not otherwise be pledged or re-hypothecated by the clearing member or the custodian. Opening a bank account generally includes discussions regarding the purpose for the account and a determination as to the terms and conditions applicable to such an account. We understand that most banks presently maintain omnibus and other similar types of accounts that are designed to recognize legally that the assets in the account may not be attached to cover debts of the account holder. Thus the standard agreement for this type of account used by banks should contain the representations and disclosures required by the proposed amendment. However, a small percentage of clearing members may need to work with a bank to modify its standard agreement. We estimate that 5% of the 20 clearing members, or 1 firm, may use a bank with a standard

agreement that does not contain the required language.[66] We further estimate each clearing member that uses a bank with a standard agreement that does not contain the required language would spend approximately 20 hours of employee resources working with the bank to update its standard agreement template. Therefore, we estimate that the total one-time burden to the industry as a result of this proposed requirement would be approximately 20 hours.[67]

Paragraph III.(d)(3)(ii)(C)(II)(a)(2) of this Order further requires that the clearing member maintain a daily record as to the amount held in the omnibus account that is owed to each customer. The Commission included this requirement in the ICE Trust order to stress the importance of such a record. However it believes that a prudent clearing member likely would create and maintain such a record for business purposes. Consequently, the Commission believes this requirement would not create any additional paperwork burden.

Paragraph III.(d)(3)(ii)(E) of this Order requires ICE Trust clearing members that receive or hold customers' funds or securities for the purpose of purchasing, selling, clearing, settling, or holding cleared CDS positions annually to provide ICE Trust with an assessment that it is in compliance with all the provisions of paragraphs III.(d)(3)(ii)(A) through (D) of that order in connection with such activities, and a report by the clearing member's independent third-party auditor, as of the same date as the firm's annual audit report,[68] that attests to, and reports on, the clearing member's assessment. The Commission estimates that it will take each clearing

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66 This estimate is based on burden estimates published with respect to other Commission actions that contained similar certification requirements (see e.g., Exchange Act Release No. 55431 (Mar. 9, 2007) (72 FR 12862 (Mar. 19, 2007)), and the burden associated with the amendments to the financial responsibility rules, including language required in securities lending agreements).

67 20 hours = (20 clearing members x 5%) x 20 hours to work with a bank to update its standard agreement template to include the necessary language.

68 The Commission intends for this requirement to be performed in conjunction with the firm's annual audit report.

member approximately five hours each year to assess its compliance with the requirements of the order relating to segregation of customer assets and attest that it is in compliance with those requirements.[69] Further, the Commission estimates that it will cost each clearing member approximately $200,000 more each year to have its auditor prepare this special report as part of its audit of the clearing member.[70] Consequently, the Commission estimates that compliance with this requirement will result in an aggregate annual burden of 100 hours for all 20 clearing members, and that the total additional cost of this requirement will be approximately $4,000,000 each year.[71]

E. Collection of Information is Mandatory

The collections of information contained in the conditions to this Order are mandatory for any entity wishing to rely on the exemptions granted by this Order.

F. Confidentiality

Certain of the conditions of this Order that address collections of information require ICE Trust clearing members to make disclosures to their customers, or to provide other information

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69 This estimate is based on burden estimates published with respect to other Commission actions that contained similar certification requirements (see e.g., Securities Act Release No. 8138 (Oct. 9, 2002) (67 FR 66208 (Oct. 30, 2002)), and the burden associated with the Disclosure Required by the Sarbanes-Oxley Act of 2002, including requirements relating to internal control reports).

70 This estimate is based on staff conversations with an audit firm. That firm suggested that the cost of such an audit report could range from $10,000 to $1 million, depending on the size of the clearing member, the complexity of its systems, and whether the work included a review of other systems already being reviewed as part of audit work the firms is already providing to the clearing member. The staff understands that it would be less costly to perform this type of audit if the clearing member chooses to forward all customer collateral to ICE Trust (an option allowed by this Order) and does not use any third party. Finally, the staff understands that most ICE Trust clearing members are large dealers whose audits likely include internal control reviews and SAS 70 reports regarding custody of customer assets, which would require a review of the same or similar systems used to comply with the audit report requirement in this order.

71 100 hours = (5 hours for each clearing member to assess its compliance with the requirements of the order relating to segregation of customer assets and attest that it is in compliance with those requirements x 20 clearing members). $4 million = $200,000 per clearing member x 20 clearing members.

to ICE Trust (and in some cases also to customers). Apart from those requirements, the provisions of this Order that address collections of information do not address or restrict the confidentiality of the documentation prepared by ICE Trust clearing members under the exemptive conditions. Accordingly, ICE Trust clearing members would have to make the applicable information available to regulatory authorities or other persons to the extent otherwise provided by law.

G. Request for Comment on Paperwork Reduction Act

The Commission requests, pursuant to 44 U.S.C. 3506(c)(2)(B), comment on the collections of information contained in this Order to:

(i) evaluate whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility;

(ii) evaluate the accuracy of the Commission's estimates of the burden of the collections of information;

(iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and

(iv) evaluate whether there are ways to minimize the burden of the collections of information on those required to respond, including through the use of automated collection techniques or other forms of information technology.

Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Elizabeth M. Murphy, Secretary, Securities

and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090, and refer to File No. S7-05-09. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this document in the Federal Register; therefore, comments to OMB are best assured of having full effect if OMB receives them within 30 days of this publication. The Commission has submitted the proposed collections of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-05-09, and be submitted to the Securities and Exchange Commission, Records Management Office, 100 F Street, NE, Washington, DC 20549.

By the Commission.

March 5, 2010

Florence E. Harmon
Deputy Secretary

SECURITIES AND EXCHANGE COMMISSION

Release No. 34-61651

Policy Statement on Obtaining and Retaining Beneficial Ownership Information for Anti-Money Laundering Purposes

AGENCY: Securities and Exchange Commission.

ACTION: Policy statement.

SUMMARY: The Securities and Exchange Commission is issuing a policy statement to provide guidance on obtaining and retaining beneficial ownership information for anti-money laundering purposes.

EFFECTIVE DATE: March 5, 2010.

FOR FURTHER INFORMATION CONTACT: Lourdes Gonzalez (202-551-5550), John J. Fahey (202-551-5550), or Emily Westerberg Russell (202-551-5550), Office of the Chief Counsel, Division of Trading and Markets.

SUPPLEMENTARY INFORMATION:

The Securities and Exchange Commission is issuing a policy statement that provides guidance on obtaining and retaining beneficial ownership information for anti-money laundering purposes. This guidance is being issued jointly with the Financial Crimes Enforcement Network, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration, and in consultation with the staff of the Commodity Futures Trading Commission. The guidance provided in this policy statement clarifies and consolidates existing regulatory expectations for obtaining beneficial ownership information for

certain accounts and customer relationships.

Regulatory Requirements

The provisions of the Administrative Procedure Act ("APA") regarding notice of proposed rulemaking, opportunities for public comment, and prior publication are not applicable to general statements of policy, such as this.[1] Similarly, the provisions of the Regulatory Flexibility Act,[2] which apply only when notice and comment are required by the APA or another statute, are not applicable.

By the Commission.

Elizabeth M. Murphy
Secretary

March 5, 2010

Florence E Harmon

By: Florence E. Harmon
Deputy Secretary

Text of the Guidance

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1 5 U.S.C. 553.

2 5 U.S.C. 601-602.

Guidance on Obtaining and Retaining Beneficial Ownership Information

The Financial Crimes Enforcement Network (FinCEN), along with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Securities and Exchange Commission, are issuing this guidance, in consultation with staff of the Commodity Futures Trading Commission, to clarify and consolidate existing regulatory expectations for obtaining beneficial ownership information for certain accounts and customer relationships. Information on beneficial ownership in account relationships provides another tool for financial institutions to better understand and address money laundering and terrorist financing risks, protect themselves from criminal activity, and assist law enforcement with investigations and prosecutions.

Background

The cornerstone of a strong Bank Secrecy Act/Anti-Money Laundering (BSA/AML) compliance program is the adoption and implementation of internal controls, which include comprehensive customer due diligence (CDD) policies, procedures, and processes for all customers, particularly those that present a high risk for money laundering or terrorist financing.[1] The requirement that a financial institution know its customers, and the risks presented by its customers, is basic and fundamental to the development and implementation of an effective BSA/AML compliance program.

[1] This guidance does not alter or supersede previously issued regulations, rulings, or guidance related to Customer Identification Program (CIP) requirements.

Specifically, conducting appropriate CDD assists an institution in identifying, detecting, and evaluating unusual or suspicious activity.

In general, a financial institution's CDD processes should be commensurate with its BSA/AML risk, with particular focus on high risk customers. CDD processes should be developed to identify customers who pose heightened money laundering or terrorist financing risks, and should be enhanced in accordance with the institution's assessment of those risks.

Heightened risks can arise with respect to beneficial owners of accounts because nominal account holders can enable individuals and business entities to conceal the identity of the true owner of assets or property derived from or associated with criminal activity. Moreover, criminals, money launderers, tax evaders, and terrorists may exploit the privacy and confidentiality surrounding some business entities, including shell companies and other vehicles designed to conceal the nature and purpose of illicit transactions and the identities of the persons associated with them. Consequently, identifying the beneficial owner(s) of some legal entities may be challenging, as the characteristics of these entities often effectively shield the legal identity of the owner. However, such identification may be important in detecting suspicious activity and in providing useful information to law enforcement.

A financial institution may consider implementing these policies and procedures on an enterprise-wide basis. This may include sharing or obtaining beneficial ownership information across business lines, separate legal entities within an enterprise, and affiliated support units. To encourage cost effectiveness, enhance efficiency, and increase availability of potentially relevant information, AML staff may find it useful to

cross-check for beneficial ownership information in data systems maintained within the financial institution for other purposes, such as credit underwriting, marketing, or fraud detection.

Customer Due Diligence

As part of an institution's BSA/AML compliance program, a financial institution should establish and maintain CDD procedures that are reasonably designed to identify and verify the identity of beneficial owners[2] of an account, as appropriate, based on the institution's evaluation of risk pertaining to an account.[3]

For example, CDD procedures may include the following:

- Determining whether the customer is acting as an agent for or on behalf of another, and if so, obtaining information regarding the capacity in which and on whose behalf the customer is acting.
- Where the customer is a legal entity that is not publicly traded in the United States, such as an unincorporated association, a private investment company (PIC), trust or foundation, obtaining information about the structure or ownership

[2] The definition of a "beneficial owner" under FinCEN's regulations specific to due diligence programs for private banking accounts and for correspondent accounts for foreign financial institutions is the individual(s) who have a level of control over, or entitlement to, the funds or assets in the account that, as a practical matter, enables the individual(s), directly or indirectly, to control, manage, or direct the account. The ability to fund the account or the entitlement to the funds of the account alone, however, without any corresponding authority to control, manage, or direct the account (such as in the case of a minor child beneficiary), does not cause the individual to be a beneficial owner. This definition may be useful for purposes of this guidance. See, e.g., 31 CFR 103.175(b).

[3] The final rules implementing Section 326 of the USA PATRIOT Act similarly provide that, based on a financial institution's risk assessment of a new account opened by a customer that is not an individual, a financial institution may need to take additional steps to verify the identity of the customer by seeking information about individuals with ownership or control over the account, including signatories. See, e.g., 31 CFR 103.121(b)(2)(ii)(C). In addition, a financial institution may need to look through the account in connection with customer due diligence procedures required under other provisions of its BSA compliance program.

of the entity so as to allow the institution to determine whether the account poses heightened risk.

- Where the customer is a trustee, obtaining information about the trust structure to allow the institution to establish a reasonable understanding of the trust structure and to determine the provider of funds and any persons or entities that have control over the funds or have the power to remove the trustees.

With respect to accounts that have been identified by an institution's CDD procedures as posing a heightened risk, these accounts should be subjected to enhanced due diligence (EDD) that is reasonably designed to enable compliance with the requirements of the BSA. This may include steps, in accordance with the level of risk presented, to identify and verify beneficial owners, to reasonably understand the sources and uses of funds in the account, and to reasonably understand the relationship between the customer and the beneficial owner.

Certain trusts, corporate entities, shell entities,[4] and PICs are examples of customers that may pose heightened risk. In addition, FinCEN rules establish particular due diligence requirements concerning beneficial owners in the areas of private banking and foreign correspondent accounts.

In addition, CDD and EDD information should be used for monitoring purposes and to determine whether there are discrepancies between information obtained regarding the account's intended purpose and expected account activity and the actual sources of funds and uses of the account.

[4] http://www.fincen.gov/statutes_regs/guidance/pdf/AdvisoryOnShells_FINAL.pdf

Private Banking[5]

Under FinCEN's regulations, a "covered financial institution"[6] must establish and maintain a due diligence program that includes policies, procedures, and controls reasonably designed to detect and report known or suspected money laundering or suspicious activity conducted through or involving private banking accounts. This requirement applies to private banking accounts established, maintained, administered, or managed in the United States.[7] The regulation currently covers private banking accounts at depository institutions, securities broker-dealers, futures commission merchants and introducing brokers in commodities, and mutual funds.

Among other actions, as part of their due diligence program, institutions that offer private banking services must take reasonable steps to ascertain the source(s) of the customer's wealth and the anticipated activity of the account, as well as potentially take into account the geographic location, the customer's corporate structure, and public information.[8] Moreover, reasonable steps must be taken to identify nominal and beneficial owners of

[5] A "private banking account" is defined in 31 CFR 103.175(o), as an account (or any combination of accounts) maintained at a covered financial institution that: (1) requires a minimum aggregate deposit of funds or other assets of not less than $1,000,000; (2) is established on behalf of or for the benefit of one or more non-U.S. persons who are direct or beneficial owners of the account; and (3) is assigned to, or is administered or managed by, in whole or in part, an officer, employee, or agent of a covered financial institution acting as a liaison between the covered financial institution and the direct or beneficial owner of the account. Private banking accounts that do not fit within this definition should be subject to the general CDD procedures, including, as appropriate, EDD procedures discussed above.

[6] 31 CFR 103.175(f)(1).

[7] See, generally, 31 CFR 103.178.

[8] See, 31 CFR 103.178 (b)(3) and (b)(4). See also, Federal Financial Institutions Examination Council (FFIEC) Exam Manual, Private Banking - Overview. Although the FFIEC Exam Manual is issued by the federal banking regulators regarding AML requirements applicable to banks, it contains guidance that may be of interest to securities and futures firms.

private banking accounts.[9] Obtaining beneficial ownership information concerning the types of accounts listed above may require the application of EDD procedures.

Special rules apply for senior foreign political figures.[10] A review of private banking account relationships is required in part to determine whether the nominal or beneficial owners are senior foreign political figures. Covered financial institutions should establish policies, procedures, and controls that include reasonable steps to ascertain the status of a nominal or beneficial owner as a senior foreign political figure. This may include obtaining information on employment status and sources of income, as well as consulting news sources and checking references where appropriate.[11] Accounts for senior foreign political figures require, in all instances, EDD that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption.[12]

With regard to private banking accounts, a covered financial institution's failure to take reasonable steps to identify the nominal and beneficial owners of an account generally would be viewed as a violation of the requirements of 31 CFR 103.178.

Foreign Correspondent Accounts

FinCEN's regulations also require covered financial institutions[13] to establish a due diligence program that includes appropriate, specific, risk-based, and, where necessary, enhanced policies, procedures and controls that are reasonably designed to detect and

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[9] 31 CFR 103.178(b)(1).

[10] A senior foreign political figure is a current or former senior official in the executive, legislative, administrative, military, or judicial branches of a foreign government (whether elected or not), senior official of a major foreign political party or a senior executive of a foreign government-owned commercial enterprise, a corporation or other entity formed by or for the benefit of such individuals, or any immediate family member or widely and publically known close associate to such individuals. 31 CFR 103.175(r).

[11] See, e.g., FFIEC Exam Manual, Private Banking Due Diligence Program (Non-U.S. Persons).

[12] 31 CFR 103.178 (b)(2) and (c).

[13] 31 CFR 103.175(f)(1). The definition of covered financial institution discussed above applies to both the private banking and correspondent account regulations.

report, on an ongoing basis, any known or suspected money laundering activity conducted through or involving any correspondent account[14] established, maintained, administered, or managed in the United States for a foreign financial institution.[15] Under these regulations, enhanced due diligence is required for correspondent accounts[16] established, maintained, administered, or managed in the United States, for foreign banks that operate under: (1) an offshore banking license; (2) a banking license issued by a country that has been designated as non-cooperative with international anti-money laundering principles or procedures; or (3) a banking license issued by a country designated by the Secretary of the Treasury (under delegation to the Director of FinCEN, and in consultation with the Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission) as warranting special measures due to money laundering concerns.[17] Enhanced due diligence is designed to be risk-based, with flexibility in its implementation to allow covered financial institutions to obtain and retain this information based on risk.

With respect to correspondent accounts for such foreign banks, a covered financial institution's risk-based EDD should obtain information, as appropriate, from the foreign bank about the identity of any person with authority to direct transactions through any correspondent account that is a payable-through account, as well as the source and

[14] 31 CFR 103.175(d). Generally, a "correspondent account" is defined as an account established for a foreign financial institution to receive deposits from, or to make payments or other disbursements on behalf of, the foreign financial institution, or to handle other financial transactions related to such foreign financial institution. 31 CFR 103.175(d)(1).

[15] 31 CFR 103.176(a).

[16] For purposes of the enhanced due diligence requirements for certain foreign banks and the foreign shell bank prohibitions discussed herein, a "correspondent account" is defined as an account established for a foreign bank to receive deposits from, or to make payments or other disbursements on behalf of, the foreign bank, or to handle other financial transactions related to such foreign bank. 31 CFR 103.175(d)(1)(ii).

[17] See 31 CFR 103.176(b) and(c) for the full text of this provision. Special Due Diligence Programs for Certain Foreign Accounts, 72 FR 44768-44775 (August 9, 2007).

beneficial owner of funds or other assets in a payable-through account. A payable-through account is a correspondent account maintained by a covered financial institution for a foreign bank by means of which the foreign bank permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.[18] Covered financial institutions may elect to use a questionnaire or conduct a review of the transaction history for the respondent bank in collecting the information required.[19]

Additionally, covered financial institutions[20] are prohibited from opening and maintaining correspondent accounts[21] for foreign shell banks.[22] Covered financial institutions that offer foreign correspondent accounts must take reasonable steps to ensure the account is not being used to indirectly provide banking services to foreign shell banks.[23] The covered financial institution must identify the owners[24] of foreign banks

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[18] See, 31 CFR 103.176(b)(1)(iii)(B).

[19] "An Assessment of the Final Rule Implementing Enhanced Due Diligence Provisions for Accounts for Certain Foreign Banks, p. 4. (March 2009).
http://www.fincen.gov/news_room/rp/files/Special_Due_Diligence_Program.pdf

[20] For purposes of the shell bank prohibitions, a covered institution generally includes: U.S. banks, savings associations, credit unions, private bankers, and trust companies; branches and agencies of foreign banks; Edge Act corporations; and securities broker-dealers. 31 CFR 103.175(f)(2).

[21] For purposes of the foreign shell bank prohibitions, a "correspondent account" is defined as an account established for a foreign bank to receive deposits from, or to make payments or other disbursements on behalf of, the foreign bank, or to handle other financial transactions related to such foreign bank. 31 CFR 103.175(d)(1)(ii).

[22] See, 31 CFR 103.177.

[23] 31 CFR 103.177(a)(1)(ii).

[24] For purposes of 31 CFR 103.177, "owner" is defined at 31 CFR 103.175(l). Similarly, under the enhanced due diligence provisions of the correspondent account rule, the covered financial institution may need to identify the owners of foreign banks whose shares are not publicly-traded. See, 31 CFR 103.176(b)(3). An "owner" is defined for this purpose to include any person who directly or indirectly owns, controls, or has the power to vote 10 percent or more of any class of securities. See, 31 CFR 103.176(b)(3)(ii).

whose shares are not publicly traded and record the name and address of a person in the United States that is authorized to be an agent to accept service of legal process.[25]

With regard to foreign correspondent accounts, a covered financial institution's failure to maintain records identifying the owners of non-publicly traded foreign banks could be viewed as a violation of the requirements of 31 CFR 103.177.

For questions about this guidance, please contact FinCEN's Regulatory Helpline at (800) 949-2732 or your appropriate regulatory agency.

[25] See 31 CFR 103.177(a)(2).

Commissioner Aguilar
Commissioner Paredes
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61655 / March 5, 2010

INVESTMENT ADVISERS ACT OF 1940
Release No. 2995 / March 5, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13808

In the Matter of **First Allied 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 SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(e) 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 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(e) of the Investment Advisers Act of 1940 ("Advisers Act") against First Allied Securities, Inc. ("First Allied" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting 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 Section 203(e) 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[1] that:

Summary

These proceedings arise out of First Allied's failure to supervise Harold H. Jaschke ("Jaschke"), a registered representative who, between May 2006 and March 2008, executed unauthorized transactions, made unsuitable recommendations, and churned his customers' accounts. During this time, Jaschke was associated with First Allied. Jaschke violated Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by engaging in an unauthorized high risk, short term Treasury bond trading strategy on behalf of his customers. Jaschke's customers, the City of Kissimmee ("COK") and the Tohopekaliga Water Authority ("Toho") (collectively, the "Municipalities"), were required by ordinance to invest their funds in order to provide for safety of capital, liquidity of funds, and investment income, in that order of importance, and were prohibited specifically from using the proceeds of repurchase agreements and reverse repurchase agreements for the purpose of making investments. Despite being aware of the ordinances, Jaschke engaged in a high risk trading strategy and leveraged the Municipalities' accounts in violation of the ordinances. In addition, Jaschke lied to First Allied and to the Municipalities to conceal the risky nature of the investments, his use of leverage, and large unrealized losses the accounts experienced as a result of his misconduct.

First Allied failed to establish a reasonable system to implement its written supervisory policies and procedures and violated certain books and records provisions, which Jaschke aided and abetted. First Allied's supervisory failures were in addition to supervisory failures of Jeffrey Young, First Allied's former vice president of supervision.

Respondent

1. **First Allied Securities, Inc. ("First Allied")** is a New York corporation with its principal place of business in San Diego, California. Since 1993, First Allied has been registered with the Commission as a broker-dealer, and, since 1994, as an investment adviser. First Allied licenses over 900 independent contractor representatives and maintains approximately 600 branch offices nationwide. First Allied is solely owned by FAS Holdings Inc., which in turn is solely owned by Advanced Equities Financial Corp.

[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.

Other Relevant Entities and Persons

2. **Harold H. Jaschke ("Jaschke"),** age 49, resides in Houston, Texas. Jaschke was associated with First Allied as a registered representative from June 2005 until August 2008, at which time First Allied terminated its association with Jaschke.

3. **Jeffrey C. Young ("Young"),** age 45, resides in San Diego, California. Young has been associated with First Allied since 1997. From 2000 to August 2009, he was vice president of supervision. He is currently vice president of special projects.

Background

4. Jaschke recommended that the Municipalities engage in a trading strategy involving long-term, zero-coupon United States Treasury Bonds, also known as "STRIPS" (which stands for Separate Trading of Registered Interest and Principal of Securities). Jaschke's strategy involved buying and selling the same STRIPS within a matter of days, and sometimes within the same day, to take advantage of short term changes in the price of STRIPS. In addition to simply short-term trading in STRIPS, Jaschke used repurchase agreements, or "repos," to finance purchases of STRIPS for the Municipalities. Repos are agreements in which a seller of securities agrees to buy the securities back from the purchaser at a specified price at a designated future date. In other words, repos are a type of short-term loan, which in this case were collateralized by STRIPS. The use of repos significantly increased the risks to which Jaschke's customers were exposed, as repos effectively allowed the accounts to borrow large amounts of money in order to hold larger positions of STRIPS. As a result of Jaschke's trading strategy, between May 2006 and June 2007, COK's account value declined 56% and Toho's account value declined 58%, an aggregate unrealized loss of more than $47 million. The Municipalities closed their accounts in March 2008 at a profit.

5. The individuals responsible for making investment decisions on behalf of the Municipalities relied upon Jaschke for information regarding their investments in STRIPS. They also relied on Jaschke to ensure that any investing they engaged in through First Allied complied with their investment policies, which were substantially identical, and codified in municipal ordinances. The ordinances stated, among other things, that the Municipalities' funds were to be invested to provide safety of capital, liquidity of funds, and investment income, in that order of importance. The ordinances, while allowing for the use of repos for liquidity, also specifically prohibited using repos for the purpose of making investments. Despite these restrictions, Jaschke engaged in risky trading and used repos in a manner that directly violated the terms of the Municipalities' investment ordinances.

Jaschke's Material Misrepresentations and Omissions

6. Jaschke lied to the Municipalities regarding his use of leverage in their accounts. In fall 2006, the STRIPS market fell, causing Jaschke to significantly leverage the Municipalities' accounts to allow him to continue his trading strategy. This, in turn, caused the percentage of equity in the Municipalities' accounts to drop below the equity threshold required by Bear Stearns, the clearing agent. As a result, the accounts began receiving house calls that

required an infusion of cash to meet the required equity percentage. House calls could be satisfied by either wiring cash into the account, or by selling off securities.

7. Jaschke lied to the Municipalities about the house calls' existence. He instructed his customers to ignore communications on First Allied letterhead regarding the need to make deposits to cover the house calls. When Jaschke needed additional funds wired into one of the accounts to satisfy a house call, he contacted his customers purporting to offer them new STRIPS "investments," which typically involved an investment of a fixed amount that would be returned shortly with a specific rate of return. However, instead of investing his customers' funds as promised, Jaschke simply used the "investment" funds to meet house calls, then returned the funds plus the rate of return when the accounts no longer needed the cash to meet the required equity threshold. If the Municipalities weren't interested in making these "investments," or if Jaschke chose not to approach them, he would simply direct First Allied's margin clerks to sell securities to cover the calls without ever disclosing either the house call or the sale to his customers (although the Municipalities did receive trade confirmations and maintenance margin notifications).

8. Jaschke also lied to the Municipalities regarding their account activity and performance. Between December 2006 and June 2007, the Municipalities' accounts continuously lost value, and experienced extremely large, unrealized losses by the summer of 2007 when the STRIPS market rapidly declined. Jaschke never disclosed the unrealized losses to his customers. Although the Municipalities received account statements from Bear Stearns, Jaschke instructed them to ignore those statements. For example, when one customer noticed that Toho's account statement showed losses in December 2006, Jaschke told him that the statements were inaccurate due to problems with Bear Stearns' systems, and instructed him to instead rely on spreadsheets Jaschke had prepared. On at least one of Jaschke's spreadsheets, the market value of Toho's STRIPS was overstated by approximately $25 million.

9. In late summer 2007, COK's and Toho's auditors began reviewing the Municipalities' investment activity and identified the unrealized losses. Jaschke blamed the losses on Bear Stearns and falsely claimed that the accounts had mistakenly been treated as margin accounts and were wrongfully liquidated, at a loss, to cover margin calls. In reality, Bear Stearns neither liquidated the Municipalities' accounts, nor directed anyone at First Allied to do so. Instead, the losses resulted from Jaschke's trading in the accounts while the STRIPS market suffered a dramatic decline, and Jaschke simply lied to deflect attention from his unauthorized activities.

Jaschke's Unauthorized Trading

10. Between May 2006 and March 2008, Jaschke engaged in several different types of unauthorized trading in the Municipalities' accounts. Despite the fact that the Municipalities held non-discretionary accounts with First Allied, Jaschke conducted hundreds of short-term STRIPS transactions in the Municipalities' accounts without the full knowledge or authorization of his customers.

11. Additionally, the manner in which Jaschke used repos was unauthorized. Jaschke led the Municipalities to believe that the repos were used only to facilitate the transfer of funds

between the Municipalities and First Allied, and would not be used to leverage the Municipalities' investment portfolios. Despite his statements to his customers, Jaschke continually used repos to highly leverage both accounts.

12. Finally, Jaschke conducted unauthorized transactions to hide the numerous house calls the Municipalities received. Jaschke engaged in unauthorized sales of securities to meet some house calls, and lied to his customers about non-existent investment opportunities in order to secure funds to satisfy other house calls.

Jaschke's Unsuitable Recommendations

13. Jaschke's trading strategy was unsuitable for the Municipalities in light of their investment ordinances and their conservative investment objectives. Their investment ordinances prioritized safety of capital above all else, and specifically prohibited using repos for the purpose of making investments. Jaschke was aware of, and had copies of, the Municipalities' investment ordinances, and the accounts were listed as having low or moderate risk tolerances within First Allied's internal account-tracking system. Nevertheless, Jaschke embarked on a risky trading strategy that involved short-term trading, a practice described as "trading" in First Allied's written definitions of investment objectives, which was not appropriate for customers with a low investment risk tolerance. Additionally, Jaschke used repos to invest in STRIPS, a practice he knew was specifically prohibited by the Municipalities' investment ordinances.

Jaschke's Churning

14. Between May 2006 and March 2008, although COK's and Toho's accounts were set up as non-discretionary, Jaschke engaged in unauthorized trading and/or in effect had complete discretion over the accounts at all relevant times. Jaschke excessively traded the Municipalities' accounts for his own gain in disregard of his customers' interest in order to generate additional commissions. First Allied retained 10% of the commissions Jaschke earned from trading in the Municipalities' accounts.

First Allied's Failure Reasonably to Supervise Jaschke

15. First Allied did not establish reasonable systems for applying its written supervisory procedures. First Allied failed to establish reasonable systems to direct follow up action in response to red flags regarding churning and suitability, and to monitor compliance with its rule prohibiting registered representatives from using their personal e-mail accounts to conduct firm business.

Inadequate Systems for Directing Follow Up Action in Response to Red Flags

16. First Allied was first notified of abnormal trading in the Municipalities' accounts in September 2006 when automated account surveillance reports, or "exception reports," were generated by Bear Stearns. The exception reports showed turnover rates of 17 for COK and 21 for Toho, and indicated the possibility of churning in the accounts.[2] When a valid exception

[2] A turnover rate measures the turnover in an account, which is the number of times during a given period that the securities are replaced by new securities, by dividing the total cost of purchases made during a given period

report was generated, First Allied's general practice was to send its customers a "negative response letter," i.e., no response is required. The negative response letter informed the customer of the type of activity shown on the exception report and provided the customer with the contact information for the regional supervisor responsible for the account in the event the customer had questions.

17. However, when First Allied received the September 2006 exception reports for the Municipalities, it did not send negative response letters to the Municipalities. Jeffrey Young, First Allied's vice president of supervision, was concerned because institutional (rather than retail) customers were involved, and he had had little experience dealing with such customers and was unsure whether to send out the typical negative response letter or whether to take some other action. Because he believed, based on representations from Jaschke, that the Municipalities were sophisticated and that the trading in the accounts was occurring at their direction, Young escalated the issue to get advice on the matter, and members of First Allied's senior management team decided not to send the Municipalities negative response letters. Bear Stearns generated additional exception reports in December 2006 indicating turnover ratios of 301 for COK and 106 for Toho, and highlighting the fact that COK's account underperformed the S&P by 40%. First Allied did not send negative response letters to the Municipalities with respect to these reports in light of the prior decision made with respect to the September 2006 exception reports.

18. In early 2007, shortly after First Allied received the December 2006 exception reports, First Allied's chief operating officer became concerned that the repo activity in the Municipalities' accounts violated their investment ordinances. She escalated the issue to other members of First Allied's senior management team, who made the decision to send positive response letters to the Municipalities which would require a written response from both the individuals responsible for making investment decisions on behalf of the Municipalities and their direct supervisors. The positive response letters were not sent until June 2007. The main purpose of the letters was to have the customers confirm that the repo activity in their accounts was consistent with their investment ordinances, because, internally, First Allied questioned whether the activity complied with the Municipalities' ordinances. The letters also requested that the Municipalities confirm that each transaction in their accounts had been authorized, and that neither Jaschke nor First Allied exercised discretion over the accounts. Rather than stating its concern over the repo activity up front, the letters sought the customers' confirmation of four separate items "in connection with [First Allied's] annual review." In fact, First Allied has no annual review process, does not typically send out annual review letters to its customers, and had never previously sent one to the Municipalities. Furthermore, the repo activity was listed as the last item in the letter and asked the customers to confirm that the activity complied with their investment ordinances without highlighting First Allied's concern over the activity. No one at First Allied, other than Jaschke, contacted the Municipalities until January 2008 to discuss their account activity or the purpose of the letters. Because the individuals responsible for making investment decisions on behalf of the Municipalities continued to believe Jaschke's lies regarding the trading in their accounts, they signed and returned the letters to First Allied.

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by the average amount invested during that period. A turnover rate that exceeds six is presumptive of churning. Arceneaux v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 767 F.2d 1498, 1502 (11th Cir. 1985); In the Matter of Al Rizek, 1998 SEC LEXIS 905, at 52.

19. First Allied's systems directing follow up action in response to red flags regarding churning and suitability were not reasonable, as they allowed First Allied to delay providing the Municipalities with any notice regarding the high turnover rates in their accounts for nine months, after which First Allied sent self-described "annual review" letters that failed to adequately inform the customers of the activity in their accounts. The Municipalities did sign and return those letters in June 2007 and did respond to First Allied's verbal inquiries in early 2008.

Inadequate Systems to Ensure Review and Retention of Correspondence with Customers

20. First Allied established a written supervisory procedure regarding the review of incoming and outgoing e-mails from each branch office, and prohibited the use of personal e-mail accounts to conduct business, as such e-mails could not be archived or screened for compliance. Despite First Allied's policies, Jaschke routinely used his personal e-mail account to correspond with his customers. As a result, almost none of Jaschke's e-mails to and from the Municipalities were archived or reviewed for compliance.

21. First Allied should have been aware of Jaschke's use of his personal e-mail account to conduct business because he routinely used this e-mail account to correspond with his supervisors and senior management. In fact, Jaschke went so far as to create an e-mail signature block that identified him as a First Allied representative and included his personal e-mail account as a contact. This signature block showed up on e-mails to Young and other members of senior management. Young and at least one member of senior management confronted Jaschke regarding the use of his personal e-mail account and received various excuses, but First Allied never did anything to verify that Jaschke had stopped using his personal e-mail account to conduct business. Additionally, during a 2007 broker-dealer examination conducted by the Commission's Office of Compliance Inspections and Examinations, an examiner noticed Jaschke's use of a personal e-mail account and asked the First Allied representative hosting the examination about review and retention. The representative asked Jaschke about the situation, and Jaschke falsely told her that his personal e-mails were automatically "journaled over" to his First Allied account. The representative did not verify Jaschke's statement and simply forwarded the false information on to the Commission's examiner.

22. Despite First Allied's written supervisory policy prohibiting registered representatives from using their personal e-mail accounts to conduct business, First Allied had no system in place to monitor compliance with the rule and effectively relied on its employees to supervise themselves. Accordingly, First Allied did not establish a reasonable system for applying its supervisory procedure regarding the use of personal e-mail accounts.

First Allied's Failure to Preserve E-mails

23. First Allied is required to maintain copies of all business-related communications, including e-mails, for a period of three years. First Allied was aware of this requirement and hired a third party e-mail archiving vendor to archive all of its e-mails. However, First Allied failed to properly configure the system to include all corporate employee e-mail addresses. As a result, certain e-mail addresses were omitted, and e-mails sent to and from the missing e-mail addresses were never retained. First Allied thereby failed to maintain all required business e-

mails from approximately May 2005 to December 2007. Additionally, as noted above, First Allied failed to preserve Jaschke's business-related e-mails.

Violations

24. As a result of the conduct described above, First Allied failed reasonably to supervise Jaschke with a view to detecting and preventing Jaschke's violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and willfully[3] violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder by failing to preserve e-mails.

First Allied's Remedial Efforts

25. In determining to accept the Offer, the Commission considered remedial acts promptly taken by First Allied and cooperation afforded the Commision staff.

Undertakings

Respondent undertakes:

a. to retain, within 30 days of the date of entry of the Order, at its own expense, the services of an Independent Consultant not unacceptable to the Division of Enforcement of the Commission, to (i) review First Allied's written supervisory policies and procedures; and (ii) review First Allied's system for implementing its supervisory polices and procedures.

b. to require the Independent Consultant, at the conclusion of the review, which in no event shall be more than 120 days after the entry of the Order, to submit a Report to First Allied and the Division. The report shall address the supervisory issues described above and shall include a description of the review performed, the conclusions reached, the Independent Consultant's recommendations for changes or improvements to the policies, procedures, and practices of First Allied and a procedure for implementing the recommended changes or improvements to such policies, procedures, and practices.

c. to adopt, implement, and maintain all policies, procedures, and practices recommended in the Report of the Independent Consultant. As to any of the Independent Consultant's recommendations about which First Allied and the Independent Consultant do not agree, such parties shall attempt in good faith to reach agreement within 180 days of the date of the entry of the Order. In the event that First Allied and the Independent Consultant

[3] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

are unable to agree on an alternative proposal, First Allied will abide by the determinations of the Independent Consultant and adopt those recommendations deemed appropriate by the Independent Consultant.

d. to cooperate fully with the Independent Consultant in its review, including making such information and documents available as the Independent Consultant may reasonably request, and by permitting and requiring First Allied's employees and agents to supply such information and documents as the Independent Consultant may reasonably request.

e. that, in order to ensure the independence of the Independent Consultant, First Allied (i) shall not have the authority to terminate the Independent Consultant without the prior written approval of the Division; (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.

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

g. For good cause shown and upon timely application by the Independent Consultant or First Allied, the Commission's staff may extend any of the deadlines 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 First Allied's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

A. Respondent First Allied cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) promulgated thereunder;

B. Respondent First Allied is censured.

C. Respondent First Allied shall, within 30 days of the entry of this Order, pay disgorgement of $1,224,606 and prejudgment interest of $233,699, for a total of $1,458,305, to the United States Treasury. It is further ordered that Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of $500,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717. 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) 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 First Allied 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 Michele Wein Layne, Division of Enforcement, Securities and Exchange Commission, 5670 Wilshire Blvd., Suite 1100, Los Angeles, CA 90036.

D. Respondent First Allied shall comply with the undertakings enumerated in Section III above.

By the Commission.

Elizabeth M. Murphy
Secretary

Commissioner Aguilar
Commissioner Paredes
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61652 / March 5, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13807

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

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 North American Technologies Group, Inc. ("NATG" or "Respondent").

II.

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

III.

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

A. NATG (File No. 0-16217) is a Delaware corporation with its principal executive offices in Marshall, Texas. NATG manufactures and markets engineered composite railroad crossties. NATG's common stock was registered with the Commission under Section 12(g) of the Exchange Act and traded on the OTC-Bulletin Board until February 18, 2009, when the OTCBB ceased quoting NATG's securities for failure to file timely reports with the Commission. Its securities are now quoted on the Pink OTC Markets.

B. NATG has failed to comply with Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder, while its common stock was registered with the Commission in that it has not filed an Annual Report on Form 10-K since June 12, 2009 or periodic or quarterly reports on Form 10-Q for any fiscal period subsequent to its fiscal quarter ending June 28, 2009.

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 Repondent's securities registered pursuant to Section 12 of the Exchange Act be, and hereby is, revoked.

By the Commission.

Elizabeth M. Murphy
Secretary

Commissioner Aguilar
Commissioner Paredes
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61688 / March 11, 2010

INVESTMENT COMPANY ACT OF 1940
Release No. 29173 / March 11, 2010

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3120 / March 11, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13543

In the Matter of **ROBERT JOHN HIPPLE,** **Respondent.**	**ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 9(b) AND 9(f) OF THE INVESTMENT COMPANY ACT OF 1940, AND RULE 102(e)(1) OF THE COMMISSION'S RULES OF PRACTICE**

I.

On July 9, 2009, the Securities and Exchange Commission ("Commission") instituted public administrative and cease-and-desist proceedings pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act"), and Rule 102(e)(1) of the Commission's Rules of Practice against Robert John Hipple ("Hipple" or "Respondent").

II.

In connection with these proceedings, Respondent Hipple 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, Hipple consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934, Sections 9(b) and 9(f) of the Investment Company Act of 1940, and Rule 102(e)(1) of the Commission's Rules of practice ("Order"), as set forth below.

III.

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

A. SUMMARY

Robert Hipple, a lawyer and the former CEO and CFO of now-defunct business development company ("BDC")[2] iWorld Projects & Systems, Inc. ("iWorld"), overstated the value of iWorld's primary asset – its investment in several portfolio companies – in three consecutive quarterly filings in 2005. Hipple, who personally performed iWorld's accounting and financial reporting functions, also misled iWorld's auditors into believing that the company had independently evaluated the worth of its portfolio companies. As a result of his conduct, Hipple i) violated the antifraud provisions of the Exchange Act, filed false Sarbanes-Oxley executive certifications, misled iWorld's auditors, falsified books and records, and knowingly circumvented internal controls; ii) violated Section 57(a)(1) of the Investment Company Act; and iii) aided and abetted and caused iWorld's violations of the reporting, books and records, and internal controls provisions of the Exchange Act, and iWorld's violations of the BDC books and records provision of the Investment Company Act.

B. RESPONDENT

Robert John Hipple, age 64, resides in Cocoa, Florida. He is an attorney licensed in Florida and Georgia. Hipple and an associate controlled the management and operations of iWorld Projects and Systems, Inc. ("iWorld Florida"), a private Florida company, when it was acquired in early 2005 by iWorld Projects & Systems, Inc. ("iWorld"), a business development company. At the time, Hipple was the CEO of iWorld Florida. After the acquisition, Hipple formally became iWorld's CEO and remained in that position until he resigned in March 2006. He also acted as iWorld's principal financial officer.

C. RELEVANT ENTITIES

iWorld Projects and Systems, Inc. ("iWorld") is a BDC that, during all relevant periods, was incorporated in Nevada and headquartered in Addison, Texas. iWorld has not filed a periodic report with the Commission since it filed its third quarter 2005 Form 10-Q in November 2005. The Nevada Secretary of State revoked iWorld's corporate charter on January 1, 2006 for failure to pay franchise taxes. iWorld filed for voluntary Chapter 7 bankruptcy in May 2008. In March 2009, the bankruptcy court closed the case because iWorld had no assets.

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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] A BDC is a closed-end investment company authorized by Congress for the purpose of making capital more readily available to certain types of companies. Under the Investment Company Act, a closed-end company meeting certain eligibility criteria may elect to be regulated as a BDC by filing a notification with the Commission on Form N-54A. A company filing such a notification is regulated under Sections 55 through 65 of the Investment Company Act. These sections set forth rules governing the investments BDCs may make, transactions BDCs may enter into, and the governance of BDCs, as well as various other rules governing BDCs.

On August 14, 2009, the Commission, pursuant to Section 12(j) of the Exchange Act, revoked the registration of each class of iWorld's registered securities.

iWorld Florida was, prior to its acquisition by iWorld, a privately-held Florida corporation formed by Hipple in May 2004. iWorld Florida was dissolved on September 15, 2006.

D. FACTS

1. Hipple Postures iWorld Florida for Acquisition by iWorld as BDC

a. Shortly after forming iWorld Florida in May 2004, Hipple and others caused it to acquire two small private companies in the project management services industry: Applied Management Concepts, Inc. ("AMC") and Process Integrity, Inc. ("PII") (together, "the subsidiaries"). iWorld Florida acquired the subsidiaries for a total of $285,000 in working capital payments, $200,000 in assumed liabilities, and 1.1 million shares of iWorld Florida common stock. This stock was not publicly traded and had no readily ascertainable market value.

b. When iWorld Florida acquired the subsidiaries, AMC had no operations, while PII had only limited revenues from sales of its only product, a piece of project management software. Specifically, during the six months before the acquisition, PII had total revenues of $89,000 and was not profitable. Hipple knew these facts at the time.

c. Notwithstanding the subsidiaries' poor performance and negligible operations, Hipple accepted and adopted the financial forecasts presented to him. According to those forecasts, AMC and PII would generate $2.4 million in revenue in the six-month period after their acquisition by iWorld Florida, and would generate in 2005 a total of $5.5 million in revenue. Hipple had no objective information in his possession to support these forecasts.

d. In December 2004, Hipple initiated and directed a series of transactions to form iWorld. He first obtained two public, blank-check shell companies, Silesia Enterprises, Inc. ("Silesia") and Organic Solutions, Inc. ("Organic"). He then caused Silesia to file a Form N-54 election to become a BDC.

e. Hipple then directed and caused Silesia's merger into Organic. Among other things, Hipple caused Organic to issue convertible preferred shares to four of his designees, including his wife and a college-aged employee of one of his business partners. Hipple oversaw the conversion of the designee's preferred shares into common shares – which gave them control over Organic – and the voting of those shares to approve actions related to merging Organic with Silesia, with Organic as the surviving corporation. At the conclusion of these transactions, Hipple effectively controlled the post-merger company (a BDC), which, as part of the merger, changed its name to iWorld. Hipple thereafter obtained a new CUSIP number and trading symbol for iWorld's common shares so they could be publicly traded.

2. **Hipple Causes iWorld to Acquire iWorld Florida and Prepares False Filings Overstating iWorld Florida's Value**

a. On February 25, 2005, iWorld filed a current report on Form 8-K announcing that it had agreed to acquire iWorld Florida through a merger. Hipple drafted the filing and caused it to be filed. The Form 8-K stated that the transaction was "valued at $10 million, based on the number of shares issued, the market price of the shares, and the assets and businesses acquired." It then described iWorld Florida and the subsidiaries' business, concluding that "combined revenues from [iWorld Florida's] subsidiaries . . . for 2005 are expected to be in the range of $25 to $30 million, provided sufficient working capital is obtained."

b. The purported $10 million valuation was materially false and misleading. Among other things, the Form 8-K failed to disclose that Hipple controlled both iWorld and iWorld Florida at the time of their merger. Consequently, and contrary to the Form 8-K's description of the transaction, the merger did not involve arms-length negotiation and was in fact a related-party transaction. Furthermore, the Form 8-K failed to disclose that, because Hipple controlled both sides of the transaction, he was able to reverse-engineer the number of shares exchanged between iWorld and iWorld Florida to lend legitimacy to the $10 million figure. In addition, there was no disclosure that iWorld Florida's sole asset – its investments in the subsidiaries – had been acquired during the summer of 2004 for only $285,000 cash, $200,000 in assumed liabilities, and 1.1 million shares of iWorld Florida's non-public stock – consideration that was worth, at best, only a fraction of $10 million.

c. The Form 8-K's representations about the subsidiaries' prospects were also materially false and misleading, since they were wholly speculative and unsupported. As noted above, at the time iWorld Florida acquired them in the summer of 2004, PII and AMC had generated meager revenues over the preceding six months. Their performance after their acquisition by iWorld Florida was no better; indeed, as Hipple knew from internal company reports he received, PII and AMC consistently fell far short of their forecasted performance. Accordingly, Hipple knew or recklessly disregarded that the Form 8-K's assertions of subsidiary revenues of $25 million to $30 million were baseless.

3. **Hipple Prepares and Certifies iWorld's False Quarterly Filings**

a. After iWorld acquired iWorld Florida, Hipple became iWorld's Chairman, CEO and CFO and performed the company's accounting and financial reporting functions. In this capacity, he maintained iWorld's books and records, was responsible for its system of internal controls, and drafted and filed with the Commission its periodic reports.

b. In 2005, iWorld filed three quarterly reports on Forms 10-Q: on May 20, 2005, August 12, 2005 and November 15, 2005. Hipple prepared, signed and certified each of the filings.

c. Each of these quarterly reports contained financial statements and other disclosures representing that the subsidiaries (AMC and PII) – including two additional start-up

operating companies iWorld had acquired – were valued at $10 million. These subsidiaries – which the quarterly reports referred to as "portfolio companies" – comprised, as reported in the quarterly reports, approximately 96% of iWorld's total assets.

d. The reported $10 million valuation was materially false and misleading. As described above, iWorld's initial valuation of the subsidiaries at $10 million was itself false and misleading since it was not the product of arms-length negotiation, was far in excess of what iWorld Florida had paid to acquire the subsidiaries roughly six months earlier, and was unsupported by the subsidiaries' poor financial performance. None of these circumstances had changed by the time Hipple prepared and filed the quarterly reports. To the contrary, he had continually received information, including reports from the subsidiaries, demonstrating that their performance was deteriorating. For instance, by the time iWorld filed the first quarter Form 10-Q on May 20, 2005, Hipple knew from internal reports that all of the subsidiaries had continued to fall far short of internal projections, with some subsidiaries producing no revenues whatsoever. He also knew that iWorld's working capital – which was critical to the subsidiaries' survival – was rapidly diminishing. From these facts alone (which were not publicly disclosed), Hipple knew or recklessly disregarded that the subsidiaries' reported valuation was grossly overstated.

e. By the time iWorld filed its second quarter Form 10-Q on August 12, 2005, Hipple knew from internal reports the additional fact that, not only were the subsidiaries far below their financial projections, they were in fact deeply unprofitable. Indeed, only PII still had operations by August 2005, due in part to the fact that iWorld had exhausted its working capital, on which the subsidiaries depended. As iWorld's CEO and CFO, Hipple knew the subsidiaries were dependent on iWorld for working capital and that, without working capital, the subsidiaries would cease operations.

f. By the time iWorld filed its third quarter Form 10-Q on November 15, 2005, Hipple knew that meaningful subsidiary operations had ceased and that there was no prospect of iWorld's reviving them, since iWorld itself had no cash. Moreover, by December 2005, Hipple learned that PII's president had previously pledged PII's sole asset – rights to its software product – to a third party as security for a loan to PII to make payroll.

g. Hipple never revealed the subsidiaries' dire circumstances in iWorld's 2005 quarterly filings. To the contrary, each of the filings repeated the $10 million valuation, which the second and third quarter filings amplified by asserting that "the Company's Investment Committee [has] determine[d] that the portfolio investments should be valued at $10 million." This was false: iWorld's investment committee never considered the valuation of the subsidiaries. Moreover, each of the quarterly filings represented that the subsidiaries were projected to earn tens of millions of dollars of revenue through the end of 2006. In view of the circumstances described above – including the subsidiaries' continuous unprofitability and the depletion of iWorld's working capital – these representations were completely unfounded and, consequently, were materially false and misleading.

h. Even after learning that PII's president had pledged PII's software to secure a loan to PII, Hipple made no effort to amend iWorld's third quarter Form 10-Q.

4. **Hipple Materially Misleads iWorld's Auditor**

a. As a BDC, iWorld was required under Section 2(a)(41) of the Investment Company Act (which applies to BDCs pursuant to Section 59 of that Act) to determine in good faith the fair value of the securities of its portfolio companies, since market quotations for those securities were not readily available. iWorld never made a good faith determination, either when it acquired iWorld Florida and its subsidiaries, or thereafter. Hipple knew, or was reckless in not knowing, that no such determination had been made.

b. Hipple, however, told iWorld's auditor – in connection with the auditor's review of iWorld's first quarter 2005 Form 10-Q – that an "independent investment board" had approved the $10 million valuation. Hipple knew, or was reckless in not knowing, that this statement was false.

5. **Civil Penalty**

Respondent has submitted sworn Statements of Financial Condition, dated October 2, 2009 and October 9, 2009, and other evidence, and has asserted his inability to pay a civil penalty.

E. VIOLATIONS

1. Based on the foregoing, the Commission finds that Respondent Hipple willfully violated:

a. 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;

b. Section 34(b) of the Investment Company Act, made applicable to BDCs through Section 59 of the Investment Company Act, which provides, among other things, that in any registration statement, application, report, account, record, or other document filed or transmitted by iWorld pursuant to the Investment Company Act or kept by iWorld pursuant to Section 31(a) of the Investment Company Act, it shall be unlawful for any person so filing, transmitting or keeping any such document to make any untrue statement of material fact or to omit 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;

c. Rule 13a-14 under the Exchange Act, which required Hipple, as iWorld's principal executive and financial officer, to certify in each quarterly and annual report filed or submitted by iWorld under Section 13(a) of the Exchange Act, that: (1) he had reviewed the report; and (2) based on his knowledge, the report did not contain any untrue statement of material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report;

d. Section 13(b)(5) of the Exchange Act, which provides that no person shall knowingly falsify any book, record, or account of an issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, or is required to file reports pursuant to Section 15(d) of the Exchange Act, or knowingly circumvent the registrant's system of internal accounting controls;

e. Rule 13b2-1 under the Exchange Act, which provides that no person shall, directly or indirectly, falsify or cause to be falsified any book, record, or account subject to Section 13(b)(2)(A) of the Exchange Act;

f. Rule 13b2-2(a) under the Exchange Act, which prohibits an officer or director of an issuer from, directly or indirectly: (1) making, or causing to be made, a materially false or misleading statement; or (2) omitting, or causing to be omitted, a statement of a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading to an accountant in connection with a required audit, or the preparation or filing of a required document or report;

g. Section 57(a)(1) of the Investment Company Act, which prohibits persons "related" to a BDC, as defined in Section 57(b) of the Investment Company Act, from acting as principal knowingly selling to the BDC any securities in another company unless at least one of two conditions applies. The first condition is that the sale involves solely securities of which the buyer is the issuer. *See* Section 57(a)(1)(A). The second is that the sale involves solely securities of which the seller is the issuer and which are part of a general offering to the holders of a class of its securities. *See* Section 57(a)(1)(B). Section 57(b)(2) defines a "related person of a BDC," in pertinent part, as any person directly or indirectly "controlling" a BDC. Section (2)(a)(9) of the Investment Company Act, in turn, defines "control" as "the power to exercise a controlling influence over the management or policies of a company." Hipple controlled iWorld when he sold, as a principal, his iWorld Florida shares to iWorld in iWorld's acquisition of iWorld Florida. Hipple's sale of his shares did not satisfy either of the two conditions set forth in Section 57(a)(1)(A) or (B). Thus, Hipple violated Section 57(a)(1);

2. Based on the foregoing, the Commission finds that Respondent Hipple willfully aided and abetted and caused iWorld's violations of:

a. Section 13(a) of the Exchange Act and Rules 13a-11, 13a-13, and 12b-20 thereunder, which required iWorld to file information and documents as prescribed by the Commission, including current and quarterly reports, and to include in those reports any material information as may be necessary to make the required statements in those reports not misleading in light of the circumstances under which the statements were made;

b. Section 13(b)(2)(A) of the Exchange Act, which required iWorld, as a reporting company, to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflected its transactions and dispositions of its assets;

c. Section 13(b)(2)(B) of the Exchange Act which required iWorld, as a reporting company, to devise and maintain a system of internal accounting controls sufficient to

provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles; and

d. Section 31(a) of the Investment Company Act made applicable to BDCs by Section 64 of the Investment Company Act, and Rule 31a-1 thereunder, which required iWorld to make and keep certain books and records, including, among other things, ledgers of all assets, liabilities, reserve capital, income and expense accounts reflecting account balances on each day, and corporate documents such as minutes from shareholder and board meetings.

IV.

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

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

A. Hipple shall cease and desist from committing or causing any violations and any future violations of Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13b2-1, 13b2-2, and 13a-14 thereunder, and Sections 34(b) and 57(a) of the Investment Company Act, and from causing any violations of and any future violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-11, and 13a-13 thereunder and Section 31(a) of the Investment Company Act and Rule 31a-1 thereunder;

B. Pursuant to Section 21C(f) of the Exchange Act, Hipple is prohibited, for a period of five years, 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, or that is required to file reports pursuant to Section 15(d) of the Exchange Act;

C. Pursuant to Section 9(b) of the Investment Company Act, Respondent Hipple 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 five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission;

D. Pursuant to Rule 102(e)(1)(iii) of the Commission's Rules of Practice, Hipple is denied the privilege of appearing or practicing before the Commission as an accountant;

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 Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition:

(1) contest the findings in this Order; (2) assert that payment of a penalty should not be ordered; (3) contest 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; and

F. 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.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2997 / March 11, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13811

In the Matter of

STEVEN E. NOTHERN,

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 Steven E. Nothern ("Nothern") 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 and III.4 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. Nothern was employed by and associated with Massachusetts Financial Services ("MFS"), an investment adviser registered with the Commission, from 1986 until he was terminated on March 7, 2002. At the relevant time, Nothern managed seven fixed-income funds for MFS. Nothern, age 53, is a resident of Scituate, Massachusetts.

2. On March 10, 2010, a final judgment was entered by consent against Nothern, permanently enjoining him from future violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder in the civil action entitled *Securities and Exchange Commission v. Steven E. Nothern*, Civil Action Number 05-10983, in the United States District Court for Massachusetts – Boston Division.

3. The Commission's complaint alleged that: Nothern engaged in insider trading in United States Treasury 30-year bonds after Peter J. Davis, a Washington, D.C.-based consultant that MFS hired, tipped Nothern with material nonpublic information that the United States Treasury Department was going to suspend future issuances of the 30-year bond. While in possession of the information Davis provided, Nothern and three other MFS portfolio managers, whom Nothern tipped, purchased approximately $65 million in par value of 30-year bonds for the portfolios they managed, making approximately $3.1 million in trading profits for those portfolios.

4. On June 22, 2009, a jury found that Nothern violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 203(f) of the Advisers Act, that Respondent Nothern be, and hereby is barred from association with any investment adviser, with the right to reapply for association after five (5) 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.

Elizabeth M. Murphy
Secretary

By: Florence E Harmon
Deputy Secretary

Commissioner Aguilar
Commissioner Paredes
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2999 / March 12, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13813

In the Matter of

SIMONE O. FEVOLA,

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 Simone O. Fevola ("Fevola" 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. Fevola, age 49, resides in Appleton, Wisconsin. He was the president and Chief Investment Officer of Wealth Management, LLC, an investment adviser registered with the Commission, from September 2002 through October 2008, when he resigned. From March 23, 1998 through May 15, 2002, Fevola was also a registered representative associated with broker-dealers registered with the Commission.

2. On March 4, 2010, a final judgment was entered by consent against Fevola, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1), 206(2), 206(4) and 207 of the Advisers Act and Rule 206(4)-8 thereunder, in the civil action entitled Securities and Exchange Commission v. Wealth Management LLC, et al., Civil Action Number 1:09-cv-506, in the United States District Court for the Eastern District of Wisconsin.

3. The Commission's complaint alleged that Fevola improperly accepted $1.24 million in undisclosed payments derived from certain investments made by four of the six unregistered funds managed by Wealth Management LLC while continuing to cause clients to invest in those funds. The complaint further alleges that Fevola also breached his fiduciary duty and engaged in fraud by misrepresenting the safety and stability of the two largest unregistered funds managed by Wealth Management LLC. The complaint also alleges that Fevola signed Wealth Management's Form ADV while knowing that he had received undisclosed improper payments.

IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 203(f) of the Advisers Act, that Respondent Fevola be, and hereby is barred from association with any investment adviser 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;

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.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61698; File Nos. 10-194 and 10-196)[1]

March 12, 2010

In the Matter of the Applications of
EDGX Exchange, Inc., and EDGA Exchange, Inc.
for Registration as National Securities Exchanges

Findings, Opinion, and Order of the Commission

I. Introduction

On May 7, 2009, EDGX Exchange, Inc. ("EDGX") and EDGA Exchange, Inc. ("EDGA") (each, an "Exchange," and, together, the "Exchanges") each submitted to the Securities and Exchange Commission ("Commission") a Form 1 application (each, a "Form 1 Application," and, together, the "Form 1 Applications") under the Securities Exchange Act of 1934 ("Act") seeking registration as a national securities exchange pursuant to Section 6 of the Act.[2] On July 30, 2009, each Exchange submitted Amendment No. 1 to its Form 1 Application. Notice of the Form 1 Applications, each as modified by Amendment No. 1, was published for comment in the Federal Register on September 17, 2009.[3] The Commission received two

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1 In the Notice (as defined below), EDGA Exchange, Inc. was assigned File No. 10-194 and EDGX Exchange, Inc. was assigned File No. 10-193. The EDGX Exchange, Inc. file number was subsequently redesignated as File No. 10-196. The EDGA Exchange, Inc. file number remains unchanged.

2 15 U.S.C. 78f. On September 11, 2009, the Commission issued an order granting EDGX and EDGA exemptive relief, subject to certain conditions, in connection with filing of their Form 1 applications. See Securities Exchange Act Release No. 60650 (September 11, 2009), 74 FR 47828.

3 See Securities Exchange Act Release No. 60651 (September 11, 2009), 74 FR 47827 ("Notice").

comments letter regarding the Form 1 Applications, as modified by Amendment No. 1.[4] On February 11, 2010, each Exchange submitted Amendment No. 2 to its Form 1 Application.[5]

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4 See letters to Elizabeth M. Murphy, Secretary, Commission, from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq OMX Group, Inc., dated November 11, 2009 ("Nasdaq Letter") and from Daniel Mathisson, Managing Director, and Vaishali Javeri, Director and Counsel, Credit Suisse Securities (USA) LLC, dated December 4, 2009 ("Credit Suisse Letter"). Direct Edge Holdings LLC responded to the Nasdaq Letter. See letter from William O'Brien, Chief Executive Officer, Direct Edge Holdings LLC, to Elizabeth M. Murphy, Secretary, Commission, dated November 13, 2009 ("DE Holdings Response").

5 In Amendment No. 2, each Exchange modified several Exhibits in its Form 1 Application. Specifically, each Exchange's Amendment No. 2:

(a) Modifies Exhibit B to: (A) specify the dates when the non-U.S. Upstream Owners adopted the Supplemental Resolutions (as defined below); and (B) revise the proposed rules of each Exchange to: (i) indicate in Rules 1.5(p), 11.9(a), 14.2(g), 14.3(d)) that the Post-Closing Session ends at 8:00 p.m.; (ii) add Rule 2.3(b)-(f) (Member Eligibility & Registration) to require registration of Authorized Traders and Principals in the appropriate category of registration as determined by the Exchange, and make conforming amendments to the interpretations and policies for Rule 2.5; (iii) reflect Direct Edge ECN LLC's assumed name of DE Route in Rules 2.11 and 2.12, regarding its roles as an inbound and outbound router; (iv) add Rule 3.21 (Customer Disclosures) to require Exchange members that execute trades on behalf of customers during either Pre-Opening or Post-Closing Sessions offered by the Exchange to provide customers with notice regarding the risks of trading during extended hours, consistent with the rules of other self-regulatory organizations; (v) amend Rule 11.5(a) to clarify that market orders are not eligible for the Pre-Opening and Post-Closing Sessions; (vi) add new Interpretation and Policy .01 to Rule 14.1 to explain the circumstances under which the Exchange will halt trading during the Pre-Opening and Post-Closing Sessions; (vii) amend Rule 11.11 to enable DTC/NSCC authorized clearing brokers to clear trades on the Exchange, even though they are not Exchange members; (viii) add section (d) to Rule 11.12 (Limitation of Liability) to establish a procedure to compensate Exchange members in relation to Exchange systems failures or a negligent act or omission of an Exchange employee, consistent with industry practice; (ix) revise the Exchange's Clearly Erroneous Trading rules (Rule 11.13) to comport with those filed by other registered national securities exchanges; and (x) add Rule 12.13 (Trading Ahead of Research Reports).

(b) Revises Exhibit C to clarify, in the description of Direct Edge ECN LLC, the cessation of its capacity as an electronic communications network following the Exchanges' commencement of operations as national securities exchanges.

(c) Modifies Exhibit E to: (A) provide a clarification with respect to the Exchange's membership in various order and trade reporting organizations; (B) refer to the planned phase-in of securities to be traded on the Exchange; and (C) update a reference to the

II. Statutory Standards

Under Sections 6(b) and 19(a) of the Act,[6] the Commission shall by order grant a registration as a national securities exchange if it finds, among other things, that the exchange is so organized and has the capacity to carry out the purposes of the Act and can comply, and can enforce compliance by, its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

As discussed in greater detail below, the Commission finds that the Exchanges' Form 1 Applications for exchange registration meet the requirements of the Act and the rules and regulations thereunder. Further, the Commission finds that the proposed rules of the Exchanges are consistent with Section 6 of the Act in that, among other things, they are designed to: (1) assure fair representation of an exchange's members in the selection of its directors and

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provision of technical systems specifications and the addition of a copy of the Direct Edge Next Gen FIX Specifications (Version 1.0) (Users Manual).

(d) Revises Exhibit F to amend the Clearing Letter of Guarantee, User Agreement, Routing Agreement, and Exchange Data Vendor Agreement to reflect comments by potential Exchange members and industry practice.

(e) Modifies Exhibit I to state that, prior to the launch of the Exchange, DE Holdings will make a capital contribution into the Exchange's capital account, and to represent that DE Holdings will enter into an explicit agreement with the Exchange to provide adequate funding for its operations.

(f) Amends Exhibit J to state that all Directors, including Owner Directors and the Chief Executive Officer, will serve staggered three year terms, subject to the Exchange's Bylaws.

(g) Revises to Exhibit L to describe the Exchange's execution of a regulatory services agreement with the ISE LLC and the Financial Industry Regulatory Authority ("FINRA") to conduct various regulatory services on behalf of the Exchange.

The changes proposed in Amendment No. 2 are either not material, consistent with the existing rules of other registered national securities exchanges, or responsive to the concerns of the Commission.

6 15 U.S.C. 78f(b) and 78s(a).

administration of its affairs and provide that, among other things, one or more directors shall be representative of investors and not be associated with the exchange, or with a broker or dealer; (2) prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and (3) protect investors and the public interest. The Commission also believes that the rules of the Exchanges are consistent with Section 11A of the Act.[7] Finally, the Commission finds that the proposed rules of the Exchanges do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[8]

III. Discussion

A. Corporate Structure

EDGX and EDGA each have applied to the Commission to register as a national securities exchange. EDGX and EDGA currently operate as separate trading platforms of Direct Edge ECN LLC ("DECN"), an electronic communications network ("ECN") that is a registered broker-dealer. Direct Edge Holdings LLC ("DE Holdings"), a Delaware limited liability company, wholly owns EDGX, EDGA, and DECN. Following EDGX's and EDGA's commencement of operations as national securities exchanges, DECN will cease operations as an ECN and DECN (doing business as DE Route) will begin to operate as a facility of the Exchanges that provides outbound order routing for the Exchanges. DECN also will provide inbound routing services to EDGX from EDGA, and to EDGA from EDGX.[9]

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7 15 U.S.C. 78k-1.

8 15 U.S.C. 78f(b)(8).

9 See EDGX and EDGA Rules 2.11 and 2.12. See also Section III.G, infra.

As a limited liability company, DE Holdings is overseen by a Board of Managers ("DE Holdings Board") and ownership in DE Holdings is represented by limited liability membership interests. The Fourth Amended and Restated Limited Liability Company Operating Agreement of DE Holdings ("DE Holdings Operating Agreement") refers to the holders of such interests as "Members."[10] The Members of DE Holdings and their respective ownership interests are: International Securities Exchange Holdings, Inc. ("ISE Holdings") (31.54%);[11] Citadel Derivatives Group LLC (19.9%); The Goldman Sachs Group, Inc. (19.9%); Knight/Trimark, Inc. (19.9%); and the ISE Stock Exchange Consortium Members (collectively 8.76%).[12]

1. Ownership of ISE Holdings

ISE Holdings, the owner of a 31.54% equity interest in DE Holdings, is also the parent company of International Securities Exchange, LLC ("ISE LLC"), a national securities exchange registered under Section 6 of the Exchange Act. Following a corporate transaction in 2007 (the "2007 Transaction"),[13] ISE Holdings became a wholly-owned subsidiary of U.S. Exchange Holdings, Inc. ("U.S. Exchange Holdings"), which is wholly owned by Eurex Frankfurt AG

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10 Specifically, the DE Holdings Operating Agreement defines a "Member" to include any Person (i) executing the DE Holdings Operating Agreement as a Member of DE Holdings as of April 13, 2009; or (ii) subsequently admitted as an additional or substitute Member of DE Holdings. References to "Members," as defined in the DE Holdings Operating Agreement and used in connection with DE Holdings, should be distinguished from references to "members," the latter refers to "members" as defined in Section 3(a)(3) of the Exchange Act, 15 U.S.C. 78c(a)(3).

11 See Securities Exchange Act Release No. 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (File No. SR-ISE-2008-85) (order relating to ISE Holdings' purchase of an ownership interest in DE Holdings) ("DE Holdings Order").

12 The ISE Stock Exchange Consortium members are: Bear Rex, Inc.; DB US Financial Markets Holding Corporation; Canopy Acquisition Corporation; IB Exchange Corp.; LabMorgan Corporation; Merrill Lynch L.P. Holdings, Inc.; Nomura Securities International, Inc.; Sun Partners LLC; and VCM Capital Markets, LLC.

13 See Securities Exchange Act Release No. 56955 (December 13, 2007), 72 FR 71979 (December 19, 2007) (File No. SR-ISE-2007-101) (order relating to the 2007 Transaction) ("Eurex Order").

("Eurex Frankfurt," and, with Deutsche Börse AG, the "German Upstream Owners"). Eurex Frankfurt is a wholly-owned subsidiary of Eurex Zürich AG ("Eurex Zürich"), which, in turn, is jointly owned by Deutsche Börse AG and SIX Swiss Exchange AG ("SWX"), a wholly-owned subsidiary of SIX Group AG (SIX Group AG, SWX, and Eurex Zürich are referred to collectively as the "Swiss Upstream Owners," and the Swiss Upstream Owners and the German Upstream Owners are referred to collectively as the "non-U.S. Upstream Owners"). As a result of ISE Holdings' purchase of an equity interest in DE Holdings,[14] the non-U.S. Upstream Owners, U.S. Exchange Holdings (together with the non-U.S. Upstream Owners, the "Upstream Owners"), and ISE Holdings acquired indirect ownership and voting interests in EDGX and EDGA.

2. Amendments to the Corporate Resolutions of the Non-U.S. Upstream Owners and Corporate Governing Documents of ISE Holdings and U.S. Exchange Holdings

In connection with the 2007 Transaction, each of the non-U.S. Upstream Owners adopted corporate resolutions (collectively, the "2007 Resolutions") designed to maintain the independence of the regulatory functions of ISE LLC.[15] In addition, the Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings ("U.S. Exchange Holdings Certificate") and the Amended and Restated Bylaws of U.S. Exchange Holdings ("U.S. Exchange Holdings Bylaws"), as well as the Certificate of Incorporation of ISE Holdings ("ISE Holdings Certificate") and the Amended and Restated Bylaws of ISE Holdings ("ISE Holdings Bylaws")

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14 See DE Holdings Order, supra note 11.

15 See Eurex Order, supra note 13. In 2007, the non-U.S. Upstream Owners were Eurex Frankfurt, Deutsche Börse AG, Eurex Zürich, SWX, SWX Group, and Verein SWX Swiss Exchange.

included provisions designed to maintain the independence of the regulatory functions of ISE LLC.[16]

The 2007 Resolutions and the corporate governing documents of U.S. Exchange Holdings and ISE Holdings related to ISE LLC and, by their terms, did not apply to additional national securities exchanges, such as EDGX and EDGA, that the Upstream Owners and ISE Holdings might control, directly or indirectly, as a result of a subsequent transaction. To maintain the independence of the regulatory function of EDGX and EDGA, each of the non-U.S. Upstream Owners have adopted supplemental resolutions (the "Supplemental Resolutions") that apply the 2007 Resolutions to EDGX and EDGA in the same manner and to the same extent as the 2007 Resolutions apply to ISE LLC.[17] Accordingly, the Supplemental Resolutions, which

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16 In this regard, through the 2007 Resolutions and the corporate governing documents of ISE Holdings and U.S. Exchange Holdings, the Upstream Owners and ISE Holdings committed, among other things: that they, and each of their directors, officers, and employees, would comply with the federal securities laws and with the Commission and ISE LLC; that their directors, officers, and employees would give due regard to preserving the independence of the self-regulatory functions of ISE LLC (or in the case of the non-U.S. Upstream Owners, that they would take reasonable steps necessary to cause their officers and employees involved in the activities of ISE LLC to give due regard to preserving the independence of the self-regulatory functions of ISE LLC); that their books and records related to the activities of ISE LLC would be subject at all times to inspection and copying by the Commission and ISE LLC, and would be deemed to be the books and records of ISE LLC for purposes of and subject to oversight pursuant to the U.S. securities laws; and, that, for so long as they controlled ISE LLC, any change to their governing documents would be submitted to the board of directors of ISE LLC and, if ISE LLC determined that such change was required to be filed with the Commission, such change would not be effective until filed with, or filed with and approved by the Commission, in accordance with Section 19(b) of the Act.

17 The enumeration in each of the 2007 Resolutions is identical. The enumeration in each of the Supplemental Resolutions also is identical. Therefore, unless otherwise specified, reference herein to certain enumerated resolutions applies to all of the 2007 Resolutions or to all of the Supplemental Resolutions, as applicable.

are included in the Form 1 Applications, extend to EDGX and EDGA the commitments that the non-U.S. Upstream Owners made in the 2007 Resolutions with respect to ISE LLC.[18]

In addition, the Commission has approved changes to the U.S. Exchange Holdings Certificate and U.S. Exchange Holdings Bylaws, and to the ISE Holdings Certificate and ISE Holdings Bylaws, that apply these governing documents to any national securities exchange, or facility thereof, that U.S. Exchange Holdings or ISE Holdings, as applicable, controls, directly or indirectly, including EDGX and EDGA.[19]

The Commission believes that the Supplemental Resolutions, the U.S. Exchange Holdings Certificate and U.S. Exchange Holdings Bylaws, as amended, and the ISE Holdings Certificate and ISE Holdings Bylaws, as amended, will assist EDGX and EDGA in fulfilling their self-regulatory obligations and in administering and complying with the requirements of the Act, as discussed in greater detail below.[20]

3. Swiss Resolutions and the 2009 Procedure

As discussed more fully in the Eurex Order,[21] Swiss law designed to protect Swiss sovereignty raised concerns about the ability of the Swiss Upstream Owners to provide the Commission with direct access to information, including books and records, related to the

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18 Id.

19 See Securities Exchange Act Release No. 61498 (February 4, 2010), 75 FR 7229 (February 18, 2009) (order approving File No. SR-ISE-2009-90) (revising the U.S. Exchange Holdings Certificate, the U.S. Exchange Holdings Bylaws, and the Trust Agreement among ISE Holdings, U.S. Exchange Holdings, and trustees) ("U.S. Exchange Holdings Order"); and DE Holdings Order, supra note 11 (revising the ISE Holdings Certificate and ISE Holdings Bylaws).

20 See Sections III.B. and III.C., infra.

21 See note 13, supra.

activities of ISE LLC.[22] To avoid conflict with Swiss law and to facilitate the 2007 Transaction, the Commission and the Swiss Federal Banking Commission ("SFBC") developed a procedure (the "2007 Procedure") under which the SFBC undertook to serve as a conduit for unfiltered delivery of books and records of the Swiss Upstream Owners related to the activities of ISE LLC.[23] Accordingly, each 2007 Resolution adopted by the Swiss Upstream Owners (the "2007 Swiss Resolutions") provided that, where necessitated by Swiss law, a Swiss Upstream Owner would provide information related to the activities of ISE LLC, including the books and records of such owner related to the activities of ISE LLC, to the Commission promptly through the SFBC.[24] Moreover, oral exchanges between each Swiss Upstream Owner and the Commission related to the activities of ISE LLC would include the participation of SFBC.[25]

By its terms, the 2007 Procedure applied solely to information of the Swiss Upstream Owners related to the activities of ISE LLC, including books and records related to the activities

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22 In particular, Art. 271 of the Swiss penal code, "Prohibited acts for a foreign state," states, in part: "Whoever, without being authorized, performs acts for a foreign state on Swiss territory that are reserved to an authority or an official, whoever performs such acts for a foreign party or another foreign organization, whoever aids and abets such acts, shall be punished with imprisonment and, in serious cases, sentenced to the penitentiary. See Eurex Order, supra note 13, at note 58 and accompanying text.

23 See Eurex Order, supra note 13, at note 59 and accompanying text. On January 1, 2009, the SFBC, the Swiss Federal Office of Private Insurance, and the Swiss Anti-Money Laundering Control Authority merged to form the Swiss Financial Markets Authority ("FINMA"), a new consolidated financial regulator for Switzerland. The Eurex Order describes the 2007 Procedure in greater detail. See Eurex Order, supra note 13, at notes 57 – 60 and accompanying text.

24 See Eurex Order, supra note 13, at note 57 and accompanying text. The 2007 Procedure was designed to ensure that the delivery of books and records to the Commission was not delayed. Therefore, under the 2007 Procedure, the Commission's requests for books and records would be sent directly to the Swiss Upstream Owners and would not be subject to filtering or substantive review by the SFBC. In addition, the SFBC agreed to pass to the Commission without delay and without substantive review materials provided by the Swiss Upstream Owners that were responsive to the Commission's requests for information. See Eurex Order, supra note 13, at note 60.

25 See Eurex Order, supra note 13, at text accompanying note 60.

of ISE LLC. To accommodate the Swiss Upstream Owners' indirect ownership and voting interest in EDGX and EDGA, the Commission and FINMA (the successor to the SFBC) have developed a procedure (the "2009 Procedure") that is substantially similar to the 2007 Procedure, except that it will apply to any U.S. securities exchange, or facility thereof, that ISE Holdings controls, directly or indirectly, including EDGX and EDGA. The 2009 Procedure, which will become effective upon the Commission's approval of the Exchanges' Form 1 applications, will supersede the 2007 Procedure.

Under the 2009 Procedure, FINMA would serve as a conduit for the delivery of information of the Swiss Upstream Owners related to the activities of any registered national securities exchange controlled, directly or indirectly, by ISE Holdings, including EDGX and EDGA. The Commission's usual practice is to have direct access to books and records related to the activities of a U.S. securities exchange. However, subject to the condition that the Swiss Upstream Owners will promptly deliver such information to the Commission,[26] coupled with the fact that under Bylaws of the Exchanges, all trading records of the Exchanges must be maintained in the United States,[27] the Commission believes that the provisions of the 2007 Resolutions adopted by the Swiss Upstream Owners, as supplemented by the Supplemental Resolutions adopted by the Swiss Upstream Owners, related to the Commission's access to the books and records of the Swiss Upstream Owners through FINMA, should not result in a level of

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26 See 2007 Swiss Resolutions 1, 3(b), 6, 7(a), 7(e), 8(a), 8(e), and 9, and Swiss Supplemental Resolution 2.

27 See Bylaws of EDGX ("EDGX Bylaws") and Bylaws of EDGA ("EDGA Bylaws" and, together with the EDGX Bylaws, the "Exchange Bylaws"), Article XI, Section 4. The enumeration in the Exchange Bylaws is identical.

access materially different from that agreed to by other entities that control U.S. securities exchanges.[28]

4. Trust Agreement

In connection with the 2007 Transaction, ISE implemented a Delaware statutory Trust (the "Trust") pursuant to a Trust Agreement ("2007 Trust Agreement") among ISE Holdings, U.S. Exchange Holdings, trustees (the "Trustees"), and a Delaware trustee.[29] By its terms, the 2007 Trust Agreement related solely to ISE Holdings' ownership of ISE LLC, but not to any other national securities exchange that ISE Holdings might control, directly or indirectly. The Commission has approved a proposal[30] that revises the 2007 Trust Agreement to replace references to ISE LLC with references to any national securities exchange or facility thereof controlled, directly or indirectly, by ISE Holdings, including EDGX and EDGA (the 2007 Trust Agreement, as amended, is referred to herein as the "2009 Trust Agreement").[31] Except for the expanded scope of the 2007 Trust Agreement, the 2009 Trust Agreement is substantially similar to the 2007 Trust Agreement.

The Trust serves two general purposes. First, for as long as ISE Holdings controls, directly or indirectly, a national securities exchange, including EDGA or EDGA, the Trust would hold capital stock of ISE Holdings in the event that a person obtains an ownership or voting

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28 See also Eurex Order, supra note 13, at note 66 and accompanying text. The Commission notes that if a non-U.S. Upstream Owner fails to make its books and record available to the Commission, the Commission could bring an action under, among other provisions, Section 17 of the Act, 15 U.S.C. 78q, and Rule 17a-1(b) thereunder, 17 CFR 240.17a-1(b), against EDGX or EDGA pursuant to Section 19(h) of the Act, 15 U.S.C. 78s(h).

29 See Eurex Order, supra note 13, at Section II.C, for a more detailed description of the Trust.

30 See U.S. Exchange Holdings Order, supra note 19.

31 The term of the Trust is perpetual, provided that ISE Holdings directly or indirectly controls a national securities exchange or a facility thereof, including EDGX or EDGA. See 2009 Trust Agreement, Article II, Section 2.6.

interest in ISE Holdings in excess of the ownership and voting limits established in the ISE Holdings Certificate of Incorporation.[32] Second, the Trust would hold capital stock of ISE Holdings in the event of a Material Compliance Event.[33] Under the 2009 Trust Agreement, a "Material Compliance Event" is any state of facts, development, event, circumstance, condition, occurrence, or effect that results in the failure of any of the non-U.S. Upstream Owners to adhere to its respective commitments under the 2007 Resolutions, as supplemented by the Supplemental Resolutions, in any material respect.[34] The Trust holds a call option over the capital stock of ISE Holdings that may be exercised if a Material Compliance Event has occurred and continues to be in effect.[35]

For the reasons discussed in the Eurex Order in connection with the 2007 Trust Agreement,[36] the Commission finds that the 2009 Trust Agreement is designed to enable EDGX and EDGA to operate in a manner that complies with the federal securities laws, including the

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32 See Eurex Order, supra note 13, at Section II.C. If a person exceeds an ownership or voting limit, then a majority of the capital stock of ISE Holdings that has the right by its terms to vote in the election of the ISE Holdings Board or on other matters (other than matters affecting the rights, preferences, or privileges of the capital stock) would automatically be transferred to the Trust. See ISE Holdings Certificate, Article FOURTH, Section III(c). See also Eurex Order, supra note 13, at note 37 and accompanying text.

33 See Eurex Order, supra note 13, at Section II.C.

34 See 2009 Trust Agreement, Article I, Section 1.1.

35 See 2009 Trust Agreement, Article IV, Section 4.2. More specifically, if a Material Compliance Event occurs and continues to be in effect, the Trustees must take certain actions, including, after a Cure Period, the exercise of a Call Option for a transfer of the majority of capital stock of ISE Holdings that has the right by its terms to vote in the election of the ISE Holdings Board or on other matters. See 2009 Trust Agreement, Article IV, Section 4.2. See also Eurex Order, supra note 13, at note 62 and accompanying text.

36 See Eurex Order, supra note 13, at Section II.C. See also U.S. Exchange Holdings Order, supra note 19.

objectives and requirements of Sections 6(b) and 19(g) of the Act,[37] and to facilitate the ability of EDGX and EDGA and the Commission to fulfill their regulatory and oversight obligations under the Act.[38] In addition, the Commission notes that the 2009 Trust Agreement, like the 2007 Trust Agreement, is consistent with the provisions that other entities that directly or indirectly own or control a self-regulatory organization have instituted and that have been approved by the Commission.[39]

B. Self-Regulatory Function of the Exchanges; Relationship between DE Holdings, the Upstream Owners, ISE Holdings, and the Exchanges; Jurisdiction over DE Holdings, ISE Holdings, and the Upstream Owners

1. DE Holdings

Although DE Holdings itself will not itself carry out regulatory functions, its activities with respect to the operation of EDGX and EDGA must be consistent with, and not interfere with, the self-regulatory obligations of EDGX and EDGA. The DE Holdings corporate documents include certain provisions that are designed to maintain the independence of the Exchanges' self-regulatory function from DE Holdings, enable EDGX and EDGA to operate in a manner that complies with the federal securities laws, including the objectives of Sections 6(b) and 19(g) of the Act, and facilitate the ability of the Exchanges and the Commission to fulfill their regulatory and oversight obligations under the Act.[40]

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37 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g).

38 See 2009 Trust Agreement, Articles V, VI, and VIII.

39 See, e.g., Securities Exchange Act Release Nos. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (File No. SR-NYSE-2006-120) (order relating to the combination between NYSE Group, Inc. and Euronext N.V.); and 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (File No. SR-NYSE-2005-77) (order relating to the business combination of the New York Stock Exchange, Inc., and Archipelago Holdings, Inc.). See also Eurex Order, supra note 13, at note 111.

40 See DE Holdings Operating Agreement Article XI, Section 11.2; Article XII; and Article XIV.

For example, DE Holdings submits to the Commission's jurisdiction with respect to activities relating to EDGX and EDGA,[41] and agrees to provide the Commission and the Exchanges with access to its books and records that are related to the operation or administration of the Exchanges.[42] In addition, to the extent they are related to the operation or administration of EDGX or EDGA, the books, records, premises, officers, Managers, agents, and employees of DE Holdings shall be deemed the books, records, premises, officers, Managers, agents, and employees of EDGX or EDGA, as applicable, for purposes of, and subject to oversight pursuant to, the Act.[43] DE Holdings also agrees to keep confidential non-public information relating to the self-regulatory function[44] of the Exchanges and not to use such information for any non-regulatory purpose.[45] In addition, the Board of Managers of DE Holdings, as well as its officers, employees, and agents, are required to give due regard to the preservation of the independence of the self-regulatory function of EDGX and EDGA.[46] Further, the DE Holdings Operating Agreement requires that any changes to the DE Holdings Operating Agreement be submitted to the Boards of Directors of EDGX and EDGA, and, if such amendment is required to be filed with the Commission pursuant to Section 19(b) of the Act, such change shall not be effective

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41 See DE Holdings Operating Agreement, Article XIV, Section 14.3.

42 See DE Holdings Operating Agreement, Article XI, Section 11.2(b).

43 Id.

44 This requirement to keep confidential non-public information relating to the self-regulatory function shall not limit the Commission's ability to access and examine such information or limit the ability of any Members, Managers, officers, employees, or agents of DE Holdings to disclose such information to the Commission. See DE Holdings Operating Agreement, Article XI, Section 11.2(a).

45 Id.

46 See DE Holdings Operating Agreement, Article XIV, Section 14.1.

until filed with, or filed with and approved by, the Commission.[47] The Commission finds that these provisions are consistent with the Act, and that they will assist EDGX and EDGA in fulfilling their self-regulatory obligations and in administering and complying with the requirements of the Act.

2. Upstream Owners and ISE Holdings

Although the Upstream Owners and ISE Holdings will not carry out any regulatory functions, the activities of each of the Upstream Owners and of ISE Holdings with respect to the operation of EDGX and EDGA must be consistent with, and not interfere with, the self-regulatory obligations of EDGX and EDGA. The 2007 Resolutions, as supplemented by the Supplemental Resolutions, the ISE Holdings Bylaws, the ISE Holdings Certificate, the U.S. Exchange Holdings Certificate, and the U.S. Exchange Holdings Bylaws include certain provisions designed to maintain the independence of the self-regulatory function of EDGX and EDGA, enable EDGX and EDGA to operate in a manner that complies with the U.S. federal securities laws, including the objectives and requirements of Sections 6(b) and 19(g) of the Act,[48] and facilitate the ability of EDGX, EDGA, and the Commission to fulfill their regulatory and oversight obligations under the Act.

For example, the Upstream Owners and ISE Holdings provide that each such Upstream Owner, and ISE Holdings, will comply with the U.S. federal securities laws and the rules and regulations thereunder and cooperate with the Commission and EDGX and EDGA.[49] Also, each

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47 See DE Holdings Operating Agreement, Article XV, Section 15.2(b). The requirement to submit changes to the Board of an Exchange endures for as long as DE Holdings directly or indirectly controls the Exchange. Id.

48 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g).

49 See Resolution 1 and Supplemental Resolution 2(a); U.S. Exchange Holdings Certificate, Article ELEVENTH; and ISE Holdings Certificate, Article THIRTEENTH.

board member, officer, and employee of the Upstream Owners, and of ISE Holdings, in discharging his or her responsibilities, will comply with the U.S. federal securities laws and the rules and regulations thereunder, cooperate with the Commission, and cooperate with EDGX and EDGA.[50] In discharging his or her responsibilities as a board member of an Upstream Owner, or of ISE Holdings, each such member must, to the fullest extent permitted by applicable law, take into consideration the effect that the actions of the Upstream Owner or ISE Holdings, as applicable, would have on the ability of EDGX and EDGA to carry out their responsibilities under the Act.[51] In addition, each of the Upstream Owners and ISE Holdings, and their board members, officers, and employees, must give due regard to the preservation of the independence of the self-regulatory function of EDGX and EDGA (or in the case of the non-U.S. Upstream Owners, that they will take reasonable steps necessary to cause their officers and employees involved in the activities of EDGX and EDGA to give due regard to preserving the independence of the self-regulatory functions of EDGX and EDGA).[52]

Further, the non-U.S. Upstream Owners (along with their respective board members, officers, and employees), U.S. Exchange Holdings, and ISE Holdings agree to keep confidential, to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of EDGX and EDGA, including, but not limited to, confidential

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50 See Resolutions 7(a) and 8(a) and Supplemental Resolutions 2(b) and (c); U.S. Exchange Holdings Certificate, Article TENTH; and ISE Holdings Certificate, Article TENTH. The Resolutions also provide that each non-U.S. Upstream Owner will take reasonable steps necessary to cause each person who subsequently becomes a board member of the non-U.S. Upstream Owner to agree in writing to certain matters included in the Resolutions. See Resolution 7 and Supplemental Resolution 2(b).

51 Resolution 7(f) and Supplemental Resolution 2(b); U.S. Exchange Holdings Certificate, Article TENTH; and ISE Holdings Certificate, Article TENTH.

52 See Resolutions 5, 7(d), and 8(d) and Supplemental Resolution 2; U.S. Exchange Holdings Certificate, Article TWELFTH; and ISE Holdings Bylaws, Article I, Section 1.5.

information regarding disciplinary matters, trading data, trading practices, and audit information, contained in the books and records of EDGX or EDGA and not use such information for any commercial[53] purposes.[54] In addition, books and records of the non-U.S. Upstream Owners related to the activities of EDGX and EDGA will at all times be made available for, and books and records of U.S. Exchange Holdings and ISE Holdings will be subject at all times to, inspection and copying by the Commission, EDGX, and EDGA.[55] Books and records of U.S. Exchange Holdings related to the activities of EDGX and EDGA, and the books and records of ISE Holdings, will be maintained within the United States.[56] Moreover, for so long as each of the Upstream Owners or ISE Holdings directly or indirectly controls EDGX or EDGA, the books, records, officers, directors (or equivalent), and employees of each of the Upstream Owners or of ISE Holdings will be deemed to be the books, records, officers, directors, and employees of EDGX or EDGA, as applicable.[57] Finally, for so long as U.S. Exchange Holdings

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53 The Commission believes that any non-regulatory use of such information would be for a commercial purpose.

54 See Resolutions 6, 7(e), and 8(e), and Supplemental Resolution 2; U.S. Exchange Holdings Certificate, Article FOURTEENTH; and ISE Holdings Certificate, Article ELEVENTH.

55 See Resolution 3 and Supplemental Resolution 2(a); U.S. Exchange Holdings Certificate, Article FIFTEENTH; and ISE Holdings Certificate, Article TWELFTH. See Section II.A.3, supra, for a discussion of the 2009 Procedure through which the Swiss Upstream Owners would make available their books and records relating to the activities of the Exchanges.

56 See U.S. Exchange Holdings Certificate, Article FIFTEENTH; and ISE Holdings Bylaws, Article I, Section 1.3.

57 See Resolutions 3 and 8(c) and Supplemental Resolutions 2(a) and (c); U.S. Exchange Holdings Certificate, Article FIFTEENTH; and ISE Holdings Certificate, Article TWELFTH.

or ISE Holdings directly or indirectly control EDGX or EDGA, the premises of U.S. Exchange Holdings and ISE Holdings will be deemed to be the premises of EDGX or EDGA.[58]

To the extent involved in the activities of EDGX or EDGA, each of the non-U.S. Upstream Owners, its board members, officers, and employees, irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for purposes of any action arising out of, or relating to, the activities of EDGX or EDGA.[59] Likewise, U.S. Exchange Holdings, its officers and directors, and employees whose principal place of business and residence is outside of the United States, to the extent such directors, officers, or employees are involved in the activities of EDGX or EDGA, irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for purposes of any action arising out of, or relating to, the activities of EDGX or EDGA.[60] Similarly, ISE Holdings and its officers, directors, employees, and agents irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for purposes of any action arising out of, or relating to, EDGX or EDGA.[61]

Finally, the 2007 Resolutions, as supplemented by the Supplemental Resolutions, the U.S. Exchange Holdings Certificate, the U.S. Exchange Holdings Bylaws, the ISE Holdings Certificate, and the ISE Holdings Bylaws each require that any change to the applicable document (including any action by the non-U.S. Upstream Owners that would have the effect of changing the Supplemental Resolutions or the 2007 Resolutions) be submitted to the Boards of

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58 See U.S. Exchange Holdings Certificate, Article FIFTEENTH; and ISE Holdings Certificate, Article TWELFTH.

59 See Resolutions 2, 7(b), and 8(b) and Supplemental Resolution 2.

60 See U.S. Exchange Holdings Bylaws, Article VI, Section 16.

61 See ISE Holdings Bylaws, Article I, Section 1.4.

EDGX and EDGA.[62] If such change must be filed with, or filed with and approved by, the Commission under Section 19 of the Act,[63] and the rules thereunder, then such change shall not be effective until filed with, or filed with and approved by, the Commission.[64] The Commission finds that these provisions are consistent with the Act, and that they will assist EDGX and EDGA in fulfilling their self-regulatory obligations and in administering and complying with the requirements of the Act.

3. Controlling Persons

Under Section 20(a) of the Act, any person with a controlling interest in EDGX or EDGA would be jointly and severally liable with and to the same extent that EDGX or EDGA is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, Section 20(e) of the Act creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder. Further, Section 21C of the Act authorizes the Commission to enter a cease-and-desist order against any person who has been "a cause of" a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation. These provisions are applicable to all entities controlling the Exchanges, including the Trust, DE Holdings, ISE Holdings, and the Upstream Owners.

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62 See Supplemental Resolution 3; U.S. Exchange Holdings Certificate, Article SIXTEENTH; U.S. Exchange Holdings Bylaws, Article VI, Section 9; ISE Holdings Certificate, Article FOURTEENTH; and ISE Holdings Bylaws, Article X, Section10.1.

63 15 U.S.C. 78s.

64 See Supplemental Resolution 3; U.S. Exchange Holdings Certificate, Article SIXTEENTH; U.S. Exchange Holdings Bylaws, Article VI, Section 9; ISE Holdings Certificate, Article FOURTEENTH; and ISE Holdings Bylaws, Article X, Section10.1. The requirement to submit changes to the Board of an Exchange endures for as long as the Upstream Owners or ISE Holdings directly or indirectly control the Exchange. Id.

C. Ownership and Voting Limitations; Changes in Control of the Exchanges

The DE Holdings Certificate includes restrictions on the ability to own and vote shares of the capital stock of DE Holdings.[65] These limitations are designed to prevent any Member of DE Holdings from exercising undue control over the operation of the Exchanges and to assure that the Exchanges and the Commission are able to carry out their regulatory obligations under the Act. Similarly, the corporate governing documents of ISE Holdings include ownership and voting limitations (respectively, the "ISE Holdings Ownership Limit" and the "ISE Holdings Voting Limit") that apply for so long as ISE Holdings controls, directly or indirectly, a national securities exchange, including EDGX or EDGA. The Resolutions and Supplemental Resolutions of the non-U.S. Upstream Owners, and the U.S. Exchange Holdings Certificate of Incorporation, include provisions requiring these entities to take reasonable steps necessary to cause ISE Holdings to be in compliance with the ISE Holdings Ownership Limit and the ISE Holdings Voting Limit.

1. DE Holdings

Generally, no person, other than ISE Holdings, either alone or together with its related persons,[66] may own, directly or indirectly, of record or beneficially, Units representing more

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65 These provisions are consistent with ownership and voting limits approved by the Commission for other self-regulatory organizations. See e.g., Securities Exchange Act Release Nos. 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10-182) (order granting the exchange registration of BATS Exchange, Inc.) ("BATS Exchange Order"); 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (File No. SR-NSX-2006-03) ("NSX Demutualization Order"); 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (File No. SR-CHX-2004-26) ("CHX Demutualization Order"); and 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (File No. SR-Phlx-2003-73) ("Phlx Demutualization Order").

66 See DE Holdings Operating Agreement, Article I, Section 1.1.

than a 40% Percentage Interest in DE Holdings.[67] In addition, the DE Holdings Operating Agreement prohibits members of the EDGX or EDGA, either alone or together with their related persons, from owning, directly or indirectly, of record or beneficially, Units representing a Percentage Interest in DE Holdings of more than 20%.[68] Further, no person, other than ISE Holdings, either alone or together with its related persons, may vote or cause the voting of Units representing more than a 20% Percentage Interest in DE Holdings.[69] If any Member of DE Holdings purports to transfer Units in violation of the ownership limits, or to vote or cause the voting of Units in violation of the voting limits, DE Holdings has the right to redeem such Units for the lesser of the fair market value or the book value of the Units.[70] In addition, DE Holdings will not honor any vote that would violate the voting limitations, and any Units that would violate the voting limitation will not be entitled to vote to the extent of the violation.[71]

The DE Holdings Board may waive the 40% ownership limitation applicable to persons who are not Exchange members and the 20% voting limitation pursuant to an amendment to the DE Holdings Operating Agreement adopted by the DE Holdings Board if the DE Holdings

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67 See DE Holdings Operating Agreement, Article XII, Section 12.1(a). A Percentage Interest is the ratio of the number of Units held to the total of all of the issued and outstanding Units, expressed as a percentage. See DE Holdings Operating Agreement, Article I, Section 1.1. The ownership and voting limitations in Article XII, Section 12.1(a) of the DE Holdings Operating Agreement will not apply to ISE Holdings for as long as ISE LLC is a wholly-owned subsidiary of ISE Holdings and ISE Holdings is subject to ownership and voting limitations comparable to those set forth in Article XII, Section 12.1(a). See DE Holdings Operating Agreement, Article XII, Section 12.1(a)(3). The comparable ownership and voting limitations for ISE Holdings are included in Article FOURTH, Section III of the ISE Holdings Certificate. See also notes 89 - 91, infra, and accompanying text.

68 See DE Holdings Operating Agreement, Article XII, Section 12.1(a)(2).

69 See DE Holdings Operating Agreement, Article XII, Section 12.1(a)(3).

70 See DE Holdings Operating Agreement, Article XII, Section 12.3.

71 See DE Holdings Operating Agreement, Article XII, Section 12.4.

Board makes certain findings.[72] Any such amendment will not be effective unless it is filed with and approved by the Commission.[73] However, as long as DE Holdings directly or indirectly controls an Exchange, the DE Holdings Board may not waive the ownership and voting limitations above 20% for Exchange members or their related persons.[74]

Exchange members that trade on an exchange traditionally have ownership interests in such exchange. As the Commission has noted in the past, however, a member's interest in an exchange could become so large as to cast doubt on whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that member.[75] A member that is a controlling shareholder of an exchange might be tempted to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently monitor and surveil the member's conduct or diligently enforce its rules and the federal securities laws with respect to conduct by the member that violates such provisions.

In addition, as proposed, the Exchanges will be wholly-owned subsidiaries of DE Holdings. The Amended and Restated Bylaws of EDGX and EDGA (together, the "Exchanges Amended and Restated Bylaws") identify this ownership structure.[76] Any changes to the

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72 See DE Holdings Operating Agreement, Article XII, Section 12.1(b).

73 Id.

74 These provisions are consistent with waiver of ownership and voting limits approved by the Commission for other SROs. See e.g., BATS Exchange Order, NSX Demutualization Order, and CHX Demutualization Order, supra note 65; and Securities Exchange Act Release No. 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (File No. SR-PCX-2004-08).

75 See, e.g., Securities Exchange Act Release Nos. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131) ("Nasdaq Exchange Order"); and 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) ("NYSE/Archipelago Merger Approval Order").

76 See Exchanges Amended and Restated Bylaws Article I(jj). The enumeration in the Amended and Restated Bylaws of EDGX and EDGA is identical.

Exchanges Amended and Restated Bylaws, including any change in the provision that identifies DE Holdings as the initial owner of the Exchanges, must be filed with and approved by the Commission pursuant to Section 19 of the Act.[77]

The Commission believes that these provisions are consistent with the Act. These requirements should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or the Exchanges to effectively carry out their regulatory oversight responsibilities under the Act.

In its comment letter, Nasdaq raises questions relating to the ownership and control of EDGX and EDGA, in particular, and of national securities exchanges in general. In this regard, Nasdaq urges the Commission to re-examine the voting and ownership limits applicable to owners of national securities exchanges and to adopt consistent rules that would apply to all national securities exchanges and alternative trading systems.[78] In addition, Nasdaq asks the Commission to consider the possibility that multiple owners, each holding a 20% ownership interest, could have common interests that cause them to act in concert on a consistent basis.[79] In the case of EDGX and EDGA, Nasdaq believes that "the bias inherent in concentrated dealer control" could affect the operation of the Exchanges and of their Member/owners, thereby

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77 See 15 U.S.C. 78s.

78 See Nasdaq Letter, supra note 4, at 3. Credit Suisse, however, believes that Commission rules governing the ownership structure of alternative trading systems are unnecessary and would be inconsistent with the goals of Regulation ATS. See Credit Suisse Letter, supra note 4. The Commission does not believe that the consideration of the Exchanges' applications for exchange registration are the appropriate forum for considering this issue.

79 Id. at 4. In this regard, Nasdaq notes that three broker-dealers each hold a 19.9% ownership interest in DE Holdings. See Nasdaq Letter, supra note 4, at 2.

requiring the Commission to review all proposed rule changes of the Exchanges for possible bias.[80]

As discussed above,[81] the DE Holdings Operating Agreement includes restrictions on the ability to own and vote Units in DE Holdings. The Commission believes that these limitations, which are consistent with the ownership and voting limits that the Commission has approved for other SROs,[82] are reasonably designed to prevent any member of DE Holdings, including the Member/owners, from exercising undue control over the operation of the Exchanges. In addition, the Commission believes that the composition of the Exchanges' Boards of Directors, which must at all times include a majority of Independent Directors, could help to counteract the influence of the Exchanges' Member/owners.[83] With respect to Nasdaq's concern regarding the need to scrutinize proposed rule changes of EDGX and EDGA for possible bias in favor of the Exchanges' Member/owners, the Commission notes that that it will review proposed rule changes by the Exchanges, as it reviews the proposed rule changes of all other national securities exchanges, to evaluate whether the proposed rules are consistent with Act, in general, and, in particular, with the requirements of Section 6(b)(5) of the Act.[84]

Nasdaq also expresses concern regarding potential unfair advantages resulting from exchanges of information between the Exchanges and their Member/owners.[85] In particular, Nasdaq questions how the Exchanges will implement the provisions of Exchange Rules 2.10

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80 See Nasdaq Letter, supra note 4, at 4.

81 See notes 65 - 77, supra, and accompanying text.

82 See note 65, supra.

83 See Exchanges Amended and Restated Bylaws, Article III, Section 2(b). The composition of the Exchanges' Boards is discussed in greater detail in Section II.D.1., infra.

84 15 U.S.C. 78f(b)(5).

85 See Nasdaq Letter, supra note 4, at 5.

and 2.11[86] and Exchange Amended and Restated Bylaws Article XI which, among other things, restrict the flow of confidential information between the Exchanges and other persons, in light of the potential presence of representatives of each of the controlling owners on the Exchange Boards. The Commission notes that Exchange Rules 2.10 and 2.11 are comparable to rules adopted by other national securities exchanges[87] and that Article XI, Section 3 of the Exchange Amended and Restated Bylaws is comparable to bylaw provisions adopted by other national securities exchanges.[88] The Commission notes that each Exchange, like all national securities exchanges, has the obligation under Section 6(b)(1) of the Act to comply with its rules and to enforce compliance by Exchange Members with, among other things, the rules of the Exchange and the federal securities laws. Accordingly, if either Exchange learns of a failure to maintain the confidentiality of information pertaining to its self-regulatory function, as required by the Exchanges Amended and Restated Bylaws and the DE Holdings Operating Agreement, such Exchange would be required to take appropriate action to address the failure to comply with the applicable requirements of its governing documents. In addition, the Commission also monitors national securities exchanges with respect to their members' compliance with the rules of the exchange.

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86 Exchange Rule 2.10, "Affiliation between Exchange and a Member," generally prohibits an Exchange from acquiring an ownership interest in a Member, and a Member from becoming an affiliate of the Exchange, without prior Commission approval. Exchange Rule 2.10 allows an Exchange Member to be a Director of the Exchange or of DE Holdings. In addition, Exchange Rule 2.10 allows each Exchange to be an affiliate of DECN. Exchange Rule 2.11, "Direct Edge ECN LLC as Outbound Router," addresses DECN's function as the outbound router for the Exchanges. Exchange Rules 2.10 and 2.11 are discussed in greater detail in Section III.G, infra.

87 See, e.g., BATS Rules 2.10 and 2.11; and NSX Rules 2.10 and 2.11. Exchange Rules 2.10 and 2.11 are discussed in greater detail in Section III.G, infra.

88 See, e.g., Article XI, Section 3 of the Amended and Restated Bylaws of BATS Exchange, Inc.

2. ISE Holdings and the Upstream Owners

(a) ISE Holdings

The governing documents of ISE Holdings also include ownership and voting limitations that apply for so long as ISE Holdings controls, directly or indirectly, a national securities exchange (a "Controlled National Securities Exchange"), or facility thereof, including EDGX or EDGA. In particular, the ISE Holdings Certificate provides that, for so long as ISE Holdings controls, directly or indirectly, a Controlled National Securities exchange, no person, either alone or together with its related persons, may own, directly or indirectly, of record or beneficially, more than 40% (or 20% if the person is a member of an exchange controlled by ISE Holdings) of the capital stock of ISE Holdings that has the right by its terms to vote in the election of the Board of Directors of ISE Holdings ("ISE Holdings Board") or on other matters (other than matters affecting the rights, preferences, or privileges of the capital stock) ("ISE Holdings Ownership Limit").[89] In addition, for so long as ISE Holdings controls, directly or indirectly, a Controlled National Securities Exchange, no person, either alone or together with its related persons, may, directly or indirectly, vote or cause the voting of more than 20% of the ISE Holdings capital stock that has the right by its terms to vote in the election of the ISE Holdings Board or on other matters (other than matters affecting the rights, preferences, or privileges of the capital stock) ("ISE Holdings Voting Limit").[90]

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89 See ISE Holdings Certificate, Article FOURTH, Section III.

90 Id. If a person exceeds an ISE Holdings Ownership or ISE Holdings Voting Limit, a majority of the capital stock of ISE Holdings that has the right by its terms to vote in the election of the ISE Holdings Board or on other matters (other than matters affecting the rights, preferences or privileges of the capital stock) would automatically be transferred to the Trust. See ISE Holdings Certificate, Article FOURTH, Section III(c). See also Eurex Order, supra note 13, at note 36 and at notes 70 – 114 and accompanying text.

Article XI of the ISE Holdings Bylaws, which originally was adopted in connection with the Eurex Transaction, waives the ISE Holdings Ownership Limits and the ISE Holdings Voting Limits to allow the Upstream Owners to own and vote all of the common stock of ISE Holdings.[91] Article XI, Section 11.1(b) states that, in waiving the ISE Holdings Ownership Limits and the ISE Holdings Voting Limits to permit the Upstream Owners to own and vote the capital stock of ISE Holdings, the ISE Holdings Board has determined, with respect to each Upstream Owner, that: (i) such waiver will not impair the ability of ISE Holdings and each Controlled National Securities Exchange to carry our their respective functions and responsibilities under the Act; (ii) such waiver is in the best interests of ISE Holdings, its stockholders, and each Controlled National Securities Exchange; (iii) such waiver will not impair the ability of the Commission to enforce the Act; (iv) neither the Upstream Owner nor any of its related persons is subject to a statutory disqualification (within the meaning of Section 3(a)(39) of the Act); and (v) neither the Upstream Owner nor any of its related persons is a member of such Controlled National Securities Exchange.

Because Article XI, Section 11.1(b) requires the ISE Holdings Board, in waiving the ISE Holdings Ownership Limit and the ISE Holdings Voting Limit, to have determined, with respect to each Upstream Owner, that, among other things, such waiver will not impair the ability of EDGX and EDGA to carry out their functions and responsibilities under the Act, or impair the

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91 The ISE Holdings Certificate allows the ISE Holdings Board to waive the ISE Holdings Ownership Limit and the ISE Holdings Voting Limit pursuant to an amendment to the ISE Holdings Bylaws, provided that the ISE Holdings Board makes certain determinations. See ISE Holdings Certificate, Article FOURTH, Sections III(a)(i)(A) III(a)(i)(B) and III(b)(i). Article XI of the ISE Holdings Bylaws was adopted in connection with the Eurex Transaction, when ISE LLC was the sole national securities exchange controlled by ISE Holdings. See Eurex Order, supra note 13. Article XI, Section 11.1(b) was subsequently amended to apply to any Controlled National Securities Exchange. See DE Holdings Order, supra note 11.

Commission's ability to enforce the Act, the Commission believes that the Upstream Owners' exercise of ownership and voting control of ISE Holdings will not impair the ability of the Commission or of EDGX and EDGA to discharge their respective responsibilities under the Act.

(b) Upstream Owners

To facilitate compliance with the ISE Holdings Ownership Limit and the ISE Holdings Voting Limit, the Resolutions of the non-U.S. Upstream Owners, as supplemented by the Supplemental Resolutions, provide that each such owner will take reasonable steps necessary to cause ISE Holdings to be in compliance with the ISE Holdings Ownership Limit and the ISE Holdings Voting Limit.[92] Likewise, the U.S. Exchange Holdings Certificate provides that, for so long as U.S. Exchange Holdings directly or indirectly controls a national securities exchange, including EDGX or EDGA, U.S. Exchange Holdings will take reasonable steps necessary to cause ISE Holdings to be in compliance with the ISE Holdings Ownership Limit and the ISE Holdings Voting Limit.[93] The Commission believes that these provisions in the Resolutions, as supplemented by the Supplemental Resolutions, and in the U.S. Exchange Holdings Certificate should minimize the potential that a person could improperly interfere with, or restrict the ability of, the Commission or EDGX or EDGA to effectively carry out their regulatory responsibilities under the Act.

D. EDGX and EDGA

EDGX and EDGA each have applied to the Commission to register as a national securities exchange. As part of their exchange applications, EDGX and EDGA have filed their Certificates of Incorporation (together, the "Exchange Certificates") and the Exchanges

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92 See Resolution 4 and Supplemental Resolution 2(a).

93 See U.S. Exchange Holdings Certificate, Article THIRTEENTH.

Amended and Restated Bylaws.[94] In these documents, among other things, the Exchanges establish the composition of their respective Boards of Directors (each, an "Exchange Board," and, together, the "Exchange Boards") and the committees of the Exchanges.

1. Exchange Boards

Each Exchange Board will be the governing body of its Exchange and will possess all of the powers necessary for the management of the business and affairs of the Exchange and the execution of the Exchange's responsibilities as a self-regulatory organization ("SRO"). Under the Exchanges Amended and Restated Bylaws, each Exchange Board initially will be composed of 19 Directors, including:[95]

- the Chief Executive Officer ("CEO") of EDGX or EDGA, as applicable;[96]
- Four Owner Directors;[97]
- Ten Independent Directors;[98] and

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94 The enumeration in the EDGX Certificate and the EDGX Amended and Restated Bylaws are the same as the enumeration in the EDGA Certificate and the EDGA Amended and Restated Bylaws, respectively.

95 See Exchanges Amended and Restated Bylaws, Article III, Section 2(a). An Exchange Board may add or remove Director positions, provided that, among other things, the number of Directors positions will not be fewer than seven nor more than 25. See Exchanges Amended and Restated Bylaws, Article III, Section 2(b).

96 See Exchanges Amended and Restated Bylaws, Article III, Section 2(a)(i).

97 See Exchanges Amended and Restated Bylaws, Article III, Section 2(a)(ii). The Designating Owners of DE Holdings (i.e., Members of DE Holdings that hold at least a 15% Percentage Interest in DE Holdings) select the Owner Directors. See Exchanges Amended and Restated Bylaws, Articles I(k) and III, Section 2(b).

98 See Exchanges Amended and Restated Bylaws, Article III, Section 2(a)(iii). An Independent Director is a Director who has no material relationship with (i) the Exchange or any Affiliate of the Exchange, or (ii) any Exchange Member or Affiliate of any Exchange Member; provided, however, that an individual who otherwise qualifies as an Independent Director will not be disqualified from serving in such capacity solely because such Director is a Director of the Exchange, DE Holdings, or, the case of EDGA, a Director of EDGX and, in the case of EDGX, a Director of EDGA. See Exchanges Amended and Restated Bylaws, Article I(u).

- Four Exchange Member Directors.[99]

In addition, at all times, at least 20% of the Directors of each Exchange Board will be Exchange Member Directors and the majority of the Directors of each Exchange Board will be Independent Directors.[100]

Following approval of the Form 1 Applications, DE Holdings, as the sole owner of the common stock of the Exchanges, will elect Directors in accordance with the Exchange Certificates and the Exchanges Amended and Restated Bylaws.[101] The first annual meeting of the stockholders of each Exchange will be held prior to the Exchanges' commencement of operations as national securities exchanges.[102] At the first annual stockholders' meeting, the stockholders will elect Directors of the Exchanges pursuant to the Exchange Certificates and the Exchanges Amended and Restated Bylaws. Therefore, prior to commencing operations as national securities exchanges, the Members of the Exchanges will have the opportunity to participate in the selection of Exchange Member Directors.[103]

DE Holdings will appoint the initial Nominating Committee[104] and the Exchange Member Nominating Committee[105] for each Exchange, which will serve until the first annual

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99 See Exchanges Amended and Restated Bylaws, Article III, Section 2(a)(iv). An Exchange Member Director is an officer, director, employee or agent of an Exchange Member who is elected in accordance with the procedures set forth in Article III, Section 4 of the Exchanges Amended and Restated Bylaws. See Exchanges Amended and Restated Bylaws, Article I(q).

100 See Exchanges Amended and Restated Bylaws, Article III, Section 2(b).

101 See Form 1 Applications, Exhibit J, Response 2.

102 See Exchanges Amended and Restated Bylaws, Article IV, Section 1(b).

103 See Exchanges Amended and Restated Bylaws, Article III, Sections 2 and 4.

104 The Nominating Committee will consist solely of three Independent Directors. See Exchanges Amended and Restated Bylaws, Article VI, Section 2. Because the Exchanges Amended and Restated Bylaws are substantially the same, the discussion of the Exchanges' committees applies to both Exchanges.

meeting of stockholders.[106] Each of the Nominating Committee and the Exchange Member Nominating Committee, after completion of its respective duties for nominating directors for election to the Board of EDGX or EDGA, as applicable, for that year, will nominate candidates to serve on the succeeding year's Nominating Committee or Member Nominating Committee, as applicable.[107] Additional candidates for the Member Nominating Committee may be nominated and elected by each Exchange's Members pursuant to a petition process.[108]

Each Exchange's Nominating Committee will nominate candidates for each director position (other than Owner Directors, Exchange Member Directors, and the director position filled by the CEO), and DE Holdings, as the sole shareholder, will elect those directors. Each Exchange's Member Nominating Committee will nominate candidates for each Exchange Member Director on the Exchange Board.[109] Members of EDGX and EDGA may nominate additional candidates for the Exchange Member Director positions pursuant to a petition process.[110] If no candidates are nominated pursuant to a petition process, then each Exchange's

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105 Each member of the Exchange Member Nominating Committee will qualify as an Exchange Member Director, although the committee member is not required to be a Director. See Exchanges Amended and Restated Bylaws, Article VI, Section 3. An Exchange Member Director is an officer, director, employee, or agent of an Exchange Member, other than an Exchange Member that maintains an ownership interest in DE Holdings, who is elected as a Director in accordance with Article III, Section 4 of the Exchanges Amended and Restated Bylaws. See Exchanges Amended and Restated Bylaws, Article I(q) and (z).

106 See Exchanges Amended and Restated Bylaws, Article VI, Section 1.

107 Id.

108 Id.

109 The Exchange Member Nominating Committee will solicit comments from Exchange members for the purpose of approving and submitting names of candidates for election to the position of Exchange Member Director. See Exchanges Amended and Restated Bylaws, Article III, Section 4.

110 See Exchanges Amended and Restated Bylaws, Article III, Section 4(c). The petition must be signed by Exchange Member Representatives representing 10% or more of the

Nominating Committee will nominate the initial nominees of the Member Nominating Committee as Exchange Member Directors.[111] If a petition process produces additional candidates, then the candidates nominated pursuant to the petition process, together with those nominated by each Exchange's Member Nominating Committee, will be presented to Exchange Members for election to determine the final nomination of Exchange Member Directors.[112] Each Exchange's Nominating Committee will nominate the candidates who receive the most votes as Exchange Member Directors.[113] DE Holdings, as the sole shareholder, will elect those candidates nominated by each Exchange's Nominating Committee as Exchange Member Directors.[114]

The Commission believes that the requirement in the Exchanges Amended and Restated By-Laws that 20% of the directors be Exchange Member Directors and the means by which they are chosen by Members provides for the fair representation of members in the selection of directors and the administration of the Exchanges consistent with the requirement in Section 6(b)(3) of the Act.[115] As the Commission has previously noted, this requirement helps to ensure that members have a voice in the use of self-regulatory authority, and that an exchange is

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Exchange members. No Exchange member, together with its Affiliates, may account for more than 50% of the signatures endorsing a particular candidate. Id.

111 See Exchanges Amended and Restated Bylaws, Article III, Section 4(e).

112 See Exchanges Amended and Restated Bylaws, Article III, Section 4(e) and (f). Each Exchange Member will have the right to cast one vote for each available Exchange Member Director nomination, provided that any such vote must be cast for a person on the List of Candidates, and no Exchange Member, together with its Affiliates, may account for more than 20% of the votes cast for a candidate. See Exchanges Amended and Restated Bylaws, Article III, Section 4(f).

113 See Exchanges Amended and Restated Bylaws, Article III, Section 4(f).

114 Id.

115 15 U.S.C. 78f(b)(3).

administered in a way that is equitable to all those who trade on its market or through its facilities.[116]

The Commission has previously stated its belief that the inclusion of public, non-industry representatives on exchange oversight bodies is critical to an exchange's ability to protect the public interest.[117] Further, public, non-industry representatives help to ensure that no single group of market participants has the ability to systematically disadvantage other market participants through the exchange governance process. The Commission believes that public directors can provide unique, unbiased perspectives, which should enhance the ability of the Exchange Boards to address issues in a non-discriminatory fashion and foster the integrity of the Exchanges.[118] The Commission believes that the composition of the Exchange Boards satisfy the requirements in Section 6(b)(3) of the Act,[119] which requires that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer.[120]

2. Exchange Committees

In the Exchanges Amended and Restated Bylaws, the Exchanges have proposed to establish several committees. Specifically, each Exchange has proposed to establish the

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116 See, e.g., Nasdaq Exchange Registration Order and NYSE/Archipelago Merger Approval Order, supra note 75, and BATS Exchange Order, supra note 65.

117 See, e.g., Regulation of Exchanges and Alternative Trading Systems, Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) ("Regulation ATS Release").

118 See Nasdaq Exchange Registration Order and NYSE/Archipelago Merger Approval Order, supra note 75, and BATS Exchange Order, supra note 65.

119 15 U.S.C. 78f(b)(3).

120 See Form 1 Applications, Exhibit J, Response 2 (stating that at least one Independent Director will be a public non-industry representative not associated with a member of the Exchange or with a broker or dealer, as required by Section 6(b)(3) of the Act).

following committees whose members the Exchange Boards, after consultation with the Chairman, may designate: a Compensation Committee;[121] an Audit Committee;[122] an Executive Committee;[123] a Regulatory Oversight Committee; and an Appeals Committee.[124] In addition, each Exchange has proposed to establish a Nominating Committee[125] and a Member Nominating Committee, which will be elected on an annual basis by a vote of the stockholders.[126] For the reasons discussed above, the Commission believes that the Exchanges' proposed committees should enable the Exchanges to carry out their responsibilities under the Act and are consistent with the Act.

E. Regulation of EDGX and EDGA

As a prerequisite for the Commission's approval of an exchange's application for registration, an exchange must be organized and have the capacity to carry out the purposes of the Act.[127] Among other requirements, an exchange must be able to enforce compliance by its

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121 The Compensation Committee will consist of three Independent Directors. See Exchanges Amended and Restated Bylaws, Article V, Section 5(a).

122 The Audit Committee, which will have at least three members, will consist solely of Directors, including a majority of Independent Directors, and an Independent Director will serve as Chairman of the Audit Committee. See Exchanges Amended and Restated Bylaws, Article V, Sections 2(a) and 5(b).

123 The Regulatory Oversight Committee will have at least three members and will consist solely of Independent Directors. See Exchanges Amended and Restated Bylaws, Article V, Sections 2(a) and 5(c).

124 The Appeals Committee will consist of two Independent Directors and one Exchange Member Director. See Exchanges Amended and Restated Bylaws, Article V, Section 5(d).

125 See Exchanges Amended and Restated Bylaws, Article VI, Sections 1 and 2, and Section II.D.1., supra.

126 See Exchanges Amended and Restated Bylaws, Article VI, Sections 1 and 3, and Section II.D.1., supra.

127 See Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

members, and persons associated with its members, with the federal securities laws and the rules of the exchange.[128]

1. Membership

Membership on the Exchanges will be open to any registered broker or dealer that is a member of another registered national securities exchange or association, or any natural person associated with such a registered broker or dealer.[129] To be eligible for membership in the Exchanges, a person must be, and remain, a member of another registered national securities exchange or association.[130]

For a temporary 90-day period after approval of the Exchanges' Form 1 Applications, an applicant that is an active member of another registered national securities exchange or the Financial Industry Regulatory Authority, Inc. ("FINRA") and is a current or former subscriber to DECN will be able to apply through an expedited process to become a member of one or both Exchanges, and to register with the Exchange(s) all of its associated persons whose registrations are active at the time the Exchanges are approved as national securities exchanges, by submitting waive-in application forms, including membership agreements.[131] EDGX or EDGA may request additional documentation in addition to the waive-in application form in order to determine whether a waive-in applicant meets the Exchange's qualification standards.[132] All of the firm's

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128 Id. See also Section 19(g) of the Act, 15 U.S.C. 78s(g).

129 See Exchange Rules 2.3(a) and 2.5(a)(4).

130 Id.

131 See Exchange Rule 2.4. The BATS Exchange also provided a waive-in application process. See BATS Rule 2.4.

132 Id.

associated persons who are registered in categories recognized by Exchange rules would become registered persons of an Exchange member firm.[133]

All other applicants (and after the 90-day period has ended, those that could have waived in through the expedited process) may apply for membership in one or both Exchanges by submitting a full membership application to the Exchange(s).[134] Applications for association with an Exchange Member shall be submitted to the Exchange(s) on Form U-4 and such other forms as the Exchanges may prescribe.[135]

Each Exchange will receive and review all applications for membership in the Exchange. If an Exchange is satisfied that the applicant is qualified for membership, the Exchange will promptly notify the applicant, in writing, of such determination, and the applicant will be a member of the Exchange.[136] If an Exchange is not satisfied that the applicant is qualified for membership, the Exchange shall promptly notify the applicant of the grounds for denial.[137] Once an applicant is a member of an Exchange, it must continue to possess all the qualifications set forth in the Exchange's rules. When an Exchange has reason to believe that an Exchange member or associated person of a member fails to meet such qualifications, the Exchange may suspend or revoke such person's membership or association.[138]

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133 Id.

134 See Exchange Rule 2.6.

135 See Exchange Rule 2.6(b).

136 See Exchange Rule 2.6(c).

137 See Exchange Rule 2.6(d).

138 See Exchange Rule 2.7; see also Exchange Rules Chapters VII and VIII.

Appeal of a staff denial, suspension, or termination of membership will be heard by the Appeals Committee of EDGX or EDGA, as applicable.[139] Decisions of the Appeals Committee will be made in writing and will be sent to the parties to the proceeding.[140] The decisions of the Appeals Committee will be subject to review by the applicable Exchange Board, on its own motion, or upon written request by the aggrieved party or by the Chief Regulatory Officer ("CRO").[141] The Exchange Board will have sole discretion to grant or deny the request.[142] The Exchange Board will conduct the review of the Appeals Committee's decision and may affirm, reverse, or modify the Appeals Committee's decision.[143] An Exchange Board's decision is final.[144]

The Commission finds that the membership rules of EDGX and EDGA[145] are consistent with Section 6 of the Act,[146] specifically Section 6(b)(2) of the Act,[147] which requires that a national securities exchange have rules that provide that any registered broker or dealer or natural person associated with such broker or dealer may become a member and any person may become associated with an exchange member. The Commission notes that pursuant to Section

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139 See Exchange Rule 10.3; see also Exchanges Amended and Restated Bylaws Article V, Section 5(d).

140 See Exchange Rule 10.4(d).

141 See Exchange Rule 10.5(a).

142 Id.

143 See Exchange Rule 10.5(b).

144 Id. Membership decisions are subject to review by the Commission. See Exchange Rule 10.7 and Section 19(d) of the Act, 15 U.S.C. 78s(d).

145 In its comment letter, Nasdaq states that EDGX and EDGA should be required to amend their rules governing the registration of associated persons of members to address certain deficiencies. See Nasdaq Letter, supra note 4, at 7. EDGX and EDGA have revised their member registration rules accordingly. See Exchange Rule 2.3 and Amendment No. 2.

146 15 U.S.C. 78f.

147 15 U.S.C. 78f(b)(2).

6(c) of the Act, an exchange must deny membership to any person, other than a natural person, that is not a registered broker or dealer, any natural person that is not, or is not associated with, a registered broker or dealer, and registered broker-dealers that do not satisfy certain standards, such as financial responsibility or operational capacity. As registered exchanges, the Exchanges must independently determine if an applicant satisfies the standards set forth in the Act, regardless of whether an applicant is a member of another SRO.[148]

2. Regulatory Independence

Each Exchange has proposed several measures to help ensure the independence of its regulatory function from its market operations and other commercial interests. The regulatory operations of each Exchange will be supervised by the Exchange's CRO and monitored by its Regulatory Oversight Committee.[149] The Regulatory Oversight Committees of each Exchange will consist of three members, each of whom must be an Independent Director.[150] Each Exchange's Regulatory Oversight Committee will be responsible for monitoring the adequacy and effectiveness of the Exchange's regulatory program, assessing the Exchange's regulatory performance, and assisting the Exchange Board in reviewing the Exchange's regulatory plan and the overall effectiveness of the Exchange's regulatory functions.[151] Each Exchange's Regulatory Oversight Committee also will meet with the Exchange's CRO in executive session at regularly scheduled meetings and at any time upon request of the CRO or any member of the Regulatory Oversight Committee.[152]

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148 See Nasdaq Exchange Registration Order, supra note 75.

149 See Exchanges Amended and Restated Bylaws, Article V, Section 5(c).

150 See Exchanges Amended and Restated By-Laws Articles I(u) and V, Sections 2(a) and 5(c).

151 See Exchanges Amended and Restated By-Laws Article V, Section 5(c).

152 See Exchanges Amended and Restated By-Laws Article VII, Section 9.

Each Exchange proposes that its CRO have general supervision of the regulatory operations of the Exchange, including overseeing surveillance, examination, and enforcement functions.[153] The CRO also will administer any regulatory services agreement with another SRO to which the Exchange is a party.[154] The CRO of each Exchange will be an Executive Vice President or Senior Vice President of the Exchange, and also may serve as the Exchange's General Counsel.[155]

In addition, each Exchange has taken steps designed to provide sufficient funding for the Exchange to carry out its responsibilities under the Act. Specifically, each Exchange has represented that: (1) DE Holdings will allocate sufficient operational assets and make a capital contribution to the Exchange's capital account prior to the launch of the Exchange; (2) such an allocation and contribution will be adequate to operate the Exchange, including the regulation of the Exchange; and (3) there will be an explicit agreement between the Exchange and DE Holdings that requires DE Holdings to provide adequate funding for each Exchange's operations, including the regulation of the Exchange.[156] In addition, the Amended and Restated Bylaws of each Exchange provides that revenues received by the Exchange from fees derived from its regulatory function or regulatory penalties will not be used for non-regulatory purposes or distributed to the stockholders, but rather, will be applied to fund the legal and regulatory operations of the Exchange (including surveillance and enforcement activities), or will be used to pay restitution and disgorgement of funds intended for customers.[157]

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153 Id.

154 Id.

155 Id. See Nasdaq Exchange Registration Order, supra note 75.

156 See Amendment No. 2, supra note 5.

157 See Exchanges Amended and Restated Bylaws Article X, Section 4.

3. Regulatory Contracts

Although the Exchanges will be SROs with all of the attendant regulatory obligations under the Act, EDGX and EDGA each have stated that they entered into a regulatory contract with FINRA and a regulatory contract with ISE LLC (each, a "Regulatory Contract," and, together, the "Regulatory Contracts"), under which FINRA and ISE will perform certain regulatory functions on behalf of EDGX and EDGA.[158] Specifically, each Exchange states that FINRA will assist Exchange staff on registration issues on an as-needed basis, investigate potential violations of each Exchange's rules or federal securities laws related to activity on the Exchange, conduct examinations related to market conduct on the Exchange by Members, assist the Exchanges with disciplinary proceedings pursuant to each Exchange's rules, including issuing charges and conducting hearings, and provide dispute resolution services to Exchange Members on behalf of the Exchanges, including operation of each Exchange's arbitration program. Each Exchange also represents that FINRA will provide the Exchange with access to FINRA's WebCRD system, and will assist with programming Exchange-specific functionality relating to such system.[159] With respect to the Regulatory Contracts with ISE, each Exchange states that ISE will perform surveillance including, but not limited to, reviews respecting trading through protected quotes, locked and crossed markets, manipulation, wash trades, marking the close, customer complaints, frontrunning, trading ahead of customer orders, and anti-spoofing.[160]

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158 See Exchange Rule 13.7; see also Amendment No.2. Pursuant to the applicable provisions of the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations thereunder, 17 CFR 200.83, the Exchanges have requested confidential treatment for the Regulatory Contracts.

159 See Amendment No. 2, supra note 5.

160 Each Exchange also states that ISE surveillance will work closely with the market operations and legal/compliance groups of the Exchange, when needed, to perform error trade reviews. See Amendment No. 2, supra note 5.

Notwithstanding the Regulatory Contracts, each Exchange acknowledges it will retain ultimate legal responsibility for the regulation of its members and its market.[161]

The Commission believes that it is consistent with the Act to allow the Exchanges to contract with FINRA and ISE to perform examination, enforcement, and disciplinary functions.[162] These functions are fundamental elements to a regulatory program, and constitute core self-regulatory functions. The Commission believes that FINRA and ISE have the expertise and experience to perform these functions on behalf of the Exchanges.[163]

At the same time, each Exchange, unless relieved by the Commission of its responsibility,[164] bears the ultimate responsibility for self-regulatory responsibilities and primary liability for self-regulatory failures, not the SRO retained to perform regulatory functions on the Exchange's behalf. In performing these regulatory functions, however, the SROs retained to perform regulatory functions may nonetheless bear liability for causing or aiding and abetting the

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161 See Exchange Rule 13.7 and Amendment No. 2, supra note 5.

162 See, e.g., Regulation ATS Release, supra note 117. See also Securities Exchange Act Release Nos. 50122 (July 29, 2004), 69 FR 47962 (August 6, 2004) (SR-Amex-2004-32) (order approving rule that allowed Amex to contract with another SRO for regulatory services) ("Amex Regulatory Services Approval Order"); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004) ("NOM Approval Order"); Nasdaq Exchange Registration Order, supra note 75; and BATS Exchange Order, supra note 65.

163 See, e.g., Amex Regulatory Services Approval Order, supra note 162; NOM Approval Order, supra note 162; and Nasdaq Exchange Registration Order, supra note 75. The Commission notes that the Regulatory Contracts are not before the Commission and, therefore, the Commission is not acting on them.

164 See Section 17(d)(1) of the Act and Rule 17d-2 thereunder, 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d-2. Section 17(d)(1) of the Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO. Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to (i) receive regulatory reports from such members; (ii) examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members. See also Section III.E.4, infra.

failure of EDGX or EDGA to perform its regulatory functions.[165] Accordingly, although FINRA and ISE will not act on their own behalf under their SRO responsibilities in carrying out these regulatory services for the Exchanges, as SROs retain to perform regulatory functions, they may have secondary liability if, for example, the Commission finds that the contracted functions are being performed so inadequately as to cause a violation of the federal securities laws by EDGX or EDGA.[166]

Because the exhibits to the Regulatory Contacts, including the Exchange and Commission rules covered by the Regulatory Contracts, have not yet been finalized, the Commission is conditioning the operation of EDGX and EDGA as exchanges on the finalization of the provisions in the Regulatory Contracts that will specify the Exchange and Commission rules for which FINRA and ISE will provide regulatory functions.[167]

4. 17d-2 Agreement

Section 19(g)(1) of the Act[168] requires every SRO to examine its members and persons associated with its members and to enforce compliance with the federal securities laws and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) of

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165 For example, if failings by the SRO retained to perform regulatory functions have the effect of leaving an Exchange in violation of any aspect of the Exchange's self-regulatory obligations, the Exchange would bear direct liability for the violation, while the SRO retained to perform regulatory functions may bear liability for causing or aiding and abetting the violation. See, e.g., Nasdaq Exchange Registration Order, supra note 75; BATS Exchange Order, supra note 65; and Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (File No. 10-127) (order approving the International Securities Exchange LLC's application for registration as a national securities exchange).

166 Id.

167 Alternatively, the Exchanges could demonstrate that they have the ability to fulfill their regulatory obligations.

168 15 U.S.C. 78s(g)(1).

the Act.[169] Section 17(d) was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication with respect to members of more than one SRO ("common members").[170] Rule 17d-2 of the Act permits SROs to propose joint plans allocating regulatory responsibilities concerning common members.[171] These agreements, which must be filed with and approved by the Commission, generally cover such regulatory functions as personnel registration, branch office examinations, and sales practices. Commission approval of a Rule 17d-2 plan relieves the specified SRO of those regulatory responsibilities allocated by the plan to another SRO.[172] Many existing SROs have entered in to such agreements.[173]

EDGX and EDGA each have represented to the Commission that each Exchange and FINRA intend to file Rule 17d-2 agreements with the Commission covering common members of EDGX or EDGA, as applicable, and FINRA. These agreements would allocate to FINRA regulatory responsibility, with respect to common members, for the following:

- FINRA will examine common members of EDGX or EDGA, as applicable, and FINRA for compliance with federal securities laws, rules and regulations, and

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169 15 U.S.C. 78q(d).

170 See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976) ("Rule 17d-2 Adopting Release").

171 17 CFR 240.17d-2.

172 See Rule 17d-2 Adopting Release, supra note 170.

173 See, e.g., Securities Exchange Act Release Nos. 13326 (March 3, 1977), 42 FR 13878 (March 14, 1977) (NYSE/Amex); 13536 (May 12, 1977), 42 FR 26264 (May 23, 1977) (NYSE/BSE); 14152 (November 9, 1977), 42 FR 59339 (November 16, 1977) (NYSE/CSE); 13535 (May 12, 1977), 42 FR 26269 (May 23, 1977) (NYSE/CHX); 13531 (May 12, 1977), 42 FR 26273 (May 23, 1977) (NYSE/PSE); 14093 (October 25, 1977), 42 FR 57199 (November 1, 1977) (NYSE/Phlx); 15191 (September 26, 1978), 43 FR 46093 (October 5, 1978) (NASD/BSE, CSE, CHX and PSE); 16858 (May 30, 1980), 45 FR 37927 (June 5, 1980) (NASD/BSE, CSE, CHX and PSE); 42815 (May 23, 2000), 65 FR 34762 (May 31, 2000) (NASD/ISE); and 54136 (July 12, 2006), 71 FR 40759 (July 18, 2006) (NASD/Nasdaq).

rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules.

- FINRA will investigate common members of EDGX or EDGA, as applicable, and FINRA for violations of federal securities laws, rules or regulations, or Exchange rules that the Exchange has certified as identical or substantially identical to a FINRA rule.
- FINRA will enforce compliance by common members with the federal securities laws, rules and regulations, and the rules of EDGX or EDGA, as applicable, that the Exchange has certified as identical or substantially similar to FINRA rules.

Because EDGX and EDGA anticipates entering into this Rule 17d-2 agreement, they have not made provision to fulfill the regulatory obligations that would be undertaken by FINRA under these agreements with respect to common members of EDGX or EDGA, as applicable, and FINRA.[174] Accordingly, the Commission is conditioning the operation of the Exchanges on approval by the Commission of the Rule 17d-2 agreements between each Exchange and FINRA that allocate the above specified matters to FINRA.[175]

5. Discipline and Oversight of Members

As noted above, as a prerequisite for Commission approval of an exchange's application for registration, an exchange must be organized and have the capacity to carry out the purposes of the Act. Among other requirements, an exchange must be able to enforce compliance by its members and persons associated with its members with federal securities laws and the rules of

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174 The Commission notes that regulation that is to be covered by the Rule 17d-2 agreements for common members will be carried out by FINRA under the Regulatory Contracts for EDGX or EDGA members that are not also members of FINRA.

175 Alternatively, EDGX and EDGA could demonstrate that they have the ability to fulfill their regulatory obligations.

the exchange.[176] As noted above, pursuant to the Regulatory Contracts, FINRA will perform many of the initial disciplinary processes on behalf of the Exchanges.[177] For example, FINRA will investigate potential securities laws violations, issue complaints, and conduct hearings pursuant to the rules of the Exchanges. Appeals from disciplinary decisions will be heard by each Exchange's Appeals Committee,[178] and the Appeals Committee's decision shall be final. In addition, each Exchange Board may on its own initiative order review of a disciplinary decision.[179]

The Exchanges Amended and Restated Bylaws and the Exchanges' rules provide that each Exchange has disciplinary jurisdiction over its members so that it can enforce its members' compliance with its rules and the federal securities laws.[180] Each Exchange's rules also permit it to sanction members for violations of its rules and violations of the federal securities laws and rules by, among other things, expelling or suspending members, limiting members' activities, functions, or operations, fining or censuring members, or suspending or barring a person from being associated with a member, or any other fitting sanction.[181] Each Exchange's rules also provide for the imposition of fines for certain minor rule violations in lieu of commencing disciplinary proceedings.[182] Accordingly, as a condition to the operation of the Exchanges, a

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176 See 15 U.S.C. 78f(b)(1).

177 See Section III.E.5, supra.

178 See Exchange Rule 8.10(b).

179 See Exchange Rule 8.10(c).

180 See generally Exchanges Amended and Restated Bylaws Article X and Exchange Rules Chapters II and VIII.

181 See Exchange Rules 2.2 and 8.1(a).

182 See Exchange Rule 8.15.

Minor Rule Violation Plan ("MRVP") filed by each Exchange under Act Rule 19d-1(c)(2) must be declared effective by the Commission.[183]

The Commission finds that the Exchanges Amended and Restated By-Laws and the rules of each Exchange concerning the Exchange's disciplinary and oversight programs are consistent with the requirements of Sections 6(b)(6) and 6(b)(7)[184] of the Act in that they provide fair procedures for the disciplining of members and persons associated with members. The Commission further finds that the rules of EDGX and EDGA are designed to provide the Exchanges with the ability to comply, and with the authority to enforce compliance by their members and persons associated with their members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchanges.[185]

F. Trading Systems of EDGX and EDGA

1. Trading Rules

Each Exchange will operate a fully automated electronic order book. Members of EDGX and EDGA and entities that enter into sponsorship arrangements with such members (collectively, "Users") will have access to the systems of EDGX and EDGA (each, an "EDGX System," an "EDGA System," or an "Exchange System," and, together, the "Exchange Systems").[186] Users will be able to electronically submit market and various types of limit orders to EDGX or EDGA from remote locations.[187] All orders submitted to the Exchanges will be

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183 17 CFR 240.19d-1(c)(2).

184 15 U.S.C. 78f(b)(6) and (b)(7).

185 See Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

186 To obtain authorized access to the Exchange Systems, each User must enter in to a User Agreement with the Exchange(s). See Exchange Rule 11.3(a).

187 One proposed order type is the Step-up Order, which is a market or limit order with the instruction that the Exchange System display the order to Users at or within the National Best Bid or Offer ("NBBO") price pursuant to Exchange Rule 11.9(b)(1)(C). See

displayed unless designated otherwise by the Exchange member submitting the order. Displayed orders will be displayed on an anonymous basis at a specified price. Non-displayed orders will not be displayed but will be ranked in an Exchange System at a specified price.[188] The Exchanges' Systems will continuously and automatically match orders pursuant to price/time priority, except that displayed orders will have priority over non-displayed orders at the same price.[189]

Each Exchange System is designed to comply with Rule 611 of Regulation NMS[190] by requiring that, for any execution to occur on the Exchange during regular trading hours, the price must be equal to, or better than, any "protected quotation" within the meaning of Regulation NMS ("Protected Quotation"), unless an exception to Rule 611 of Regulation NMS applies.[191] Each Exchange will direct any orders or portion of orders that cannot be executed in their

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Exchange Rule 11.5(c)(11). Prior to routing to away markets, or cancellation per the order's instructions, Step-up Orders will be displayed to Users, in a manner that is separately identifiable from other Exchange orders, at or within the NBBO price for a period of time not to exceed 500 milliseconds, as determined by the Exchange. See Exchange Rule 11.9(a)(1)(C). In its comment letter, Nasdaq notes that the Commission recently has proposed a rule amendment to prohibit the use of this type of order, known as a flash order, and questions whether the Commission should approve the Form 1 Applications with an order type that "would become illegal if the Commission's flash order ban is adopted." See Nasdaq Letter, supra note 4, at 6. The Commission notes that it has not acted on its proposal to prohibit the use of flash orders. The Commission also notes that the Exchanges will be required to comply with any Commission rules regarding flash orders and that the Exchanges have represented that they will do so. See letter from William O'Brien, Chief Executive Officer, DE Holdings, DECN, EDGX, and EDGA, to James Brigagliano, Co-Acting Director, Division of Trading and Markets, Commission, dated August 10, 2009.

188 The rules of EDGX and EDGA do not provide for specialists or market makers.

189 See Exchange Rule 11.8.

190 17 CFR 242.611.

191 See Exchange Rule 11.9(a).

entirety to away markets for execution, unless the terms of the orders direct the Exchange not to route such orders away.[192]

Each Exchange intends to operate as an automated trading center in compliance with Rule 600(b)(4) of Regulation NMS.[193] Each Exchange will display automated quotations at all times except in the event that a systems malfunction renders the Exchange's System incapable of displaying automated quotations.[194] Each Exchange has designed its rules relating to orders, modifiers, and order execution to comply with the requirements of Regulation NMS, including an immediate-or-cancel functionality.[195] These rules include accepting orders marked as intermarket sweep orders, which will allow orders so designated to be automatically matched and executed without reference to Protected Quotations at other trading centers,[196] and routing orders marked as intermarket sweep orders by a User to a specific trading center for execution.[197] In addition, each Exchange's rules address locked and crossed markets,[198] as required by Rule 610(d) of Regulation NMS.[199] The Commission believes that the Exchanges' rules are consistent with the Act, in particular with the requirements of Rule 610(d) and Rule 611 of Regulation NMS.

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192 See Exchange Rule 11.9(b)(2).

193 17 CFR 242.600(b)(4).

194 See Exchange Rule 11.9(d); see also 17 CFR 242.600(b)(3).

195 See Exchange Rules 11.5 and 11.9; see also 17 CFR 242.600(b)(3).

196 See Exchange Rule 11.5(d)(1).

197 See Exchange Rule 11.5(d)(2).

198 See Exchange Rule 11.16.

199 17 CFR 242.610(d).

As stated above, each Exchange intends to operate as an automated trading center and have its best bid and best offer be a Protected Quotation.[200] To meet their regulatory responsibilities under Rule 611(a) of Regulation NMS, market participants must have sufficient notice of new Protected Quotations, as well as all necessary information (such as final technical specifications).[201] Therefore, the Commission believes that it would be a reasonable policy and procedure under Rule 611(a) for industry participants to begin treating each Exchange's best bid and best offer as a Protected Quotation within 90 days after the date of this order, or such later date as the Exchange begins operations as national securities exchange.

2. Section 11 of the Act

Section 11(a)(1) of the Act[202] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively, "covered accounts"), unless an exception applies. Rule 11a2-2(T) under the Act,[203] known as the "effect versus execute" rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2-2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange. To comply with Rule 11a2-2(T)'s conditions, a member: (i) must transmit the order from off the exchange floor; (ii) may not participate in the execution of the

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200 17 CFR 242.600(b)(58).

201 See Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038, 30041 (May 24, 2006).

202 15 U.S.C. 78k(a)(1).

203 17 CFR 240.11a2-2(T).

transaction once it has been transmitted to the member performing the execution;[204] (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

In letters to the Commission,[205] each Exchange requested that the Commission concur with its conclusion that Exchange members entering orders into each respective Exchange System satisfy the requirements of Rule 11a2-2(T). For the reasons set forth below, the Commission believes that EDGA members entering orders into the EDGA System and EDGX members entering orders into the EDGX System would satisfy the conditions of the Rule.

The rule's first condition is that orders for covered accounts be transmitted from off the exchange floor. Each Exchange System receives orders electronically through remote terminals or computer-to-computer interfaces. In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[206] Because each Exchange System receives orders electronically through remote

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204 The member may, however, participate in clearing and settling the transaction. See 1978 Release, infra note 206.

205 See letter from Eric W. Hess, General Counsel and Secretary, EDGA Exchange, to Elizabeth Murphy, Secretary, Commission, dated February 11, 2010; and letter from Eric W. Hess, General Counsel and Secretary, EDGX Exchange, to Elizabeth Murphy, Secretary, Commission, dated February 11, 2010 (collectively, "Exchange 11(a) Request Letters").

206 See, e.g., Securities Exchange Act Release Nos. 59154 (December 23, 2008) 73 FR 80468 (December 31, 2008) (SR-BSE-2008-48) (order approving proposed rules of NASDAQ OMX BX); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (order approving the Boston Options Exchange as an options trading facility of the Boston Stock Exchange); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (order approving Archipelago Exchange as electronic trading facility of the Pacific Exchange ("PCX")); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (regarding NYSE's Off-Hours Trading Facility); 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979)

terminals or computer-to-computer interfaces, the Commission believes that each System satisfies the off-floor transmission requirement.

Second, the rule requires that the member not participate in the execution of its order. Each Exchange represents that at no time following the submission of an order is a member able to acquire control or influence over the result or timing of an order's execution.[207] According to each Exchange, the execution of a member's order is determined solely by what orders, bids, or offers are present in each system at the time the member submits the order and on the priority of those orders, bids and offers.[208] Accordingly, the Commission believes that Exchange members do not participate in the execution of orders submitted into the Exchange Systems.

Third, Rule 11a2-2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this requirement is satisfied when automated exchange facilities, such as the Exchange Systems, are used, as long as the design of these systems ensures that members do not possess any special or

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(regarding the American Stock Exchange ("Amex") Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX Communications and Execution System, and the Philadelphia Stock Exchange ("Phlx") Automated Communications and Execution System ("1979 Release")); and 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (regarding the NYSE's Designated Order Turnaround System ("1978 Release")).

207 See Exchange 11(a) Request Letters, supra note 205. The member may only cancel or modify the order, or modify the instructions for executing the order, but only from off the Exchange floor. The Commission has stated that the non-participation requirement is satisfied under such circumstances so long as such modifications or cancellations are also transmitted from off the floor. See 1978 Release, supra note 206 (stating that the "non-participation requirement does not prevent initiating members from canceling of modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor").

208 Id.

unique trading advantages in handling their orders after transmitting them to the exchange.[209] Each Exchange represents that the design of its Exchange System ensures that no member has any special or unique trading advantage in the handling of its orders after transmitting its orders to the Exchange.[210] Based on the Exchanges' representations, the Commission believes that the Exchange Systems satisfy this requirement.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2-2(T).[211] Each Exchange represents that Exchange members trading for covered

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209 In considering the operation of automated execution systems operated by an exchange, the Commission noted that while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into each system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See 1979 Release, supra note 206.

210 See Exchange 11(a) Request Letters, supra note 205.

211 17 CFR 240.11a2-2(T)(a)(2)(iv). In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated person thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. See 17 CFR 240.11a2-2(T)(d). See also 1978 Release, supra note 206(stating "[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests").

accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.[212]

G. Section 11A of the Act

Section 11A of the Act and the rules thereunder form the basis of our national market system and impose requirements on exchanges to implement its objectives. Specifically, national securities exchanges are required, under Rule 601 of Regulation NMS,[213] to file transaction reporting plans regarding transactions in listed equity and Nasdaq securities that are executed on their facilities. Currently registered exchanges satisfy this requirement by participating in the Consolidated Transaction Association Plan ("CTA Plan") for listed equities and the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("Nasdaq UTP Plan") for Nasdaq securities.[214] Before the Exchanges can begin operating as exchanges, each must join these plans as a participant.

National securities exchanges are required, under Rule 602 of Regulation NMS,[215] to collect bids, offers, quotation sizes and aggregate quotation sizes from those members who are responsible broker or dealers. National securities exchanges must then make this information available to vendors at all times when the exchange is open for trading. The current exchanges

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212 See Exchange 11(a) Request Letters, supra note 205

213 17 CFR 242.601.

214 These plans also satisfy the requirement in Rule 603 that national securities exchanges and national securities associations act jointly pursuant to an effective national market system plan to disseminate consolidated information, including a national best bid and offer, and quotations for and transactions in NMS stocks. See 17 CFR 242.603. See also Nasdaq Exchange Registration Order, supra note 75.

215 17 CFR 242.602.

satisfy this requirement by participating in the Consolidated Quotation System Plan ("CQ Plan") for listed equity securities and the Nasdaq UTP Plan for Nasdaq securities. Before EDGX and EDGA can begin operating as exchanges, each must join the CQ Plan as a participant, in addition to the CTA Plan and the Nasdaq UTP Plan.

Finally, national securities exchanges must make available certain order execution information pursuant to Rule 605 of Regulation NMS.[216] Current exchanges have standardized the required disclosure mechanisms by participating in the Order Execution Quality Disclosure Plan.[217] Each Exchange must join this plan before it begins operations as an exchange.

H. Order Routing

As discussed above, DE Holdings wholly owns EDGA, EDGX, and DECN.[218] As such, each Exchange is affiliated with DECN,[219] which is a registered broker-dealer and member of FINRA. The Exchanges also anticipate that DECN will be a member of each Exchange.

Each Exchange's Rule 2.10 provides generally that, without prior Commission approval, the Exchange may not, directly or indirectly, acquire or maintain an ownership interest in a member organization of such Exchange. In addition, each Exchange's Rule 2.10 provides that, without prior Commission approval, none of the Exchange's members may be or become an affiliate of the Exchange or an affiliate of an affiliate of the Exchange. However, each Exchange proposes that its affiliate, DECN, become a member of the Exchange to provide certain routing services on behalf of the Exchange. Specifically, each Exchange proposes to (1) operate DECN as a facility of such Exchange to provide outbound routing services to other securities

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216 17 CFR 242.605.

217 See Securities Exchange Act Release No. 44177 (April 12, 2001), 66 FR 19814 (April 17, 2001).

218 See Section III.A, supra.

219 The Exchanges state that DECN will do business under the name of "DE Route."

exchanges,[220] automated trading systems, electronic communications networks, or other broker-dealers (collectively, "Trading Centers"), and (2) receive through DECN orders routed inbound to such Exchange from its affiliated exchange (i.e., EDGX in the case of EDGA, and EDGA in the case of EDGX).[221] Accordingly, each Exchange seeks Commission approval of an exception in the Exchange's Rule 2.10 that will permit the affiliation between the Exchange and its member, DECN.

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange, particularly where a member is routing orders to such affiliated exchange,[222] each Exchange has proposed limitations and conditions on DECN's affiliation with the Exchange. Specifically, each Exchange proposes that DECN operate as an affiliated outbound router on behalf of the Exchange, subject to certain conditions set forth in the Exchange's Rule 2.11; and that DECN operate as an affiliated inbound router on behalf of the Exchange subject to certain conditions set forth in the Exchange's Rule 2.12.[223]

1. DECN as Outbound Router

Each Exchange proposes that DECN would operate as a facility of the Exchange providing outbound routing services from the Exchange to other Trading Centers.[224] DECN's

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220 Securities exchanges to which each Exchange proposes to route orders include its affiliated exchange (i.e., EDGX in the case of EDGA, and EDGA in the case of EDGX).

221 See Notice, supra note 3.

222 See e.g., Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 FR (March 6, 2006).

223 See Exchange Rules 2.11 and 2.12.

224 See Exchange Rule 2.11. See also Notice, supra note 3.

operation as a facility providing outbound routing services for each Exchange is subject to the conditions that:

- the Exchange regulates DECN as a facility of the Exchange;
- FINRA, a self-regulatory organization unaffiliated with the Exchange, is DECN's designated examining authority;
- DECN only provides routing services unless otherwise approved by the Commission;
- the use of DECN for outbound routing by Exchange members is optional; and
- the Exchange will establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and its facilities (including DECN) and any other entity.[225]

As a facility of each Exchange, DECN will be subject to each Exchange's and the Commission's regulatory oversight; and each Exchange will be responsible for ensuring that DECN's outbound routing function is operated consistent with Section 6 of the Act and the Exchange's rules. In addition, each Exchange will be required to file with the Commission rule changes and fees relating to DECN's outbound routing function. Any such fees relating to DECN's outbound router function will be subject to exchange non-discrimination requirements. Further, the Commission believes that the proposed conditions on which DECN will operate as a facility providing outbound routing services for each Exchange should minimize the potential for conflicts of interest and informational advantages involved where a member firm is affiliated with an exchange to which it is routing orders. The Commission notes that the proposed

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225 Id.

conditions for the operation of DECN as affiliated outbound router on behalf of each Exchange are consistent with conditions the Commission has approved for other exchanges.[226] The Commission therefore finds the proposed operation of DECN as an affiliated outbound router of each Exchange to be consistent with the Act.

2. DECN as Inbound Router

Each Exchange also proposes that DECN, operating as a facility of the Exchange, provide routing services from EDGX to EDGA, in the case of EDGA, and from EDGA to EDGX, in the case of EDGX (i.e, "inbound" routing), subject to the following conditions and limitations:

- The Exchange enters into (1) a 17d-2 agreement with FINRA, a non-affiliated SRO,[227] to relieve the Exchange of regulatory responsibilities for DECN with respect to rules that are common rules between the Exchange and the non-affiliated SRO, and (2) a regulatory services agreement with FINRA, a non-affiliated SRO, to perform regulatory responsibilities for DECN for unique Exchange rules.
- The regulatory service agreement requires the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively "Exceptions") in which DECN is identified as a participant that has potentially violated Exchange or Commission Rules, and

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226 See, e.g., Securities Exchange Act Release No. 59153 (December 23, 2008), 73 FR 80485 (December 31, 2008) (order approving outbound routing by broker-dealer affiliate of Nasdaq Stock Exchange); and BATS Exchange Order, supra note 65.

227 The Rule 17d-2 agreement is discussed at Section III.E.4, supra.

requires that FINRA provide a report, at least quarterly, to the Exchange quantifying all Exceptions in which DECN is identified as a participant that has potentially violated Exchange or Commission rules.

- The Exchange has in place a rule that requires DE Holdings to establish and maintain procedures and internal controls reasonably designed to ensure that DECN does not develop or implement changes to its system based on non-public information obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated members of the Exchange.
- Routing of orders from DECN to the Exchange, in DECN's capacity as a facility of the affiliated exchange (i.e., EDGX, in the case of EDGA, and EDGA, in the case of EDGX), be authorized for a pilot period of 12 months.[228]

Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit DECN to be affiliated with each Exchange and to provide inbound routing to each Exchange on a pilot basis, subject to the conditions described above.

Each Exchange has proposed five conditions applicable to DECN's inbound routing activities, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of DECN,[229] combined with FINRA's

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228 See Exchange Rule 2.12.

229 This oversight will be accomplished through the Rule 17d-2 agreement and the RSA.

monitoring of DECN's compliance with the equity trading rules and quarterly reporting to each Exchange, will help to protect the independence of each Exchange's regulatory responsibilities with respect to DECN. The Commission also believes that the requirement that each Exchange establish and maintain procedures and internal controls reasonably designed to ensure that DECN does not develop or implement changes to its system based on non-public information obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated members of the Exchange is reasonably designed to ensure that DECN cannot use any information advantage it may have because of its affiliation with the Exchange. Furthermore, the Commission believes that each Exchange's proposal to allow DECN to route orders inbound to its affiliated exchange (i.e., from EDGX, in the case of EDGA, and from EDGA, in the case of EDGX), on a pilot basis, will provide each Exchange and the Commission an opportunity to assess the impact of any conflicts of interest of allowing an affiliated member of an Exchange to route orders inbound to the Exchange and whether such affiliation provides an unfair competitive advantage.

Further, the Commission notes that the proposed conditions for the operation of DECN as affiliated inbound router on behalf of each Exchange are similar to conditions the Commission has approved for other exchanges.[230] The Commission therefore finds the proposed operation of DECN as an affiliated inbound router of each Exchange is consistent with the Act.

I. Listing Requirements/ Unlisted Trading Privileges

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230 See e.g., Securities Exchange Release Nos. 60598 (September 1, 2009), 74 FR 46280 (September 8, 2009) (SR-ISE-2009-45); 59154 (December 23, 2008) 73 FR 80468 (December 31, 2008) (SR-BSE-2008-48) (order approving proposed rulebook of NASDAQ OMX BX); and 59009 (November 24, 2008), 73 FR 73363 (December 2, 2008) (order granting accelerated approval to File No. SR-NYSEALTR-2008-07).

The Exchanges initially do not intend to list any securities. Accordingly, the Exchanges have not proposed rules that would allow them to list any securities at this time.[231] Instead, the Exchanges have proposed to trade securities pursuant to unlisted trading privileges, consistent with Section 12(f) of the Act and Rule 12f-5 thereunder. Rule 12f-5 requires an exchange that extends unlisted trading privileges to securities to have in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges.[232] Each Exchange's rules allow it to extend unlisted trading privileges to any security listed on another national securities exchange or with respect to which unlisted trading privileges may otherwise be extended in accordance with Section 12(f) of the Act.[233] Each Exchange's rules provide for transactions in the class or type of security to which the exchange intends to extend unlisted trading privileges.[234] In addition, pursuant to its rules, each Exchange will cease trading any equity security admitted to unlisted trading privileges that is no longer listed on another national securities exchange or to which unlisted trading privileges may no longer be extended, consistent with Section 12(f). The Commission finds that these rules are consistent with the Act.[235]

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231 The Exchanges have incorporated listing standards for certain derivative securities products in their rules. However, each Exchange's rules will prohibit the Exchange from listing any derivative security product pursuant to these listing standards until the Exchange submits a proposed rule change to the Commission to amend its listing standards to comply with Rule 10A-3 under the Act and incorporate qualitative listing criteria. See Exchange Rule 14.1(a).

232 17 CFR 240.12f-5. See also Securities Exchange Act Release No. 35737 (April 21, 1995), 60 FR 20891 (April 28, 1995) (adopting Rule 12f-5).

233 See Exchange Rule 14.1(a).

234 Id. The Exchanges' rules currently do not provide for the trading of options, security futures, or other similar instruments.

235 Each Exchange has represented to the Commission that it intends to phase-in the trading of securities currently trading on the DECN to each Exchange, and that it will provide appropriate advance notice to its members of the phase-in schedule. The Commission

J. Exchange Fees

In the Form 1 Applications, the Exchanges generally describes their proposed fees and note that they, may, in the future, prescribe such reasonable dues, fees, and assessments or other charges as they may deem appropriate.[236] Nasdaq, however, argues that the Form 1 Applications are deficient because the Exchanges have not included their fee schedules in the Form 1 Applications.[237] The Commission notes that it previously approved Form 1 applications that did not include fee schedules. For example, the Commission approved the Form 1 application of BATS Exchange, Inc. ("BATS") on August 18, 2008,[238] and BATS subsequently filed its fee schedule on October 21, 2008, pursuant to Exchange Act Section 19(b).[239] The Commission also notes that any fees to be charged by the Exchanges would need to be filed with the Commission pursuant to Section 19(b) of the Act and would not be effective until filed with, or filed with and approved by, the Commission.

IV. Exemption from Section 19(b) of the Act with Regard to FINRA Rules Incorporated by Reference

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believes that this approach is appropriate and should help maintain an orderly transition to the Exchanges. See Amendment No. 2, supra note 5.

236 See Form 1 Applications, Exhibit E, Response F.

237 See Nasdaq Letter, supra note 4, at 7 - 8. Nasdaq also raises questions concerning fees that Nasdaq proposed in File No. SR-NASDAQ-2009-054. See Nasdaq Letter, supra note 4, at 8. The Commission believes that Nasdaq's proposed fees should be addressed in the context of Nasdaq's proposal, rather than in connection with the Form 1 Applications.

238 See BATS Exchange Order, supra note 65.

239 See Securities Exchange Act Release No. 58871 (October 28, 2008), 73 FR 65428 (November 3, 2008) (notice of filing and immediate effectiveness of File No. SR-BATS-2008-009) (implementing the fee schedule that would be in effect on the date BATS commenced operations as a national securities exchange). Similarly, DE Holdings notes that Nasdaq filed fee schedules for two of its facilities, Nasdaq BX and the Nasdaq Options Market, after the Commission approved rules establishing the facilities. See DE Holdings Response, supra note 4, at 5.

Each Exchange proposes to incorporate by reference certain rules of FINRA.[240] Thus, for certain EDGA rules, EDGA members will comply with an EDGA rule by complying with the referenced FINRA rule. Similarly, for certain EDGX rules, EDGX members will comply with an EDGX rule by complying with the referenced FINRA rule.

In connection with its proposal to incorporate FINRA rules by reference, each Exchange requested, pursuant to Rule 240.0-12,[241] an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for changes to those Exchange rules that are effected solely by virtue of a change to a cross-referenced FINRA rule.[242] Each Exchange proposes to incorporate by reference categories of rules (rather than individual rules within a category) that are not trading rules. Each Exchange agrees to provide written notice to its members whenever FINRA proposes a change to a cross-referenced rule[243] and whenever any such proposed changes are approved by the Commission.[244]

Using its authority under Section 36 of the Act, the Commission previously exempted certain SROs from the requirement to file proposed rule changes under Section 19(b) of the

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240 Specifically, each Exchange proposes to incorporate by reference the following FINRA rules: FINRA's 1010 Series (Membership Proceedings) (referenced in each Exchange's Rule 2.4); FINRA's 12,000 Series (Code of Arbitration for Customer Disputes) and FINRA's 13,000 Series (Code of Arbitration Procedure for Industry Disputes) (referenced in each Exchange's Rules 9.1 and 9.4).

241 17 CFR 240.0-12.

242 See letter from Eric W. Hess, General Counsel and Secretary, EDGA, to Elizabeth M. Murphy, Secretary, Commission, dated February 11, 2010; and letter from Eric W. Hess, General Counsel and Secretary, EDGX, to Elizabeth M. Murphy, Secretary, Commission, dated February 11, 2010 (together, the "Exchange 19(b) Exemption Request Letters").

243 See Exchange 19(b) Exemption Request Letters, supra note 242.

244 Each Exchange will provide such notice through a posting on the same Web site location where each Exchange will post its own rule filings pursuant to Rule 19b-4 under Act, within the time frame required by that Rule. The Web site posting will include a link to the location on the FINRA Web site where FINRA's proposed rule change is posted. Id.

Act.[245] Each such exempt SRO agreed to be governed by the incorporated rules, as amended from time to time, but is not required to file a separate proposed rule change with the Commission each time the SRO whose rules are incorporated by reference seeks to modify its rules. In addition, each SRO incorporated by reference only regulatory rules (e.g., margin, suitability, arbitration), not trading rules, and incorporated by reference whole categories of rules (i.e., did not "cherry-pick" certain individual rules within a category). Each exempt SRO had reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO in order to provide its members with notice of a proposed rule change that affects their interests, so that they would have an opportunity to comment on it.

The Commission is granting each Exchange's request for exemption, pursuant to Section 36 of the Act, from the rule filing requirements of Section 19(b) of the Act with respect to the rules that each Exchange proposes to incorporate by reference into their respective rules. This exemption is conditioned upon each Exchange providing written notice to its members whenever FINRA proposes to change a rule that each Exchange has incorporated by reference. The Commission believes that this exemption is appropriate in the public interest and consistent with the protection of investors because it will promote more efficient use of Commission and SRO resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO. Consequently, the Commission grants each Exchange's exemption request.

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245 See, e.g., Securities Exchange Act Release No. 57478 (March 12, 2008) 73 FR 14521, (March 18, 2008) (order approving rules governing the trading of options on the NASDAQ Options Market); Nasdaq Exchange Registration Order, supra note 75; and BATS Exchange Registration Order, supra note 65.

V. Conclusion

IT IS ORDERED that the applications of each of EDGX and EDGA for registration as a national securities exchange be, and hereby is, granted.

IT IS FURTHER ORDERED that operation of each of EDGX and EDGA is conditioned on the satisfaction of the requirements below:

A. Participation in National Market System Plans. Each Exchange must join the CTA Plan, the CQ Plan, the Nasdaq UTP Plan, and the Order Execution Quality Disclosure Plan.

B. Intermarket Surveillance Group. Each Exchange must join the Intermarket Surveillance Group.

C. Minor Rule Violation Plan. A MRVP filed by each Exchange under Rule 19d-1(c)(2) must be declared effective by the Commission.[246]

D. 17d-2 Agreement. An agreement pursuant to Rule 17d-2[247] between FINRA and each Exchange that allocates to FINRA regulatory responsibility for those matters specified above[248] must be approved by the Commission, or each Exchange must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

E. Regulatory Contracts. Each Exchange and FINRA, and each Exchange and ISE LLC, must finalize the provisions in the Regulatory Contracts, as described above,[249] that will specify the Exchange and Commission rules for which FINRA and ISE will provide certain regulatory functions, or each Exchange must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

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246 17 CFR 240.19d-1(c)(2).

247 17 CFR 240.17d-2.

248 See Sections III.E.4 and III.H.2, supra.

249 See Sections III.E.3 and III.H.2, supra.

F. Examination by the Commission. Each Exchange must have, and represent in a letter to the staff in the Commission's Office of Compliance Inspections and Examinations that it has, adequate procedures and programs in place to effectively regulate the Exchange.

G. Trade Processing and Exchange Systems. Each Exchange must have, and represent in letters to the staff in the Commission's Division of Trading and Markets that it has, adequate procedures and programs in place, as noted in Commission Automation Policy Review guidelines,[250] to effectively process trades and maintain the confidentiality, integrity, and availability of the Exchange's systems.

IT IS FURTHER ORDERED, pursuant to Section 36 of the Act,[251] that each Exchange shall be exempt from the rule filing requirements of Section 19(b) of the Act[252] with respect to the FINRA rules the Exchange proposes to incorporate by reference into the Exchange's rules, subject to the conditions specified in this Order.

By the Commission.

Florence E. Harmon
Deputy Secretary

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250 On November 16, 1989, the Commission published its first Automation Review Policy ("ARP I"), in which it created a voluntary framework for self-regulatory organizations to establish comprehensive planning and assessment programs to determine systems capacity and vulnerability. On May 9, 1991, the Commission published its second Automation Review Policy ("ARP II") to clarify the types of review and reports that were expected from SROs. See Securities Exchange Act Release Nos. 27445 (November 16, 1989), 54 FR 48703 (November 24, 1989); and 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991).

251 15 U.S.C 78mm.

252 15 U.S.C 78s(b).

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61709 / March 15, 2010

INVESTMENT ADVISERS ACT OF 1940
Release No. 3000 / March 15, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13816

In the Matter of **DON C. WEIR,** **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 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Don C. Weir ("Weir" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Weir, 56, resides in Wentzville, Missouri. Between June 1988 and September 2008, Weir was associated with Huntleigh Capital Management, Inc., an investment adviser registered with the Commission. Between December 2000 and September 2008, Weir was also associated with HFI Securities, Inc., a broker-dealer registered with the Commission.

B. RESPONDENT'S CRIMINAL CONVICTION

2. On February 20, 2009, in U.S. v. Don C. Weir, Case No. 4:09CR00149RWS (United States District Court for the Eastern District of Missouri, Eastern Division), Weir pled guilty to Counts I and II of a two-count Information charging the felony of Mail Fraud (18 USC 1341 and 2) and Criminal Forfeiture. He was sentenced on September 30, 2009 to six and one-half years imprisonment and three years supervised release, and ordered to pay $12.1 million in restitution.

3. The counts of the criminal Information to which Weir pled guilty alleged, inter alia, that Weir purchased approximately $13.7 million in gold coins, paper currency and other precious metals for 44 of his brokerage customers, pursuant to his own recommendation. Weir kept the metals in his office, in the basement of his house, and at a coin and precious metals dealer. The Information further alleged that between 2000 and 2008, Weir sold approximately $10.4 million of the metals without the customers' authorization, and used the money for personal and business expenses, and to pay purported profits to certain investors. The Information also alleged that Weir provided a customer with a fraudulent HFI Securities, Inc. statement which was designed to conceal the misappropriation, and which inflated the market values of the items not yet sold.

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 Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b)(6) 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 the Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If the 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 the Respondent 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.

Elizabeth M. Murphy
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. 61712 / March 15, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13817

In the Matter of **Lasersight, Inc.,** **LifeCo Investment Group, Inc.,** **LifeOne, Inc.,** **LifeF/X, Inc.,** **Lincorp Holdings, Inc.,** **Lionshare Group, Inc.,** **Lite King Corp.,** **Livent, Inc.,** **Loehmann's, Inc.,** **The Loewen Group, Inc., and** **Lorelei Corp.,** **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") against Respondents Lasersight, Inc., LifeCo Investment Group, Inc., LifeOne, Inc., LifeF/X, Inc., Lincorp Holdings, Inc., Lionshare Group, Inc., Lite King Corp., Livent, Inc., Loehmann's, Inc., The Loewen Group, Inc., and Lorelei Corp.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Lasersight, Inc. (CIK No. 879301) is a delinquent Delaware corporation located in Winter Park, Florida with a class of securities registered with the Commission

pursuant to Exchange Act Section 12(g). Lasersight 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, 2006, which reported a net loss of $901,192 for the prior nine months. On September 5, 2003, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Middle District of Florida, and the case was terminated on January 7, 2005. As of March 10, 2010, the company's stock (symbol "LRST") was traded on the over-the-counter markets.

2. LifeCo Investment Group, Inc. (CIK No. 802677) is a dissolved Florida corporation located in Orlando, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). LifeCo Investment Group 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, 1993. On June 6, 1994, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Delaware, which was converted to Chapter 7, and was still pending as of March 10, 2010.

3. LifeOne, Inc. (CIK No. 706597) is a Louisiana corporation located in Baltimore, Maryland with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). LifeOne 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, 1997. On December 1, 1999, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Maryland, and the case was terminated on December 9, 2003.

4. LifeF/X, Inc. (CIK No. 1072914) is a permanently revoked Nevada corporation located in Newton, Massachusetts with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). LifeF/X is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 2001. On June 3, 2002, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Massachusetts, and the case was pending as of December 8, 2009. As of March 10, 2010, the company's stock (symbol "LEFX") was traded on the over-the-counter markets.

5. Lincorp Holdings, Inc. (CIK No. 202172) is a void Delaware corporation located in Edison, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Lincorp Holdings 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, 2003, which reported a net loss of $199,000 for the prior nine months. The company's stock is not publicly quoted or traded. As of March 10, 2010, the company's stock (symbol "LCPH") was traded on the over-the-counter markets.

6. Lionshare Group, Inc. (CIK No. 1051142) is a void Delaware corporation located in Boca Raton, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Lionshare 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, 2002, which reported a net loss of $53,559 for the prior three months.

7. Lite King Corp. (CIK No. 1074267) is a New York corporation located Jersey City, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Lite King 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, 2007, which reported a net loss of $33,451 for the prior three months. As of March 10, 2010, the company's stock (symbol "LKNG") was traded on the over-the-counter markets.

8. Livent, Inc. (CIK No. 945024) is an Ontario corporation located in Toronto, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Livent is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 40-F for the period ended December 31, 1997, which reported a net loss of $44,130,869 for the prior twelve months. On November 18, 1998, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Southern District of New York, and the case was pending as of March 10, 2010.

9. Loehmann's, Inc. (CIK No. 60064) is a Delaware corporation located in The Bronx, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Loehmanns 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 July 29, 2000, which reported a net loss of $10,612,000 for the six months ended September 31, 1995.

10. The Loewen Group, Inc. (CIK No. 845577) is a British Columbia corporation located in Toronto, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Loewen 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, 2001, which reported a net loss of $177,942 for the prior nine months. On June 1, 1999, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Delaware, and the case was terminated on March 30, 2009.

11. Lorelei Corp. (CIK No. 60394) is a void Delaware corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Lorelei 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, 2002.

B. DELINQUENT PERIODIC FILINGS

12. As discussed in more detail above, all of the respondents are delinquent in their periodic filings with the Commission, 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.

13. 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 and Rule 13a-13 requires domestic issuers to file quarterly reports. Rule 13a-16 requires foreign private issuers to furnish quarterly and other reports to the Commission under cover of Form 6-K if they make or are required to make the information public under the laws of the jurisdiction of their domicile or in which they are incorporated or organized; if they file or are required to file information with a stock exchange on which their securities are traded and the information was made public by the exchange; or if they distribute or are required to distribute information to their security holders.

14. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 or 13a-16 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 registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

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, and any successor under Exchange Act Rules 12b-2

or 12g-3, and any new corporate names of any 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.

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61707 / March 15, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13814

In the Matter of **Martech USA, Inc., and** **Mexican Patio Cafes, 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") against Respondents Martech USA, Inc., and Mexican Patio Cafes, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Martech USA, Inc. (CIK No. 857475) is a void Delaware corporation located in Anchorage, Alaska with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Martech 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 May 31, 1993, which reported a net loss of over $1.4 million for the prior nine months. A Form 8-K filed by the company on April 25, 1994 reported a net loss of $1.14 million for the month ended February 28, 1994. On December 19, 1993, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Alaska, which was converted to Chapter 7, and the case was still pending as of March 3, 2010.

2. Mexican Patio Cafes, Inc. (CIK No. 851891) is a void Delaware corporation located in Phoenix, Arizona with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Mexican Patio 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 June 30, 1996, which reported a net loss of $172,319 for the prior six months.

B. DELINQUENT PERIODIC FILINGS

3. 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.

4. 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 and Rule 13a-13 requires domestic issuers to file quarterly reports.

5. 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.

Elizabeth M. Murphy
Secretary

Attachment

By: Jill M. Peterson
Assistant Secretary

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-Q	11/30/01	01/14/02	Not filed	98
	10-Q	02/28/02	04/15/02	Not filed	95
	10-Q	05/31/02	07/15/02	Not filed	92
	10-K	08/31/02	11/29/02	Not filed	88
	10-Q	11/30/02	01/14/03	Not filed	86
	10-Q	02/28/03	04/14/03	Not filed	83
	10-Q	05/31/03	07/15/03	Not filed	80
	10-K	08/31/03	12/01/03	Not filed	75
	10-Q	11/30/03	01/14/04	Not filed	74
	10-Q	02/29/04	04/14/04	Not filed	71
	10-Q	05/31/04	07/15/04	Not filed	68
	10-K	08/31/04	11/29/04	Not filed	64
	10-Q	11/30/04	01/14/05	Not filed	62
	10-Q	02/28/05	04/14/05	Not filed	59
	10-Q	05/31/05	07/15/05	Not filed	56
	10-K	08/31/05	11/29/05	Not filed	52
	10-Q	11/30/05	01/17/06	Not filed	50
	10-Q	02/28/06	04/14/06	Not filed	47
	10-Q	05/31/06	07/17/06	Not filed	44
	10-K	08/31/06	11/29/06	Not filed	40
	10-Q	11/30/06	01/16/07	Not filed	38
	10-Q	02/28/07	04/16/07	Not filed	35
	10-Q	05/31/07	07/16/07	Not filed	32
	10-K	08/31/07	11/29/07	Not filed	28
	10-Q	11/30/07	01/14/08	Not filed	26
	10-Q	02/29/08	04/14/08	Not filed	23
	10-Q	05/31/08	07/15/08	Not filed	20
	10-K	08/31/08	12/01/08	Not filed	15
	10-Q	11/30/08	01/14/09	Not filed	14
	10-Q	02/28/09	04/14/09	Not filed	11
	10-Q	05/31/09	07/15/09	Not filed	8
	10-K	08/31/09	11/30/09	Not filed	4
	10-Q	11/30/09	01/14/10	Not filed	2

Total Filings Delinquent 66

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Mexican Patio Cafes, Inc.	*10-QSB*	09/30/96	11/14/96	Not filed	160
	10-KSB	12/31/96	03/31/97	Not filed	156
	10-QSB	03/31/97	05/15/97	Not filed	154
	10-QSB	06/30/97	08/14/97	Not filed	151
	10-QSB	09/30/97	11/14/97	Not filed	148
	10-KSB	12/31/97	03/31/98	Not filed	144
	10-QSB	03/31/98	05/15/98	Not filed	142
	10-QSB	06/30/98	08/14/98	Not filed	139
	10-QSB	09/30/98	11/16/98	Not filed	136
	10-KSB	12/31/98	03/31/99	Not filed	132
	10-QSB	03/31/99	05/17/99	Not filed	130
	10-QSB	06/30/99	08/16/99	Not filed	127
	10-QSB	09/30/99	11/15/99	Not filed	124
	10-KSB	12/31/99	03/30/00	Not filed	120
	10-QSB	03/31/00	05/15/00	Not filed	118
	10-QSB	06/30/00	08/14/00	Not filed	115
	10-QSB	09/30/00	11/14/00	Not filed	112
	10-KSB	12/31/00	04/02/01	Not filed	107
	10-QSB	03/31/01	05/15/01	Not filed	106
	10-QSB	06/30/01	08/14/01	Not filed	103
	10-QSB	09/30/01	11/14/01	Not filed	100
	10-KSB	12/31/01	04/01/02	Not filed	95
	10-QSB	03/31/02	05/15/02	Not filed	94
	10-QSB	06/30/02	08/14/02	Not filed	91
	10-QSB	09/30/02	11/14/02	Not filed	88
	10-KSB	12/31/02	03/31/03	Not filed	84
	10-QSB	03/31/03	05/15/03	Not filed	82
	10-QSB	06/30/03	08/14/03	Not filed	79
	10-QSB	09/30/03	11/14/03	Not filed	76
	10-KSB	12/31/03	03/30/04	Not filed	72
	10-QSB	03/31/04	05/17/04	Not filed	70
	10-QSB	06/30/04	08/16/04	Not filed	67
	10-QSB	09/30/04	11/15/04	Not filed	64
	10-KSB	12/31/04	03/31/05	Not filed	60
	10-QSB	03/31/05	05/16/05	Not filed	58
	10-QSB	06/30/05	08/15/05	Not filed	55
	10-QSB	09/30/05	11/14/05	Not filed	52
	10-KSB	12/31/05	03/31/06	Not filed	48

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-QSB	03/31/06	05/15/06	Not filed	46
	10-QSB	06/30/06	08/14/06	Not filed	43
	10-QSB	09/30/06	11/14/06	Not filed	40
	10-KSB	12/31/06	04/02/07	Not filed	35
	10-QSB	03/31/07	05/15/07	Not filed	34
	10-QSB	06/30/07	08/14/07	Not filed	31
	10-QSB	09/30/07	11/14/07	Not filed	28
	10-KSB	12/31/07	03/31/08	Not filed	24
	10-Q1	03/31/08	05/15/08	Not filed	22
	10-Q1	06/30/08	08/14/08	Not filed	19
	10-Q1	09/30/08	11/14/08	Not filed	16
	10-K1	12/31/08	03/31/09	Not filed	12
	10-Q1	03/31/09	05/15/09	Not filed	10
	10-Q1	06/30/09	08/14/09	Not filed	7
	10-Q1	09/30/09	11/16/09	Not filed	4
Total Filings Delinquent	53				

[1]Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, have been removed from the federal securities laws. *See* Release No. 34-56994 (Dec. 19, 2007). The removal took effect over a transition period that concluded on March 15, 2009. All reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB are now required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than $75 million in public equity float as of the end of its most recently completed second fiscal quarter) have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61708 / March 15, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13815

In the Matter of **infoUSA Inc., k/n/a infoGROUP Inc.,** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

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 infoUSA Inc., k/n/a infoGROUP Inc. ("Info" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

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

Summary

Info materially understated the compensation of its former CEO and Chairman, Vinod Gupta, in the company's 2003 through 2007 Forms 10-K, which incorporated its proxy statements by reference. Info paid Gupta approximately $9.5 million of unauthorized and undisclosed perquisites, which arose out of Gupta's personal use of company-chartered aircraft and Info's payment of other personal expenses. The filings for fiscal years 2003 through 2005 also understated, mischaracterized, or omitted significant related party transactions involving various entities owned by Gupta.

Respondent

1. Info, a Delaware corporation based in Omaha, Nebraska, compiles and sells business and consumer databases for sales leads, mailing lists, and direct and email marketing. Info stock is registered under Section 12 of the Exchange Act. Info's common stock trades on the NasdaqGS under the symbol "IUSA."

Background

2. Info materially understated Gupta's compensation in its Forms 10-K for fiscal years 2003 through 2007 that incorporated by reference its proxy statements. The Forms 10-K and associated proxy statements for fiscal years 2003 through 2005 also contained material understatements, misstatements, and omissions concerning related party transactions with Gupta or his entities.

3. Info paid Gupta approximately $9.5 million of unauthorized and undisclosed perquisites. The perquisites related to Info's payments for Gupta's personal use of company-chartered aircraft, his credit cards expenses, Gupta's yacht and houses, leases and purchases of cars for Gupta's use, 28 golf and country club memberships, and life insurance premiums, among other things.

4. Info's related party disclosures in its 2003 through 2005 Forms 10-K and proxy statements regarding its transactions with Gupta and his entities failed to disclose properly: (1) substantial payments to a Gupta entity for leasing Gupta's aircraft, yacht and houses, (2) car lease payments to another Gupta owned entity, and (3) the provision of free office space to Gupta's

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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.

entities. Info also failed to disclose in these filings related party payments to a third-party jet leasing company on behalf of a Gupta owned entity. Additionally, Info failed to disclose in its 2003 Form 10-K and related proxy statement and its third quarter 2004 Form 10-Q two purchases of jet interests from a Gupta entity. Finally, Info failed to disclose in its first quarter 2005 Form 10-Q and 2005 Form 10-K and related proxy statement its purchase of cars from another Gupta owned entity. Moreover, in its 2003 through 2007 Forms 10-K and proxy statements, Info failed to disclose properly payments to Quest Venture Coordinators Pvt. Ltd., an entity in which Gupta owned an interest until October 2003 and was a member of the board until as late as March 2008. As a result, Info failed to disclose properly payments to, or on behalf of, entities related to Gupta during 2003 through 2007 totaling $9,297,000. Approximately $2.5 million of these undisclosed related party transaction payments are also reflected in the $9.5 million paid to Gupta for unauthorized and undisclosed perquisites as reported in paragraph three above.

5. As a result of the conduct described above, Info violated Section 13(a) of the Exchange Act and Rules 13a-1, 13a-13, and 12b-20 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act file with the Commission information, documents, and annual and quarterly reports as the Commission may require, and mandate that periodic reports contain such further material information as may be necessary to make the required statements not misleading.

6. Because Info improperly recorded its compensation to and related party transactions with Gupta, its books, records and accounts did not, in reasonable detail, accurately and fairly reflect these transactions.

7. In addition, Info maintained a system of internal accounting controls that permitted Gupta to obtain a significant amount of unreported compensation. Info also failed to implement internal controls for related party transactions until December 2004 and, thereafter, failed to enforce effectively its related party transactions policy. These internal control lapses allowed Gupta to direct payments to himself directly or his entities and failed to provide reasonable assurances that these transactions were accurately recorded to permit the preparation of Info's financial statements in conformity with generally accepted accounting principles.

8. As a result of the conduct described above, Info violated Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

9. Also as a result of the conduct described above, Info violated Section 13(b)(2)(B) of the Exchange Act, which requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles.

10. Info solicited and filed definitive proxy statements in connection with its 2003 through 2007 annual meetings which materially understated Gupta's compensation and understated, misstated, and omitted material related party transactions for the same time period.

11. As a result of the conduct described above, Info violated Section 14(a) of the Exchange Act and Rules 14a-3 and 14a-9 thereunder, which require that proxy statements include information specified by Schedule 14A, including executive compensation and related party transactions and prohibit the use of proxy statements containing materially false or misleading statements or materially misleading omissions.

Info's Remedial Efforts and Cooperation

In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent and cooperation afforded the Commission staff. Specifically, Info undertook remedial efforts, including (i) replacing officers and directors, (ii) creating a new position of executive vice president for business conduct and general counsel; (iii) instituting mandatory director and executive officer training programs; (iv) hiring an independent compensation consultant to advise on compensation matters; and (v) implementing new internal control procedures and policies concerning reimbursement for expenses, perquisites, and related party transactions. Further, Info formed a Special Litigation Committee ("SLC") comprised of independent members of Info's board of directors, which, in turn, hired independent outside counsel to conduct an internal investigation of Gupta's expenses and related party transactions and presented the results of the internal investigation to the Commission staff. Moreover, Info dedicated several months to review and analyze certain expenses submitted to the company by Gupta between 2003 and 2007 to determine the amount of undisclosed perquisites paid to Gupta. This effort reduced the time and resources necessary for the Commission staff to conclude the investigation.

IV.

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

Accordingly, it is hereby ORDERED that:

Pursuant to Section 21C of the Exchange Act, Respondent Info cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-13, 14a-3, and 14a-9 thereunder.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Commissioner Paredes
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9113 / March 16, 2010

SECURITIES EXCHANGE ACT OF 1934
Release No. 61719 / March 16, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13532

In the Matter of

Prime Capital Services, Inc.,
Gilman Ciocia, Inc.,
Michael P. Ryan,
Rose M. Rudden,
Christie A. Andersen,
Eric J. Brown,
Matthew J. Collins,
Kevin J. Walsh,
Mark W. Wells,

Respondents.

ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AS TO PRIME CAPITAL SERVICES, INC. AND GILMAN CIOCIA, INC.

I.

On June 30, 2009, the Securities and Exchange Commission ("Commission") instituted administrative proceedings pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, against Prime Capital Services, Inc. ("PCS") and Gilman Ciocia, Inc. ("G&C"), among others.

II.

PCS and G&C (collectively, the "Entity Respondents") have submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are

admitted, the Entity Respondents consent to the entry of this Order Making Findings and Imposing Remedial Sanctions Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934 as to Prime Capital Services, Inc. and Gilman Ciocia, Inc. ("Order") as set forth below.

III.

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

Respondents

1. Gilman Ciocia, Inc. ("G&C"), is an income tax preparation business headquartered in Poughkeepsie, New York. It also offers financial services in New York, New Jersey, Pennsylvania and Florida through its wholly-owned subsidiaries, Prime Capital Services, Inc. ("PCS"), a broker-dealer registered with the Commission, and Asset & Financial Planning, Ltd. ("AFP"), an investment adviser registered with the Commission. In fiscal year 2007, approximately ninety percent of G&C's revenue was derived from commissions and fees from financial services, including commissions from sales of variable annuities; the remaining approximately ten percent of revenue was derived from tax preparation and accounting services. G&C was registered with the Commission as an investment adviser from 2000 through 2006. G&C's common stock is quoted on the OTC Bulletin Board under the symbol "GTAX."

2. Prime Capital Services, Inc. ("PCS") is a wholly-owned subsidiary of G&C that provides securities brokerage services. It is registered with the Commission as a broker-dealer and is a member of the Financial Industry Regulatory Authority. A significant percentage of the revenue generated by PCS from 1999 through February 2007 came from sales of variable annuities. PCS operates under a management agreement with G&C under which PCS remits revenues to G&C, and G&C pays various expenses for PCS including personnel compensation, training, and marketing costs associated with free-lunch seminars that are provided by PCS's registered representatives and are used to recruit new customers. Prior to November 2003, marketing for the seminars was provided by G&C's in-house telemarketing department; since November 2003, G&C has paid for marketing and PCS has reimbursed G&C pursuant to the management agreement. PCS and G&C consolidate their financial statements and are under common control.

Background

3. From approximately November 1999 through February 2007 (the "relevant period"), four representatives associated with Respondent PCS who were employed by Respondent G&C (the "registered representatives") offered and sold variable annuities to senior citizen customers in Delray Beach, Boynton Beach, Melbourne and Boca Raton. Most of the registered representatives' customers had attended G&C's free-lunch seminars in south Florida communities, during which the four representatives touted PCS's financial services in general and, during most

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

of the relevant period, variable annuities in particular. The seminar script, which the representatives used during their presentations, had been provided to them by PCS.

4. Variable annuities are long-term investments with an insurance component. The insurance component provides a death benefit for the owner's beneficiaries, guaranteeing that they will receive at least the amount of principal the owner invested (excluding any withdrawals or outstanding loans), regardless of the variable annuity's investment value at the time of the insured person's death. Earnings accumulate on a tax deferred basis and are taxed as ordinary income upon withdrawal. Each variable annuity contract includes subaccounts to which a contract owner may allocate premiums. The subaccounts invest in underlying funds which have investment objectives similar to retail mutual funds, such as growth, income or maintaining a stable $1 NAV. Variable annuity issuers charge fees that include annual mortality, expense and administrative fees, and advisers of the underlying funds charge fees for the management of the funds. The variable annuities the registered representatives sold were also structured so that a sales charge was not incurred upon purchase but was instead charged if, during the first six to eight years, the owner surrendered the contract for cash, withdrew funds above a certain amount from the account, or exchanged the variable annuity for another annuity. Those charges, called surrender charges, were highest during the initial years of the variable annuity, typically starting at approximately six to eight percent of the amount the customer invested. The charges decreased over the surrender period. The owner of a variable annuity contract can reallocate his or her investment among the available subaccounts offered through the variable annuity without incurring surrender charges.

5. During some or all of the relevant period, the registered representatives induced customers into purchasing variable annuities by means of material misrepresentations and omissions. For example: the registered representatives sometimes told customers that the principal invested in the variable annuity was guaranteed not to lose money, without disclosing that the guarantee was triggered by the death of an annuitant, and without disclosing that until the annuitant's death the value could fluctuate and decline; they sometimes promised customers that the customers would receive a guaranteed return on their investment without disclosing that such return would be paid only over the course of the annuitization period if, in the future, the customers elected to annuitize; they sometimes told customers they would have access to their invested money whenever they needed it, omitting to tell them about charges for early withdrawals above a certain amount; they often failed to disclose to customers the ownership costs of variable annuities, which in some cases were more than three percent annually of the invested amount. Certain written disclosures provided to customers, and other records in customers' files, were incomplete and/or inaccurate, and in some cases were altered after the customer signed to make it appear that disclosures had been provided and that the sales were suitable when, in fact, they were not.

6. Many of the variable annuities sold by the registered representatives were unsuitable investments based on the customers' ages, incomes, liquid assets and investment objectives. For example, because of their advanced age, some customers who wanted full access to their money were unlikely to outlive the period during which they would pay surrender fees on their variable annuities, and other customers were induced to invest more than seventy-five percent of their liquid assets in variable annuities with limitations and/or fees on withdrawals. In addition, variable annuities limited access to the invested principal in a way that was expressly contrary to some customers' objectives for their money.

7. During times when Florida authorities had revoked or restricted the license of Eric J. Brown ("Brown"), one of the registered representatives in Respondent PCS's Delray Beach office, another of the registered representatives, Matthew J. Collins, ("Collins") signed as the associated person on the account for variable annuities Representative Brown solicited. Thus, on paperwork for the customer and the variable annuity issuing company, Representative Collins misrepresented who sold the variable annuity.

8. Compared to other investment products, which generally paid less than three percent in sales commissions, the variable annuities sold by the registered representatives generally paid approximately a six percent gross sales commission to Respondent PCS. As compensation, PCS typically paid out approximately half of the sales commission to three of the registered representatives, and as much as seventy percent of the sales commission to the fourth registered representative. During the relevant period, PCS and three of the registered representatives each earned millions of dollars in sales commissions from variable annuity transactions, and the fourth registered representative earned hundreds of thousands of dollars.

9. During the relevant period, based on the recommendations of the registered representatives, at least twenty-three customers were induced to buy at least thirty-five variable annuities, investing an aggregate of nearly $5 million.

10. Most of twenty-three customers who bought variable annuities from the registered representatives met these representatives at free-lunch seminars that Respondent G&C marketed and arranged. At the free-lunch seminars, the registered representatives discussed tax and financial planning, including during most of the relevant period, variable annuities. After the seminars, the customers were invited to schedule private appointments with the registered representatives. The variable annuities were sold in one-on-one sales meetings at Respondent PCS's offices in Delray Beach, Boynton Beach, Melbourne and/or Boca Raton, Florida.

11. Respondent G&C's free-lunch seminars were instrumental in providing a steady stream of variable annuity customers to the registered representatives. G&C arranged and marketed the seminars, including identifying prospective customers, sending them invitations, otherwise advertising the seminars, preparing presentation materials, and training PCS representatives to make seminar presentations. Many members of the public who attended seminars ultimately purchased variable annuities through PCS's registered representatives, and those representatives recruited almost all their customers at G&C's free-lunch seminars.

12. From at least 1999 through 2007, the president of Respondent PCS and/or PCS's chief compliance officer had supervisory authority over the registered representatives because they had the ability to control the representatives' conduct by, among other things, terminating their employment, withholding their compensation, levying fines, requiring heightened supervision if they determined there was a need of closer oversight, or any combination of those and other measures. The president of PCS, Michael P. Ryan, held his position from at least 1999 through 2007, and the chief compliance officer, Rose M. Rudden, was the highest ranking compliance officer from at least 2004 through 2007. The chief compliance officer also participated in branch examinations and reviews of variable annuity transactions.

13. Respondent PCS had written supervisory procedures, including procedures specifically pertaining to the sale and supervisory review of variable annuity transactions. PCS's president was responsible for implementing PCS's written supervisory procedures. However, neither the president nor PCS put systems in place to implement many of the written supervisory procedures. Therefore, PCS's and its president's supervision of the registered representatives could not reasonably be expected to detect or prevent their violations of the federal securities statutes, rules and regulations.

14. At times during the relevant period, a supervisor in Respondent PCS's Boca Raton office was the direct supervisor for one of the registered representatives, Mark W. Wells, ("Wells"), and in Delray Beach, Representative Collins was the direct supervisor for Representative Brown. The direct supervisors were responsible for reviewing variable annuity transactions for suitability and approving them if they were suitable or rejecting them if they were not. The Boca Raton supervisor approved certain variable annuity transactions of Representative Wells and failed to review others. In Delray Beach, Representative Collins failed to review Representative Brown's variable annuity transactions.

15. During all or part of the relevant period, Respondent PCS's president, chief compliance officer, and/or supervisors in Boca Raton and Delray Beach failed to respond reasonably to red flags of wrongdoing in the variable annuity sales practices of the registered representatives, and thereby failed to detect or prevent their violations of the federal securities statutes, rules and regulations.

Variable Annuity Sales at PCS's Delray Beach and Boynton Beach Branch Offices

16. Representative Brown's misrepresentations to variable annuity customers included misleading statements and material omissions about access to invested money, guaranteed minimum returns and/or guarantees against losses. Some of Representative Brown's customer files included inaccurate information about customers' net worth, liquid assets and/or income.

17. Representative Brown made material misrepresentations and omissions, and/or sold unsuitable variable annuities to senior citizen customers, including in the following instances:

a. In 2000 and 2001, Representative Brown induced an elderly couple into buying at least ten variable annuities, including several that were purchased by partially surrendering the variable annuity contracts Representative Brown sold them a year earlier. The purchases and redemptions generated more than $50,000 in sales commissions for Respondent PCS, of which more than $20,000 was paid out to Representative Brown. As a result of the transactions, more than three-quarters of the couple's liquid assets was invested in illiquid variable annuities. No supervisor reviewed or approved the transactions.

b. In 1999 and 2000, Representative Brown induced a 76-year-old widow to rearrange her diversified portfolio of stocks and bonds so that eighty percent of her assets was invested in variable annuities with surrender periods during which time access to her money would be limited. The concentration in variable annuities was unsuitable and contrary to the customer's investment objectives. The sales generated approximately $16,000 in commissions for

Representative Brown and approximately the same amount in net commissions to Respondent PCS. Among the transactions Representative Brown orchestrated was the purchase of a variable annuity and its subsequent liquidation for reinvestment in another variable annuity at a cost of $20,000 in surrender charges for the early withdrawal. No supervisor reviewed or approved the transactions.

c. In 2000, Representative Brown induced a 68-year-old widow to use money from a maturing bank certificate of deposit to buy a variable annuity in her retirement account. Documents surrounding the variable annuity investment included a forged customer signature with the customer's name misspelled. Respondent PCS's president and chief compliance officer later confirmed with a handwriting expert that the customer's signature was not genuine. Representative Brown earned approximately $3,000 in sales commissions and Respondent PCS earned slightly more. No supervisor reviewed or approved the transaction.

d. In 2001, Representative Brown induced a 79-year-old customer to partially redeem a variable annuity to fund a new variable annuity purchase. The exchange caused the customer to lose approximately $20,000 worth of the death benefit in the original variable annuity. When the customer noticed it, he was within the time period to reverse the transaction at no cost and instructed Representative Brown to do so. Representative Brown delayed. The customer died. The customer's widow lost approximately $20,000 in death benefit due to Representative Brown's misconduct. No supervisor reviewed or approved the exchange that caused the customer to lose approximately $20,000 worth of death benefits.

18. Representative Collins, who was Representative Brown's supervisor from 2002 to 2005, failed to review or approve variable annuity business Representative Brown wrote. Respondent PCS's ranking compliance officer was advised of this in an October 2003 branch exam that noted Representative Collins's failure to supervise Representative Brown.

19. In December 2003, the State of Florida Department of Financial Services revoked Representative Brown's license to sell insurance. In April 2004, Representative Brown consented to reinstatement of his insurance license with a restriction that prohibited him from marketing variable annuities to new customers over the age of 65. During the period when his license was revoked or restricted, Representative Brown continued to solicit variable annuity business including to customers over the age of 65. Representative Collins, who was Representative Brown's supervisor at those times, knew of the revocation and subsequent restriction and took no action to curtail Representative Brown's activities. In fact, for new variable annuity customers over the age of 65 whom Representative Brown solicited in violation of his licensing restriction, Representative Collins signed the paperwork and misrepresented himself as the associated person on the account. In addition, Respondent PCS's president and chief compliance officer knew of Representative Brown's solicitations during the period when his license was revoked and/or restricted but did not take action to stop his marketing activities. It was not until February 2005 that they placed him on "heightened supervision," requiring that Representative Brown's variable annuity sales be reviewed before being submitted to the variable annuity issuing companies.

20. Monthly reports in 2004 and annual branch exams from the Delray Beach and Boynton Beach offices from 2003 through 2006, which Respondent PCS's chief compliance

officer reviewed, included descriptions of disclosure and documentation deficiencies and details of Representative Brown's unsuitable variable annuity sales to senior citizen investors. For example, branch exams revealed that for Representative Brown's variable annuity transactions, disclosure forms were missing or missing key information, that elderly customers had invested high percentages of their liquid assets in illiquid variable annuities, and that no supervisor had reviewed certain transactions. The monthly reports Representative Collins submitted to the compliance department in 2004, and an evaluation of Representative Brown's free-lunch seminar that the chief compliance officer reviewed, also indicated that during times when Representative Brown's insurance license was revoked or restricted, he continued to market variable annuities at Respondent G&C's free-lunch seminars without regard to specific, state-imposed limitations on his marketing activities.

21. Representatives Brown and Collins made material misrepresentations and omissions, and/or sold unsuitable variable annuities to senior citizen customers, including in the following instances:

a. In 2005, Representative Brown recommended to a disabled customer's father that he invest all of his son's liquid assets in a variable annuity with an eight-year surrender period. The disabled customer had an annual income of approximately $13,000 and was neither consulted on the investment nor signed any of the forms authorizing it. Representative Brown knew the customer's father had signed his son's name on the forms. Representative Collins purported to guarantee the customer's signature, although neither he nor Representative Brown had ever met the customer, or had seen any documentation verifying the customer's signature. A supervisor approved the transaction.

b. In 2004 and 2005, Representative Brown induced an octogenarian couple to exchange six variable annuities that they owned for six others that he recommended, costing them more than $61,000 in surrender fees. At the time, Representative Brown was prohibited by state orders from marketing variable annuities to new customers over the age of 65, and Representative Collins signed as the associated person on the account for the transactions. A supervisor approved the transactions after discussing them with Respondent PCS's chief compliance officer.

c. In 2004, Representative Brown induced a septuagenarian couple to buy two variable annuities at a time when Representative Brown's insurance license was revoked. Representative Brown's name and representative information is crossed out on the paperwork for the transactions, and Representative Collins, who was Representative Brown's supervisor at the time, signed as the associated person on the account. Representative Brown initially was credited with the sales commission of more than $5,000. No other supervisor reviewed or approved the transactions.

d. In 2004, Representative Brown induced a 72-year-old customer to buy a variable annuity at a time when Representative Brown was prohibited from marketing variable annuities to new customers over the age of 65. Representative Collins's name, information and signature appear on the paperwork for the customer's transaction as the associated person on the account in places where Representative Brown's information is crossed out, and Representative Collins earned a sales commission of more than $1,000. Representative Collins

was Representative Brown's supervisor at the time of the transaction, but no other supervisor reviewed or approved the transaction.

Variable Annuity Sales at PCS's Melbourne, Florida Branch Office

22. During the time period from late 2003 through 2004, one of the registered representatives, Kevin J. Walsh ("Walsh") refused to submit most of his variable annuity business to his supervisor for review, which violated Respondent PCS's written supervisory procedures. Representative Walsh's supervisor complained numerous times about Representative Walsh's misconduct to Respondent PCS's chief compliance officer, who acknowledged the problem and involved PCS's president in addressing the behavior. During the time period when Representative Walsh refused to submit his variable annuity business for supervisory review, the chief compliance officer did not curtail Representative Walsh's sales activities; Representative Walsh continued to sell hundreds of variable annuities during that time. The chief compliance officer took no remedial action against Representative Walsh for his misconduct. Representative Walsh earned approximately $385,000 in sales commissions from his variable annuities business in 2004, and PCS retained approximately the same amount from those transactions.

23. Representative Walsh's misrepresentations to variable annuity customers included misleading statements and material omissions about access to invested money, guaranteed minimum returns and/or guarantees against losses. In some cases, Representative Walsh selected subaccount allocations for the variable annuity investments that were inconsistent with customers' investment objectives. Some of Representative Walsh's customer files included inaccurate information about customers' net worth, liquid assets and/or income.

24. Branch exams from the Melbourne office from 2003 through 2006, which Respondent PCS's chief compliance officer reviewed, included details of unsuitable variable annuity sales to senior citizen investors. For example, branch exams reflected that Representative Walsh's business was almost exclusively selling variable annuities to senior citizens, and investing high percentages of those elderly customers' liquid assets in illiquid variable annuities. The branch exams also reflected missing explanations of investments, missing disclosures – including costs associated with variable annuities – and purported disclosures that customers had not acknowledged receiving.

25. Representative Walsh made material misrepresentations and omissions, and/or sold unsuitable variable annuities to senior citizen customers, including in the following instances:

a. In 2005, Representative Walsh induced a 69-year-old customer to convert her two retirement portfolios into two variable annuities with seven-year surrender periods during which access to her money was limited. Although the customer wanted to participate in market returns, Representative Walsh invested her entirely in money market subaccounts within her two variable annuities. The customer's paperwork contains multiple inaccuracies, including the purported issuance of a prospectus dated several months after the transaction, and a length of investment experience that would have required the customer to have started investing at age eleven. Representative Walsh earned nearly $6,000 in sales commissions. More than a month after the transaction, a supervisor retroactively approved one of the two variable annuities the

customer bought. His approval was based on the tax benefits of the investment, even though the assets had previously been in a tax-advantaged retirement account. No supervisor reviewed or approved the other variable annuity.

b. In 2004, Representative Walsh induced an octogenarian customer to invest $100,000 – or about seventy-five percent of her liquid assets – in a variable annuity, earning Representative Walsh more than $2,000 in sales commissions. A supervisor retroactively approved the transaction months after the sale on grounds that did not apply to the customer's circumstances, including that the customer, who was already in the lowest tax bracket, would benefit from tax deferral available for a variable annuity.

c. In 2004 and 2005, Representative Walsh induced a 77-year-old customer to invest in two variable annuities, earning Representative Walsh and Respondent PCS nearly $8,000 each in sales commissions. After the customer learned of an annual administrative charge that he said Representative Walsh did not disclose at the time of sale, the customer terminated his investments and paid $12,000 in early withdrawal charges. Disclosure forms in the customer's file indicate that after the customer signed them, Representative Walsh added information about fees and other terms of the investment. The transactions were retroactively approved by a supervisor months after the sales.

d. In 2001, Representative Walsh induced an 80-year-old customer to invest more than three quarters of his liquid assets in variable annuities. Representative Walsh earned more than $6,000 in sales commissions in transactions that were not reviewed by a supervisor, and limited the customer's access to his money for eight years.

Variable Annuity Sales at PCS's Boca Raton, Florida Office

26. The misrepresentations of Representative Wells to variable annuity customers included misleading statements and material omissions about access to invested money, guaranteed minimum returns and/or guarantees against losses. Some of Representative Wells's customer files included inaccurate information about customers' net worth, liquid assets and/or income.

27. Annual branch exams from the Boca Raton office from 2004 through 2006, which Respondent PCS's chief compliance officer reviewed, included details of unsuitable variable annuity sales to senior citizen investors, including high percentages of elderly customers' liquid assets invested in illiquid variable annuities, and ongoing deficiencies in disclosure forms provided to customers to explain the terms of their variable annuity investments. In addition, net worth figures frequently matched figures for liquid assets, even where customers already owned variable annuities.

28. The supervisor of the Boca Raton branch office, who reviewed the 2004 and 2005 Boca Raton branch exams, advised Respondent PCS's chief compliance officer in 2004 that she was having difficulty managing her duties as supervisor for Representative Wells and others, and sought assistance reviewing variable annuity transactions for suitability. The chief compliance officer took no action in response to the Boca Raton office supervisor's concerns, which left Representative Wells and others with supervision their supervisor had indicated was inadequate.

29. Paperwork for Representative Wells's variable annuity customers contain patterns that indicate the sales were unsuitable for individual customers' needs and circumstances. As one example, Representative Wells's customer disclosure forms acknowledging understanding of the terms of the investment were initialed by Representative Wells's assistant, not the customers. This is evident from the handwriting of the initials, which belonged to Representative Wells's sales assistant and bears no resemblance to the customers' authentic signatures. As another example, explanations of the reason for investing in variable annuities are not initialed by customers, as required by the firm's form.

30. Representative Wells made material misrepresentations and omissions, and/or sold unsuitable variable annuities to senior citizen customers, including in the following instances:

a. In 2004 and 2005, Representative Wells induced a 71-year-old woman to liquidate her retirement account and invest all of her retirement savings – which was more than half her net worth – in variable annuities. Representative Wells earned more than $5,000 in sales commissions. The Boca Raton supervisor approved some of the transactions, but others were not reviewed by a supervisor.

b. In 2004 and 2005, Representative Wells induced a 65-year-old retiree into buying six variable annuities in his trading and retirement accounts, thereby subjecting the customer to limitations for eight years on about two-thirds of his liquid assets. Representative Wells earned more than $16,000 in sales commissions. The Boca Raton supervisor approved some of the transactions, but others were not reviewed by a supervisor.

c. In 2006, Representative Wells induced an 80-year-old widow to exchange a variable annuity that was out of its surrender period for a new one that limited her access to half her net worth for six years. Representative Wells earned more than $6,000 in sales commissions. Despite a comparison that showed the customer's new annuity would cost more in fees and be worth less in the future than her old one, and despite the customer's age and concentration of her net worth in the variable annuity, the Boca Raton supervisor approved the transaction as suitable.

d. In 2003 and 2004, Representative Wells induced a 67-year-old widow to invest nearly eighty percent of her liquid assets in variable annuities with surrender periods as long as eight years, earning nearly $15,000 in sales commissions. Representative Wells's assistant discouraged the customer from seeking a comparison form that Florida requires be offered to variable annuity customers by instructing her to initial a box declining the comparison; neither Representative Wells nor the Boca Raton supervisor questioned the sales assistant's written indication that the customer should decline the comparative information form. Paperwork in the customer's file indicates signed documents were copied and altered. The Boca Raton supervisor approved some of the transactions, but others were not reviewed by a supervisor.

e. In 2007, Representative Wells induced a septuagenarian couple to invest $100,000 of their approximately $148,000 in liquid assets in a variable annuity with a seven-year surrender period, earning him more than $3,000 in sales commissions. The transaction was approved by a supervisor.

f. In 2006, Representative Wells induced a retired couple to buy matching variable annuities, generating for himself more than $4,000 in sales commissions. The customers did not understand the fee structure of their investments, and were misled regarding the returns they could expect. The transactions were approved by a supervisor after the application was submitted to the variable annuity issuing company.

Supervisory Failures of Respondent PCS

31. Respondent PCS had written supervisory procedures, including some specifically pertaining to the sale and supervisory review of variable annuity transactions. However, PCS did not have a system in place to implement the written supervisory procedures. Therefore, the firm's supervision of the registered representatives could not reasonably be expected to detect or prevent their violations of the federal securities statutes, rules and regulations. For example, PCS failed to implement the firm's written supervisory procedures in the following ways:

a. Respondent PCS failed to implement a system for review and follow-up of branch exams that reasonably could have been expected to detect and prevent violations of the federal securities laws by the registered representatives. The chief compliance officer and the Boca Raton supervisor reviewed branch exams from Delray Beach, Boynton Beach, Melbourne and/or Boca Raton that included repeated indications of fraudulent and/or unsuitable variable annuity sales by the registered representatives, such as missing or deficient disclosure documents, patterns of similar customer profiles for which variable annuities were not suitable, and repeated instances of elderly customers investing large percentages of their assets in variable annuities.

b. Respondent PCS failed to implement a system for supervisory review and approval of variable annuity transactions that reasonably could have been expected to detect and prevent violations of the federal securities laws by the registered representatives. The registered representatives sold many variable annuities that were never reviewed by a supervisor, or were not reviewed by a supervisor until long after the transaction. Certain variable annuity transactions of the registered representatives were unsuitable based on information in the customers' files.

c. Respondent PCS failed to implement a system for responding to customer complaints that reasonably could have been expected to detect and prevent violations of the federal securities laws by the registered representatives. The registered representatives' variable annuity customers sent numerous complaints to the firm, regarding, among other things, the unsuitability of their investments, misrepresentations and omissions during sales meetings, and in one instance, forgery. PCS's chief compliance officer, who drafted many of the replies to customers, inadequately investigated the complaints and instead relied on the statements of the registered representatives, who had no oversight in responding to customers' complaints of their variable annuity sales practices. While PCS documented the complaints and replies, there was no action by the firm in response to complaints that reasonably would have led to detection and prevention of the registered representatives' securities law violations.

d. Respondent PCS failed to implement a system to comply with state regulatory orders, such as the revocation and restriction of Representative Brown's insurance license. Had PCS implemented a system to enforce the restriction on Representative Brown's sales of variable annuities, it is likely that Representative Brown's fraudulent sales of variable annuities would have been prevented and detected.

e. Respondent PCS also failed to implement a reasonable system for supervision of Representative Brown, including failure to devote adequate resources to his supervision. In particular, PCS's president unreasonably delegated Representative Brown's supervision from 1999 to 2001 to a former chief compliance officer at PCS. The former chief compliance officer complained to the president that she was having difficulty managing her dual responsibilities as chief compliance officer and Representative Brown's supervisor, and told the president that she needed help supervising him effectively. The president's delegation to her while she was burdened with compliance responsibilities was unreasonable because she told him she was overwhelmed by her duties, and he failed to follow up to determine whether the delegated responsibilities were being exercised diligently.

32. As a result of the conduct described above, Respondent PCS willfully violated: Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Securities Exchange Act of 1934 ("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; Section 15(c) of the Exchange Act, which prohibits a broker or dealer from engaging in fraudulent conduct in connection with the purchase or sale of securities; and Section 17(a) of the Exchange Act and Rule 17a-3 thereunder, which require brokers and dealers to make and keep current certain books and records relating to its business for prescribed periods of time and furnish them to the Commission as necessary and appropriate for the public interest; and failed reasonably to supervise pursuant to Section 15(b)(4)(E) of the Exchange Act with a view to prevent and detect the registered representatives' violations of the federal securities statutes, rules and regulations.

33. As a result of the conduct described above, Respondent G&C willfully aided, abetted and caused Respondent PCS's violations of 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 and of Section 15(c) of the Exchange Act, which prohibits a broker or dealer from engaging in fraudulent conduct in connection with the purchase or sale of securities.

Undertakings

The Entity Respondents have undertaken to:

34. Retain an Independent Compliance Consultant:

a. G&C shall retain, within 30 days of the date of entry of this Order, the services of an Independent Compliance Consultant not unacceptable to the staff of the Commission and a majority of the independent directors of G&C. The Independent Compliance Consultant's compensation and expenses shall be borne exclusively by G&C or its affiliates. G&C shall require that the Independent Compliance Consultant conduct a comprehensive review of G&C's and its subsidiaries' supervisory, compliance, and other policies, practices and procedures related to variable annuities designed to prevent and detect breaches of the federal securities laws by G&C, its subsidiaries, and employees. This review shall include, but shall not be limited to, a review of variable annuity marketing activities, sales practices, supervisory procedures, and training thereon. G&C and its subsidiaries' and employees shall cooperate fully with the Independent Compliance Consultant and shall provide the Independent Compliance Consultant with access to files, books, records, and personnel as reasonably requested for the review.

b. G&C shall require that, at the conclusion of the review, which in no event shall be more than 180 days after the date of entry of this Order, the Independent Compliance Consultant submit a Report to the independent directors of G&C and to the staff of the Commission. The Report shall address the issues described in paragraphs III.3 through III.33, inclusive, of this Order, and shall include a description of: the review performed; the conclusions reached; the Independent Compliance Consultant's recommendations for changes in and/or improvements to policies, practices and procedures concerning all aspects of variable annuity marketing, sales, supervisory reviews and training thereon; the Independent Compliance Consultant's recommendations for a procedure to implement the recommended changes to the policies, practices and procedures of G&C's and/or its subsidiaries; and the Independent Compliance Consultant's recommendation for a process to test the changes or improvements to ensure G&C and/or its subsidiaries' policies, practices and procedures comply with federal securities laws and the rules of self-regulatory organizations pertaining to variable annuities.

c. G&C shall adopt all recommendations with respect to it and to its subsidiaries contained in the Report of the Independent Compliance Consultant; provided, however, that within 30 days after the date of the submission of the Report described in paragraph 34.b, above, G&C shall in writing advise the Independent Compliance Consultant and the staff of the Commission of any recommendations that it considers to be unnecessary or inappropriate. With respect to any recommendation that G&C considers unnecessary or inappropriate, G&C need not adopt that recommendation at that time but shall propose in writing an alternative policy, practice, procedure or system designed to achieve the same objective or purpose.

d. As to any recommendation with respect to G&C's or its subsidiaries' policies, practices and procedures on which G&C and the Independent Compliance Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 60

days of the date of the Report. In the event G&C and the Independent Compliance Consultant are unable to agree on an alternative proposal acceptable to the staff of the Commission, G&C and its subsidiaries will abide by the determinations of the Independent Compliance Consultant.

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

f. G&C shall require that the Independent Compliance Consultant, 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 G&C or any of its subsidiaries, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. G&C shall require that any firm with which the Independent Compliance Consultant is affiliated in performance of his or her duties under the Order shall not, without prior written consent of the independent directors of G&C and the staff of the Commission, enter into any employment, consultant, attorney client, auditing or other professional relationship with G&C or any of its subsidiaries, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

g. G&C shall require the Independent Compliance Consultant to review all responses to the mailing it sends to customers under paragraph 39, below, and determine whether any further disclosures to customers is prudent. If so, G&C shall require the Independent Compliance Consultant to prepare such further disclosures and G&C shall provide such further disclosure to customers.

35. PCS and G&C shall prohibit Representatives Wells and Collins from selling variable annuities to anyone over the age of 59.5 until such time as the Independent Compliance Consultant has completed its review and new policies and practices are in place.

36. Until such time as the Independent Compliance Consultant has completed its review and new policies and practices are in place, PCS and G&C shall require that all variable annuity sales in Florida to customers over the age of 59.5 be subject to the following reviews prior to any application being sent to variable annuity issuing companies: (1) principal review and approval, and (2) a second review by the Independent Compliance Consultant, who is empowered to reject or modify any such sale, for the duration of the Independent Compliance Consultant's contractual relationship with G&C.

37. PCS and G&C shall prohibit PCS's president, Michael P. Ryan, and chief compliance officer, Rose M. Rudden, from any and all involvement in variable annuity marketing, sales, reviews, or approvals until such time as the Independent Compliance Consultant has

completed its review and new policies and practices are in place. This undertaking is not intended to prohibit PCS's president from involvement in strategic corporate decisions related to the product mix of G&C or its subsidiaries. Until such time as the Independent Compliance Consultant has completed its review and new policies and practices are in place, the president and chief compliance officer shall be prohibited from involvement in all other activities relating to variable annuities, including but not limited to, marketing of variable annuities, the development of marketing materials regarding the sales of variable annuities, the development of training materials for registered representatives regarding the sales of variable annuities, the development or dissemination of materials used at free-lunch or other seminars and workshops, and the sale or review or approval of specific variable annuity transactions. During the period of the Independent Compliance Consultant's review, the Entity Respondents will communicate to all registered representatives a written internal protocol, directing them to appropriate compliance and supervisory staff for consultation on questions regarding variable annuities and will designate one compliance professional and appropriate supervisory staff who will have final decision-making authority and responsibilities with respect to variable annuities. After the Independent Compliance Consultant has completed its review and new policies and practices are in place, the president's and the chief compliance officer's involvement with variable annuity marketing, sales, reviews, or approvals will be on terms consistent with the recommendations of the Independent Compliance Consultant.

38. PCS shall notify all customers whose variable annuity transactions are described in this Order that, if they have any complaint regarding their variable annuity and such variable annuity was sold by PCS and the complaint was not previously settled by PCS and the customer, then PCS will for the next three years, extend to that customer the opportunity to cancel his or her variable annuity contract, and further that PCS shall refund to the customer all fees paid, including surrender fees, mortality and expense fees, contract fees and management fees, but that PCS shall not be responsible for any market losses of the principal invested. Notice of the customers' opportunity shall be provided in plain English in a letter not unacceptable to the staff of the Commission.

39. PCS shall provide to all variable annuity customers who were over the age of 59.5 at the time they purchased their variable annuities from the registered representatives identified in the Order during the period June 30, 2004 to June 30, 2009 a letter in plain English and not unacceptable to the staff of the Commission which describes their investment and states that the information in the letter is being provided pursuant to a settlement with the Commission in an administrative enforcement action.

40. Deadlines: For good cause shown, the Commission staff may extend any of the procedural dates set forth in the Undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to by the Entity Respondents. Accordingly, pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934 it is hereby ORDERED that:

A. Respondent PCS shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Sections 10(b), 15(c) and 17(a) of the Exchange Act and Rules 10b-5 and 17a-3 thereunder.

B. Respondent G&C shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Sections 10(b) and 15(c) of the Exchange Act and Rule 10b-5 thereunder.

C. Respondent PCS is censured.

D. Respondent G&C is censured.

E. Respondent PCS shall pay disgorgement of $97,389.05 and prejudgment interest of $46,873.53, for a total payment of $144,262.58. Disgorgement and prejudgment interest shall be paid within twenty (20) days from issuance of this Order. Respondent G&C shall pay $1 in disgorgement and civil penalties of $450,000. Respondent G&C's payments shall be made in the following installments: $1.00 in disgorgement and $53,824.28 of the penalty amount paid within twenty (20) days of the issuance of this Order ("First Installment"); $198,087.86 paid within 180 days from issuance of this Order ("Second Installment"), and $198,087.86 paid within 364 days from issuance of this Order ("Third Installment") with post-judgment interest due on the Second and Third Installments. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payments shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Respondents PCS and G&C as Respondents in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Andrew M. Calamari, Associate Director, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, 4th Floor, New York, NY 10281-1022.

F. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, interest and penalties referenced in paragraph IV.E. above. 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, the Entity Respondents agree that they shall not, after offset or reduction in any Related Investor Action based on the Entity Respondents payment of disgorgement in this action, argue that they are

entitled to, nor shall they further benefit by offset or reduction of any part of Respondent G&C's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, the Entity 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 the Entity 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.

G. The Entity Respondents shall comply with the undertakings enumerated in Section III paragraphs 34 through 39, above.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR Ch. II

[Release Nos. 33-9112, 34-61714, IA-3001, IC-29175, File No. S7-06-10]

Regulatory Flexibility Agenda

AGENCY: Securities and Exchange Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Securities and Exchange Commission is publishing an agenda of its rulemaking actions pursuant to the Regulatory Flexibility Act (RFA) (Pub. L. No. 96-354, 94 Stat. 1164) (Sep. 19, 1980). Information in the agenda was accurate on March 12, 2010, the day on which the Commission's staff completed compilation of the data. To the extent possible, rulemaking actions by the Commission since that date have been reflected in the agenda. The Commission invites questions and public comment on the agenda and on the individual agenda entries.

The Commission is now printing in the **Federal Register**, along with our preamble, only those agenda entries for which we have indicated that preparation of a Regulatory Flexibility Act analysis is required.

The Commission's complete RFA agenda will be available online at www.reginfo.gov.

DATES: Comments should be received on or before June 30, 2010.

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

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/other.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-06-10 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 Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. S7-06-10. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/other.shtml). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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: Anne Sullivan, Office of the General Counsel, 202-551-5019.

SUPPLEMENTARY INFORMATION: The RFA requires each Federal agency, during April and October of each year, to publish in the **Federal Register** an agenda identifying rules that the agency expects to consider in the next 12 months that are likely to have a significant economic impact on a substantial

number of small entities (5 U.S.C. 602(a)). The RFA specifically provides that publication of the agenda does not preclude an agency from considering or acting on any matter not included in the agenda and that an agency is not required to consider or act on any matter that is included in the agenda (5 U.S.C. 602(d)). Actions that do not have an estimated date are placed in the long-term category; the Commission may nevertheless act on items in that category within the next 12 months. The agenda includes new entries, entries carried over from prior publications, and rulemaking actions that have been completed (or withdrawn) since publication of the last agenda.

The following abbreviations for the acts administered by the Commission are used in the agenda:

"Securities Act"--Securities Act of 1933

"Exchange Act"--Securities Exchange Act of 1934

"Investment Company Act"--Investment Company Act of 1940

"Investment Advisers Act"--Investment Advisers Act of 1940

The Commission invites public comment on the agenda and on the individual agenda entries.

By the Commission.

Dated: March 16, 2010

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Commissioner Casey
Commissioner Walter
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61718 / March 16, 2010

INVESTMENT ADVISERS ACT OF 1940
Release No. 3002 / March 16, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13818

In the Matter of **GPS PARTNERS, LLC and BRETT S. MESSING,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTIONS 203(e) AND 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against GPS Partners, LLC and Brett S. Messing (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, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and Sections 203(e) and 203(f) of the Investment Advisers 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' Offers, the Commission finds[1] that:

Respondents

1. **GPS Partners, LLC ("GPS")** is a Delaware limited liability company with its principal place of business in Santa Monica, California. GPS was registered as an investment adviser with the Commission from June 2005 through November 2009 and advised proprietary hedge funds and other pooled investment vehicles as well as separate account clients. As of August 2007, GPS had approximately $2 billion under management.

2. **Brett S. Messing ("Messing")**, age 45, resides in Los Angeles, California. Messing is GPS' founder, managing partner, chief executive officer, and primary portfolio manager. He owns 85% of GPS. Prior to starting GPS, Messing held various management, advisory, and brokerage positions at several securities firms.

Summary

3. In 2006, GPS and Messing violated the former version of Rule 105 of Regulation M, "Short Selling in Connection with a Public Offering," in five instances, and in 2007 GPS and Messing violated the current version of Rule 105 in one instance. As a result, GPS obtained profits of more than $1.1 million.

Legal Framework

4. In 2006, when GPS participated in five of the transactions at issue, Rule 105 of Regulation M provided, in pertinent part: "In connection with an offering of securities for cash pursuant to a registration statement ... filed under the Securities Act, it shall be unlawful for any person to cover a short sale with offered securities purchased from an underwriter or broker or dealer participating in the offering, if such short sale occurred during the ... period beginning five business days before the pricing of the offered securities and ending with such pricing . . . ." *Final Rule: Short Sales*, Rel. No. 34-50103, 69 Fed. Reg. 48008 (July 28, 2004) (effective Sept. 7, 2004) ("*Former Rule Release*"). This five business day or shorter period is referred to herein as the "restricted period."

5. The Commission adopted Rule 105 in an effort to prevent manipulative short selling prior to a public offering. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale.

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

6. The Commission has recognized that violations of Rule 105 could result from sham transactions designed to evade the text of the rule. Interpretative guidance issued by the Commission in 2004 provided that a transaction violates Rule 105 "where the transaction is structured such that there is no legitimate economic purpose or substance to the contemporaneous purchase and sale, no genuine change in beneficial ownership, and/or little or no market risk . . ." *Former Rule Release*. The Commission described one type of sham transaction as occurring when "a trader effects pre-pricing short sales during the Rule 105 restricted period, receives offering shares, sells the offering shares into the open market, and then contemporaneously or nearly contemporaneously purchases an equivalent number of the same class of shares as the offering shares, which are then used to cover the short sales." *Id.*

7. The Commission amended Rule 105 prior to one of the transactions at issue. Effective October 9, 2007, Rule 105 provided, in pertinent part: "In connection with an offering of equity securities for cash pursuant to a registration statement . . . filed under the Securities Act of 1933 ("offered securities"), it shall be unlawful for any person to sell short . . . the security that is the subject of the offering and purchase the offered securities from an underwriter or broker or dealer participating in the offering if such short sale was effected" during the restricted period. 17 C.F.R. § 242.105.

8. One exception to the current version of Rule 105 applies when an equal or greater number of the issuer's shares are purchased after the last restricted short sale is effected but before the follow-on offering (known as the "bona fide purchase" exception). If a bona fide purchase is made, participation in the offering will not violate the rule. *See* 17 C.F.R. § 242.105(b)(1). However, "[p]urchases made during the Rule 105 restricted period but before the last Rule 105 restricted period short sale do not qualify as a bona fide purchase . . . ." *Final Rule: Short Selling in Connection with a Public Offering*, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007).

The Violative Trades

9. During the relevant period, GPS and Messing engaged in transactions prohibited by Rule 105 in connection with purchases of securities in public offerings made by Washington Real Estate Investment Trust ("WRE"), W&T Offshore, Inc. ("WTI"), MCG Capital Corp. ("MCGC"), Luminent Mortgage Capital Inc. ("LUM"), NorthStar Realty Finance Corp. ("NRF"), and Kinder Morgan Energy Partners LP ("KMP"). As portfolio manager, Messing was generally responsible for the trading at GPS, including the trades at issue here.

A. Sham Transactions Using Market Orders

10. In connection with the WRE and WTI follow-on offerings, GPS executed transactions which lacked economic purpose or substance by contemporaneously entering market orders to sell the offering shares and purchase shares in the open market, which were then used to cover the short positions that had been established during the restricted period. These violations resulted in profits of $121,241.

11. For example, GPS participated in a follow-on offering of WRE on June 1, 2006. The shares were priced after the close of trading on May 31, 2006 at $34.40/share. During the restricted period, GPS established a 55,000 share short position in WRE at $34.90/share.

12. On the morning of June 1, 2006, GPS received a 55,000 share allocation of the WRE offering, resulting in a 55,000 share short position and a 55,000 share long position.

13. Later that morning, through two different brokers, GPS contemporaneously entered a market order at 9:35:52 a.m. to sell the 55,000 offering shares and another market order at 9:36:04 a.m. to buy 55,000 shares to cover the restricted short position. The orders were filled within one minute of each other and at exactly the same price of $34.00/share. This resulted in profits of $29,981.

B. Sham Transactions Using VWAP Algorithms

14. In connection with the MCGC, LUM, and NRF follow-on offerings, GPS executed transactions which lacked economic purpose or substance by contemporaneously entering orders using VWAP algorithms[2] to sell offering shares and purchase shares in the open market, which were then used to cover the short position that had been established during the restricted period. These violations resulted in profits of $73,654.

15. For example, GPS participated in a follow-on offering of MCGC on October 11, 2006. The shares were priced after the close of trading on October 10, 2006 at $15.75/share. During the restricted period, GPS established a 81,500 share short position with three transactions consisting of 50,000 shares at $16.006/share, 5,000 shares at $16.177/share, and 26,500 shares at $16.101/share.

16. On October 11, 2006, GPS received a 200,000 share allocation of the MCGC offering, resulting in a 81,500 share short position and a 200,000 share long position.

17. On October 19, 2006, through two different brokers, GPS contemporaneously entered an order to sell 82,200 offering shares and buy 82,200 shares to cover part of the restricted short position. Both orders were placed using a VWAP algorithm and were executed from 11:05 a.m. to 3:59 p.m. The sale order was executed in 302 fills with an average price of $16.777/share, and the buy order was executed in 525 fills with an average price of $16.786/share – a difference of $0.009. This resulted in profits of $24,140.

C. KMP Follow-On Offering

18. GPS participated in a follow-on offering of KMP on November 30, 2007. The shares were priced prior to the market's opening on November 30, 2007 at $49.34/share. During the restricted period, GPS established a short position of 150,400 shares consisting of 28,000 shares on November 23 at $49.57/share, 10,000 shares on November 26 at $49.26/share, 11,000 shares on November 28 at $50.64/share, and 101,400 shares on November 28 at $50.857/share.

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[2] "VWAP" refers to volume weighted average price. A VWAP algorithm is a trading strategy that breaks orders into multiple smaller trades that are executed throughout the day with an aim to achieve an overall price close to the VWAP benchmark for that day.

19. On November 27 and 29, 2007, GPS purchased 38,000 and 112,400 shares of KMP, respectively, for a total of 150,400 shares. Neither purchase, however, qualified for the bona fide purchase exception because: (i) the November 27 purchase did not occur after the last restricted short sale, which occurred on November 28, and (ii) the November 29 purchase of 112,400 shares was not equal to or greater than the total number of shares shorted during the restricted period (150,400).

20. On November 30, 2007, GPS received a 1,410,000 share allocation of the KMP offering, which amounted to 23% of the entire offering. As a result, GPS obtained profits of $956,376.

21. As a result of the conduct described above, GPS and Messing willfully[3] committed violations of Rule 105.

IV.

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

Accordingly, pursuant to Section 21C of the Exchange Act and Sections 203(e) and 203(f) of the Advisers Act, it is hereby ORDERED that:

A. Respondent GPS shall cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M under the Exchange Act.

B. Respondent Messing shall cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M under the Exchange Act.

C. Respondent GPS is censured.

D. Respondent Messing is censured.

E. Respondents shall, jointly and severally, within thirty (30) days of the entry of this Order, pay disgorgement of $1,151,271 and prejudgment interest of $132,900 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. 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 GPS Partners, LLC and Brett S. Messing as Respondents in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Andrew G. Petillon,

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[3] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Los Angeles Regional Office, 5670 Wilshire Blvd., Suite 1100, Los Angeles, California 90036.

F. Respondents shall, jointly and severally, within 30 days of the entry of this Order, pay a civil money penalty in the amount of $575,635 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. 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) 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 GPS Partners, LLC and Brett S. Messing as Respondents in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Andrew G. Petillon, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Los Angeles Regional Office, 5670 Wilshire Blvd., Suite 1100, Los Angeles, California 90036.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA

Before the
Securities and Exchange Commission
March 17, 2010

Securities Exchange Act of 1934
Release No. 61722

In the Matter of **Chicago Board Options Exchange, Incorporated** **400 South LaSalle Street** **Chicago, IL 60605** **File No. SR-ISE-2009-35**	**Order Extending Time to File Statements**

On August 28, 2009, the Division of Trading and Markets ("Division") issued an order pursuant to delegated authority, 17 CFR 200.30-3(a)(12), approving a proposed rule change submitted by the International Securities Exchange, LLC ("ISE") to establish a Qualified Contingent Cross ("QCC") Order.[1]

On September 4, 2009, the Chicago Board Options Exchange, Incorporated ("CBOE") filed a notice of intention to petition for review of the Delegated Order pursuant to Rule 430 of the Rules of Practice.[2] The Commission granted CBOE's Petition on November 12, 2009 and ordered that any party or other person may file a statement in support of or in opposition to the delegated action on or before December 3, 2009.[3]

The Commission's Division of Risk, Strategy, and Financial Innovation has prepared a memorandum dated March 1, 2010, which was placed in the public comment file. In order to give the public an opportunity to consider the data and analysis contained in this memorandum, the Commission is extending the period of time for submitting statements in support of or in opposition to the delegated action.

THEREFORE, it is ORDERED that any party or other person may file a statement in support of or in opposition to the action made by delegated authority on or before April 7, 2010.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

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1 See Securities Exchange Act Release No. 60584 (August 28, 2009), 74 FR 45663 (September 3, 2009) (File No. SR-ISE-2009-35).

2 17 CFR 201.430.

3 See Securities Exchange Act Release No. 60989 (File No. SR-ISE-2009-35).

Commissioner Paredes Disapproved as to Heckler

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3005 / March 17, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13821

In the Matter of

Paul H. Heckler and Yosemite Capital Management, LLC

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, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

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), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), against Paul H. Heckler and Yosemite Capital Management, LLC (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, which are admitted, Respondents consent to the entry of this 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, 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' Offers, the Commission finds[1] that

Summary

These proceedings involve the failure of a registered investment adviser Yosemite Capital Management, LLC ("Yosemite") and its managing director Paul H. Heckler ("Heckler"), to disclose to clients that their promised due diligence had encountered significant problems. Yosemite, through Heckler, placed $3.25 million of four of its clients' funds through a "feeder fund," Ashton Investments LLC ("Ashton"), into purported bridge loans arranged by Norman Hsu ("Hsu") and Next Components, Ltd. ("Next") Instead of being placed in bridge loans, however, the moneys were part of Hsu's and Next's $60 million Ponzi scheme.

In January 2007, prior to placing his clients' investments with Ashton and Next, Heckler promised to conduct due diligence to at least two clients prior to placing his clients into the Ashton investment. Although Heckler asked Ashton representatives several key questions, he received incomplete, contradictory, and evasive responses. He received no financials. Investors were promised a high rate of return, effectively 24% per year, and received a post-dated check shortly after investing in the amount of their principal plus interest. In response to Heckler's requests for information, he was told that Hsu was a private person and no information was available. He also received an eight-page brochure from Ashton replete with misspellings, and was told that the bridge loans were safer than stocks or bonds. Because Ashton had no offices, Heckler met the three Ashton representatives -- one of whom Heckler believed was a UPS truck driver or deliveryman -- at local restaurants to discuss the investment. Despite these red flags, Heckler placed four Yosemite clients into the Ashton investment without disclosing to clients that his due diligence process had been thwarted.

As a result of the conduct described above, Heckler and Yosemite willfully[2] violated Section 206(2) of the Advisers Act, which prohibits any investment adviser from engaging in any transaction, practice, or course of business, which operates as a fraud or deceit on any client or prospective client, and Heckler caused Yosemite's violations of Section 206(2) of the Advisers Act.

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

[2] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

Respondents

1. **Paul H. Heckler**, 51, resides in Capistrano Beach, California. From 2001 through the present, Heckler has been managing director and a control person of Yosemite. He co-founded Yosemite with six other partners. At all relevant times, Heckler was also an investment adviser to Yosemite's clients. Heckler holds Series 3, 7, 63, and 65 licenses.

2. **Yosemite Capital Management, LLC** is an investment adviser registered with the Commission. In 1999, Yosemite became organized as a California limited liability company with its principal place of business in Tustin, California. Yosemite provides discretionary advisory services, and in some instances, financial planning services, to individuals and high net worth individuals. In addition, Yosemite's advisory representatives, through an unaffiliated broker-dealer, sell securities in their capacity as registered representatives. Several of its representatives also offer insurance services through unaffiliated insurance agencies. As of March 30, 2009, Yosemite had $154 million of assets under management.

Other Relevant Entities

3. **Ashton Investments LLC** was formed in California in 2006. Ashton has never registered an offering of securities under the Securities Act of 1933 ("Securities Act"), nor a class of securities under the Securities Exchange Act of 1934 ("Exchange Act"). Ashton was a "feeder fund" to Next Components, gathering investor funds and providing those funds to Next.

4. **Next Components, Ltd.** was incorporated in New York in 2005. Next Components, Ltd. was the successor to Components, Ltd, which was incorporated in New York in 1997. Next Components, Ltd. has never registered an offering of securities under the Securities Act, nor a class of securities under the Exchange Act. On October 6, 2008, the Commission filed a complaint in the U.S. District Court for the Central District of California, Southern Division, against Next for its role in the Ponzi scheme.

5. **Norman Hsu**, 57, had residences in Newport Beach, California and New York City, New York. Hsu was the founder and managing director of Next Components. On September 19, 2007, Hsu was indicted for investment fraud and wire fraud in connection with a $60 million Ponzi scheme, and for making illegal campaign contributions. On May 7, 2009, Hsu pleaded guilty to mail and wire fraud in connection with the Ponzi scheme. On May 19, 2009, after a jury trial, Hsu was convicted on the remaining four counts related to the illegal campaign contributions. On October 6, 2008, the Commission filed a complaint in the U.S. District Court for the Central District of California, Southern Division, against Hsu for his role in the Ponzi scheme.

Background

6. Since 2001, Paul H. Heckler has been a managing director of Yosemite Capital Management. Yosemite is an investment adviser registered with the Commission. As of March 30, 2009, Yosemite had $154 million in assets under management. At Yosemite, Heckler is

the investment adviser for over 100 clients; he manages his clients' portfolios, including selecting particular investments. One of his clients, Mr. A, in late winter 2006 or early 2007, told Heckler about a possible investment. The investment was short-term bridge loans originated by Ashton, Norman Hsu, and Next. Heckler stated that after meeting Mr. A, he conducted due diligence of Ashton, Hsu, and Next. Heckler obtained nearly all of his unverified information in January 2007 from Mr. A, who was a former advertising executive and current Ashton representative, and Ashton's two principals, Messrs. B and C. Heckler believed Mr. B was a former United Parcel Service truck driver or delivery person.

A. Heckler Failed to Recognize Red Flags

7. Heckler attempted to determine the nature of Ashton's and Next's businesses. Heckler was told by Mr. A that over three years, Ashton had made 40 short-term loans as a "feeder fund."[3] Heckler understood that Ashton was a shell set up to create an opportunity for the lenders to come in to feed the money to Mr. Hsu's deals. Heckler was told that investors through Ashton lent money to Hsu who in turn lent money to others. Investors were promised a six percent return for a 90-day loan, receiving a post-dated check for the amount of their principal plus interest shortly after making the loan that could be cashed after the 90-day period ended. If within 18 days of the start of the loan period a loan did not materialize, the investor was entitled to his principal plus a two percent break-up fee. Heckler was told that Hsu personally guaranteed repayment of investor loans and that Hsu had a net worth of between $50 million and $100 million. In addition, Mr. A told Heckler that the short-term loans were safer than stocks and bonds. Heckler disagreed and thought that there should be a disclaimer in the loan agreement concerning the risky nature of the investment. Mr. C told Heckler that no disclaimer was necessary because the investment was not risky. Additionally, Mr. A told Heckler that the short-term loans would be insured up to $10 million in case of default. Mr. C later contradicted Mr. A and told Heckler that there was no such insurance. Ashton had no offices, and thus Heckler had a series of meetings with Messrs. A, B, and C in local restaurants.

8. Messrs. A, B, and C told Heckler that Next was an apparel company that also made the short-term bridge loans. When Heckler inquired who else was involved with Next, he was told that Hsu has lawyers and accountants, but that Heckler could not contact them. He was told that Hsu was a very private person. Hsu's privacy was a recurrent theme when Heckler asked for information. Heckler was first told that Hsu had extensive business background in the apparel industry. Soon thereafter this information was contradicted and he was told that Hsu's apparel business was very limited. Heckler conducted an internet search on Ashton, Hsu, and Next, learning only that Next was a New York corporation and that Hsu was a fundraiser for politicians such as Hillary Clinton.

9. Heckler asked for proof of the short-term loans and Hsu's 15-year history of making the loans with only one default. Messrs. A, B, and C simply told Heckler that all of the

[3] Although Mr. A used the term "feeder fund" to describe Ashton, it may be more precisely termed a "solicitor." For consistency's sake, however, the term "feeder fund" will be employed to describe Ashton.

Hsu loans had been paid off except for one. In that $10 million loan, the borrower defaulted, and Hsu paid off the investor for the default. Besides these oral assurances of Hsu's financial wherewithal, Heckler received emails from Messrs. A, B, and C, which contained no identifying information and summarized some of the loans. Heckler also spoke with a single investor, who Messrs. A, B, and C brought with them, to one of the restaurant meetings. The investor stated that he received his principal and interest from a short-term loan with Ashton and Hsu.

10. Heckler attempted without success to obtain financial records for Hsu, Ashton, and Next. First, he asked Messrs. A, B, and C for Hsu's financial records because Mr. Hsu was the one personally guaranteeing these notes, thinking that it would be prudent to get a copy of Hsu's personal financials. They responded that Hsu was a private businessman; he was not going to give those out. Heckler was simply told, in a testament to Hsu's character and viability as a professional, when one of the short-term loans went bad, Hsu stepped up and repaid the investors with his own funds. Second, Heckler asked Messrs. A, B, and C for financial records concerning Ashton. They told Heckler that there was not anything to disclose, and that there was nothing there. Ashton was simply a shell or "feeder fund." Third, Heckler asked Messrs. A, B, and C for Next's financial records and was told that Hsu was "not going to give us any information on Hsu or Next Components."

11. Heckler only received three pieces of written information concerning Ashton and Hsu. First, he received business cards from Messrs. A, B, and C. Messrs. A and B listed their position with Ashton as "Represenative [sic]." Second, Heckler received an eight-page brochure replete with misspellings and mostly general, unverified information. The brochure contained statements such as: "Ashton Investments specializes in Bridge Loans offering are [sic] clients high returns on there [sic] money in 30 to 90 days." During the summer of 2007, Heckler claims this brochure was stolen by Mr. or Mrs. A. Heckler left a message for Mr. A, asking for return of the brochure. Mr. A did not return Heckler's phone call. Third, as mentioned above, Heckler received emails, without any identifying information, that summarized a few of the loans. Heckler thought that these emails were helpful in determining whether to place his clients in the Ashton investment. These emails, Heckler believed, indicated that there were legitimate businesses behind the short-term loans. Even though there were no names, Heckler testified, it indicated when you looked at the brief description of the business that there was a true business behind it. Like the brochure, Heckler alleges that these emails were stolen in the summer of 2007 by Mr. or Mrs. A.

B. Heckler Recommends Investment in Ashton Investments

12. Despite not having obtained the information he had sought in his attempted due diligence, Heckler recommended investment in Ashton to four of his clients. From February to August 2007, the four clients invested $3.25 million in Ashton and Hsu, realizing $1.95 million in losses when Hsu's Ponzi scheme collapsed in September 2007. Heckler represented to at least two investors that he had conducted due diligence of Ashton. One investor stated that Heckler had told him that the investment had little risk because Next Components had been around for 15 years and because Next and Hsu have never had bad returns. The investor further stated that Heckler also had told him that Heckler had checked out Ashton, Next, and Hsu, conducting due diligence.

Another investor claimed that Heckler had assured him that Heckler had done all of the appropriate investigation necessary prior to recommending investment in Ashton and Hsu.

C. Heckler Receives Fees for Recommendations

13. For referring investors to Ashton, Heckler received a two percent commission. He received the commission at the time the bridge loan matured. Accordingly, Heckler received a total of $26,000 in commissions from the $1.3 million of bridge loans that matured. Heckler remitted this $26,000 to Yosemite. He then received a portion of the $26,000 per his compensation agreement with Yosemite. Additionally, Heckler also invested $275,000 of his own money in Ashton, realizing a $150,000 loss.

D. Violations

14. As a result of the conduct described above, Heckler and Yosemite willfully[4] violated Section 206(2) of the Advisers Act which makes it unlawful for an adviser to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any client.

15. As a result of the conduct described above, Heckler willfully caused Yosemite's violations of Sections 206(2) of the Advisers Act, which makes it unlawful for an adviser to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any client.

Undertakings

Respondents undertake to:

16. Within thirty (30) days of the issuance of this Order, mail a copy of the Form ADV which incorporates the paragraphs contained in the Summary section of this Order to each of Yosemite's existing clients, and specify that the entire Order will be posted on Yosemite's website. Within thirty (30) days of the issuance of this Order, post a copy of this Order on Yosemite's website and maintain this copy of the Order on Yosemite's website for a period of six (6) months. Respondents shall also provide a copy of the Form ADV to any new client that engages Yosemite or Heckler within two (2) years of the date of this Order.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Heckler's and Yosemite's Offers.

Accordingly, pursuant to Sections 203(e), 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

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[4] See n.2.

A. Respondents Paul H. Heckler and Yosemite Capital Management, LLC cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act;

B. Respondents Paul H. Heckler and Yosemite Capital Management, LLC are censured;

C. Respondent Paul H. Heckler shall, within 30 days of the entry of this Order, pay a civil penalty of $26,000.00 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. 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 Paul H. Heckler 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 Michele Wein Layne, Associate Regional Director, U.S. Securities and Exchange Commission, 5670 Wilshire Blvd, Suite 1100, Los Angeles, CA 90036;

D. Respondent Yosemite Capital Management, LLC shall, within 30 days of the entry of this Order, pay disgorgement of $26,000.00, prejudgment interest of $3,071.86 and civil penalties of $50,000.00 (for a total amount of $79,071.86) to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. 3717. 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 Yosemite Capital Management, LLC 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 Michele Wein Layne, Associate Regional Director, U.S. Securities and Exchange Commission, 5670 Wilshire Blvd, Suite 1100, Los Angeles, CA 90036; and

E. Orders that Paul H. Heckler and Yosemite Capital Management, LLC shall comply with the undertakings enumerated in Section III, Paragraph 16 above.

By the Commission.

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61723 / March 17, 2010

INVESTMENT ADVISERS ACT OF 1940
Release No. 3003 / March 17, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13819

In the Matter of **CHARLES J. MARQUARDT,** **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 Charles J. Marquardt ("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 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. In June 2008, Marquardt was a senior vice president and the chief administrative officer for operations of Evergreen Investment Management Company, Inc. ("EIMCO"), an investment adviser registered with the Commission. From April 1998 through April 2009, Marquardt was a registered representative of Evergreen Investment Services, Inc., a broker-dealer registered with the Commission. Marquardt, 42 years old, is a resident of Cambridge, Massachusetts.

2. On March 11, 2010, a final judgment was entered by consent against Marquardt, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in the civil action entitled Securities and Exchange Commission v. Charles J. Marquardt, Civil Action Number 10-cv-10073, in the United States District Court for the District of Massachusetts.

3. The Commission's complaint alleged that, on or about June 12, 2008, Marquardt redeemed all of the shares he owned in the Evergreen Ultra Short Opportunities Fund ("Ultra Fund") and caused a family member to do the same while Marquardt was in possession of material, nonpublic information about the Ultra Fund that he had learned from his employer, EIMCO.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Marquardt'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 Marquardt be, and hereby is barred from association with any broker, dealer, or 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.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61730 / March 18, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13823

In the Matter of	
Tangent Solutions, Inc., Telzuit Medical Technologies, Inc., Thomaston Mills, Inc., Three D Departments, Inc., Tiger Telematics, Inc., and TIS Mortgage Investment Co.,	**ORDER INSTITUTING ADMINISTRATIVE 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") against Respondents Tangent Solutions, Inc., Telzuit Medical Technologies, Inc., Thomaston Mills, Inc., Three D Departments, Inc., Tiger Telematics, Inc., and TIS Mortgage Investment Co.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Tangent Solutions, Inc. (CIK No. 764763) is a forfeited Delaware corporation located in Boca Raton, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Tangent 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 March 31, 2003, which reported a net loss of $35,060 for the prior three months. As of March 1, 2010, the company's stock ("TGTS") was quoted on the Pink Sheets operated by Pink OTC Markets, Inc. ("Pink Sheets"), had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

"TISM") was quoted on the Pink Sheets, had seven market makers, and was eligible for the "piggyback" exception 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, 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 and Rule 13a-13 requires issuers to file quarterly reports.

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 registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any corporate names of any Respondents.

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, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any 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.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

March 18, 2010

IN THE MATTER OF	:	
Talisman Enterprises, Inc.,	:	
Tangent Solutions, Inc.,	:	
Telepanel Systems, Inc.,	:	**ORDER OF SUSPENSION**
Telesis North Communications, Inc.,	:	**OF TRADING**
Telzuit Medical Technologies, Inc.,	:	
Tengtu International Corp.,	:	
Thomaston Mills, Inc.,	:	
Three D Departments, Inc.,	:	
Tiger Telematics, Inc., and	:	
TIS Mortgage Investment Co.,	:	
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 Talisman Enterprises, 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 Tangent Solutions, Inc. because it has not filed any periodic reports since the period ended March 31, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Telepanel Systems, Inc. because it has not filed any periodic reports since the period ended January 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Telesis North

Communications, Inc. because it has not filed any periodic reports since the period ended February 28, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Telzuit Medical Technologies, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tengtu International Corp. because it has not filed any periodic reports since the period ended March 31, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Thomaston Mills, Inc. because it has not filed any periodic reports since the period ended December 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Three D Departments, Inc. because it has not filed any periodic reports since the period ended August 1, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tiger Telematics, Inc. because it has not filed any periodic reports since the period ended September 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of TIS Mortgage Investment Co. because it has not filed any periodic reports since the period ended September 30, 2004.

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 securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on March 18, 2010, through 11:59 p.m. EDT on March 31, 2010.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61729 / March 18, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13822

In the Matter of	:	
Talisman Enterprises, Inc., Telepanel Systems, Inc., Telesis North Communications, Inc., and Tengtu International Corp.,	:	**ORDER INSTITUTING ADMINISTRATIVE 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") against Respondents Talisman Enterprises, Inc., Telepanel Systems, Inc., Telesis North Communications, Inc., and Tengtu International Corp.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Talisman Enterprises, Inc. (CIK No. 1076831) is an Ontario corporation located in Mississauga, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Talisman 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, 2000, which reported a net loss of over $2.26 million for the prior nine months. As of March 1, 2010, the company's stock ("BATTQ") was quoted on the Pink Sheets operated by Pink OTC Markets, Inc. ("Pink Sheets"), had two market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. Telepanel Systems, Inc. (CIK No. 910641) is a Canadian corporation located in Markham, Ontario, Canada with a class of securities registered with the Commission

pursuant to Exchange Act Section 12(g). Telepanel is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended January 31, 2002, which reported a loss of over $5.5 million (Canadian) for the prior twelve months. As of March 1, 2010, the company's stock ("TLSXF") was quoted on the Pink Sheets, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Telesis North Communications, Inc. (CIK No. 1108521) is a British Columbia corporation located in Toronto, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Telesis North is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended February 28, 2002, which reported a net loss of over $2 million (Canadian) for the prior twelve months. As of March 1, 2010, the company's stock (symbol "TNCVF") was quoted on the Pink Sheets, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. Tengtu International Corp. (CIK No. 847597) is a void Delaware corporation located in Toronto, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Tengtu 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 March 31, 2005, which reported a net loss of over $3 million for the prior nine months. As of March 1, 2010, the company's stock (symbol "TNTU") was quoted on the Pink Sheets, had nine market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

5. As discussed in more detail above, all of the respondents are delinquent in their periodic filings with the Commission, 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.

9. 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 and Rule 13a-13 requires domestic issuers to file quarterly reports. Rule 13a-16 requires foreign private issuers to furnish quarterly and other reports to the Commission under cover of Form 6-K if they make or are required to make the information public under the laws of the jurisdiction of their domicile or in which they are incorporated or organized; if they file or are required to file information with a stock exchange on which their securities are traded and the information was made public by the exchange; or if they distribute or are required to distribute information to their security holders.

10. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 or 13a-16 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 registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

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, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any 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.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
SECURITIES EXCHANGE ACT OF 1934

Release No. 61734 / March 18, 2010

Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: JP Morgan Securities, Inc.

I. Introduction

The Division of Enforcement has investigated whether JP Morgan Securities Inc. ("JPMSI"), a broker-dealer registered with the Commission, violated MSRB Rule G-37 ("Rule G-37"). Rule G-37 prohibits a broker, dealer or municipal securities dealer from, among other things, underwriting municipal bonds for an issuer within two years after the broker, dealer or municipal securities dealer or one of its municipal finance professionals ("MFPs") makes a political contribution to an official of that issuer. JPMSI underwrote municipal bonds issued by the state of California within two years after the Vice Chairman of JPMSI's parent bank holding company, JP Morgan Chase & Co., Inc. ("JP Morgan Chase" or "the Company"), who also led JP Morgan Chase's investment banking business, gave a $1,000 contribution to the Treasurer of the State of California ("California Treasurer"). Although the Vice Chairman of JP Morgan Chase was not a director, officer or employee of JPMSI, he nevertheless was an MFP associated with JPMSI because he functionally supervised JPMSI and served on the executive committee that oversaw JPMSI.

The Commission deems it appropriate and in the public interest to issue this Report of Investigation ("Report") pursuant to Section 21(a) of the Securities Exchange Act of 1934 ("Exchange Act").[1] The Report reaffirms guidance issued previously by the MSRB that a person associated with a broker, dealer or municipal securities dealer, as defined in Sections 3(a)(18) and (32) of the Exchange Act, but employed by an entity affiliated with a broker, dealer or municipal securities dealer, such as a parent bank holding company or an affiliated bank, is an MFP if by his or her activities, function, authority or responsibilities, such person meets the definition of MFP set forth in MSRB Rule G-37(g).

II. Background on MSRB Rule G-37

A. MSRB Rule G-37(b)

MSRB Rule G-37 has three substantive provisions—subparagraphs (b), (c) and (d)—that govern certain activities of brokers, dealers and municipal securities dealers to prohibit profiting from pay-to-play practices. MSRB Rule G-37(b) prohibits any broker, dealer, or municipal securities

[1] Section 21(a) of the Exchange Act authorizes the Commission to investigate violations of the federal securities laws and, in its discretion, to "publish information concerning any such violations." This Report does not constitute an adjudication of any fact or issue addressed herein. JPMSI has consented to the issuance of this Report without admitting or denying any of the statements or conclusions herein.

dealer from engaging in municipal securities business[2] with an issuer within two years after any contribution to an official of the issuer[3] made by the broker, dealer, or municipal securities dealer; or by any MFP associated with the broker, dealer, or municipal securities dealer; or by any political action committee controlled by the broker, dealer, municipal securities dealer or an MFP. A *de minimus* exception to Rule G-37(b) allows an MFP to contribute up to $250 per candidate per election if the MFP is entitled to vote for that issuer official.

Because Rule G-37 is a broad prophylactic measure, the Commission is not required to establish scienter or a *quid pro quo* in order to find a violation of Rule G-37(b). See In the Matter of Fifth Third Securities, Inc., Exchange Act Rel. No. 46087, n.4 (June 18, 2002). Instead, the prohibited act under Rule G-37(b) is engaging in municipal securities business within two years of a contribution to an official of the issuer, regardless of intent.[4]

As indicated above, a violation of Rule G-37(b) can occur as a result of a contribution by a broker, dealer, or a municipal securities dealer, an associated political action committee, or by certain associated persons who are MFPs. In basic terms, an MFP, as defined in Rule G-37(g), is any associated person who: (A) primarily engages in municipal securities representative activities; (B) solicits municipal securities business; (C) is a municipal securities principal or a municipal securities sales principal and supervises persons described in subparagraphs (A) and (B); (D) supervises any person described in subparagraph (C) up through and including, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, the chief executive officer or similarly-situated official; or (E) is a member of the broker, dealer or municipal securities dealer executive or management committee or similarly situated officials. In addition, each person designated by a broker, dealer or municipal securities dealer as an MFP is deemed to be an MFP.

In evaluating the activities of an associated person to determine if he is an MFP as defined in MSRB Rule G-37(g), the Commission has previously noted that the definition includes "those individuals who have an economic interest in seeing that the dealer is awarded municipal securities business and who thus may be in a position to make political contributions for the purpose of influencing the awarding of such business by issuer officials." Notice of Filing of Proposed Rule Change by the MSRB Relating to Political Contributions and Prohibitions on

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[2] MSRB Rule G-37(g)(vii) defines "municipal securities business" to include, among other things, purchasing a primary offering of municipal securities from an issuer on other than a competitive bid basis (i.e., a negotiated underwriting), and providing financial advisory services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis.

[3] Under MSRB Rule G-37(g)(vi), the definition of an "official of an issuer" includes any state or local "official" or "candidate" (or "successful candidate") for elective office of the issuer, which office is "responsible for, or can influence," the awarding of municipal securities business.

[4] See Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Political Contributions and Prohibitions on Municipal Securities Business, SEC Release No. 34-33482, 59 Fed. Reg. 3389, 3398 (Jan. 21, 1994) (explaining that the MSRB "determined to eliminate the intent element and replace it with an objective standard. . . . . Instead of proposing a prohibition on making contributions, the [MSRB] has proposed a prohibition on engaging in municipal business with issuers under certain circumstances and for a limited time"). See also In re District Business Conduct Comm. For District No. 8, N.A.S.D. Compl. No. C8A960040, 1998 WL 1084578 (Mar. 23, 1998).

Municipal Securities Business, Release No. 34-33482, 1994 SEC LEXIS 152 at *16 (Jan. 14, 1994). Thus, the definition of MFP not only includes those employees of a broker, dealer or municipal securities dealer primarily engaged in municipal securities business and their supervisors, but also certain other associated persons who might be solicited for contributions or might otherwise have an incentive to give a contribution in an effort to win underwriting business. Moreover, the MSRB has explained that whether someone is an MFP depends on "the activities of the individual and not his or her title." MSRB Additional Rule G-37 Q&As (Sept. 9, 1997, revised Oct. 30, 2003 and June 8, 2006).

With respect to subparagraph (E) of the definition—covering executive or management committee MFPs—the Commission previously explained in a 1996 order approving certain changes to Rule G-37 that the subparagraph is

> . . . the only part of the definition of municipal finance professional that does not depend upon the municipal securities activities of the person or the supervision of persons engaged in municipal securities activities. This provision was intended to prevent issuer officials from seeking contributions from dealers' senior executives once Rule G-37 precluded municipal finance professionals from contributing to those officials.

Order Granting Approval of Proposed Rule Change by the MSRB Relating to Political Contributions and Prohibitions on Municipal Securities Business, Release No. 34-37928, 1996 SEC LEXIS 3127 at *3 (Nov. 6, 1996).

III. Facts

A. The Role of the Former Vice Chairman of JP Morgan Chase

After joining JP Morgan Chase in 2000 with responsibility for JP Morgan's retail and consumer banking business, the Vice Chairman relinquished those roles in July 2002 and assumed responsibility for JP Morgan Chase's global investment banking, asset management and private wealth businesses. The Vice Chairman reported exclusively to JP Morgan Chase's Chairman and CEO at the time. In press releases after the change, JP Morgan Chase often referred to the Vice Chairman as the "CEO" of JP Morgan Chase's Investment Bank. The Investment Bank included a number of legal entities. JPMSI, the registered broker-dealer, was the primary U.S.-based legal entity, and it conducted its business on a fully integrated basis. JPMSI operated seamlessly within the Investment Bank.

From July 2002 through September 2004, the Vice Chairman supervised the entire global investment banking business, which included municipal securities underwriting in the United States by JPMSI. During that time period, JPMSI was an important component of the business units under the Vice Chairman's supervision, generating significant operating revenues for the global investment bank. The Vice Chairman had full authority to hire or fire employees of the Investment Bank, including employees of JPMSI; he set the compensation pools for the various business lines within the Investment Bank that operated through JPMSI; resolved disputes within

the Investment Bank that involved JPMSI; and oversaw transactions involving JPMSI's municipal finance department.

The Vice Chairman was the only JP Morgan Chase officer with responsibility for all businesses under the JPMSI umbrella. During the Vice Chairman's tenure as CEO of the JP Morgan Chase's Investment Bank, the head of JPMSI's public finance business reported indirectly to the Vice Chairman; periodically met with the Vice Chairman to brief him on public finance deals, and arranged for the Vice Chairman to participate in meetings with important public finance clients. While the Vice Chairman did not directly supervise managers in the public finance business, his direct reports, who were responsible for that line of business, regularly reported to him on the public finance business' performance.[5]

JPMSI did not have a chief executive officer or similarly situated official. While JPMSI had its own board of directors, the Board did not manage or control the business, but only met annually to address regulatory and perfunctory operational matters. Although JPMSI also had an executive committee, it never met. Therefore, it never functioned as a management subcommittee of the board. In fact, an officer in the Investment Bank who, for a period, served as "president" of JPMSI, testified that he "didn't remember the [JPMSI executive] committee ever doing anything or what the function of the committee was." JPMSI's "chairman and president" occupied a regulatory function, with no real authority over the various businesses conducted by JPMSI, and he served no functional role overseeing the public finance business.

The Vice Chairman did play a functional role in the public finance business by, among other things, actively promoting its services. For example, in October 2002, the Vice Chairman sent a pitch letter to JPMSI's public finance customers, who included, among others, state and municipal bond issuers. The letter also was subsequently included by the public finance department in at least eight responses to Requests for Qualifications ("RFQs") from municipal securities issuers between November 2002 and October 2003.

By virtue of his senior position within JP Morgan Chase, the Vice Chairman was a member of JP Morgan Chase's executive committee. According to the Vice Chairman, JP Morgan Chase's executive committee met one to three times a month to discuss JP Morgan Chase's "annual plan, the overall strategy, regular performance reviews, risk management activities, positioning in the markets in general, in communities in particular, and global functions throughout the organization." The executive committee provided "broad-banded oversight of the entire organization."

[5] Under the requirements of MSRB Rules G-8(a)(xvi) and G-9(a)(viii), JPMSI was required to maintain and preserve records reflecting a listing of all of its MFPs. During 2002, JP Morgan listed the head of the public finance business and his direct supervisors as MFPs. The Vice Chairman and his immediate subordinate responsible for the fixed income business were not included on the list.

B. Political Contributions to the California Treasurer

In August 2002, a few months after he became CEO of JP Morgan Chase's Investment Bank, the Vice Chairman received a call from the California Treasurer, who was in the middle of his 2002 re-election campaign. The California Treasurer called about fundraising. Soon after the call, on August 20, 2002, the California Treasurer' re-election campaign sent the Vice Chairman a facsimile inviting him to co-chair an upcoming New York event.

The invitation indicated that the Vice Chairman would be required to raise $10,000 for the California Treasurer's campaign in order to serve as co-chair of the event. The Vice Chairman did not agree to co-chair the event, but subsequently solicited $10,000 for the California Treasurer. On September 10, 2002, the Vice Chairman forwarded an invitation for the California Treasurer's New York fundraising event to JP Morgan Chase's executive committee and to its Vice President for Government Relations with a handwritten note stating that the California Treasurer is an important client and soliciting their help in raising $10,000 for the event.

The Vice Chairman gave $1,000 to the California Treasurer's campaign on September 30, 2002. The Vice Chairman also successfully solicited additional contributions totaling $8,000 from JP Morgan Chase Bank and three of JP Morgan Chase's senior officials.[6]

C. JPMSI's Municipal Securities Business in California—2002-2004

Within two years after the Vice Chairman's contribution described above, JPMSI participated as senior manager or co-manager in more than 50 negotiated underwritings for California state agencies or instrumentalities for which the California Treasurer was an official of such issuers within the meaning of Rule G-37(g)(vi).[7] The bonds underwritten sold for a total of more than $15.8 billion. For its roles in these underwritings and engagements, JPMSI received approximately $37 million in investment banking fees.

IV. Discussion

JPMSI underwrote certain California issues within two years after JP Morgan Chase's Vice Chairman contributed $1,000 to the California Treasurer. Although the Vice Chairman was not a director, officer or employee of JP Morgan Chase's broker-dealer subsidiary, JPMSI, the Vice Chairman was a person associated with JPMSI as that term is defined in the Exchange Act. Persons associated with brokers, dealers and municipal securities dealers are MFPs if by their activities, function, authority or responsibilities, they meet the definition of MFP set forth in Rule G-37(g).

[6] The Commission notes that MSRB Rule G-37(c) prohibits, among other things, an MFP from soliciting any person, including, but not limited to, any affiliated entity of the broker, dealer or municipal securities dealer, to make any contribution, or coordinating any contributions, to an official of an issuer with which the broker, dealer or municipal securities dealer is engaging or is seeking to engage in municipal securities business.

[7] See Note 3, above.

In the Commission's 1994 Exchange Act Release approving Rule G-37, addressing a letter commenting on the MSRB's rule proposal, the Commission indicated that banks and bank holding companies affiliated with brokers, dealers and municipal securities dealers were excluded from the scope of MSRB Rule G-37.[8] Since that time, the MSRB has stated in guidance first issued in 1997 that "one must review the activities of the individual and not his or her title[,]" when determining whether a person associated with the broker, dealer or municipal securities dealer, which by definition can include officers and employees of affiliated banks and bank holding companies, is an MFP and, thus, covered by the rule.[9] Furthermore, in other guidance, the MSRB has described circumstances under which a person associated with a broker, dealer or municipal securities dealer but employed by an affiliated entity can be an MFP.[10] The Commission, however, has never directly addressed whether directors, officers or employees of banks and bank holding companies affiliated with brokers, dealers or municipal securities dealers, who supervise the public finance activities of such brokers, dealers and municipal securities dealers, or who serve on executive committees that engage in such supervision, are MFPs.

We note that financial services firms cannot simply place executives managing a subsidiary broker, dealer, or municipal securities dealer, outside the broker, dealer, or municipal securities dealer's corporate structure as a means to avoid the limitations that Rule G-37 imposes on those executives' political contributions. We concur with the prior guidance by the MSRB that the rule looks to the activities, not merely the title, of an associated person in determining whether the person is an MFP. Today, many brokers, dealers and municipal securities dealers are subsidiaries of bank holding companies offering a broad array of financial services beyond municipal securities brokerage and investment banking. Given that commercial banks and other businesses within financial services companies are not directly subjected to pay-to-play prohibitions similar to Rule G-37, we underscore the limits imposed by Rule G-37 on executives who are the face of, and authority behind, brokers, dealers and municipal securities dealers within larger financial firms.

In this case, JPMSI, JP Morgan Chase's broker-dealer subsidiary, did not have an internal committee or other group overseeing the executive management and business operations of the broker-dealer. Accordingly, those responsibilities flowed outside the broker-dealer to executives at the Investment Bank, in particular, to the Vice Chairman, who essentially served as the *de facto* supervisor and executive officer of JPMSI. The Vice Chairman was the only executive within JP Morgan Chase to supervise and exercise authority over all of the businesses that operated through JPMSI. The Vice Chairman's active promotion of the public finance business is further evidence of his functional, supervisory role over that group. Moreover, JP Morgan Chase's executive committee, not JPMSI's, exercised management and supervisory functions

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[8] Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Political Contributions and Prohibitions on Municipal Securities Business and Notice of Filing and Order Approving on an Accelerated Basis Amendment No. 1 Relating to the Effective Date and Contribution Date of the Pro-posed Rule, SEC Release No. 34-33868, 59 Fed. Reg. 17621, 17628 (April 7, 1994).

[9] MSRB Additional Rule G-37 Q&As IV.18 (Sept. 9, 1997, revised Oct. 30, 2003 and June 8, 2006).

[10] MSRB Additional Rule G-37 Q&As IV. 17 (August 6, 1996, revised Oct. 30, 2003).

with respect to JPMSI.[11]

V. Conclusion

This Report serves to remind the financial community that placing an executive who supervises the activities of a broker, dealer or municipal securities dealer outside of the corporate governance structure of such broker, dealer or municipal securities dealer does not prevent the application of MSRB Rule G-37 to that individual's conduct. Brokers, dealers and municipal securities dealers without distinct, active and functioning corporate governance structures may violate Rule G-37 when officers, directors or other individuals within affiliated entities who supervise the public finance activities of such brokers, dealers and municipal securities dealers, or who serve on executive committees that engage in such supervision, make political contributions to issuer officials. A proper application of the Rule requires a review of the activities, not merely the title, of an associated person of a broker, dealer or municipal securities dealer in determining whether the person is an MFP and, thus, subject to pay-to-play prohibitions set forth in Rule G-37.

By the Commission.

[11] Although the Vice Chairman was already an MFP when he began soliciting municipal securities business on behalf of JPMSI, the solicitation activities described above would have made the Vice Chairman an MFP had he not already obtained that status. As the MSRB has explained in two interpretations of the Rule released in 1994 and 1995, soliciting municipal securities business includes, but is not limited to, responding to issuer requests for proposals; making or attending presentations of public finance or municipal securities marketing capabilities to issuer officials; and engaging in other activities calculated to appeal to issuer officials for municipal securities business, or which effectively do so. MSRB Additional Rule G-37 Q&As, Q&A No. 2 (Dec. 7, 1994); MSRB Additional Rule G-37 Q&As, Q&A No. 1 (March 22, 1995).

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61740 / March 19, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13824

In the Matter of **Aspen Group Resources Corp., Commercial Concepts, Inc., Desert Health Products, Inc., Equalnet Communications Corp., Geneva Steel Holdings Corp., Orderpro Logistics, Inc. (n/k/a Securus Renewable Energy, Inc.), Sepragen Corp., and Trinity Energy Resources, 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") against Respondents Aspen Group Resources Corp., Commercial Concepts, Inc., Desert Health Products, Inc., Equalnet Communications Corp., Geneva Steel Holdings Corp., Orderpro Logistics, Inc. (n/k/a Securus Renewable Energy, Inc.), Sepragen Corp., and Trinity Energy Resources, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Aspen Group Resources Corp. ("ASRPF")[1] (CIK No. 1023947) is a Yukon corporation located in Oklahoma City, Oklahoma with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ASRPF is delinquent in its periodic filings with the Commission, having not filed any periodic

[1]The short form of each issuer's name is also its stock symbol.

reports since it filed a Form 20-F for the period ended December 31, 2003, which reported a net loss of $2,717,662 for the prior year. As of March 17, 2010, the common stock of ASRPF was quoted on the Pink Sheets, had seven market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

2. Commercial Concepts, Inc. ("CMEC") (CIK No. 1014618) is an expired Utah corporation located in N. Salt Lake, Utah with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). CMEC 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 November 30, 2002, which reported a net loss of $518,794 for the prior nine months. As of March 17, 2010, the common stock of CMEC was quoted on the Pink Sheets, had six market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

3. Desert Health Products, Inc. ("DHPIQ") (CIK No. 1097570) is a dissolved Arizona corporation located in Scottsdale, Arizona with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). DHPIQ 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 December 31, 2005, which reported a net loss of $2,390,043 for the prior year. On December 15, 2005, DHPIQ filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Arizona, which was converted to a Chapter 7 petition, and was still pending as of March 17, 2010. As of March 17, 2010, the common stock of DHPIQ was quoted on the Pink Sheets, had seven market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

4. Equalnet Communications Corp. ("ENET") (CIK No. 936163) is a Texas corporation located in Houston, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ENET 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 March 31, 2000, which reported a net loss of $22,706,426 for the prior nine months. On August 9, 2000, ENET filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Southern District of Texas, which was converted to a Chapter 7 proceeding, and was still pending as of March 17, 2010. As of March 17, 2010, the common stock of ENET was quoted on the Pink Sheets, had six market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

5. Geneva Steel Holdings Corp. ("GNVHQ") (CIK No. 1128709) is a delinquent Delaware corporation located in Vineyard, Utah with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). GNVHQ 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, 2001, which reported a net loss of $67,594,000 for the prior nine months. On September 13, 2002, GNVHQ filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Utah which was still pending as of March 17, 2010. As of March 17, 2010, the common stock of GNVHQ was quoted on the Pink Sheets, had six market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

6. Orderpro Logistics, Inc. (n/k/a Securus Renewable Energy, Inc.) ("OPLO") (CIK No. 1116884) is a Nevada corporation located in Tucson, Arizona with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). OPLO 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, 2004, which reported a net loss of $10,655,008 for the prior nine months. As of March 17, 2010, the common stock of OPLO was quoted on the Pink Sheets, had ten market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

7. Sepragen Corp. ("SPGNA") (CIK No. 794154) is a California corporation located in Austin, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). SPGNA 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, 2002, which reported a net loss of $683,632 for the prior nine months. As of March 17, 2010, the common stock of SPGNA was quoted on the Pink Sheets, had seven market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

8. Trinity Energy Resources, Inc. ("TRGC") (CIK No. 1082292) is a dissolved Nevada corporation located in Houston, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). TRGC 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, 2002, which reported a net loss of $423,419 for the period from inception to September 30, 2002. On January 31, 2003, TRGC filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Southern District of Texas which was still pending as of March 17, 2010.

B. DELINQUENT PERIODIC FILINGS

9. As discussed in more detail above, all of the respondents are delinquent in their periodic filings with the Commission, 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.

10. 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, and Rule 13a-13 requires domestic issuers to file quarterly reports. Rule 13a-16 requires foreign private issuers to furnish quarterly and other reports to the Commission under cover of Form 6-K if they make or are required to make the information public under the laws of the jurisdiction of their domicile or in which they are incorporated or organized; if they file or are required to file information with a stock exchange on which their securities are traded and the information was made public by the exchange; or if they distribute or are required to distribute information to their security holders.

11. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 or 13a-16 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 hereof 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 registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

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, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any 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 permitted by the Commission Rules of Practice.

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.

Elizabeth M. Murphy
Secretary

Florence E Harmon

By: Florence E Harmon
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

March 19, 2010

In the Matter of

Aspen Group Resources Corp.,
Commercial Concepts, Inc.,
Desert Health Products, Inc.,
Equalnet Communications Corp.,
Geneva Steel Holdings Corp.,
Orderpro Logistics, Inc.
(n/k/a Securus Renewable Energy, Inc.), and
Sepragen Corp.,

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 Aspen Group Resources Corp. because it has not filed any periodic reports since the period ended December 31, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Commercial Concepts, Inc. because it has not filed any periodic reports since the period ended November 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Desert Health Products, Inc. because it has not filed any periodic reports since the period ended December 31, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Equalnet Communications Corp. because it has not filed any periodic reports since the period ended March 31, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Geneva Steel Holdings Corp. because it has not filed any periodic reports since the period ended September 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Orderpro Logistics, Inc. (n/k/a Securus Renewable Energy, Inc.) 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 Sepragen Corp. because it has not filed any periodic reports since the period ended September 30, 2002.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on March 19, 2010, through 11:59 p.m. EDT on April 1, 2010.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Florence E. Harmon
Deputy Secretary

Commissioner Walter not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61746 / March 19, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-12805

In the Matter of

Evergreen Investment Management Company, LLC, Evergreen Investment Services, Inc., Evergreen Service Company, LLC and Wachovia Securities, LLC

Respondents.

ORDER APPOINTING A FUND ADMINISTRATOR AND WAIVING BOND

On September 19, 2007, the Commission instituted settled administrative proceedings against Evergreen Investment Management Company, LLC ("EIMCO"), Evergreen Investment Services, Inc. ("EIS"), Evergreen Service Company, LLC ("ESC"), and Wachovia Securities, LLC ("Wachovia Securities") in connection with the market timing of Evergreen mutual funds. *See Order Instituting Administrative and Cease-and-Desist Proceedings pursuant to Sections 15(b)(4), 17A(c)(3) and 21C 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 as to Evergreen Investment Management Company, LLC, Evergreen Investment Services, Inc., Evergreen Service Company, LLC and Wachovia Securities, LLC*, Admin. Proc. File No. 3-12805, Exchange Act Release No. 56462 (September 19, 2007) ("Evergreen Order"). Also on September 19, 2007, the Commission instituted settled administrative proceedings against William M. Ennis in connection with the market timing of one Evergreen mutual fund. *See 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)(6) and 17A(c)(4)(C) 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 as to William M. Ennis*, Admin Proc. File No. 3-12806, Exchange Act Release No. 56464 (September 19, 2007) ("Ennis Order"). Among other things, the Evergreen Order and the Ennis Order required EIMCO, EIS, ESC, Wachovia Securities, and Ennis to pay a total of $28,503,280 in disgorgement and $4,150,000 in civil penalties. The Evergreen Order further required EIMCO to retain an independent distribution consultant ("IDC"), not unacceptable to the staff, to develop a distribution plan for the Fair Fund. EIMCO has

retained Kenneth Lehn, Ph.D., as the IDC, and has submitted the Distribution Plan to the Division of Enforcement, which has filed the plan with the Commission.

Dr. Lehn has proposed that Rust Consulting, Inc. be appointed as the Fund Administrator and that Rust Consulting not be required to post a bond generally required under Fair Fund Rule 1105(e). With respect to the bond, Dr. Lehn has noted that the Plan incorporates several layers of protection for the Fair Fund. Among other things, under the Plan: (1) the Fund Administrator will have no custody, and only limited control, of the Fair Fund; (2) the Fair Fund will be held by the U.S. Treasury Department's Bureau of the Public Debt until immediately before transmittal of checks or electronic transfers to eligible investors; (3) upon transfer from the U.S. Treasury, funds will be held in an escrow account, separate from the assets of the Escrow Bank, Deutsche Bank Trust Company Americas, until presentation of a check or electronic transfer, at which time funds will be transferred to a controlled distribution account; (4) presented checks or electronic transfers will be subject to "positive pay" controls before being honored by the Escrow Bank; and (5) both the Escrow Bank and the Fund Administrator will maintain, throughout this process, insurance and/or a financial institution bond that covers errors and omissions, misfeasance and fraud.

The Division of Enforcement proposes that the Commission appoint Rust Consulting as the Fund Administrator of the Distribution Plan as proposed by the Plan, and waive the bond requirement of the Fund Administrator for the good cause shown in the Plan.

Accordingly, pursuant to Rules 1105(a) and (c) of the Commission's Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. § 201.1105, IT IS HEREBY ORDERED that Rust Consulting is appointed as the Fund Administrator in accordance with the terms of the Distribution Plan and that the bond requirement is waived for good cause shown.

By the Commission.

Elizabeth M. Murphy
Secretary

Commissioner Walter not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61745 / March 19, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-12805

In the Matter of Evergreen Investment Management Company, LLC, Evergreen Investment Services, Inc., Evergreen Service Company, LLC and Wachovia Securities, LLC Respondents.	NOTICE OF PROPOSED PLAN OF DISTRIBUTION AND OPPORTUNITY FOR COMMENT

Notice is hereby given, pursuant to Rule 1103 of the Securities and Exchange Commission's ("Commission") Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. § 201.1103, that the Division of Enforcement has filed with the Commission the proposed plan ("Distribution Plan") for the distribution of monies in *In the Matter of Evergreen Investment Management Company, LLC, Evergreen Investment Services, Inc., Evergreen Service Company, LLC, and Wachovia Securities, LLC*. The Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings pursuant to Sections 15(b)(4), 17A(c)(3) and 21C 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 as to Evergreen Investment Management Company, LLC, Evergreen Investment Services, Inc., Evergreen Service Company, LLC and Wachovia Securities, LLC, Administrative Proceeding File No. 3-12805, Exchange Act Release No. 56462, on September 19, 2007. The Commission also issued an 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)(6) and 17A(c)(4)(C) 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 as to William M. Ennis, Administrative Proceeding File No. 3-12806, Exchange Act Release No. 56464, on September 19, 2007. Among other things, these orders required the Respondents to pay a total of $28,503,280 in disgorgement and $4,150,000 in civil penalties.

OPPORTUNITY FOR COMMENT

Pursuant to this Notice, all interested parties are advised that they may obtain a copy of the Distribution Plan from the Commission's public website, http://www.sec.gov, or by submitting a written request to Kevin M. Kelcourse, Assistant Regional Director, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, Massachusetts, 02110. Further, all persons desiring to comment on the Distribution Plan may submit their comments, in writing, no later than 30 days from the date of this Notice:

1. to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090;

2. by using the Commission's Internet comment form (http://www.sec.gov/litigation/admin.shtml); or

3. by sending an e-mail to rule-comments@sec.gov.

Comments submitted by e-mail or via the Commission's website should include "Administrative Proceeding File No. 3-12805" in the subject line. Comments received will be available to the public. Persons should only submit information that they wish to make publicly available.

THE DISTRIBUTION PLAN

The Distribution Plan provides for distribution of disgorgement payments in the amount of $28,503,280 and civil penalty payments in the amount of $4,150,000, plus any accumulated interest. The proposed plan provides for distribution of the Fair Fund to eligible investors in the Evergreen Funds identified in the plan to compensate them for losses resulting from market timing. If the Distribution Plan is approved, eligible investors will receive a proportionate share of the Fair Fund as calculated by the Independent Distribution Consultant. The distribution amount will be calculated from information in Evergreen's records, and records obtained from third-party intermediaries. Eligible investors will not need to go through a claims process.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Commissioner Aguilar
Commissioner Paredes
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act of 1934
Release No. 61741 / March 19, 2010

Investment Advisers Act of 1940
Release No. 3006 / March 19, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13825

In the Matter of **WILLIAM H. LOFTHUS,** **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 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against William H. Lofthus ("Lofthus" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

Lofthus is 55 years old and is currently incarcerated in a state prison in Vandalia, Illinois. From 1993 to February 2006, Respondent was a registered representative associated with a broker-dealer registered with the Commission. From June 2003 to February 2006, Respondent was an investment advisory representative associated with an investment adviser registered with the Commission.

B. CRIMINAL CONVICTION

1. On January 27, 2009, in *State of Illinois v. William H. Lofthus*, File No. 06-CF-2419 (August 24, 2006), Lofthus pled guilty in the Circuit Court of DuPage County, Illinois ("Circuit Court") to one count of a criminal indictment for theft of assets having a total value exceeding $100,000 and not exceeding $500,000 from a broker-dealer customer. On June 25, 2009, the Circuit Court sentenced Lofthus to six years in prison.

2. The count of the criminal indictment to which Respondent pled guilty alleged that, beginning in 2000 and continuing to September 2005, Respondent obtained money and property by means of materially false and misleading statements from an elderly customer who was physically and mentally impaired and misappropriated the customer's money for his own personal use.

3. During the period beginning in 2000 and continuing to September 2005, Respondent was associated with a broker-dealer registered with the Commission. Further, during part of this, Respondent was associated with an investment adviser registered with the Commission.

C. ACTION BY STATE OF ILLINOIS

1. Additionally, on August 28, 2006, the Securities Department of the Illinois Secretary of State issued an Order of Prohibition against Lofthus in the matter entitled *In the Matter of William H. Lofthus,* Illinois Department of Securities, File No. 0600143. The Order of Prohibition is final and bars Lofthus from offering or selling securities in or from the State of Illinois.

2. The Order of Prohibition contained findings that, among other things, beginning in 2002 and continuing to February 2006, Respondent, as a securities salesperson and investment adviser registered with the State of Illinois, solicited funds from one or more customers for investment in promissory notes, but converted the funds for his own use and benefit.

3. During the period beginning in 2002 and continuing to February 2006, Respondent was associated with a broker-dealer registered with the Commission. Further, during a part of this period, Respondent was associated with an investment adviser 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 proceedings be instituted to determine:

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

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act.

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to 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 Respondent 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 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.

Elizabeth M. Murphy
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. 61761 / March 23, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13826

In the Matter of	
JOSEPH P. COLLINS, ESQ., **Respondent.**	**ORDER OF SUSPENSION PURSUANT TO RULE 102(e)(2) OF THE COMMISSION'S RULES OF PRACTICE**

I.

The Securities and Exchange Commission deems it appropriate to issue an order of forthwith suspension of Joseph P. Collins, Esq. 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. Collins is an attorney admitted to practice law in Illinois.

2. On March 17, 2010, a judgment of conviction was entered against Collins in *United States v. Collins*, S1 07 CR 1170 (RPP), in the United States District Court for the Southern District of New York, finding him guilty of one count of conspiracy, two counts of securities fraud, and two counts of wire fraud. Collins was convicted for his role in fraudulent conduct that occurred at Refco Group Ltd., a former financial services firm that was his longtime client, and its corporate successor, Refco Inc.

3. As a result of this conviction, Collins was sentenced to 7 years imprisonment in a federal correctional facility.

[1] Rule 102(e)(2) provides in pertinent part: "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."

III.

In view of the foregoing, the Commission finds that Collins 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 Joseph P. Collins, Esq. is forthwith suspended from appearing or practicing before the Commission as an attorney pursuant to Rule 102(e)(2) of the Commission's Rules of Practice.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3007 / March 23, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13827

In the Matter of **MARK K. TERUYA,** **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 Mark K. Teruya ("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. From November 2004 through September 2007, Teruya was a registered representative associated with USA Wealth Management, an investment adviser registered with the Commission. Teruya, 37 years old, is a resident of Honolulu, Hawaii.

2. On March 1, 2010, a final judgment was entered by consent against Teruya, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, 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. Senior Resources of Hawaii, Inc. and Mark K. Teruya, Civil Action Number CV-07-00467 HG (LEK), in the United States District Court for the District of Hawaii.

3. The Commission's complaint alleged that Teruya fraudulently induced senior citizen clients and prospective clients to sign documents enabling him to liquidate their securities holdings by misrepresenting the purpose of the forms to the clients. Teruya would then use the forms to purchase insurance products and establish new investment accounts, without the clients' authorization or knowledge, for which he would receive a commission or an advisory fee.

IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 203(f) of the Advisers Act, that Respondent Teruya 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.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Walter
Commissioner Aguilar
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61763 / March 23, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13828

In the Matter of **Comverse Technology, Inc.,** **Respondent.**	**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") against Comverse Technology, Inc. ("Comverse" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

A. Comverse Technology, Inc. (CIK No. 0000803014) is a New York corporation based in New York, New York. Comverse's common stock is registered with the Commission pursuant to Exchange Act Section 12(g) and is quoted on the "Pink Sheets" under the symbol "CMVT" or "CMVT.PK." Comverse is required to file reports pursuant to Section 13(a) of the Exchange Act.

B. Section 13(a) of the Exchange Act and the rules promulgated thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act 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 (on Forms 10-K or 10-KSB), and Rule 13a-13 requires issuers to file quarterly reports (on Forms 10-Q or 10-QSB).

C. Comverse is delinquent in its periodic filings with the Commission.

D. Comverse has not filed an annual report on either Form 10-K or Form 10-KSB since April 20, 2005, or quarterly reports on either Form 10-Q or Form 10-QSB since December 12, 2005.

E. As a result of the foregoing, Comverse has failed to comply with Section 13(a) of the Exchange Act 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 pursuant to Section 12(j) of the Exchange Act to determine:

A. Whether the allegations in Section II hereof are true and, in connection therewith, to afford the Respondent 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 Respondent identified in Section II hereof 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, as provided by Rule 200 of the Commission's Rules of Practice [17 C.F.R. § 201.200], 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 the Respondent shall file an Answer to the allegations contained in this Order Instituting Proceedings within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice [17 C.F.R. § 201.220].

If the 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 the 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 the Respondent personally or by certified mail.

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.

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61765 / March 23, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13829

In the Matter of **Ultimate Security Systems Corp.,** **United Trans-Western, Inc.,** **Universal Bio-Medical Enterprises, Inc.,** **Universal Broadband Communications, Inc.,** **Universal Guaranty Investment Co.,** **Urethane Technologies, Inc., and USMX, 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") against Respondents Ultimate Security Systems Corp., United Trans-Western, Inc., Universal Bio-Medical Enterprises, Inc., Universal Broadband Communications, Inc., Universal Guaranty Investment Co., Urethane Technologies, Inc., and USMX, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Ultimate Security Systems Corp. (CIK No. 1047306) is a Nevada corporation located in Irvine, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Ultimate Security 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 January 10, 2005, which reported a net loss of $898,878 for the nine months ended September 30, 2004.

2. United Trans-Western, Inc. (CIK No. 316600) is a void Delaware corporation located in Victoria, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). United Trans-Western 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 March 31, 2000, which reported a net loss of $133,089 for the prior three months.

3. Universal Bio-Medical Enterprises, Inc. (CIK No. 1128440) is a Florida corporation located in Indianapolis, Indiana with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Universal Bio-Medical is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 2006, which did not include financial statements.

4. Universal Broadband Communications, Inc. (CIK No. 1126561) is a revoked Nevada corporation located in Irvine, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Universal Broadband 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, 2002, which reported a net loss of over $2.77 million for the prior nine months.

5. Universal Guaranty Investment Co. (CIK No. 110619) is a dissolved Delaware corporation located in Springfield, Illinois with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Universal Guaranty 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 March 31, 1995.

6. Urethane Technologies, Inc. (CIK No. 858482) is a dissolved Nevada corporation located in Orange, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Urethane Technologies is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q/A for the period ended September 30, 1996, which reported a net loss of over $3.35 million for the prior nine months. As of March 16, 2010, the company's stock (symbol "UTEC") was traded on the over-the-counter markets.

7. USMX, Inc. (CIK No. 315523) is a void Delaware corporation located in Lakewood, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). USMX 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 March 31, 1997, which reported a net loss of $1.22 million for the prior three months.

B. DELINQUENT PERIODIC FILINGS

8. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, 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.

9. 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 and Rule 13a-13 requires issuers to file quarterly reports.

10. 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 registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

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, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any 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.

Elizabeth M. Murphy
Secretary

Commissioner Schapiro not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61768 / March 24, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13831

In the Matter of **SOUTHWEST SECURITIES, INC.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 15(b), 15B(c)(2) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

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), 15B(c)(2) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Southwest Securities, Inc. ("Southwest" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b), 15B(c)(2) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

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

[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.

Summary

1. These proceedings involve violations of the law concerning political contributions and municipal securities business by Southwest, a broker-dealer and municipal securities dealer. From December 2000 to July 2009, a sales person with the title of senior vice president in Southwest's public finance office ("senior vice president"), engaged in solicitation activities that made him a "municipal finance professional" under Municipal Securities Rulemaking Board ("MSRB") Rule G-37. The senior vice president made political contributions to an incumbent for office with influence over the awarding of municipal securities business by certain state issuers in Massachusetts. Within two years of these political contributions, Southwest engaged in municipal securities business with the issuers associated with the incumbent who received the political contributions. Southwest's engagement in municipal securities business with these issuers violated Section 15B(c)(1) of the Exchange Act and MSRB Rule G-37(b).[2] The contributions were not disclosed on MSRB Forms G-37 in violation of MSRB Rule G-37(e).

Respondent

2. Southwest, incorporated in Delaware in 1991, is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act since September 1, 1992 and with the MSRB as a municipal securities dealer as defined in Sections 3(a)(30) and 3(a)(31) of the Exchange Act. Southwest's principal place of business is in Dallas, Texas. At all times relevant to these proceedings, Southwest was a wholly-owned subsidiary of SWS Group, Inc.

Background

3. Between December 2000 and July 2009, Southwest's senior vice president engaged in activities that constituted solicitation of municipal securities business from certain issuers on behalf of Southwest. As a result, the senior vice president was a "municipal finance professional" (MFP") associated with Southwest under MSRB Rule G-37.[3]

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[2] Rule G-37(b) provides that no broker, dealer or municipal securities dealer shall engage in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by: (A) the broker, dealer or municipal securities dealer; (B) any municipal finance professional associated with such broker, dealer or municipal securities dealer; or (C) any political action committee controlled by the broker, dealer or municipal securities dealer or by any municipal finance professional.

[3] Rule G-37(g)(iv)(B) provides that "the term 'municipal finance professional' [includes] . . . any associated person [of a broker, dealer or municipal securities dealer] who solicits municipal securities business." According to MSRB interpretations, soliciting municipal securities business includes, but is not limited to, responding to issuer requests for proposals. *See* MSRB Notice 2006-15 (June 15, 2006). The senior vice president engaged in municipal securities solicitation activities by signing cover letters attached to responses to requests for qualifications ("RFQ") for underwriting business and by having his name appear in the responses to the RFQs as a member of Southwest's underwriting team. Although the

4. Between 2003 through 2008, the senior vice president contributed $1,625 to an incumbent who was also at the time of the contributions a candidate for elective office in the Commonwealth of Massachusetts (hereinafter "the issuer official").[4] The contributions were made through seven different checks during two election cycles. Specifically, on February 8, 2003, March 25, 2004 and June 22, 2005, the senior vice president contributed $250 to the issuer official through three different personal checks, for a total of $750. These contributions were all made before the primary election in 2006. The contributions on March 25, 2004 and June 22, 2005 placed the senior vice president's total contributions for the primary election above the $250 *de minimis* exception.[5] In addition, on December 15, 2006, May 29, 2007, December 10, 2007 and April 28, 2008, before the scheduled primary election in 2010, in which the incumbent expected to be a candidate, the senior vice president contributed $875 to the issuer official through four different personal checks. Each of the contributions on May 29, 2007, December 10, 2007 and April 28, 2008 placed the senior vice president's total contributions above the $250 *de minimis* exception.

5. The issuer official is responsible for, or has the authority to appoint persons who are responsible for, the hiring of brokers, dealers, or municipal securities dealers for municipal securities business by the Commonwealth of Massachusetts and certain related state governmental units (hereinafter "the Issuers").

6. Under Rule G-37, each of these contributions above the $250 *de minimis* exception triggered a two-year ban on municipal securities business with the Issuers, starting with the dates of the contributions. Accordingly, during the first election cycle, Southwest was

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senior vice president engaged in both of these solicitation activities, either one by itself was sufficient to make the senior vice president an MFP.

[4] Rule G-37(g)(vi) defines an "official of such issuer" as any person who was, at the time of the contribution, an incumbent, candidate or successful candidate: (A) for elective office of the issuer which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by the issuer; or (B) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by an issuer.

[5] A *de minimis* exception to Rule G-37(b) allows an MFP to contribute up to $250 per candidate per election if the MFP is entitled to vote for the candidate. If an issuer official is involved in a primary election prior to the general election, an MFP who is entitled to vote for such official can contribute a total of $500 to that official—up to $250 for the primary and up to $250 for the general election. Although an MFP is permitted to contribute a total of $500 per election cycle, the rule limits contributions to $250 before the primary, with an additional $250 allowed after the primary for the general election. *See, e.g.,* MSRB G-37 Q&As, Q&A No. II.8 (May 24, 1994); *Pryor, McClendon, Counts & Co., Inc. et al.*, Exchange Act Release No. 48095 (June 26, 2003), 2003 SEC LEXIS 1503 ("Rule G-37 limited contributions to $250 before the primary, with an additional $250 allowed after the primary for the general election.").

prohibited from engaging in municipal securities business with the Issuers for the period March 25, 2004 to June 22, 2007. During the second election cycle, Southwest was prohibited from engaging in municipal securities business with the Issuers for the period May 29, 2007 to April 28, 2010.

7. Within two years after the above non-*de minimis* contributions, Southwest participated as co-manager for a total of 19 negotiated underwritings by the Issuers totaling approximately $14 billion. For its roles in the 19 underwritings, Southwest received gross income in the amount of $348,154.

8. The above non-*de minimis* contributions were not disclosed in Southwest's quarterly reports to the MSRB on Form G-37.

Violations

9. Section 15B(b) of the Exchange Act established the MSRB and empowered it to propose and adopt rules with respect to transactions in municipal securities by brokers, dealers, and municipal securities dealers. Section 15B(c)(1) of the Exchange Act prohibits a broker, dealer or municipal securities dealer from 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 MSRB. As a municipal securities dealer, Southwest was subject to Section 15B(c)(1) of the Exchange Act and the MSRB rules.

10. As a result of the conduct described above, Southwest willfully violated MSRB Rule G-37(b), which prohibits brokers, dealers or municipal securities dealers from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by (i) the broker, dealer or municipal securities dealer; (ii) any municipal finance professional associated with such broker, dealer or municipal securities dealer; or (iii) any political action committee controlled by the broker, dealer or municipal securities dealer or by any municipal finance professional, unless the contribution is exempt.

11. As a result of the conduct described above, Southwest willfully violated Rule G-37(e), which requires brokers, dealers, or municipal securities dealers to file quarterly reports with the MSRB disclosing contributions to any official of a municipal securities issuer made by, among others, each municipal finance professional associated with such broker, dealer, or municipal securities dealer.

12. As a result of Southwest's willful violations of MSRB Rules G-37(b) and G-37(e), Southwest willfully violated Section 15B(c)(1) of the Exchange Act.[6]

Southwest's Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent.

IV.

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

Accordingly, pursuant to Sections 15(b), 15B(c)(2), 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Southwest cease and desist from committing or causing any violations and any future violations of Section 15B(c)(1) of the Exchange Act, MSRB Rule G-37(b) and MSRB Rule G-37(e).

B. Respondent Southwest shall, within 10 days of the entry of this Order, pay disgorgement of $348,154 and prejudgment interest of $71,993 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. 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 Southwest Securities, Inc. 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 John T. Dugan, Associate Regional Director, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, Suite 2300, Boston, MA 02110.

C. Respondent Southwest shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $50,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A)

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[6] Rule G-37 is a broad prophylactic measure. Finding a violation of Rule G-37(b), Rule G-37(e) and Section 15B(c)(1) of the Exchange Act does not require a showing of scienter or a *quid pro quo*. A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

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 Southwest Securities, Inc. 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 John T. Dugan, Associate Regional Director, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, Suite 2300, Boston, MA 02110.

By the Commission.

Elizabeth M. Murphy
Secretary

Chairman Schapiro not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61767 / March 24, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13830

In the Matter of **JOHN F. KENDRICK,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 15(b), 15B(c)(4) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b), 15B(c)(4) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against John F. Kendrick ("Kendrick" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent was the senior vice president of public finance for New England in Southwest Securities, Inc.'s Medfield, Massachusetts branch office between December 1, 2000 and July 2009. Kendrick was also a registered representative associated with Southwest Securities, Inc., a registered broker-dealer and municipal securities dealer. Kendrick, 65 years old, is a resident of Medfield, Massachusetts.

B. OTHER RELEVANT ENTITY

2. Southwest Securities, Inc. ("Southwest"), incorporated in Delaware in 1991, is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act since September 1, 1992 and with the Municipal Securities Rulemaking Board ("MSRB") as a municipal securities dealer as defined in Sections 3(a)(30) and 3(a)(31) of the Exchange Act. Southwest's principal place of business is in Dallas, Texas. At all times relevant to these proceedings, Southwest was a wholly-owned subsidiary of SWS Group, Inc.

C. BACKGROUND

3. Between December 2000 and July 2009, Kendrick engaged in activities that constituted solicitation of municipal securities business from certain issuers on behalf of Southwest. As a result, Kendrick was a "municipal finance professional" ("MFP") associated with Southwest under MSRB Rule G-37. [1]

4. Between 2003 through 2008, Kendrick contributed $1,625 to Timothy Cahill, the treasurer of the Commonwealth of Massachusetts (hereinafter "the treasurer"). The treasurer was an incumbent who was also at the time of the contributions a candidate for elective office in the Commonwealth of Massachusetts.[2] The contributions were made through seven different checks during two election cycles. Specifically, on February 8, 2003, March 25, 2004 and June 22, 2005, Kendrick contributed $250 to the treasurer through three different personal checks, for a total of $750. These contributions were all made before the state primary election in 2006. The contributions on March 25, 2004 and June 22, 2005 placed Kendrick's total contributions for the primary election above the $250 *de minimis* exception.[3] In addition, on December 15, 2006, May 29, 2007, December 10, 2007 and April 28, 2008, before the scheduled state primary election in 2010, in which the treasurer expected to be a candidate, Kendrick

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1 Rule G-37(g)(iv)(B) provides that "the term 'municipal finance professional' [includes] . . . any associated person [of a broker, dealer or municipal securities dealer] who solicits municipal securities business." According to MSRB interpretations, soliciting municipal securities business includes, but is not limited to, responding to issuer requests for proposals. *See* MSRB Notice 2006-15 (June 15, 2006). Kendrick engaged in municipal securities solicitation activities by signing cover letters attached to responses to requests for qualifications ("RFQ") for underwriting business and by having his name appear in the responses to the RFQs as a member of Southwest's underwriting team. Although Kendrick engaged in both of these solicitation activities, either one by itself was sufficient to make him an MFP.

2 Rule G-37(g)(vi) defines an "official of such issuer" as any person who was, at the time of the contribution, an incumbent, candidate or successful candidate: (A) for elective office of the issuer which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by the issuer; or (B) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by an issuer.

3 A *de minimis* exception to Rule G-37(b) allows an MFP to contribute up to $250 per candidate per election if the MFP is entitled to vote for the candidate. If an issuer official is involved in a primary election prior to the general election, an MFP who is entitled to vote for such official can contribute a total of $500 to that official—up to $250 for the primary and up to $250 for the general election. Although an MFP is permitted to contribute a total of $500 per election cycle, the rule limits contributions to $250 before the primary, with an additional $250 allowed after the primary for the general election. *See, e.g.,* MSRB G-37 Q&As, Q&A No. II.8 (May 24, 1994); *Pryor, McClendon, Counts & Co., Inc. et al.*, Exchange Act Release No. 48095 (June 26, 2003), 2003 SEC LEXIS 1503 ("Rule G-37 limited contributions to $250 before the primary, with an additional $250 allowed after the primary for the general election.").

contributed $875 to the treasurer through four different personal checks. Each of the contributions on May 29, 2007, December 10, 2007 and April 28, 2008 placed Kendrick's total contributions above the $250 *de minimis* exception.

5. The treasurer is responsible for, or has the authority to appoint persons who are responsible for, the hiring of brokers, dealers, or municipal securities dealers for municipal securities business by the Commonwealth of Massachusetts and certain related state governmental units, including the Massachusetts Water Pollution Abatement Trust and the Massachusetts School Building Authority (hereinafter "the Issuers").

6. Under Rule G-37, each of these contributions above the $250 *de minimis* exception triggered a two-year ban on municipal securities business with the Issuers, starting with the dates of the contributions. Accordingly, during the first election cycle, Southwest was prohibited from engaging in municipal securities business with the Issuers for the period March 25, 2004 to June 22, 2007. During the second election cycle, Southwest was prohibited from engaging in municipal securities business with the Issuers for the period May 29, 2007 to April 28, 2010.

7. Within two years after the above non-*de minimis* contributions, Southwest, with Kendrick's knowledge, participated as co-manager for a total of 19 negotiated underwritings by the Issuers totaling approximately $14 billion.

8. In June 2005, Kendrick co-hosted a fundraiser for the treasurer. Kendrick made approximately 82 solicitation requests for campaign contributions relating to the fundraiser. In addition, Kendrick personally delivered his own check, and the checks that he solicited from others, to a representative of the treasurer's campaign. The fundraiser raised approximately $9,000 for the treasurer's campaign committee. At the same time of the solicitations, Southwest was engaged in or seeking to engage in municipal securities business through a response to a request for qualifications sent to the Issuers.

D. VIOLATIONS

9. As a result of the conduct described above, Kendrick willfully caused Southwest's violations of MSRB Rule G-37(b), which prohibits brokers, dealers or municipal securities dealers from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by (i) the broker, dealer or municipal securities dealer; (ii) any municipal finance professional associated with such broker, dealer or municipal securities dealer; or (iii) any political action committee controlled by the broker, dealer or municipal securities dealer or by any municipal finance professional, unless the contribution is exempt.

10. As a result of the conduct described above, Kendrick willfully violated Rule G-37(c) of the MSRB, which prohibits, among other things, brokers, dealers, municipal securities dealers or any municipal finance professional of the broker, dealer or municipal

securities dealer from soliciting any person to make any contributions or coordinating any contributions to an official of an issuer with which the broker, dealer or municipal securities dealer is engaging or is seeking to engage in municipal securities business.

11. As a result of the conduct described above, Kendrick willfully caused Southwest's violations of Section 15B(c)(1) of the Exchange Act, which prohibits a broker, dealer or municipal securities dealer from 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 MSRB.

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 Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act including, but not limited to, civil penalties pursuant to Section 21B of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to 15B(c)(4) of the Exchange Act including, but not limited to, civil penalties pursuant to Section 21B of the Exchange Act; and

D. Whether, pursuant to Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Rule G-37(c) of the MSRB and whether Respondent should be ordered to cease and desist from causing violations of and any future violations of Section 15B(c)(1) of the Exchange Act and Rule G-37(b) of the MSRB.

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 Respondent 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 Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61772 / March 24, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13833

In the Matter of **P&P Research Co., Ltd.,** **Respondent.**	**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") against Respondent P&P Research Co., Ltd.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. P&P Research Co., Ltd. (CIK No. 1239668) is a Korean corporation located in Seoul, Korea with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). P&P is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F registration on June 9, 2003, which reported a net loss of $886,576 for the fiscal year ended December 31, 2002.

B. DELINQUENT PERIODIC FILINGS

2. As discussed in more detail above, the respondent is delinquent in its periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), has repeatedly failed to meet its obligations to file timely periodic reports, and failed to heed delinquency letters sent to it by the Division of Corporation

Finance requesting compliance with its periodic filing obligations or, through its failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

3. 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 and Rule 13a-16 requires foreign private issuers to furnish quarterly and other reports to the Commission under cover of Form 6-K if they make or are required to make the information public under the laws of the jurisdiction of their domicile or in which they are incorporated or organized; if they file or are required to file information with a stock exchange on which their securities are traded and the information was made public by the exchange; or if they distribute or are required to distribute information to their security holders.

4. As a result of the foregoing, Respondent failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-16 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 hereof are true and, in connection therewith, to afford the Respondent 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 Respondent 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 Respondent 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 Respondent fails to file the directed Answers, 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 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 Respondent 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.

Elizabeth M. Murphy
Secretary

Attachment

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Appendix 1

Chart of Delinquent Filings
P&P Research Co., Ltd.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
P&P Research Co., Ltd.					
	20-F	12/31/03	06/30/04	Not filed	64
	20-F	12/31/04	06/30/05	Not filed	52
	20-F	12/31/05	06/30/06	Not filed	40
	20-F	12/31/06	07/02/07	Not filed	27
	20-F	12/31/07	06/30/08	Not filed	16
	20-F	12/31/08	06/30/09	Not filed	4

Total Filings Delinquent *6*

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61771 / March 24, 2010

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3122 / March 24, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13832

In the Matter of **BRIAN K. RABINOVITZ, 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 Brian K. Rabinovitz ("Respondent" or "Rabinovitz") 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.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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

1. Rabinovitz, age 41, is and has been a certified public accountant licensed to practice in the State of California as of 2007. He also was or is licensed to practice in the State of New York. Rabinovitz was employed by Merdinger, Fruchter, Rosen & Corso, P.C. (later Merdinger, Fruchter, Rosen & Company, P.C.)("MFRC") as a senior manager and, later, as a non-equity partner from 1995 until August 2002. In the latter capacity, he supervised MFRC's audit and other engagements concerning Exotics.com, Inc. ("Exotics.com") in 2001 and 2002.

2. Exotics.com was, at all relevant times, a Nevada corporation with its principal place of business in Vancouver, British Columbia, Canada. Exotics.com was engaged in the business of owning, operating, and licensing adult-oriented websites. At all relevant times, Exotics.com's common stock was registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934, and was approved for quotation on the OTC Bulletin Board.

3. On March 15, 2010, a final judgment was entered against Rabinovitz, permanently enjoining him from future violations of Rule 2-02 of Regulation S-X in the civil action entitled Securities and Exchange Commission v. Exotics.com, Inc., et. al, Civil Action Number 2:05-cv-00531-PMP-GWF, in the United States District Court for the District of Nevada. Rabinovitz was also ordered to pay a $30,000 civil money penalty.

4. The Commission's complaint alleged, among other things, that Rabinovitz and others participated in a scheme that resulted in Exotics.com filing materially false and misleading financial statements in its Commission filings, including, among others, an amended current report on Form 8-K filed on September 24, 2001, a quarterly report on Form 10-QSB for the quarter ended September 30, 2001, and an annual report on Form 10-KSB for the fiscal year ended December 31, 2001. The complaint further alleged that Rabinovitz and audit staff under his supervision committed acts and/or omissions that caused them to become non-independent during audits of Exotics.com and that Rabinovitz approved the issuance by MFRC of audit reports which, among other things, falsely stated that the audits had been conducted by an independent auditor

and in accordance with generally accepted auditing standards ("GAAS"). The Complaint also alleged that Rabinovitz and audit staff under his supervision engaged in a number of improper accounting practices that caused Exotics.com's financial statements to depart from generally accepted accounting principles ("GAAP").

IV.

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

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

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

B. After three 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 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 Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Elizabeth M. Murphy
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. 61773 / March 24, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13834

In the Matter of

BFA Liquidation Trust,
Big Dog Partners, Inc.,
Big Fun Toys, Inc.,
Billy Dead, Inc.,
Biltmore Vacation Resorts, Inc.
(n/k/a Absolutesky, Inc.),
BioImmune, Inc.,
BioSecure Corp.,
Brazos Sportswear, Inc.
(n/k/a Marinas International, Inc.),
Bridge Technology, Inc.,
BrightCube, Inc., and
B.U.M. International, 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") against Respondents BFA Liquidation Trust, Big Dog Partners, Inc., Big Fun Toys, Inc., Billy Dead, Inc., Biltmore Vacation Resorts, Inc. (n/k/a Absolutesky, Inc.), BioImmune, Inc., BioSecure Corp., Brazos Sportswear, Inc. (n/k/a Marinas International, Inc.), Bridge Technology, Inc., BrightCube, Inc., and B.U.M. International, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. BFA Liquidation Trust (CIK No. 1140513) is an Arizona corporation located in Phoenix, Arizona with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). BFA 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, 2005.

2. Big Dog Partners, Inc. (CIK No. 1105870) is a permanently revoked Nevada corporation located in Reno, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Big Dog Partners 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 June 6, 2001.

3. Big Fun Toys, Inc. (CIK No. 1101177) is a void Delaware corporation located in Malibu, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Big Fun Toys 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, 2000, which reported a net loss of $4,700 for the prior three months.

4. Billy Dead, Inc. (CIK No. 1227153) is a void Delaware corporation located in Los Angeles, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Billy Dead 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 March 31, 2004, which reported a net loss of $5,349 for the prior three months.

5. Biltmore Vacation Resorts, Inc. (n/k/a Absolutesky, Inc.) (CIK No. 1108653) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Biltmore Vacation Resorts 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, 2000, which reported a net loss of $169,760 for the prior three months. On November 28, 2001, the company filed a petition in the U.S. Bankruptcy Court for the District of Nevada, and the case was still pending as of March 18, 2010. As of March 18, 2010 the company's stock (symbol "ABSY") was traded on the over-the-counter markets.

6. BioImmune, Inc. (CIK No. 1094025) is an inactive Florida corporation located in Scottsdale, Arizona with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). BioImmune is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB/A on November 1, 2000.

7. BioSecure Corp. (CIK No. 856979) is a Nevada corporation located in Newport Beach, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). BioSecure Corp. is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB/A for the period ended December 31, 2001.

8. Brazos Sportswear, Inc. (n/k/a Marinas International, Inc.) (CIK No. 856711) is a dissolved Delaware corporation located in Cincinnati, Ohio with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Brazos 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 October 3, 1998, which reported a net loss of $24,409 for the prior forty weeks. On January 21, 1999, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Delaware, and the case was terminated on January 21, 2004. As of March 18, 2010, company's stock (symbol "MNSI") was traded on the over-the-counter markets.

9. Bridge Technology, Inc. (CIK No. 1048273) is a revoked Nevada corporation located in Garden Grove, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Bridge 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, 2003, which reported a net loss of $17,630 for the prior three months. On June 21, 2004, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Central District of California, and the case was still pending as of March 18, 2010. As of March 18, 2010, the company's stock (symbol "BRDG") was traded on the over-the-counter markets.

10. BrightCube, Inc. (CIK No. 1086722) is a Nevada corporation located in El Segundo, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). BrightCube is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB/A for the period ended June 30, 2002, which reported a net loss of $1,726,500 for the prior three months. On September 30, 2002, the company filed a Chapter 7 petition in the U.S. Bankruptcy Court for the Central District of California, and the case was terminated on March 19, 2003. As of March 18, 2010, the company's stock (symbol "BRCU") was traded on the over-the-counter markets.

11. B.U.M. International, Inc. (CIK No. 865886) is a dissolved Nevada corporation located in Rancho Dominquez, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). B.U.M. 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 October 1, 1995, which reported a net loss of $12,352,000 for the prior nine months.

B. DELINQUENT PERIODIC FILINGS

12. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, 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.

13. 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 and Rule 13a-13 requires issuers to file quarterly reports.

14. 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 registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

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, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any 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.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61786 / March 25, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13836

In the Matter of **SANDEEP SINGH,** **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 Sandeep Singh ("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 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 Respondent's Offer, the Commission finds that:

1. From January 2003 through June 11, 2009, Singh was a registered representative associated with Aura Financial Services, Inc. ("Aura"), a broker-dealer registered with the Commission. Singh, 29 years old, is a resident of West Palm Beach, Florida.

2. On February 26, 2010, a final judgment was entered by consent against Singh, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Aura Financial Services, Inc., et al., Civil Action Number 09-CIV-21592, in the United States District Court for the Southern District of Florida.

3. The Commission's complaint alleged that, in approximately June 2007, Singh made untrue statements of material facts to an Aura client. Additionally, the complaint alleged that between January 11, 2008 and November 21, 2008, Singh excessively traded the same client's account for the purposes of generating commissions. The complaint alleged that these actions operated as a fraud and deceit on the investor.

IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act, that Respondent Singh be, and hereby is barred from association with any broker or dealer with the right to reapply for association after two (2) 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.

Elizabeth M. Murphy
Secretary

Chairman Schapiro not participating

SECURITIES AND EXCHANGE COMMISSION
Washington D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 61791 / March 26, 2010

Admin. Proc. File No. 3-13610

In the Matter of the Application of

TIMOTHY P. PEDREGON, JR.

For Review of Action Taken by the

Financial Industry Regulatory Authority, Inc.

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION – REVIEW OF DENIAL OF MEMBERSHIP CONTINUANCE APPLICATION

Registered securities association denied member's application to retain membership if it employed individual subject to statutory disqualification because of 2007 felony conviction. *Held*, review proceeding is *dismissed.*

APPEARANCES:

Timothy P. Pedregon, Jr., pro se.

Marc Menchel, Alan Lawhead, Michael J. Garawski, and *Deborah F. McIlroy*, for the Financial Industry Regulatory Authority, Inc.

Appeal filed: September 2, 2009
Last brief received: December 7, 2009

I.

Timothy P. Pedregon, Jr. appeals from the denial by the Financial Industry Regulatory Authority, Inc. ("FINRA") of an application by PlanMember Securities Corporation ("PSEC" or the "Firm") to remain a FINRA member if it employs Pedregon as a general securities

representative acting in the capacity of a compliance officer.[1] Pedregon is subject to statutory disqualification based on his January 31, 2007 conviction on two felony counts of "online solicitation of a minor to meet with the intention of sexual contact." We base our findings on an independent review of the record.

II.

A. Background

For several months in fall 2005, Pedregon conducted online conversations with a fourteen-year-old young woman whom he had not met in person. On November 9, 2005, he went to a hotel where he had arranged to meet the young woman. When he arrived, he was arrested by police officers who had been told about the intended meeting by the young woman's mother. The following day, he was discharged by the FINRA member firm where he had been employed as a compliance officer since November 2004.[2]

Pedregon subsequently pled guilty to two counts of online solicitation of a minor to meet with the intention of sexual contact, a felony in Texas.[3] In January 2007, a Texas court sentenced

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[1] On July 26, 2007, the Commission approved a proposed rule change filed by the National Association of Securities Dealers, Inc. ("NASD") to amend NASD's Restated Certificate of Incorporation to reflect its name change to the Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of NASD and the member regulation, enforcement, and arbitration functions of the New York Stock Exchange. *See* Securities Exchange Act Rel. No. 56146 (July 26, 2007), 91 SEC Docket 517 (SR-NASD-2077-053). Because FINRA's review of PSEC's application occurred after the consolidation, references to FINRA will include references to NASD.

[2] Pedregon's employment as a compliance officer was his first and only association with a FINRA member firm in a registered capacity.

[3] Records obtained from the District Court of Collin County, Texas, indicate that Pedregon was indicted under Section 33.201(c) of the Texas Penal Code, which stated, at the time of the offense:

> A person commits an offense if the person, over the Internet or by electronic mail or a commercial online service, knowingly solicits a minor to meet another person, including the actor, with the intent that the minor will engage in sexual contact, sexual intercourse, or deviate sexual intercourse with the actor or another person.

We take official notice of these records (which are also our source of the fact that the young

(continued...)

him to 180 days in county jail for each count, the sentences to be served consecutively. It also placed him on "community supervision," apparently a type of probation, for ten years. Pedregon was required, among other things, to perform 180 hours of community service at the rate of ten hours per month, report to a supervision officer, and register as a sex offender.[4] Pedregon served the jail sentences and registered as a sex offender. As of January 22, 2009, he had completed two years of community supervision.

Pedregon had not begun counseling by the time of the hearing.[5] As of October 8, 2009, Pedregon had attended four court-mandated counseling sessions in a program that ordinarily

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[3] (...continued)
woman was fourteen years old) pursuant to Rule 323 of our Rules of Practice, 17 C.F.R. § 201.323.

Pedregon testified that his conviction was for two felonies because he was charged with one felony for the county in which the young woman resided, and another for the county in which he was arrested.

[4] Court records show that additional community supervision requirements were added in June, 2008. These include a requirement that

> [a]t the direction of [Pedregon's] supervision officer, [Pedregon] shall not reside at a location with or have access (either directly or indirectly) to a computer with a modem or any other device allowing access to the internet and shall allow inspection of [his] computer files, digital camera, cell phone and removable storage media;

a requirement that Pedregon "submit to internet, e-mail, and other electronic transfer of information monitoring at his/her own expense, as directed by the supervision officer"; a prohibition against accessing "myspace, facebook, craigslist, or any similar personal ad web-page"; and a requirement that Pedregon abide by all monitoring rules and refrain from tampering with or attempting to disable the monitoring system. It is unclear why these requirements were added.

[5] Pedregon testified that the probation officer in Texas did not want him to begin counseling there if he would soon be moving to California to work for PSEC, because the counseling process was very expensive and California would not recognize the counseling provided to Pedregon in Texas.

Pedregon submitted to the Commission a progress report from a California therapist, which was dated October 8, 2009, regarding his participation in therapy as of that date. Rule of Practice 452, 17 C.F.R. § 201.452, permits the submission of additional evidence on appeal if (1) the evidence is material and (2) there are reasonable grounds for the failure to adduce such evidence previously. We find that the progress report meets these requirements.

requires about eighteen months to complete. His therapist reported that Pedregon had completed two of twenty-five relapse prevention tasks and that many of the identified goals of the program had not yet been addressed, due to the short time that Pedregon had been participating in the program.

Pedregon has no other disciplinary actions, complaints, arbitrations, or criminal actions against him. However, in June 2004, while working as an NASD examiner, Pedregon was placed on probation.[6] The memorandum placing him on probation stated that, during the course of an examination, Pedregon "used an obscene and derogatory term in reference to the firm [under examination] in the presence of firm employees," and that "at times during the course of the examination you conducted yourself in an overly aggressive manner." The memorandum further stated:

> Your overly aggressive approach has been brought to your attention in the past by your supervisor, your mentor, and at least one other co-worker . . . . The impact of your behavior has been considerable. By engaging in inappropriate and unprofessional conduct you have negatively impacted NASD's image as a fair and objective regulator. In addition, your conduct on the examination in question has provided the firm with the opportunity to complain about its treatment by NASD, causing resources to be diverted from investigating the serious apparent violations detected during the examination, to investigating and responding to the firm's allegations.[7]

B. Pedregon's Statutory Disqualification and PSEC's Membership Continuance Application

As a result of his felony conviction, Pedregon is subject to a ten-year statutory disqualification under the Securities Exchange Act of 1934 and FINRA's By-Laws.[8] As a statutorily disqualified person, Pedregon is not eligible to associate with a FINRA member firm without the consent of FINRA.[9]

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[6] Pedregon worked as an NASD examiner from April 2003 until November 2004.

[7] The only specific deficiencies in Pedregon's conduct identified in the memorandum relate to a particular examination in which Pedregon participated. It is unclear whether the statement that Pedregon's "overly aggressive approach" had been brought to his attention "in the past" relates to conduct other than that examination.

[8] *See* Section 3(a)(39)(F) of the Exchange Act, 15 U.S.C. § 78c(a)(39)(F); Art. II, § 4 of the FINRA By-Laws.

[9] FINRA By-Laws, Art. III, § 3(d).

In July 2008, PSEC applied to FINRA for consent to continue as a FINRA member if Pendregon became an associated person.[10] PSEC has been a member of FINRA and its predecessor, NASD, since 1983, and a member of the Municipal Securities Rulemaking Board since 2001. It sells mutual funds, municipal securities, variable annuities, limited real estate investment trusts, and limited partnerships; it also provides investment advisory services. At the time of its application to FINRA, PSEC had three hundred branch offices, with eighty-five principals and almost four hundred registered representatives.

PSEC's membership continuation application provided that Pedregon would work in PSEC's Carpinteria, California office and would be supervised by Daniel Murphy, PSEC's chief compliance officer. Murphy began working in the securities industry in 1993, in sales, then began working in compliance in 1995. He held various compliance positions at another firm for eleven years before becoming chief compliance officer of PSEC in March 2005. At the time of the application, Murphy supervised four individuals at the Firm. He has never supervised a statutorily disqualified individual.

PSEC proposed that Pedregon serve as its compliance officer, with responsibilities for branch office examinations, trade and e-mail surveillance, customer complaint resolution, licensing and registration, and anti-money laundering and advertising review. Murphy testified that Pedregon would be working "literally right at 15 feet outside of my office" and would not be meeting with clients or handling customer funds. Murphy further testified that although Pedregon's position as compliance officer would be "a level above a compliance specialist," Pedregon would not be managing anybody.

PSEC submitted a proposed plan of supervision for Pedregon with its membership continuation application. Although the application instructed PSEC to describe the proposed plan "in specific detail," PSEC's plan had only two elements:

> The supervisor [will meet] with [Pedregon] on a periodic basis to review his performance. This will entail a review of his performance in the areas assigned to him. The firm will keep a log of the findings of these meetings.
>
> All customer, representative or staff complaints pertaining to [Pedregon], whether verbal or written, will be immediately referred to the Director of Compliance. The supervisor will prepare a memorandum to the file as to what measures he took to investigate the merits of the complaint and the resolution of the matter. Documents pertaining to these complaints should be segregated for ease of review.

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[10] FINRA's By-Laws allow a member firm to request relief from ineligibility to associate with a disqualified person on behalf of the prospective associated person. *See* FINRA By-Laws, Art. III, § 3(d).

At the hearing, after Murphy had learned that Member Regulation staff found PSEC's proposed plan inadequate, Murphy orally elaborated on the plan, saying that Pedregon's e-mails would be subject to review, that Pedregon would have quarterly performance reviews, and that Murphy "could have one of my staff look at [Pedregon's] hard drive periodically." However, Murphy was willing to commit only to a general outline of a supervisory plan, stating that he "wasn't going to spend a lot of time on it" and "[didn't] plan on giving the detailed, the granular level" until he was sure that Pedregon would be joining PSEC, because "I'm busy enough as it is."

When asked how the plan he described would differ from the supervision applicable to other PSEC employees who were not subject to statutory disqualification, Murphy said that other employees would not be subjected to hard drive review, and that the review of Pedregon's e-mails would be more comprehensive. Murphy did not explain which of Pedregon's e-mails he would review, or how many he would review, or how he would select the e-mails to review.

PSEC submitted a more detailed supervision plan after the hearing. The revised plan explicitly stated that Pedregon would not maintain discretionary accounts, act in a sales representative capacity, meet with clients, or handle client funds. It named Murphy as Pedregon's primary supervisor and Angel Sugleris, PSEC's Director of Human Resources, as "interim supervisor" if Murphy was to be "on vacation or out of the office for an extended period."[11] The revised plan required Murphy to "periodically review Timothy Pedregon's electronic communications, branch examinations he conducts, his performance as an employee, and his internet activity," and to document and maintain records of those reviews; it also required Murphy to periodically review Pedregon's written correspondence. The revised plan required Pedregon to disclose details related to his probation to Murphy each month, and to notify Murphy immediately if he was in violation of any terms of his probation. The revised plan further specified that all complaints related to Pedregon were to be referred immediately to Murphy for review, and that Murphy was to maintain records as to his investigation and resolution of any such complaints. The revised plan also required Murphy to certify quarterly that Pedregon was in compliance with all the conditions of heightened supervision set forth in that plan.

At the hearing, Pedregon apologized for the conduct that led to his felony convictions and stated that he held himself accountable for it. Pedregon explained that, if he violated probation during his ten-year term, he would be sent to prison for ten years, and would not be given credit for the 360 days already served. Pedregon emphasized that this threat of consequences for a violation of probation made it especially important for him to be scrupulously attentive to maintaining the highest standards of conduct. Pedregon also testified to his dedication to the securities industry, the significance of his prior military service as a Marine, the tenacity he displayed as an NASD examiner, his appreciation of PSEC's willingness to hire him, and his eagerness to devote himself again to protecting investors' interests.

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[11] The revised plan provided that PSEC would notify Member Regulation if it wanted to replace Murphy with a different "responsible supervisor" for Pedregon.

C. FINRA Denies Application

FINRA denied PSEC's application. FINRA found that Pedregon was only recently convicted of a very serious crime, that he would be on probation until 2017, and that he had not shown that he had successfully completed the counseling sessions that are a condition of his probation. FINRA also found that Pedregon's actions, although not securities-related, were "deceptive," and that his misconduct was directed against a minor.

FINRA found that PSEC's proposed supervisory plan was inadequate. FINRA noted three specific areas in which the plan was lacking: (1) the plan did not specify how often Murphy's periodic reviews of Pedregon's electronic communications, branch examinations, internet activity, and written correspondence would take place; (2) the plan did not provide for supervision of Pedregon while Pedregon was conducting branch examinations; and (3) the plan provided for Sugleris to supervise Pedregon in Murphy's absence, although Sugleris was not qualified to supervise Pedregon.[12] FINRA also questioned the likely rigor of Murphy's proposed supervision of Pedregon, finding that Murphy had not prepared adequately for the hearing[13] and expressing concern that Murphy might not devote sufficient time and energy to supervising Pedregon. FINRA also found that the memorandum providing notice of Pedregon's probation at NASD contained "disturbing" comments that did not reflect favorably on Pedregon's character and judgment or his ability to act professionally as PSEC's compliance officer.[14]

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[12] FINRA noted that Sugleris was registered only as an investment company/variable products limited representative and principal and was therefore not qualified to supervise Pedregon, who under the proposal would be registered as a general securities representative acting in the capacity of a compliance officer.

[13] At the hearing, Murphy was unable to recall details about a PSEC violation based on the failure to follow Firm procedures for the review of an individual under heightened supervision. The violation occurred while Murphy was PSEC's chief compliance officer, and a 2007 letter of caution from FINRA noting the violation had been attached as an exhibit to a letter from Member Regulation outlining Member Regulation's recommendation on PSEC's application that was sent to Murphy only two weeks before the hearing.

[14] Pedregon did not disclose the fact that he had been jailed on any of the three successive Uniform Applications for Securities Industry Regulation and Transfer ("Forms U-4") that he submitted to PSEC in 2008. FINRA found Pedregon's failure to include information about the jail sentences on his Forms U-4 troubling, although it found that Pedregon "did not mislead the Firm or Member Regulation in this regard as the information about the two jail sentences was apparent from the copies of the two January 31, 2007 sentencing court orders that the Firm enclosed with its MC-400." It appears that FINRA did not weight this factor very heavily since Pedregon provided the information to PSEC and FINRA, albeit not on the Forms U-4. *But see Timothy H. Emerson, Jr.*, Exchange Act Rel. No. 60328 (July 17, 2009), 96 SEC

(continued...)

Based on these findings, FINRA concluded that Pedregon's participation in the securities industry would present an unreasonable risk of harm to investors or the marketplace, and that the public interest would not be served by permitting him to associate with PSEC. It accordingly denied PSEC's application. This appeal followed.

III.

Exchange Act Section 19(f) governs our review of this appeal.[15] In general, Section 19(f) requires us to dismiss such an appeal if we find that (1) the specific grounds on which FINRA based its denial of PSEC's membership continuance application exist in fact, (2) FINRA's action was in accordance with its rules, and (3) FINRA's rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.[16] The burden is on the applicant to show that it is in the public interest to permit the requested employment despite the disqualification.[17]

With respect to the first element under Section 19(f), Pedregon does not dispute, as FINRA found, that (1) Pedregon was convicted on two felony counts in 2007; (2) these felonies were statutorily disqualifying events; (3) Pedregon has not completed either the term of probation or the court-ordered counseling imposed; (4) NASD placed Pendregon on probation, identifying as deficiencies in his conduct the use of an obscene term and an "overly aggressive approach"; (5) Pedregon did not mention his two jail terms on any of three Forms U-4 in the record; and (6) PSEC's revised supervisory plan (a) does not name a supervisor for periods when Pedregon is out of the office, (b) names Sugleris, who is registered only as an investment company/variable products representative, as Pedregon's supervisor in Murphy's absence, and (c) does not indicate with what frequency certain reviews are to occur. We find that all these grounds exist in fact.

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[14] (...continued)
Docket 18882, 18889 (recognizing that "FINRA and other self-regulatory agencies rely on Form U-4 'to monitor and determine the fitness of securities professionals'") (quoting *Thomas R. Alton*, 52 S.E.C. 380, 382 (1995), *aff'd*, 105 F.3d 664 (9th Cir. 1996) (Table)); *Rosario R. Ruggiero*, 52 S.E.C. 725, 728 (1996) (emphasizing that "'[t]he candor and forthrightness of [individuals making these filings] is critical to the effectiveness of this screening process'") (quoting *Alton*, 52 S.E.C. at 382 (alteration in original)).

[15] 15 U.S.C. § 78s(f).

[16] *Id.; see, e.g.*, *Frank Kufrovich*, 55 S.E.C. 616, 623 (2002); *William J. Haberman*, 53 S.E.C. 1024, 1027 (1998), *aff'd*, 205 F.3d 1345 (8th Cir. 2000) (Table). Even if these criteria were satisfied, however, Section 19(f) would require us to sustain the appeal if we found that FINRA's action imposed an undue burden on competition. *Id.*

[17] *Emerson*, 96 SEC Docket at 18890; *Gershon Tannenbaum*, 50 S.E.C. 1138, 1140 (1992).

We also find that FINRA's denial of the application was in accordance with FINRA's rules, which clearly provide for the denial of a firm's application to continue in membership if the firm employs a statutorily disqualified person. As discussed, FINRA conducted an eligibility hearing in accordance with its rules, during which it afforded Pedregon and PSEC an opportunity to be heard.[18]

Pedregon challenges one aspect of the eligibility hearing as inconsistent with FINRA rules. He alleges that FINRA senior management told his former co-workers at NASD (now FINRA) not to comply with his requests for letters of reference. This conduct, Pedregon contends, violated FINRA Rule 9524(a), which permits a statutorily disqualified individual to submit "any relevant evidence" in an eligibility proceeding.

We find that Pedregon failed to introduce facts sufficient to establish that FINRA management deprived him of the right to submit relevant evidence in the form of letters from his former co-workers. Pedregon did not identify anyone who was allegedly involved in this conduct, either FINRA management or former co-workers. He did not provide details as to what such letters might have said or how they would have supported his cause. He did not provide evidence that co-workers would have written such letters if management had not intervened. For these reasons, we find that Pedregon did not establish that FINRA violated Rule 9524(a)(4).[19]

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[18] *See* FINRA By-Laws, Art. 3, § 3(d) (stating that a person may file an application requesting relief from ineligibility from association with a member and that FINRA "may conduct such inquiry or investigation into the relevant facts and circumstances as it, in its discretion, considers necessary to its determination" of whether to approve such an application); *see also* FINRA Code of Procedure, Rules 9520-25 (setting forth parameters of eligibility proceedings).

FINRA is in the process of developing a collection of consolidated rules. The first phase of these consolidated rules became effective on December 15, 2008. *See* FINRA Regulatory Notice 08-57 (Oct. 2008). Because PSEC's application was filed before December 15, 2008, however, the NASD Rule 9520 series was applicable.

[19] Pedregon also contended that, by telling his former co-workers not to submit letters on his behalf, FINRA deprived him of his right to due process. It is well established that the requirements of constitutional due process do not apply to FINRA because FINRA is not a state actor. *See, e.g., D.L. Cromwell Invs., Inc. v. NASD Regulation, Inc.*, 279 F.3d 155, 162 (2d Cir. 2002); *Scott Epstein*, Exchange Act Rel. No. 59328 (Jan. 30, 2009), 95 SEC Docket 13833, 13855, *appeal filed*, No. 09-1550 (3d Cir. Feb. 24, 1009); *Charles C. Fawcett*, Exchange Act Rel. No. 56770 (Nov. 8, 2007), 91 SEC Docket 3147, 3153-55; *Mark H. Love*, 57 S.E.C. 315, 322 n.13 (2004). In any event, as discussed above, we find that Pedregon did not introduce facts sufficient to support his claim that FINRA management effectively prevented his former co-workers from submitting letters on his behalf.

We further find that FINRA applied its rules in a manner consistent with the Exchange Act when it denied PSEC's application. Under the Exchange Act, FINRA may deny a firm's application for continuation in membership if it determines that the association of the statutorily disqualified person would be inconsistent with the public interest and the protection of investors.[20] For FINRA's denial of an application to be consistent with the Exchange Act, FINRA must "independently [evaluate the] application, based upon the totality of the circumstances, and . . . explain the bases for its conclusion."[21] For example, we found in *Kufrovich* that NASD "properly discharged its Exchange Act obligation" where it "appropriately weighed all of the facts developed," including the nature and recency of the felony conviction, the ongoing probationary status, the fact that the misconduct was knowingly directed against a vulnerable child, the risk of harm to third parties, the adequacy of the proposed supervisory plan, and the prior disciplinary history of the statutorily disqualified individual.[22]

FINRA found that Pedregon had been convicted of a very serious crime, one that involved "deceptive" conduct and was directed against a minor.[23] FINRA found that "Pedregon's activities cast doubt on his character and lead us to question his ability to act in a trustworthy and

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[20] Section 15A(g)(2) of the Exchange Act, 15 U.S.C. §78*o*-3(g)(2); *see also* FINRA By-Laws, Art. 3, § 3(d) (providing that FINRA Board may approve continuation in membership or association or continuation in association of any person if Board determines that such approval is consistent with public interest and protection of investors); *cf. Haberman*, 53 S.E.C. at 1027 n.7 ("NASD may, in its discretion, approve association with a statutorily disqualified person only if the NASD determines that such approval is consistent with the public interest and the protection of investors.").

[21] *Kufrovich*, 55 S.E.C. at 625. Some of our previous cases state that FINRA "'must explain how the particular felony at issue, examined in light of circumstances relating to the felony, creates an unreasonable risk of harm to the market or investors.'" *Emerson*, 96 SEC Docket at 18888 (quoting *Stephen L. Keidash*, 54 S.E.C. 983, 987 (2000)); *see also Kufrovich*, 55 S.E.C. at 625 (quoting *Keidash*). Those cases make clear, however, that the analysis goes beyond the circumstances relating to the felony, and also encompasses circumstances relating to the proposed association. *See, e.g.*, *Emerson*, 96 SEC Docket at 18888 (finding FINRA's denial of application consistent with Exchange Act where it "appropriately weigh[ed] all the facts and circumstances surrounding [the] felony conviction and [the] proposed supervisory plan").

[22] *Kufrovich*, 55 S.E.C. at 625-26 & n.13.

[23] Pedregon contends that "inflammatory language" in FINRA's denial of membership continuation shows that FINRA acted with prejudice. We find no prejudice in FINRA's denial, which FINRA explained in terms of the seriousness of the felony, Pedregon's ongoing probation, Pedregon's questionable conduct during an examination and the doubts about his character and judgment to which it gave rise, Pedregon's failure to show that he had completed probation or counseling, and the inadequacy of PSEC's proposed plan of supervision.

responsible manner in the securities industry." We have consistently recognized that, in order to ensure protection of investors, a self-regulatory organization ("SRO") such as FINRA "may demand a high level of integrity from securities professionals."[24] We agree with FINRA that the seriousness of Pedregon's conviction militates against allowing PSEC's application.[25]

Pedregon argues that the conduct that led to his felony convictions did not involve matters related to securities or finance and that "this one legal matter should not reflect upon Pedregon's entire career in the industry."[26] He asserts that FINRA's denial of re-entry into the securities industry to persons convicted of felonies unrelated to the securities laws is "both unfair and unconstitutional." FINRA is not a state actor and is therefore not bound by constitutional limitations applicable to government agencies.[27] Moreover, Congress, not FINRA, determined that felony convictions unrelated to the securities laws could preclude participation in the securities industry for a ten-year period, unless an SRO finds that such participation is in the public interest.[28] FINRA properly acted in furtherance of this Congressional determination.

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[24] *Kufrovich*, 55 S.E.C. at 627.

[25] In *Kufrovich*, we dismissed a review proceeding in which NASD denied a membership continuation application based in part on its finding that misconduct "'knowingly directed against a vulnerable child'" calls into question the ability of the statutorily disqualified individual to act in a trustworthy and responsible manner in interactions with the investing public. 55 S.E.C. at 626 (quoting NASD opinion). *Kufrovich*, like the case before us, involved sexual activity directed at a minor. *Id.* at 617.

[26] In this connection, Pedregon argues that *Kufrovich*, 55 S.E.C. 616, and *Haberman*, 53 S.E.C. 1024, which FINRA cited in support of its decision against Pedregon, do not support the denial of PSEC's application because those cases involved misconduct related to securities or finance. In *Kufrovich*, however, the underlying felonious conduct involved sexual activity directed against a minor, as did Pedregon's; Kufrovich's securities-related misconduct was noted as a relevant factor in that it "reflects poorly on Kufrovich's judgment and trustworthiness," 55 S.E.C. at 628, treatment similar to our recognition of the "troubling" conduct at NASD that caused Pedregon to be put on probation there. In any event, the fact that other cases may involve securities- or finance-related misconduct does not restrict FINRA's power to deny PSEC's application where the statutory standard provides for review by FINRA of applications based on all felonies. *See infra* note 28.

[27] *See, e.g., William J. Gallagher*, 56 S.E.C. 163, 168 n.10 (2003) (citing additional cases); *see also supra* note 19.

[28] In 1990, Congress amended Section 3(a)(39)(F) of the Exchange Act to add "any other felony" to the list of crimes that result in statutory disqualification. Act of November 15, 1990, Pub. L. No. 101-550, Title II, § 203(b)(6), 104 Stat. 2713, 2717-18 (codified at 15 U.S.C.

(continued...)

We also agree with FINRA that the recency of Pedregon's conviction, the pendency of his probation through January 2017, and his failure to complete mandatory counseling militate against allowing Pedregon's re-entry into the securities entry at this time. As we have previously stated, we share FINRA's concern about allowing persons serving probation to be associated with member firms.[29] Moreover, because Pedregon has completed so little of the court-mandated counseling, he has done little to show successful rehabilitation after his conviction. The therapist's progress report submitted by Pedregon rates his progress in therapy on thirteen factors, on a scale of zero (not applicable/unknown) to five (excellent). Pedregon received no rating higher than three, satisfactory, on any factor.

FINRA found PSEC's proffered supervisory plan unacceptable, pointing out several specific flaws and omissions. FINRA concluded that under that plan, PSEC and Murphy would be unable to provide the required heightened level of supervision necessary to ensure that they would effectively prevent and detect possible misconduct on the part of Pedregon. We agree with FINRA that PSEC's proposed supervisory plan is inadequate. A supervisory plan for a

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[28] (...continued)
§ 78c(a)(39)(F)). The legislative history indicates that Congress understood that this amendment did not mean that any felony conviction results in automatic exclusion from the securities industry. Instead, the amendment interposed an additional safeguard in the form of special scrutiny by SROs, subject to Commission review, as a condition of re-entry into the industry. *See* H.R. Rep. No. 101-240, at 22 (1989) ("This amendment would not automatically exclude every person convicted of a felony from the securities business. Rather, it would permit SROs, subject to Commission review, to consider the facts and circumstances surrounding a particular felony and to impose appropriate safeguards to protect the markets and investors from unreasonable risks."); S. Rep. No. 101-155, at 40 (1989) ("This amendment does not automatically exclude every person convicted of a felony from the securities business. Rather, it permits SROs, subject to Commission review, to consider the facts and circumstances surrounding a particular felony and to impose necessary safeguards to protect the markets and investors from unreasonable risks.").

[29] *See, e.g.*, *Kufrovich*, 55 S.E.C. at 627-28 (finding that NASD "properly considered" that Kufrovich was still required to serve a probationary sentence that would last eight more months as part of his felony conviction; "We share [NASD's] concern that Kufrovich remains on probation."); *Funding Capital Corp.*, 50 S.E.C. 603, 606 (1991) ("We share the NASD's concern that [the statutorily disqualified individual] remains on probation . . . ."). Pedregon argues that FINRA granted another membership continuation application even though the individual in question was still on probation and that this factor is therefore not applied uniformly. FINRA did not treat Pedregon's probation as an absolute bar to his re-entry; it properly considered it as one factor, along with many others. The case on which Pedregon relies presents a different constellation of factors, so it is not surprising that the two cases resulted in different outcomes.

person subject to statutory disqualification must provide for stringent supervision.[30] For example, we have stated that "a supervisory plan lacks the necessary intensive scrutiny when the supervisor will not be in close, physical proximity to the statutorily disqualified person."[31] Under PSEC's proposed plan, it appears that there would be no supervisor in proximity when Pedregon would be conducting branch office examinations, so Pedregon would not have the intensive scrutiny required because of his statutorily disqualified status. Other shortcomings pointed out by FINRA -- lack of specificity about the frequency of certain reviews and assignment of the unqualified Sugleris as Pedregon's supervisor in Murphy's absence -- are similarly troubling. Although Murphy represented that he would develop a more detailed supervisory plan for Pedregon if Pedregon is permitted to associate with PSEC, the burden of proposing a suitable supervisory plan is on PSEC, and it cannot satisfy this burden by waiting until Pedregon is in the job to work out the details of the plan.[32]

We also share FINRA's concerns about whether Murphy would provide an appropriate level of supervision for Pedregon. Murphy devoted limited attention to structuring a supervisory plan for Pedregon.[33] Although he elaborated on his original plan during and after the hearing, the plan remains vague and flawed. Moreover, Murphy's lack of commitment to thinking through these supervisory issues, as exemplified by his stated refusal to "spend a lot of time" working out the details of a supervision plan because he was "busy enough as it is," suggest that Murphy might not devote sufficient time and attention to supervising Pedregon if we approved PSEC's application.

FINRA found that Pedregon's use of an obscene and derogatory term in reference to a firm under NASD examination in the presence of employees of the firm, and the indications that

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[30] *Emerson*, 96 SEC Docket at 18889; *Haberman*, 53 S.E.C. at 1031.

[31] *Emerson*, 96 SEC Docket at 18890; *see also Kufrovich*, 55 S.E.C. at 629 (finding supervisory plan inadequate where, among other factors, supervisor would not be physically present in close proximity to statutorily disqualified individual during all working days); *Haberman*, 53 S.E.C. at 1031-32 (finding supervisory plan inadequate where, among other factors, supervisor's travel schedule and firm's usual way of conducting business would result in insufficient contact between supervisor and statutorily disqualified individual).

[32] We reject Pedregon's contention that "the denial did not accurately reflect [PSEC's] dedication to ensuring that Pedregon would be adequately supervised." Because the burden of proposing a suitable plan is on PSEC, FINRA was fully justified in requiring PSEC to provide specifics before approving the application, rather than accepting general assurances that PSEC would devise an appropriate plan once Pedregon started working there.

[33] As FINRA noted, Murphy's preparation for the hearing was also less than thorough. *See supra* note 13.

several of his colleagues considered his approach "overly aggressive," did not reflect favorably on Pedregon's character or judgment, or his ability to act professionally as PSEC's compliance officer. We agree that these facts are troubling, and that they further weigh against Pedregon's re-entry into the securities industry as a statutorily disqualified person, especially when the proposed heightened supervision is inadequate.[34]

For these reasons, we find that FINRA's basis for denying PSEC's application to continue in membership with Pedregon as its compliance officer exists in fact, and that FINRA acted fairly and in accordance with its rules, which are and were applied in a manner consistent with the purposes of the Exchange Act.[35]

Pedregon incorrectly asserts that the Commission recommended in 2003 that FINRA limit or discontinue the review of membership continuation applications based on offenses unrelated to the securities industry. The recommendation Pedregon cites was made in an audit by the Commission's Office of the Inspector General with respect to reviews by our Division of Market Regulation[36] of SRO approvals of membership continuation applications.[37] The audit noted that Market Regulation staff "generally defer judgment to the SROs for determining, on a case-by-case basis, whether it is in the public interest to permit the proposed or continued association of [statutorily disqualified] persons."[38] Thus, the recommendation was directed

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[34] Pedregon states that his examination of the firm uncovered various violations and irregularities, and that the firm was subsequently closed "because of Pedregon's attention to detail, investigative mentality, assertive approach, and steadfastness." He argues that rather than raising concerns about his conduct, his involvement in the examination should be viewed as demonstrating his commitment to the public interest. We find that FINRA appropriately concluded that Pedregon's behavior during the examination was questionable, even if his goals in conducting the examination were laudable.

[35] We also find that FINRA's action imposed no undue burden on competition. *See supra* note 16 and accompanying text (discussing requirements of Exchange Act Section 19(f), 15 U.S.C. § 78s(f)).

[36] The Division of Market Regulation is now known as the Division of Trading and Markets.

[37] *Statutory Disqualification Process*, Audit No. 363 (May 13, 2003), *available at* http://www/sec/gov/about/oig/audit/363fin.htm.

[38] *Id.* at 3.

solely to Market Regulation staff and did not suggest that SROs such as FINRA limit or discontinue their consideration of such applications.[39]

Pedregon argues that he is devoted to the securities industry and the protection of investor interests,[40] that he should be given a second chance, that his "years of honorable service with distinction in the Marine Corps" show that he has the integrity necessary to work in the securities industry, and that it is in the best interests of all parties to let him re-enter that industry. We disagree. The factors militating against re-entry discussed above outweigh the factors supporting re-entry that Pedregon identifies.[41]

Pedregon's misconduct was serious, his conviction was recent, and he has not completed probation or counseling (and has done little to show successful rehabilitation). Moreover, the conduct that gave rise to his probation at NASD did not reflect favorably on his character or judgment. Additionally, PSEC's proposed supervisory plan does not adequately provide for heightened supervision of Pedregon, and the record suggests that Murphy might not devote sufficient time and energy to supervising Pedregon. For these reasons, we find that Pedregon and

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[39] Moreover, review by an SRO is the only avenue by which FINRA member firms can continue in membership if they associate with statutorily disqualified individuals. If FINRA stopped reviewing applications where the disqualification was based on a non-securities related felony, firms would have no way to employ such persons and still retain their FINRA membership.

[40] Pedregon cites the examination that led to his being put on probation at NASD as evidence of his commitment to the public interest. As discussed, *see supra* note 34, we find that devotion to the public interest does not excuse Pedregon's "overly aggressive" approach and use of obscene language.

[41] In reaching this conclusion, we have also considered the letters of reference Pedregon submitted in support of PSEC's application.

PSEC have not shown that it is in the public interest to allow Pedregon re-entry into the securities industry as PSEC's compliance officer. We therefore dismiss this review proceeding.

An appropriate order will issue.[42]

By the Commission (Commissioners CASEY, WALTER, AGUILAR and PAREDES; Chairman SHAPIRO not participating).

Elizabeth M. Murphy
Secretary

By: Florence E. Harmon
Deputy Secretary

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[42] 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. 61791 / March 26, 2010

Admin. Proc. File No. 3-13610

In the Matter of the Application of

TIMOTHY P. PEDREGON, JR.

For Review of Action Taken by the

Financial Industry Regulatory Authority, Inc.

ORDER DISMISSING REVIEW PROCEEDING

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

ORDERED that the application for review filed by Timothy P. Pedregon, Jr. be, and it hereby is, dismissed.

By the Commission.

Elizabeth M. Murphy
Secretary

Florence E. Harmon

By: Florence E. Harmon
Deputy Secretary

Chairman Schapiro not participating

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 61790 / March 26, 2010

Admin. Proc. File No. 3-13482

In the Matter of

PHILLIP J. MILLIGAN

322 East 79th Street, No. 3B
New York, New York 10075

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

Grounds for Remedial Action

Injunction

Former associated person of registered broker-dealer was permanently enjoined from violating antifraud provisions of the federal securities laws. *Held*, it is in the public interest to bar Respondent from association with any broker or dealer.

APPEARANCES:

Phillip J. Milligan, pro se.

Jack Kaufman and *Bohdan S. Ozaruk*, for the Division of Enforcement.

Appeal filed: September 16, 2009
Last brief received: January 19, 2010

I.

Phillip J. Milligan, the founder, sole owner, and president of J.P. Milligan & Co. (the "Firm"), a former registered broker-dealer, appeals from the decision of an administrative law judge barring him from association with any broker or dealer. The law judge based his decision on a 2009 order from the United States District Court for the Eastern District of New York enjoining Milligan from violations of the antifraud provisions of the securities laws and imposing

other sanctions as a result of his involvement in a fraudulent kickback scheme.[1] We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal.

II.

As the district court found, the Injunctive Action "is an offshoot of a criminal case that . . . resulted in several convictions, including that of the defendant Milligan."[2] A brief summary of the actions underlying the Criminal Proceeding follows.

During 1995 and 1996, Milligan was a registered principal and president of the Firm.[3] A stock promoter agreed to pay kickbacks to Milligan in exchange for Milligan causing stock in Pilot Transport, Inc. ("Pilot"), a publicly traded company, to be recommended to Firm customers for purchase. Between November 1995 and February 1996, Milligan caused shares of Pilot to be sold to Firm customers, without disclosure of the kickback arrangement.[4] Following the sales, Milligan received $93,600 as a result of his involvement in the scheme. Milligan received the $93,600 in a bank account under his control which carried the name of a third party with no apparent connection to Milligan or the Firm. Milligan was arrested and indicted in 1997 in connection with this activity. Milligan pled guilty in December 1998. He was sentenced to six months of incarceration, six months of community confinement, and three years of supervised release.

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[1] *SEC v. Milligan*, No. CV-99-7357 (NG) (VVP) (E.D.N.Y. Apr. 29, 2009) ("Injunctive Action"). Although the injunctive complaint was filed and injunctions were issued against several of the parties named in the complaint in late 1999, the proceedings continued against Milligan for roughly ten years, until an injunction was issued against him in April 2009.

[2] *United States v. Milligan*, No. 1:97-cr-0663-RJD (E.D.N.Y.) ("Criminal Proceeding"). On January 12, 2010, we issued an order to the parties soliciting their views on whether we should take official notice of the transcript of the allocution in the Criminal Proceeding. *See Phillip J. Milligan*, Admin. Proc. File No. 3-13482 (Jan. 12, 2010); Rule of Practice 323, 17 C.F.R. § 201.323. The Division had no objection to our use of the transcript, and Milligan did not file a written response. Accordingly, we have taken official notice of the transcript and refer to it herein.

[3] Milligan is approximately forty-five years old and has worked in the securities industry since at least 1993 when he founded J.P. Milligan.

[4] Although the complaint in the injunctive action specified that Milligan's misconduct occurred between 1995 and 1996, the magistrate judge in the Criminal Proceeding indicated that the fraudulent scheme occurred over a more extensive period, 1993 to 1996. The reason for this discrepancy is unclear from the record. We base our finding on the more narrow period specified in the injunctive complaint.

On April 29, 2009, in the Injunctive Action, the district court enjoined Milligan from violations of Section 10(b) of the Securities and Exchange Act of 1934,[5] Rule 10b-5 thereunder,[6] and Section 17(a) of the Securities Act of 1933[7] and ordered him to pay $93,600 in disgorgement, $144,430 in prejudgment interest, and $100,000 in a civil money penalty. In connection with the issuance of this injunction, the district court "adopt[ed] in their entirety" two reports prepared by a United States Magistrate Judge: the first recommended granting the Division's motion for summary judgment against Milligan, and the second addressed the appropriate amount of disgorgement. The magistrate judge found "that Milligan's guilty plea and the facts underlying Milligan's conviction on the wire fraud charge, as established by his plea allocution, coupled with other undisputed facts in the record, are sufficient to establish his liability for the securities fraud claims asserted here."[8]

In making these findings, the magistrate judge in the Injunctive Action focused on statements made by Milligan at his criminal allocution. The judge presiding over the allocution explained to Milligan the count to which he was to plead guilty:

> THE COURT: That count is commonly known as the wire fraud count, and you are alleged in that count to have engaged in a scheme to defraud. The object – the means by which that scheme was undertaken was through the transmission of wire communications through interstate commerce, through writings, signs, signals, pictures and sounds, and the object of the fraudulent scheme was to obtain money and property in connection with the sale of Pilot stock.
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> You are alleged to have, as part of this scheme and artifice to defraud, made false and fraudulent pretenses, representations and promises.

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[5] 15 U.S.C. § 78j(b).

[6] 17 C.F.R. § 240.10b-5.

[7] 15 U.S.C. § 77q(a).

[8] Although the district court in the Injunctive Action fully endorsed the magistrate judge's findings, it noted "one minor exception" to those findings, *i.e.*, that the magistrate judge had at one point in his report erroneously "described the count to which Milligan pled guilty as securities fraud" rather than wire fraud. As the quoted passage above indicates, the magistrate judge did properly describe Milligan's conviction at several other points in his reports, and the district court observed that "the broader and uncontroversial point being made by [the magistrate judge at the particular part of the report in question] was that Milligan had been convicted of fraud, and that bore on the question of his credibility." The district court in no way questioned the magistrate judge's finding, based on Milligan's conviction and other evidence in the record, that Milligan had engaged in fraud in connection with the sale of Pilot securities.

Do you understand that count and have you discussed it with your attorney?

THE DEFENDANT: Yes, Your Honor.

After entering his guilty plea to the wire-fraud count of the indictment, Milligan described, under oath, his conduct as follows:

> THE DEFENDANT: Your Honor, in the time period specified, I agreed with others to have my brokerage firm recommend the sale to the public of shares in a publicly traded company known as Pilot. I did this upon the understanding that I would be compensated by these persons for the recommendation and sale of this stock. This agreement was not disclosed to purchasers of Pilot . . . . I know that my conduct was unlawful.
>
> * * *
>
> THE COURT: Did you receive money or property as a result of this conduct?
>
> THE DEFENDANT: Yes, Your Honor.

The district court in the Injunctive Action gave preclusive effect to these allocution statements. Thus, Milligan was not permitted to dispute them, and the district court awarded summary judgment in the Commission's favor.

The district court in the Injunctive Action characterized Milligan's actions furthering the "fraudulent kickback scheme" as "extensive – a total of thirteen [of Milligan's] customers purchased Pilot stock from Milligan's firm – and apparently highly profitable – there is evidence that Milligan netted a total of $93,600.00 in kickback payments." The district court also found that, by receiving payments through a third-party bank account, "Milligan undertook efforts to mask the illegitimate origin of the proceeds" and concluded that "[t]here is little question that Milligan exercised a high degree of 'scienter' in his unlawful actions, which were by no means isolated." The district court also determined that Milligan had not "taken responsibility for his transgressions," and that he was, "at the very least, capable of violating securities laws in the future."

The magistrate judge also held a hearing regarding the appropriate disgorgement amount. The Division proposed that Milligan disgorge $93,600, reflecting two payments Milligan received from a co-defendant in the criminal proceeding. Milligan challenged that amount, contending that he was never paid any of the alleged kickbacks. He claimed there (and continues to claim before us) that the payments at issue were, in one instance, repayment of principal and interest on a personal loan and, in the other, a return of funds tendered for Pilot stock that was never delivered. Based on the evidence adduced at the hearing, the magistrate judge found that the funds at issue were kickbacks. The magistrate judge found that Milligan's explanation that $60,000 was received as payment of principal and interest on a personal loan was "simply

incredible." The magistrate judge found further that Milligan's contention that the remaining $33,600 he received was "partial repayment of $75,000 that Milligan paid for stock he never received is similarly not credible." The magistrate judge concluded that "Milligan received at least $93,600 for his participation in the fraudulent scheme" and recommended disgorgement in that amount.

More generally, the district court made strongly negative credibility findings with respect to Milligan's overall testimony based on the magistrate judge's personal observation of Milligan throughout the Injunctive Action. In recommending the award of summary judgment to the Division, the magistrate judge found that "[a]ny assurances Milligan may offer that he will abide by securities laws in the future do not remotely satisfy the court's concerns to the contrary considering Milligan's demonstrated willingness to offer false and misleading testimony in proceedings before this court." The magistrate judge made similar findings in his report on the proper disgorgement amount stating that "[Milligan] testified that he lied under oath during his plea allocution, reinforcing the court's view that he does not take the oath, or the need to testify truthfully, with any seriousness." The magistrate judge also found that Milligan was a convicted felon and concluded that he was generally untruthful: "The court thus concludes that Milligan has no difficulty testifying in a manner consistent with his own self-interest, as he perceives it, regardless of what the truth might be, and that his testimony therefore cannot be believed absent substantial corroboration."

Following issuance of the injunction, and based on it, we instituted administrative proceedings against Milligan on May 22, 2009. Shortly after we issued the Order Instituting Proceedings ("OIP"), the Division moved for summary disposition pursuant to Commission Rule of Practice 250.[9] The law judge granted the Division's motion, finding that there was "no genuine issue" that Milligan, as alleged in the OIP, had been enjoined in connection with his participation in a fraudulent scheme to promote securities at the Firm, then a registered broker-dealer. The law judge then barred Milligan based on his findings that Milligan's actions were "egregious and recurrent," involved thirteen customers, generated thousands of dollars in undisclosed kickbacks, and demonstrated scienter.

III.

Exchange Act Sections 15(b)(6) and 15(b)(4)(C) authorize us to sanction any person associated with a broker or dealer who has been enjoined from "engaging in or continuing any

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[9] 17 C.F.R. § 201.250. Rule 250 provides that "[a]fter a respondent's answer has been filed . . . the respondent, or the interested division may make a motion for summary disposition of any or all allegations of the order instituting proceedings with respect to that respondent." 17 C.F.R. § 201.250(a). The hearing officer "may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law." 17 C.F.R. § 201.250(b).

conduct or practice in connection with the purchase or sale of any security."[10] The record establishes without dispute that Milligan has been enjoined from engaging in fraudulent conduct in connection with the purchase or sale of securities and that, at the time the enjoined conduct occurred, he was associated with a broker-dealer. We find, therefore, that the statutory requirements for the imposition of sanctions have been satisfied.

Milligan maintains that the injunction was wrongly imposed and administrative sanctions are unwarranted, notwithstanding his sworn allocution that he participated in the kickback scheme. While Millligan admits that he agreed with others to have the Firm recommend Pilot stock on the "understanding that [he] would be compensated by these persons for the recommendations and sale of the stock," he claims that he never admitted that he "actually went through with making the alleged recommendations" or received kickbacks. Milligan argues that the district court in the Injunctive Action erred in finding him liable for securities fraud based on his wire fraud conviction because he pled guilty only to wire fraud, not to securities fraud, which charges he asserts were dropped. He also maintains that the law judge erred in relying on the district court's findings in the Injunctive Action. According to Milligan, "the prior proceeding . . . did not litigate the securities fraud claims against him, thus the material facts in this proceeding remain in dispute," and summary disposition was wrongly awarded.

As we have summarized above, the district court made extensive and detailed findings of fact related to Milligan's conduct and credibility. The district court's findings are well supported by, among other things, Milligan's sworn allocution at his plea hearing.

Milligan is disputing before us the findings not only of the district court in the Injunctive Action but of the district court in the Criminal Proceeding.[11] Our precedent is clear that Milligan's collateral attack on the two district courts' findings is impermissible.[12] We have repeatedly held that a respondent in a follow-on proceeding may not challenge the findings made by the court in the underlying proceeding and we consider those findings in determining the

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[10] 15 U.S.C. §§ 78*o*(b)(6), 78*o*(b)(4)(C).

[11] As noted, in the Criminal Proceeding, Milligan expressly acknowledged that the count of the indictment to which he pled guilty involved fraudulent misconduct on his part involving the sale of securities.

[12] *John Francis D'Acquisto*, 53 S.E.C. 440, 444 (1998) (finding injunction entered after summary judgment precludes relitigation of issues in follow-on proceedings); *see also Gary M. Kornman*, Securities Exchange Act Rel. No. 59403 (Feb. 13, 2009), 95 SEC Docket 14246, 14257 (finding criminal conviction based on guilty plea has collateral estoppel effect precluding relitigation of issues in Commission proceedings); *James E. Franklin*, Exchange Act Rel. No. 56649 (Oct. 12, 2007), 91 SEC Docket 2708, 2711 (granting preclusive effect to injunction entered after jury trial); and *Demitrious Julius Shiva*, 52 S.E.C. 1247, 1249 (1997) (granting preclusive effect to injunction entered after trial).

appropriate sanction.[13] The district court findings in the Injunctive Action can be challenged only through the appellate process, which Milligan has done.[14]

Milligan's current contentions contradict his sworn allocution at the plea hearing. Milligan, however, appears to have attempted to explain this contradiction when he told the magistrate judge in the Injunctive Action that he lied under oath in his allocution.[15] Even if we accepted Milligan's attempted recantation of his allocution, which we do not, we cannot allow a collateral attack on the finding of the district court that Milligan received the agreed-upon kickback.[16]

Milligan asserts that the law judge ignored evidence that Milligan had received the $93,600 for some reason other than a kickback. In fact, both of the alternative explanations – that they were repayments of a loan or a return of funds not expended to purchase Pilot stock – offered by Milligan to the magistrate judge in the Injunctive Action were rejected as "incredible," and the law judge properly adopted those findings.[17]

Milligan also objects to the institution of this proceeding fourteen years after his fraudulent conduct. Milligan's objection is based on a mistaken premise. The event upon which this proceeding is based is the April 2009 issuance of the injunction, not the underlying

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[13] *See, e.g., Franklin*, 91 SEC Docket at 2713 ("It is well established that [respondents are] collaterally estopped from challenging in [follow-on] administrative proceeding the decisions of the district court in the injunctive proceeding").

[14] Milligan's appeal of the Injunctive Action is pending. *SEC v. Curtis*, No. 09-2782 (2d Cir. May 22, 2009) (filing notice of appeal). It is well established that a pending judicial appeal does not affect the injunction's status as a basis for an administrative proceeding. *Franklin*, 91 SEC Docket at 2714 n.15 (collecting cases). To the extent Milligan prevails in his appeal, he would be entitled to file a motion to vacate the opinion and order in this matter. *Id.* (citing *Jimmy Dale Swink*, 52 S.E.C. 379 (1995) (granting motion to vacate bar upon appellate reversal of criminal conviction that was basis for bar in administrative proceeding)).

[15] This assertion is further evidence of Milligan's unfitness to remain in the securities industry.

[16] *See D'Acquisto*, 53 S.E.C. at 446. We note that Milligan was represented by counsel at his allocution and that counsel advised Milligan with respect to his guilty plea and allocution. Furthermore, Milligan's counsel did not disavow any of the statements that Milligan now claims were untruthful at the time he made them under oath.

[17] Of course, as related above, the district court's determination that the funds at issue represented kickbacks is not subject to collateral attack in this proceeding. *Id.*

misconduct, as expressly authorized by the Exchange Act.[18] In that context, our institution of this proceeding in May 2009 is timely.

In assessing the need for sanctions in the public interest, we consider the following factors: the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.[19]

The district court's numerous detailed findings with respect to factors similar to the *Steadman* factors inform our consideration of the public interest. The district court found that the fraudulent kickback scheme earned Milligan $93,600 and defrauded thirteen of his customers over several months. Milligan objects to the law judge's use of the term "bogus shares" in his finding that Milligan's actions were egregious, contending that the finding is not supported by the evidence. While the record does not address whether, in fact, the shares at issue were "bogus," Milligan's objection does not affect the district court's finding that Milligan misled numerous customers into buying Pilot shares, earning close to $100,000 from the fraud. We find that conduct to be egregious.

Milligan argues that his conduct was not recurrent because he had a clean disciplinary record before he participated in the kickback scheme. Milligan's formerly clean record does not mitigate the reality that he defrauded numerous customers over an extended period. Milligan's repetition of the fraudulent actions amply supports our conclusion that his actions were recurrent. The district court found that Milligan's attempts to conceal his receipt of the kickback payments through use of the third-party bank account demonstrated that he acted with a "high degree of

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[18] 15 U.S.C. § 78*o*(b)(6)(A)(iii). *See Vyacheslav Steven Zubkis,* Exchange Act Rel. No. 52876 (Dec. 2, 2005), 86 SEC Docket 2618, 2626 (stating limitations period begins to run on date of injunction); *cf. William E. Lincoln*, 53 S.E.C. 452, 457 (1998) (noting that, because the Exchange Act "authorizes us to proceed . . . on the basis of [respondent's] conviction . . . it is the date of [the] conviction, not the conduct underlying the conviction, which is relevant"); *see also Michael J. Markowski*, 55 S.E.C. 21, 24 (2001) (stating that limitations period begins to run on the date of the injunction that provides the basis for the proceeding), *petition denied*, No. 01-1181 (D.C. Cir. 2002), (citing *Proffitt v. FDIC*, 200 F.3d 855, 862-65 (D.C. Cir. 2000)) (unpublished); *Elliott v. SEC*, 36 F.3d 86, 87 (11th Cir. 1994) ("Under the statutory language, existence of the injunction provides a ground for the bar adequate in itself . . . .").

[19] *Scott B. Gann,* Exchange Act Rel. No. 59729 (Apr. 8, 2009), 95 SEC Docket 15818 (citing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979)), *aff'd*, No. 09-60435 (5th Cir. Jan. 13, 2010) (*per curiam*).

'scienter.'" That conclusion is consistent with our precedent, which holds that attempts to conceal misconduct indicate scienter.[20]

Milligan assures us that he will not violate the law again because he has no securities licenses at present and does not intend to procure any in the future. As noted previously, the magistrate judge found that Milligan's assurances "do not remotely satisfy the court's concerns to the contrary" because of Milligan's "demonstrated willingness to offer false and misleading testimony." This, and other negative credibility findings by the district court described above, persuade us to reject Milligan's minimal assurances of future compliance. Milligan's age and experience strongly suggest that, as the district court found, Milligan is, "at the very least, capable of violating securities laws in the future."

Milligan's injunction, based on allegations that he had defrauded thirteen investors of approximately $93,600 over an extended period in a manner designed to avoid detection, raises significant doubts about his integrity and his fitness to remain in the securities industry. Antifraud injunctions have especially serious implications for the public interest.[21] As we have held, "an antifraud injunction can . . . indicate the appropriateness in the public interest" of a bar from participation in the securities industry.[22] As we have also held, "[f]idelity to the public interest" requires a severe sanction when a respondent's misconduct involves fraud because the

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[20] *See Justin F. Ficken*, Exchange Act Rel. No. 58802 (Oct. 17, 2008), 94 SEC Docket 10887, 10892 (finding that concealment of improper trading demonstrated scienter).

[21] *See Michael T. Studer*, 57 S.E.C. 890, 898 (2004) (stating that "the fact that a person has been enjoined from violating antifraud provisions 'has especially serious implications for the public interest'"); *Marshall E. Melton*, 56 S.E.C. 695, 713 (2003) ("Based on our experience enforcing the federal securities laws, we believe that ordinarily, and in the absence of evidence to the contrary, it will be in the public interest to . . . suspend or bar from participation in the securities industry . . . a respondent who is enjoined from violating the antifraud provisions.").

[22] *Michael Batterman*, 57 S.E.C. 1031, 1043 (2004) (quoting *Melton*, 56 S.E.C. at 709-10)), *aff'd*, No. 05-0404 (2d Cir. 2005) (unpublished).

"securities business is one in which opportunities for dishonesty recur constantly."[23] In our view, Milligan's continued presence in the securities industry represents a substantial threat to investors. Under the circumstances, therefore, we have determined that barring Milligan serves the public interest.[24]

An appropriate order will issue.[25]

By the Commission (Commissioners CASEY, WALTER, AGUILAR, and PAREDES). Chairman SCHAPIRO did not participate.

Elizabeth M. Murphy
Secretary

By: Florence E Harmon
Deputy Secretary

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[23] *Richard C. Spangler, Inc.*, 46 S.E.C. 238, 252 (1976).

[24] *See Jeffrey L. Gibson*, Exchange Act Rel. No. 57266 (Feb. 2, 2008), 92 SEC Docket 2104 (barring respondent in follow-on case based on antifraud injunction), *petition denied*, 561 F.3d 548 (6th Cir. 2009); *Batterman*, 57 S.E.C. at 1042 (same); *Studer*, 83 SEC Docket at 2853 (same); *Nolan Wayne Wade*, 56 S.E.C. 748 (2003) (same); *Christopher A. Lowry*, 55 S.E.C. 1133 (same).

[25] 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. 61790 / March 26, 2010

Admin. Proc. File No. 3-13482

In the Matter of

PHILLIP J. MILLIGAN

322 East 79th Street, No. 3B
New York, New York 10075

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Phillip J. Milligan be, and he hereby is, barred from association with any broker or dealer.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Florence E. Harmon
Deputy Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61803; File No. S7-06-09)

March 30, 2010

ORDER EXTENDING TEMPORARY EXEMPTIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934 IN CONNECTION WITH REQUEST OF CHICAGO MERCANTILE EXCHANGE INC. RELATED TO CENTRAL CLEARING OF CREDIT DEFAULT SWAPS, AND REQUEST FOR COMMENTS

I. Introduction

The Securities and Exchange Commission ("Commission") has taken multiple actions[1] designed to address concerns related to the market in credit default swaps ("CDS").[2] The over-

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[1] See generally Securities Exchange Act Release No. 60372 (Jul. 23, 2009), 74 FR 37748 (Jul. 29, 2009) (temporary exemptions in connection with CDS clearing by ICE Clear Europe Limited); Securities Exchange Act Release No. 60373 (Jul. 23, 2009), 74 FR 37740 (Jul. 29, 2009) (temporary exemptions in connection with CDS clearing by Eurex Clearing AG); Securities Exchange Act Release No. 59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009) ("March 2009 CME order") and Securities Exchange Act Release No. 61164 (Dec. 14, 2009), 74 FR 67258 (Dec. 18, 2009) ("December 2009 CME order") (temporary exemptions in connection with CDS clearing by Chicago Mercantile Exchange Inc.); Securities Exchange Act Release No. 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009), Securities Exchange Act Release No. 61119 (Dec. 4, 2009), 74 FR 65554 (Dec. 10, 2009), and Securities Exchange Act Release No. 61662 (Mar. 5, 2010), 75 FR 11589 (Mar. 11, 2010) (temporary exemptions in connection with CDS clearing by ICE Trust U.S. LLC); Securities Exchange Act Release No. 59164 (Dec. 24, 2008), 74 FR 139 (Jan. 2, 2009) (temporary exemptions in connection with CDS clearing by LIFFE A&M and LCH.Clearnet Ltd.) and other Commission actions discussed in several of these orders.

In addition, we have issued interim final temporary rules that provide exemptions under the Securities Act of 1933 and the Securities Exchange Act of 1934 for CDS to facilitate the operation of one or more central counterparties for the CDS market. See Securities Act Release No. 8999 (Jan. 14, 2009), 74 FR 3967 (Jan. 22, 2009) (initial approval); Securities Act Release No. 9063 (Sep. 14, 2009), 74 FR 47719 (Sep. 17, 2009) (extension until Nov. 30, 2010).

Further, the Commission has provided temporary exemptions in connection with Sections 5 and 6 of the Securities Exchange Act of 1934 for transactions in CDS. See Securities Exchange Act Release No. 59165 (Dec. 24, 2008), 74 FR 133 (Jan. 2, 2009) (initial exemption); Securities Exchange Act Release No. 60718 (Sep. 25, 2009), 74 FR 50862 (Oct. 1, 2009) (extension until Mar. 24, 2010).

[2] A CDS is a bilateral contract between two parties, known as counterparties. The value of this financial contract is based on underlying obligations of a single entity ("reference entity") or on a particular security or other debt obligation, or an index of several such entities, securities, or obligations. The obligation of a seller to make payments under a CDS contract is triggered by a default or other credit event as to such entity or entities or such security or securities. Investors may use CDS for a variety of reasons, including to offset or insure against risk in their fixed-income portfolios, to take positions in bonds or in segments of the debt market as represented by an index, or to take positions on the volatility in credit spreads during times of economic uncertainty.

the-counter ("OTC") market for CDS has been a source of particular concern to us and other financial regulators, and we have recognized that facilitating the establishment of central counterparties ("CCPs") for CDS can play an important role in reducing the counterparty risks inherent in the CDS market, and thus can help mitigate potential systemic impact. We have therefore found that taking action to help foster the prompt development of CCPs, including granting temporary conditional exemptions from certain provisions of the federal securities laws, is in the public interest.[3]

The Commission's authority over the OTC market for CDS is limited. Specifically, Section 3A of the Securities Exchange Act of 1934 ("Exchange Act") limits the Commission's authority over swap agreements, as defined in Section 206A of the Gramm-Leach-Bliley Act.[4] For those CDS that are swap agreements, the exclusion from the definition of security in Section 3A of the Exchange Act, and related provisions, will continue to apply. The Commission's action today does not affect these CDS, and this Order does not apply to them. For those CDS that are not swap agreements ("non-excluded CDS"), the Commission's action today provides temporary conditional exemptions from certain requirements of the Exchange Act.

Growth in the CDS market has coincided with a significant rise in the types and number of entities participating in the CDS market. CDS were initially created to meet the demand of banking institutions looking to hedge and diversify the credit risk attendant to their lending activities. However, financial institutions such as insurance companies, pension funds, securities firms, and hedge funds have entered the CDS market.

3 See generally actions referenced in note 1, supra.

4 15 U.S.C. 78c-1. Section 3A excludes both a non-security-based and a security-based swap agreement from the definition of "security" under Section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10). Section 206A of the Gramm-Leach-Bliley Act defines a "swap agreement" as "any agreement, contract, or transaction between eligible contract participants (as defined in section 1a(12) of the Commodity Exchange Act . . .) . . . the material terms of which (other than price and quantity) are subject to individual negotiation." 15 U.S.C. 78c note.

The Commission believes that using well-regulated CCPs to clear transactions in CDS provides a number of benefits by helping to promote efficiency and reduce risk in the CDS market, by contributing to the goal of market stability, and by requiring maintenance of records of CDS transactions that would aid the Commission's efforts to prevent and detect fraud and other abusive market practices.[5]

In March 2009, the Commission issued an order[6] providing temporary conditional exemptions to the Chicago Mercantile Exchange Inc. ("CME") and Citadel Investment Group, LLC. ("Citadel"), and certain other parties to permit CME and Citadel to clear and settle CDS transactions.[7] In response to CME's request, the Commission temporarily extended and expanded the exemptions in December 2009.[8] The current exemptions are scheduled to expire on March 31, 2010, and CME has requested that the Commission extend those exemptions.[9]

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5 See generally actions referenced in note 1, supra.

6 Securities Exchange Act Release No. 59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009).

7 For purposes of this Order, "Cleared CDS" means a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to CME, that is offered only to, purchased only by, and sold only to eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), and in which: (i) the reference entity, the issuer of the reference security, or the reference security is one of the following: (A) an entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available; (B) a foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States; (C) a foreign sovereign debt security; (D) an asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or (E) an asset-backed security issued or guaranteed by the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac") or the Government National Mortgage Association ("Ginnie Mae"); or (ii) the reference index is an index in which 80 percent or more of the index's weighting is comprised of the entities or securities described in subparagraph (i). See definition in paragraph III.(f)(1) of this Order. As discussed above, the Commission's action today does not affect CDS that are swap agreements under Section 206A of the Gramm-Leach-Bliley Act. See text at note 4, supra.

8 Securities Exchange Act Release No. 61164 (Dec. 14, 2009), 74 FR 67258 (Dec. 18, 2009).

9 See Letter from Ann K. Shuman, Managing Director and Deputy General Counsel, CME, to Elizabeth Murphy, Secretary, Commission, Mar. 30, 2010 ("March 2010 request").

Based on the facts presented and the representations made by CME,[10] and for the reasons discussed in this Order and subject to certain conditions, the Commission is extending each of the existing exemptions connected with CDS clearing by CME: the temporary conditional exemption granted to CME from clearing agency registration under Section 17A of the Exchange Act solely to perform the functions of a clearing agency for certain non-excluded CDS transactions; the temporary conditional exemption of CME and certain of its clearing members from the registration requirements of Sections 5 and 6 of the Exchange Act solely in connection with the calculation of mark-to-market prices for non-excluded CDS cleared by CME; the temporary conditional exemption of CME and certain eligible contract participants from certain Exchange Act requirements with respect to non-excluded CDS cleared by CME; the temporary conditional exemption of certain CME clearing members that receive customer collateral in connection with non-excluded CDS cleared by CME from certain Exchange Act requirements; and the temporary conditional exemption from certain Exchange Act requirements granted to registered broker-dealers. This extension is temporary, and the exemptions will expire on November 30, 2010.

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[10] See id. The exemptions we are granting today are based on all of the representations made by CME in its request, which in turn incorporate representations made by CME in its request for relief granted in the December 2009 exemptions addressing CDS clearing by CME. We recognize, however, that there could be legal uncertainty in the event that one or more of the underlying representations were to become inaccurate. Accordingly, if any of these exemptions were to become unavailable by reason of an underlying representation no longer being materially accurate, the legal status of existing open positions in non-excluded CDS that previously had been cleared pursuant to the exemptions would remain unchanged, but no new positions could be established pursuant to the exemptions until all of the underlying representations were again accurate.

II. Discussion

A. CME's CDS Clearing Activities to Date

CME's request for an extension of its current temporary conditional exemptions incorporates representations, in its request preceding the December 2009 CME order, explaining how CME would clear proprietary CDS transactions of its clearing members and CDS transactions involving its clearing members' clients.[11] These representations are discussed in detail in our earlier CME orders.[12]

On December 15, 2009, CME began offering clearing services for CDS contracts on a limited basis. As of March 12, 2010, CME had cleared 33 CDS transactions, with a total $189.5 million notional amount, of CDS contracts based on indices of securities.

B. Extended Temporary Conditional Exemption from Clearing Agency Registration Requirement

In March 2009 and December 2009, in connection with its efforts to facilitate the establishment of one or more CCPs for Cleared CDS, the Commission issued orders conditionally exempting CME from clearing agency registration under Section 17A of the Exchange Act on a temporary basis.[13] Subject to the conditions in those orders, CME has been permitted to act as a CCP for Cleared CDS by novating trades of non-excluded CDS that are

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[11] See March 2010 Request, supra note 9. CME represents that there have been no material changes to the statements made in the letter that preceded the exemptions we granted in the December 2009 CME order, apart from certain developments it described with regard to the implementation of its price quality auction methodology, open access to CDS clearing services, policies and procedures with regard to securities trading by employees, enhancements related to financial safeguards, and the status of a CME petition with the Commodity Futures Trading Commission ("CFTC").

[12] In its present request, CME reiterates that it expects to rely on procedures, pursuant to the price quality auction methodology described in its earlier request for exemptions, whereby CME will periodically require CDS clearing members to trade at prices generated by their indicative settlement prices, where those prices generate crossed bids and offers. To date, CME has yet to require the execution of any trades through this process.

[13] See supra, note 1.

securities and generating money and settlement obligations for participants without having to register with the Commission as a clearing agency. The current CME exemptive order expires on March 31, 2009. Pursuant to its authority under Section 36 of the Exchange Act,[14] for the reasons described herein, the Commission is extending the exemption granted in that order until November 30, 2010, subject to certain conditions.

In the earlier exemptive orders, the Commission recognized the need to ensure the prompt establishment of CME as a CCP for CDS transactions. The Commission also recognized the need to ensure that important elements of Section 17A of the Exchange Act, which sets forth the framework for the regulation and operation of the U.S. clearance and settlement system for securities, apply to the non-excluded CDS market. Accordingly, the temporary exemptions in those orders were subject to a number of conditions designed to enable Commission staff to monitor CME's clearance and settlement of CDS transactions.[15]

The temporary exemptions were based, in part, on CME's representation that it met the standards set forth in the Committee on Payment and Settlement Systems ("CPSS") and International Organization of Securities Commissions ("IOSCO") report entitled: Recommendations for Central Counterparties ("RCCP").[16] The RCCP establishes a framework that requires a CCP to have: (i) the ability to facilitate the prompt and accurate clearance and settlement of CDS transactions and to safeguard its users' assets; and (ii) sound risk

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[14] 15 U.S.C. 78mm. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, by rule, regulation, or order, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

[15] See Securities Exchange Act Release No. 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009).

[16] The RCCP was drafted by a joint task force ("Task Force") composed of representative members of IOSCO and CPSS and published in November 2004. The Task Force consisted of securities regulators and central bankers from 19 countries and the European Union. The U.S. representatives on the Task Force included staff from the Commission, the Federal Reserve Board, and the CFTC.

management, including the ability to appropriately determine and collect clearing fund and monitor its users' trading. This framework is generally consistent with the requirements of Section 17A of the Exchange Act.

The Commission believes that continuing to facilitate the central clearing of CDS transactions – including customer CDS transactions – through a temporary conditional exemption from Section 17A will continue to provide important risk management and systemic benefits by facilitating the prompt establishment of CCP clearance and settlement services. Accordingly, and consistent with our findings in the CME Exemptive Order, we find pursuant to Section 36 of the Exchange Act that it is necessary and appropriate in the public interest and is consistent with the protection of investors for the Commission to extend, until November 30, 2010, CME's exemption provided from the clearing agency registration requirements of Section 17A, subject to certain conditions.

In granting this exemption, we are balancing the aim of facilitating CME's service as a CCP for non-excluded CDS transactions with ensuring that important elements of Commission oversight are applied to the non-excluded CDS market. The continued use of temporary exemptions will permit the Commission to continue to develop direct experience with the non-excluded CDS market. During the extended exemptive period, the Commission will continue to monitor closely the impact of the CCPs on this market. In particular, the Commission will seek to assure itself that CME has sufficient risk management controls in place and does not act in an anticompetitive manner or indirectly facilitate anticompetitive behavior with respect to fees charged to members, the dissemination of market data, and the access to clearing services by independent CDS exchanges or CDS trading platforms.

This temporary extension of this exemption also is designed to assure that – as CME has represented – information will be available to market participants about the terms of the CDS cleared by CME, the creditworthiness of CME or any guarantor, and the clearance and settlement process for CDS.[17] The Commission believes operation of CME consistent with the conditions of the Order will facilitate the availability to market participants of information that should enable them to make better informed investment decisions and better value and evaluate their Cleared CDS and counterparty exposures relative to a market that is not centrally cleared.

This temporary extension of this exemption is subject to a number of conditions that are designed to enable Commission staff to monitor CME's clearance and settlement of CDS transactions and help reduce risk in the CDS market. These conditions require that CME: (i) make available on its Web site its annual audited financial statements; (ii) preserve records related to the conduct of its Cleared CDS clearance and settlement services for at least five years (in an easily accessible place for the first two years); (iii) provide information relating to its Cleared CDS clearance and settlement services to the Commission and provide access to the Commission to conduct on-site inspections of facilities, records, and personnel related to its Cleared CDS clearance and settlement services; (iv) notify the Commission on a monthly basis about material disciplinary actions taken against any of its members utilizing its Cleared CDS clearance and settlement services, and about the involuntary termination of the membership of an entity that is utilizing CME's Cleared CDS clearance and settlement services; (v) provide the Commission with changes to rules, procedures, and any other material events affecting its

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[17] The Commission believes that it is important in the CDS market, as in the securities market generally, that parties to transactions have access to financial information that would allow them to evaluate appropriately the risks relating to a particular investment and make more informed investment decisions. See generally Policy Statement on Financial Market Developments, The President's Working Group on Financial Markets, March 13, 2008, available at: http://www.treas.gov/press/releases/reports/pwgpolicystatemktturmoil_03122008.pdf.

Cleared CDS clearance and settlement services not less than one day prior to effectiveness or implementation of such rule changes, or in exigent circumstances, as promptly as reasonably practicable under the circumstances; (vi) provide the Commission with reports prepared by independent audit personnel that are generated in accordance with risk assessment of the areas set forth in the Commission's Automation Review Policy Statements[18] and its annual audited financial statements prepared by independent audit personnel; and (vii) report all significant systems outages to the Commission within specified timeframes.

Also, the temporary extension of this exemption is conditioned on CME, directly or indirectly, making available to the public on terms that are fair and reasonable and not unreasonably discriminatory: (i) all end-of-day settlement prices and any other prices with respect to Cleared CDS that CME may establish to calculate settlement variation or margin requirements for CME clearing members; and (ii) any other pricing or valuation information with respect to Cleared CDS as is published or distributed by CME.

As a CCP, CME will collect and process information about CDS transactions, prices, and positions from all of its participants. With this information, it will calculate and disseminate current values for open positions for the purpose of setting appropriate margin levels. The availability of such information can improve fairness, efficiency, and competitiveness of the market – all of which enhance investor protection and facilitate capital formation. Moreover, with pricing and valuation information relating to Cleared CDS, market participants would be able to derive information about underlying securities and indexes. This may improve the

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[18] See Automated Systems of Self-Regulatory Organization, Exchange Act Release No. 27445 (Nov. 16, 1989), File No. S7-29-89, and Automated Systems of Self-Regulatory Organization (II), Exchange Act Release No. 29185 (May 9, 1991), File No. S7-12-91.

efficiency and effectiveness of the securities markets by allowing investors to better understand credit conditions generally.

In addition, the temporary extension of this exemption is conditioned on CME not materially changing its methodology for determining Cleared CDS margin levels without prior written approval from the Commission staff,[19] and from FINRA with respect to customer margin requirements that would apply to broker-dealers.

C. Extended Temporary Conditional Exemption from Exchange Registration Requirements

In our December 2009 order in connection with CDS clearing by CME, we granted a temporary conditional exemption for CME from the requirements of Sections 5 and 6 of the Exchange Act, and the rules and regulations thereunder, in connection with CME's methodology for determining CDS settlement prices, including its price quality auction methodology. We also temporarily exempted CME clearing members from the prohibitions of Section 5 to the extent they use CME to effect or report any transaction in Cleared CDS in connection with CME's calculation of mark-to-market prices for open positions in Cleared CDS. Section 5 of the Exchange Act contains certain restrictions relating to the registration of national securities

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[19] This condition has been modified from the equivalent condition in the December 2009 CME order, to provide that prior written approval may be given by Commission staff.

exchanges,[20] while Section 6 provides the procedures for registering as a national securities exchange.[21]

We granted these temporary exemptions to facilitate the establishment of CME's settlement price process. CME had represented that updated settlement prices will be made available to clearing members on their open positions on a regular basis (at least once a day, or more frequently in case of sudden market moves), and that, as part of the CDS clearing process, CME would periodically require CDS clearing members to trade at prices generated by their indicative settlement prices where those indicative settlement prices generate crossed bids and offers, pursuant to CME's price quality auction methodology.

As part of its current request, CME states that it continues to want to be able to make use of procedures that periodically will require clearing members to execute certain CDS trades in this manner.[22]

As discussed above, we have found in general that it is necessary or appropriate in the public interest, and is consistent with the protection of investors, to facilitate continued CDS clearing by CME. Consistent with that finding – and in reliance on CME's representation that the settlement pricing process, including the periodically required trading, is part of its clearing process – we further find that it is necessary or appropriate in the public interest, and is

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20 In particular, Section 5 provides:

> It shall be unlawful for any broker, dealer, or exchange, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce for the purpose of using any facility of an exchange . . . to effect any transaction in a security, or to report any such transactions, unless such exchange (1) is registered as a national securities exchange under section 6 of [the Exchange Act], or (2) is exempted from such registration . . . by reason of the limited volume of transactions effected on such exchange. . . .

15 U.S.C. 78e.

21 15 U.S.C. 78f. Section 6 of the Exchange Act also sets forth various requirements to which a national securities exchange is subject.

22 See note 12 , supra.

consistent with the protection of investors that we exercise our authority under Section 36 of the Exchange Act to extend, until November 30, 2010, CME's temporary exemption from Sections 5 and 6 of the Exchange Act in connection with its calculation of settlement variation prices for open positions in Cleared CDS, and CME clearing members' temporary exemption from Section 5 with respect to such trading activity, subject to certain conditions.

The temporary exemption for CME will continue to be subject to three conditions. First, CME must report the following information with respect to its determination of daily settlement prices for cleared CDS to the Commission within 30 days of the end of each quarter, and preserve such reports for as long as CME offers CDS clearing services and for a period of at least five years thereafter:

- The total dollar volume of CDS transactions executed during the quarter pursuant to CME's price quality auction methodology, broken down by reference entity, security, or index; and
- The total unit volume or notional amount executed during the quarter pursuant to CME's price quality auction methodology, broken down by reference entity, security, or index.

Second, CME must establish and maintain adequate safeguards and procedures to protect participants' confidential trading information related to Cleared CDS. Such safeguards and procedures shall include: (a) limiting access to the confidential trading information of participants to those CME employees who have a need to access such information in connection with the provision of CME CDS clearing services or who are responsible for compliance with this exemption or any other applicable rules; and (b) implementing policies and procedures for CME employees with access to such information with respect to trading for their own accounts.

CME must adopt and implement adequate oversight procedures to ensure that the policies and procedures established pursuant to this condition are followed.

Third, CME must comply with the conditions to the temporary exemption from registration as a clearing agency extended by this Order, given that this exemption is granted in the context of our goal of continuing to facilitate CME's ability to act as a CCP for non-excluded CDS, and given CME's representation that the forced trade process is an important component of CME's overall settlement price determination process.

The Commission also is continuing to temporarily exempt each CME clearing member, until November 30, 2010, from the prohibition in Section 5 of the Exchange Act to the extent that such CME clearing member uses any facility of CME to effect any transaction in Cleared CDS, or to report any such transaction, in connection with CME's calculation of mark-to-market prices for open positions in Cleared CDS. Absent an exemption, Section 5 would prohibit any CME clearing member that is a broker or dealer from effecting transactions in Cleared CDS on CME, which will rely on this Order for an exemption from exchange registration. The Commission believes that temporarily exempting CME clearing members from the restriction in Section 5 is necessary and appropriate in the public interest and is consistent with the protection of investors because it will facilitate their use of CME's CCP for Cleared CDS, which for the reasons set forth in this Order the Commission believes to be beneficial. Without also temporarily exempting CME clearing members from this Section 5 requirement, the Commission's temporary exemption of CME from Sections 5 and 6 of the Exchange Act would be ineffective, because CME clearing members that are brokers or dealers would not be permitted to effect transactions on CME in connection with the end-of-day settlement price process.

D. Extended Temporary Conditional General Exemption for CME and Certain Eligible Contract Participants

As we recognized in our earlier orders in connection with CDS clearing by CME, applying the full panoply of Exchange Act requirements to participants in transactions in non-excluded CDS likely would deter some participants from using CCPs to clear CDS transactions. We also recognized that it is important that the antifraud provisions of the Exchange Act apply to transactions in non-excluded CDS, particularly given that OTC transactions subject to individual negotiation that qualify as security-based swap agreements already are subject to those provisions.[23]

As a result, we concluded in those orders that it is appropriate in the public interest and consistent with the protection of investors temporarily to apply substantially the same framework to transactions by market participants in non-excluded CDS that applies to transactions in security-based swap agreements. We thus temporarily exempted CME and certain eligible contract participants from a number of Exchange Act requirements, while excluding certain enforcement-related and other provisions from the scope of the exemption.

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[23] While Section 3A of the Exchange Act excludes "swap agreements" from the definition of "security," certain antifraud and insider trading provisions under the Exchange Act explicitly apply to security-based swap agreements. See (a) paragraphs (2) through (5) of Section 9(a), 15 U.S.C. 78i(a), prohibiting the manipulation of security prices; (b) Section 10(b), 15 U.S.C. 78j(b), and underlying rules prohibiting fraud, manipulation or insider trading (but not prophylactic reporting or recordkeeping requirements); (c) Section 15(c)(1), 15 U.S.C. 78o(c)(1), which prohibits brokers and dealers from using manipulative or deceptive devices; (d) Sections 16(a) and (b), 15 U.S.C. 78p(a) and (b), which address disclosure by directors, officers and principal stockholders, and short-swing trading by those persons, and rules with respect to reporting requirements under Section 16(a); (e) Section 20(d), 15 U.S.C. 78t(d), providing for antifraud liability in connection with certain derivative transactions; and (f) Section 21A(a)(1), 15 U.S.C. 78u-1(a)(1), related to the Commission's authority to impose civil penalties for insider trading violations.

"Security-based swap agreement" is defined in Section 206B of the Gramm-Leach-Bliley Act as a swap agreement in which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

We believe that continuing to facilitate the central clearing of CDS transactions by CME through this type of temporary conditional exemption will provide important risk management and systemic benefits. We also believe that facilitating the central clearing of customer CDS transactions, subject to the conditions in this Order, will provide an opportunity for the customers of CME clearing members to control counterparty risk.

Accordingly, pursuant to Section 36 of the Exchange Act, the Commission finds that it is necessary or appropriate in the public interest and is consistent with the protection of investors to grant an exemption until November 30, 2010, from the requirements of the Exchange Act discussed below, subject to certain conditions. As before, this temporary exemption applies to CME and to eligible contract participants[24] other than: eligible contract participants that receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons;[25] eligible contract participants that are self-regulatory organizations; or eligible contract participants that are registered brokers or dealers.[26]

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[24] This exemption in general applies to eligible contract participants, as defined in Section 1a(12) of the Commodity Exchange Act ("CEA") as in effect on the date of this Order, other than persons that are eligible contract participants under paragraph (C) of that section.

[25] Solely for purposes of this requirement, an eligible contract participant would not be viewed as receiving or holding funds or securities for purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons, if the other persons involved in the transaction would not be considered "customers" of the eligible contract participant in a parallel manner when certain persons would not be considered "customers" of a broker-dealer under Exchange Act Rule 15c3-3(a)(1). For these purposes, and for the purpose of the definition of "Cleared CDS," the terms "purchasing" and "selling" mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing the rights or obligations under, a Cleared CDS, as the context may require. This is consistent with the meaning of the terms "purchase" or "sale" under the Exchange Act in the context of security-based swap agreements. See Exchange Act Section 3A(b)(4). A separate temporary conditional exemption addresses members of CME that hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons. See Part II.E, infra.

[26] A separate temporary exemption addresses the Cleared CDS activities of registered-broker-dealers. See Part II.F, infra. Solely for purposes of this Order, a registered broker-dealer, or a broker or dealer registered under Section 15(b) of the Exchange Act, does not refer to someone that would

As before, under this temporary conditional exemption, and solely with respect to Cleared CDS, those persons generally are exempt from the provisions of the Exchange Act and the rules and regulations thereunder that do not apply to security-based swap agreements. Thus, those persons will still be subject to those Exchange Act requirements that explicitly are applicable in connection with security-based swap agreements.[27] In addition, all provisions of the Exchange Act related to the Commission's enforcement authority in connection with violations or potential violations of such provisions remain applicable.[28] In this way, the temporary exemption applies the same Exchange Act requirements in connection with non-excluded CDS as apply in connection with OTC credit default swaps that are security-based swap agreements.

Consistent with our earlier exemptions, and for the same reasons, this temporary exemption also does not extend to: the exchange registration requirements of Exchange Act Sections 5 and 6;[29] the clearing agency registration requirements of Exchange Act Section 17A;

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otherwise be required to register as a broker or dealer solely as a result of activities in Cleared CDS in compliance with this Order.

27 See note 23, supra.

28 Thus, for example, the Commission retains the ability to investigate potential violations and bring enforcement actions in the federal courts as well as in administrative proceedings, and to seek the full panoply of remedies available in such cases.

29 These are subject to a separate temporary class exemption. See note 1, supra. A national securities exchange that effects transactions in Cleared CDS would continue to be required to comply with all requirements under the Exchange Act applicable to such transactions. A national securities exchange could form subsidiaries or affiliates that operate exchanges exempt under that order. Any subsidiary or affiliate of a registered exchange could not integrate, or otherwise link, the exempt CDS exchange with the registered exchange including the premises or property of such exchange for effecting or reporting a transaction without being considered a "facility of the exchange." See Section 3(a)(2), 15 U.S.C. 78c(a)(2).

This Order also includes a separate temporary exemption from Sections 5 and 6 in connection with the settlement price calculation methodology of CME, discussed above. See Part II.C, supra.

the requirements of Exchange Act Sections 12, 13, 14, 15(d), and 16;[30] the Commission's administrative proceeding authority under Sections 15(b)(4) and (b)(6);[31] or certain provisions related to government securities.[32] CME clearing members relying on this temporary exemption must be in material compliance with CME rules.

E. Extension of Conditional Temporary Exemption for Certain Clearing Members of CME

In our December 2009 order, we granted a temporary conditional exemption from the same Exchange Act requirements discussed above to CME clearing members that receive or hold customer funds or securities for the purpose of purchasing, selling, clearing, settling or holding Cleared CDS positions for customers. Absent an exception or exemption, persons that effect transactions in non-excluded CDS that are securities may be required to register as broker-dealers pursuant to Section 15(a)(1) of the Exchange Act.[33]

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30 15 U.S.C. 78l, 78m, 78n, 78o(d), 78p. Eligible contract participants and other persons instead should refer to the interim final temporary rules issued by the Commission. See note 1, supra.

31 Exchange Act Sections 15(b)(4) and 15(b)(6), 15 U.S.C. 78o(b)(4) and (b)(6), grant the Commission authority to take action against broker-dealers and associated persons in certain situations. Accordingly, while this exemption generally extends to persons that act as inter-dealer brokers in the market for Cleared CDS and do not hold funds or securities for others, such inter-dealer brokers may be subject to actions under Sections 15(b)(4) and (b)(6) of the Exchange Act. In addition, such inter-dealer brokers may be subject to actions under Exchange Act Section 15(c)(1), 15 U.S.C. 78o(c)(1), which prohibits brokers and dealers from using manipulative or deceptive devices. As noted above, Section 15(c)(1) explicitly applies to security-based swap agreements. Sections 15(b)(4), 15(b)(6), and 15(c)(1), of course, would not apply to persons subject to this exemption who do not act as broker-dealers or associated persons of broker-dealers.

32 This exemption specifically does not extend to the Exchange Act provisions applicable to government securities, as set forth in Section 15C, 15 U.S.C. 78o-5, and its underlying rules and regulations; nor does the exemption extend to related definitions found at paragraphs (42) through (45) of Section 3(a), 15 U.S.C. 78c(a). The Commission does not have authority under Section 36 to issue exemptions in connection with those provisions. See Exchange Act Section 36(b), 15 U.S.C. 78mm(b).

33 15 U.S.C. 78o(a)(1). This section generally provides that, absent an exception or exemption, a broker or dealer that uses the mails or any means of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, any security must register with the Commission.

Section 3(a)(4) of the Exchange Act generally defines a "broker" as "any person engaged in the business of effecting transactions in securities for the account of others," but provides 11 exceptions for certain bank securities activities. 15 U.S.C. 78c(a)(4). Section 3(a)(5) of the Exchange Act generally

As we noted in our earlier orders, it is consistent with our investor protection mandate to require securities intermediaries that receive or hold funds and securities on behalf of others to comply with standards that safeguard the interests of their customers.[34] At the same time, we recognized that requiring intermediaries that receive or hold funds and securities on behalf of customers in connection with transactions in non-excluded CDS to register as broker-dealers may deter the use of CCPs in CDS transactions, to the detriment of the markets and market participants generally. We concluded that those factors, along with certain representations by CME, argued in favor of flexibility in applying the requirements of the Exchange Act to these intermediaries.

Accordingly, in December 2009 (as in March 2009) we provided a temporary conditional exemption to CME clearing members registered as FCMs that receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons. Solely with respect to Cleared CDS, those CME clearing members generally were

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defines a "dealer" as "any person engaged in the business of buying and selling securities for his own account," but includes exceptions for certain bank activities. 15 U.S.C. 78c(a)(5). Exchange Act Section 3(a)(6) defines a "bank" as a bank or savings association that is directly supervised and examined by state or federal banking authorities (with certain additional requirements for banks and savings associations that are not chartered by a federal authority or a member of the Federal Reserve System). 15 U.S.C. 78c(a)(6).

Certain reporting and other requirements of the Exchange Act may also apply to such persons, as broker-dealers, regardless of whether they are registered with the Commission.

[34] Registered broker-dealers are required to segregate assets held on behalf of customers from proprietary assets, because segregation will assist customers in recovering assets in the event the intermediary fails. Absent such segregation, collateral could be used by an intermediary to fund its own business, and could be attached to satisfy the intermediary's debts were it to fail. Moreover, the maintenance of adequate capital and liquidity protects customers, CCPs, and other market participants. Adequate books and records (including both transactional and position records) are necessary to facilitate day to day operations as well as to help resolve situations in which an intermediary fails and either a regulatory authority or receiver is forced to liquidate the firm. Appropriate records also are necessary to allow examiners to review for improper activities, such as insider trading or fraud.

exempted from provisions of the Exchange Act and the underlying rules and regulations that do not apply to security-based swap agreements.

Our December 2009 order – in contrast to the March 2009 order – required CME clearing members relying on this exemption to hold customer collateral in one of three types of accounts: (i) in an account established pursuant to Section 4d of the CEA;[35] or (ii) in the absence of a 4d Order from the CFTC, in an account that is part of a separate account class, specified by CFTC Bankruptcy Rules, established for an FCM to hold its customers' positions and collateral in cleared OTC derivatives; or (iii) if both of those other two alternatives are not available, in an account established in accordance with CFTC Rule 30.7 (with additional disclosures to be made to the customer).[36]

Those conditions reflected our understanding that the protections associated with using CFTC Rule 30.7 to segregate collateral associated with over-the-counter derivatives are untested, and thus are less certain than those protections that would be afforded to collateral protected by Section 4d. The conditions also reflected the CFTC's proposal of a rule (on which CFTC has not

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[35] If the CFTC were to issue an order pursuant to Section 4d of the CEA ("4d Order"), Section 4d of the CEA and the related regulations would control the segregation and protection of customer funds and property. In that event, all collateral received from customers of FCMs in connection with purchasing, selling, or holding CDS positions would be subject to the requirements of CFTC Regulation 1.20, et seq. promulgated under Section 4d. These regulations require that customer positions and property be separately accounted for and segregated from the positions and property of an FCM. Customer property would be held under an account name that clearly identifies it as customer property and demonstrates that it is appropriately segregated as required by the CEA and Regulation 1.20, et seq.

[36] Rule 30.7 provides a mechanism for establishing accounts for holding collateral posted by foreign futures customers. When CME requested the exemptions that we granted in March 2009, it stated that, pending the receipt of the 4d Order, FCMs would hold customer collateral within accounts established pursuant to Rule 30.7.

When CME requested the relief granted to it in December 2009, it recognized the uncertainty associated with the protections provided by Rule 30.7, stating that "[n]either the CFTC nor the courts have issued an interpretation with regard to the bankruptcy protections that would be afforded to customers clearing OTC positions in 30.7 accounts, and it is therefore unclear whether they would receive the same protections as foreign futures customers." See Letter from Ann K. Shuman, Managing Director and Deputy General Counsel, CME, to Elizabeth Murphy, Secretary, Commission, Dec. 14, 2009.

taken action) to provide for the establishment of a new account class that would be designed to protect positions in cleared over-the-counter derivatives and collateral securing such positions in the event an FCM became insolvent.[37]

To date, the CFTC has not issued the 4d Order, and it has not taken final action on proposed rules that would establish a new account class. We remain mindful, however, of the benefits that may be expected to accompany central clearing of customer CDS transactions by CME. In that light, we have determined to renew this exemption on a temporary basis.[38]

Accordingly, in light of the risk management and systemic benefits in continuing to facilitate CDS clearing by CME while promoting customer protection in connection with those CDS transactions, the Commission finds pursuant to Section 36 of the Exchange Act that it is necessary or appropriate in the public interest and is consistent with the protection of investors to extend this temporary conditional exemption for certain CME clearing members from certain requirements of the Exchange Act in connection with Cleared CDS until November 30, 2010.

As before, this temporary conditional exemption will be available to any CME clearing member that is also an FCM (other than one that either is registered pursuant to Section 4f(a)(2) or is registered as a broker or dealer under Section 15(b) of the Exchange Act (other than paragraph (11) thereof)) that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons. Solely with respect to Cleared CDS, those members generally will be exempt from those provisions of the Exchange Act and the underlying rules and regulations that do not apply to security-based swap agreements. As with the exemption discussed above that is applicable to CME and certain

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37 See 74 FR 40794 (Aug. 13, 2009).

38 During the exemptive period we intend to monitor developments with regard to the protection afforded this collateral.

eligible contract participants, and for the same reasons, this exemption for CME clearing members that receive or hold funds and securities does not extend to Exchange Act provisions that explicitly apply in connection with security-based swap agreements,[39] or to related enforcement authority provisions.[40] As with the exemption discussed above, we also are not exempting those members from Sections 5, 6, 12(a) and (g), 13, 14, 15(b)(4), 15(b)(6), 15(d), 16, and 17A of the Exchange Act.[41]

This temporary exemption is subject to the member complying with conditions that are important for protecting customer funds and securities. Any CME clearing member relying on this temporary exemption must be in material compliance with the rules of CME,[42] and in material compliance with applicable laws and regulations relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared CDS.[43] In addition, the customers for whom the clearing member receives or holds such funds or securities may not be natural persons, and the clearing member must make certain risk disclosures to those customers.[44]

As discussed above, this temporary exemption is further conditioned on funds or securities received or held by the clearing member for the purpose of purchasing, selling,

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39 See note 23, supra.

40 See note 28, supra.

41 See notes 29 through 31, supra, and accompanying text. Nor are we exempting those members from provisions related to government securities, as discussed above. See note 32, supra.

42 These include Rules 971 and 973 relating to Segregation and Secured Requirements and Customer Accounts with the Clearing House.

43 The term "customer," solely for purposes of Part III.(d) and (e), infra, and corresponding references in this Order, means a "customer" as defined under CFTC Regulation 1.3(k). 17 CFR 1.3(k).

44 The clearing member must disclose that it is not regulated by the Commission, that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities held by the clearing member to collateralize Cleared CDS, and that the applicable insolvency law may affect such customers' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding.

clearing, settling, or holding cleared CDS positions for those customers being held: (i) in an account established in accordance with Section 4d of the CEA and CFTC Rules 1.20 through 1.30 and 1.32 thereunder, or (ii) in the absence of a 4d order from the CFTC, in an account that is part of a separate account class, specified by CFTC Bankruptcy Rules,[45] established for an FCM to hold its customers' positions in cleared OTC derivatives (and funds and securities posted to margin, guarantee, or secure such positions); or (iii) if neither of those other accounts is available, those funds and securities must be held in an account established in accordance with CFTC Rule 30.7.[46]

To facilitate compliance with these segregation conditions, the clearing member – regardless of the type of account discussed above that it uses – also must annually provide CME with a self-assessment that it is in compliance with the requirements, along with a report by the clearing member's independent third-party auditor that attests to that assessment.[47] Finally, a CME clearing member that receives or holds funds or securities of customers for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions shall segregate such funds and securities of customers from the CME clearing member's own assets (i.e., the member

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45 17 CFR 190.01 et seq.

46 In that situation, the clearing member must disclose to Cleared CDS customers that uncertainty exists as to whether they would receive priority in bankruptcy (vis-à-vis other customers) with respect to any funds or securities held by the clearing member to collateralize Cleared CDS positions.

The conditions in this Order require that any FCM that holds Cleared CDS customer funds and securities in a 30.7 account must segregate all such customer funds and securities in a 30.7 account. It is our understanding that this is consistent with CME Rule 8F03.

47 The report must be dated the same date as the clearing member's annual audit report (but may be separate from it), and must be produced in accordance with the standards that the auditor follows in auditing the clearing member's financial statements.

This condition requiring the clearing member to convey a third-party audit report to CME as a repository for regulators does not impose upon CME any independent duty to audit or otherwise review that information. This condition also does not impose on CME any independent fiduciary or other obligation to any customer of a clearing member.

may not permit the customers to "opt out" of applicable segregation requirements for such funds and securities even if regulations or laws would permit the customer to "opt out").

F. Extended Temporary Conditional General Exemption for Certain Registered Broker-Dealers including Certain Broker-Dealer-FCMs

The March 2009 and December 2009 CME exemptive orders granted temporary limited exemptions from Exchange Act requirements to registered broker-dealers in connection with their activities involving Cleared CDS. In crafting these temporary exemptions, we balanced the need to avoid creating disincentives to the prompt use of CCPs against the critical role that certain broker-dealers play in promoting market integrity and protecting customers (including broker-dealer customers that are not involved with CDS transactions).

In light of the risk management and systemic benefits in continuing to facilitate CDS clearing by CME through targeted conditional exemptions to registered broker-dealers, the Commission finds pursuant to Section 36 of the Exchange Act that it is necessary or appropriate in the public interest and is consistent with the protection of investors to exercise its authority to extend this temporary conditional registered broker-dealer exemption from certain Exchange Act requirements until November 30, 2010.[48]

As before, consistent with the temporary exemptions discussed above, and solely with respect to Cleared CDS, we are temporarily exempting registered broker-dealers (including registered broker-dealers that are also FCMs ("BD-FCMs")) from provisions of the Exchange Act and the rules and regulations thereunder that do not apply to security-based swap

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[48] The temporary exemptions addressed above – with regard to CME, certain clearing members, and certain eligible contract participants – are not available to persons that are registered as broker-dealers with the Commission (other than those that are notice registered pursuant to Exchange Act Section 15(b)(11)). Exchange Act Section 15(b)(11) provides for notice registration of certain persons that effect transactions in security futures products. 15 U.S.C. 78o(b)(11).

agreements, subject to certain conditions. As discussed above, we are not excluding registered broker-dealers, including BD-FCMs, from Exchange Act provisions that explicitly apply in connection with security-based swap agreements or from related enforcement authority provisions.[49] As above, and for similar reasons, we are not exempting registered broker-dealers, including BD-FCMs, from: Sections 5, 6, 12, 13, 14, 15(b)(4), 15(b)(6), 15(d), 16 and 17A of the Exchange Act.[50]

Further, we are not exempting registered broker-dealers from the following additional provisions under the Exchange Act: (1) Section 7(c),[51] regarding the unlawful extension of credit by broker-dealers; (2) Section 15(c)(3),[52] regarding the use of unlawful or manipulative devices by broker-dealers; (3) Section 17(a),[53] regarding broker-dealer obligations to make, keep, and furnish information; (4) Section 17(b),[54] regarding broker-dealer records subject to examination; (5) Regulation T,[55] a Federal Reserve Board regulation regarding extension of credit by broker-dealers; (6) Exchange Act Rule 15c3-1,[56] regarding broker-dealer net capital;

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49 See notes 23 and 28, supra. As noted above, broker-dealers also would be subject to Section 15(c)(1) of the Exchange Act, which prohibits brokers and dealers from using manipulative or deceptive devices, because that provision explicitly applies in connection with security-based swap agreements. In addition, to the extent the Exchange Act and any rule or regulation thereunder imposes any other requirement on a broker-dealer with respect to security-based swap agreements (e.g., requirements under Rule 17h-1T to maintain and preserve written policies, procedures, or systems concerning the broker or dealer's trading positions and risks, such as policies relating to restrictions or limitations on trading financial instruments or products), these requirements would continue to apply to broker-dealers' activities with respect to Cleared CDS.

50 See notes 29 through 31, supra, and accompanying text. We also are not exempting those members from provisions related to government securities, as discussed above. See note 32, supra.

51 15 U.S.C. 78g(c).

52 15 U.S.C. 78o(c)(3).

53 15 U.S.C. 78q(a).

54 15 U.S.C. 78q(b).

55 12 CFR 220.1 et seq.

56 17 CFR 240.15c3-1.

(7) Exchange Act Rule 15c3-3,[57] regarding broker-dealer reserves and custody of securities; (8) Exchange Act Rules 17a-3 through 17a-5,[58] regarding records to be made and preserved by broker-dealers and reports to be made by broker-dealers; and (9) Exchange Act Rule 17a-13,[59] regarding quarterly security counts to be made by certain exchange members and broker-dealers.[60] Registered broker-dealers must comply with these provisions in connection with their activities involving non-excluded CDS because these provisions are especially important to helping protect customer funds and securities, ensure proper credit practices, and safeguard against fraud and abuse.[61]

CME clearing members that are BD-FCMs and that receive or hold customer funds or securities for the purpose of purchasing, selling, clearing, settling, or holding CDS positions cleared by CME in a futures account (as that term is defined in Rule 15c3-3(a)(15)[62]) also shall be exempt from Exchange Act Rule 15c3-3, subject to conditions that are similar to those – discussed above – that are applicable to CME that are not broker-dealers and that hold customer funds and securities in connection with Cleared CDS transactions. Thus, such BD-FCMs must be in material compliance with CME rules, as well as and applicable laws and regulations relating to capital, liquidity, and segregation of customers' funds and securities (and related

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57 17 CFR 240.15c3-3.

58 17 CFR 240.17a-3 through 240.17a-5.

59 17 CFR 240.17a-13.

60 Solely for purposes of this temporary exemption, in addition to the general requirements under the referenced Exchange Act sections, registered broker-dealers shall only be subject to the enumerated rules under the referenced Exchange Act sections.

61 Indeed, Congress directed the Commission to promulgate broker-dealer financial responsibility rules, including rules relating to custody, the use of customer securities, the use of customers' deposits or credit balances, and the establishment of minimum financial requirements. See Exchange Act Section 15(c)(3).

62 17 CFR 240.15c3-3(a)(15).

books and records provisions) with respect to Cleared CDS. A BD-FCM may not receive or hold funds or securities relating to Cleared CDS transactions and positions for customers who are natural persons. In addition, the BD-FCM must make certain risk disclosures to each such customer.[63] Further, the BD-FCM must hold the customer funds or securities in the same type of account (e.g., in a 4d account) as is required for other clearing members that hold customer funds and securities in connection with Cleared CDS transactions.[64] The BD-FCM also must segregate the funds and securities of customers from the CME clearing member's own assets (i.e., the member may not permit the customers to "opt out" of applicable segregation requirements for such funds and securities even if regulations or laws would permit the customer to "opt out"). In addition, the BD-FCM also must annually provide CME with a self-assessment that it is in

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[63] The BD-FCM must disclose that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities held by the clearing member to collateralize Cleared CDS positions, and that the applicable insolvency law may affect such customers' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding.

This BD-FCM condition differs from the analogous disclosure condition related to other CME clearing members that hold customer funds and securities, in that the other condition also requires disclosure that the clearing member is not regulated by the Commission.

[64] As with the exemption applicable to those other CME clearing members, in the absence of a 4d order from the CFTC, the BD-FCM may hold the funds and securities in an account that is part of a separate account class, specified by CFTC Bankruptcy Rules, established for an FCM to hold its customers' positions in cleared OTC derivatives (and funds and securities posted to margin, guarantee, or secure such positions). See Part II.E, supra.

If that alternative also is not available, the BD-FCM must hold the funds and securities in an account established in accordance with CFTC Rule 30.7. In that situation, the clearing member must disclose to Cleared CDS customers that uncertainty exists as to whether they would receive priority in bankruptcy (vis-à-vis other customers) with respect to any funds or securities held by the clearing member to collateralize Cleared CDS positions.

As above, the conditions in this Order require that BD-FCM (as well as any other FCM) that holds Cleared CDS customer funds and securities in a 30.7 account must segregate all such customer funds and securities in a 30.7 account.

compliance with the requirements, along with a report by the clearing member's independent third-party auditor that attests to that assessment.[65]

Finally – and in addition to the conditions that are applicable to CME that are not broker-dealers and that hold customer funds and securities in connection with Cleared CDS transactions – the CME clearing member must comply with the margin rules for Cleared CDS of the self-regulatory organization that is its designated examining authority[66] (e.g., FINRA).

G. Solicitation of Comments

When we granted the March 2009 and December 2009 orders extending the exemptions granted in connection with CDS clearing by CME, we requested comment on all aspects of the exemptions. We received no comments in response to these requests.

In connection with this Order extending the exemptions granted in connection with CDS clearing by CME, we reiterate our request for comments on all aspects of the exemptions. We particularly request comment on the adequacy of the proposed conditions for the protection of customer assets, including whether it is appropriate to permit such assets to be protected in an account that is subject to the framework provided by CFTC Rule 30.7, and, if so, whether the conditions associated with the use of that account are adequate.

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/other.shtml); or

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65 The report must be dated the same date as the clearing member's annual audit report (but may be separate from it), and must be produced in accordance with the standards that the auditor follows in auditing the clearing member's financial statements. See text accompanying note 57, supra.

66 See 17 CFR 240.17d-1 for a description of a designated examining authority.

- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-06-09 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 Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-06-09. 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. We will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/other.shtml). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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.

III. Conclusion

IT IS HEREBY ORDERED, pursuant to Section 36(a) of the Exchange Act, that, until November 30, 2010:

(a) Exemption from Section 17A of the Exchange Act.

The Chicago Mercantile Exchange Inc. ("CME") shall be exempt from Section 17A of the Exchange Act solely to perform the functions of a clearing agency for Cleared CDS (as defined in paragraph (f) of this Order), subject to the following conditions:

(1) CME shall make available on its Web site its annual audited financial statements.

(2) CME shall keep and preserve records of all activities related to the business of CME as a central counterparty for Cleared CDS. These records shall be kept for at least five years and for the first two years shall be held in an easily accessible place.

(3) CME shall supply such information and periodic reports relating to its Cleared CDS clearance and settlement services as may be reasonably requested by the Commission. CME shall also provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), and records related to its Cleared CDS clearance and settlement services. CME will provide the Commission with access to its personnel to answer reasonable questions during any such inspections related to its Cleared CDS clearance and settlement services.

(4) CME shall notify the Commission, on a monthly basis, of any material disciplinary actions taken against any CME clearing members utilizing its Cleared CDS clearance and settlement services, including the denial of services, fines, or penalties. CME shall notify the Commission promptly when CME involuntarily terminates the membership of an entity that is utilizing CME's Cleared CDS clearance and settlement services. Both notifications shall describe the facts and circumstances that led to CME's disciplinary action.

(5) CME shall notify the Commission of all changes to rules as defined under the CFTC rules, fees, and any other material events affecting its Cleared CDS clearance and settlement services, including material changes to risk management models. In addition, CME will post any rule or fee changes on the CME Web site. CME shall provide the

Commission with notice of all changes to its rules not less than one day prior to effectiveness or implementation of such rule changes or, in exigent circumstances, as promptly as reasonably practicable under the circumstances. Such notifications will not be deemed rule filings that require Commission approval.

(6) CME shall provide the Commission with annual reports and any associated field work concerning its Cleared CDS clearance and settlement services prepared by independent audit personnel that are generated in accordance with risk assessment of the areas set forth in the Commission's Automation Review Policy Statements. CME shall provide the Commission (beginning in its first year of operation) with its annual audited financial statements prepared by independent audit personnel for CME.

(7) CME shall report to the Commission all significant outages of clearing systems having a material impact on its Cleared CDS clearance and settlement services. If it appears that the outage may extend for 30 minutes or longer, CME shall report the systems outage immediately. If it appears that the outage will be resolved in less than 30 minutes, CME shall report the systems outage within a reasonable time after the outage has been resolved.

(8) CME, directly or indirectly, shall make available to the public on terms that are fair and reasonable and not unreasonably discriminatory: (i) all end-of-day settlement prices and any other prices with respect to Cleared CDS that CME may establish to calculate settlement variation or margin requirements for CME clearing members; and (ii) any other pricing or valuation information with respect to Cleared CDS as is published or distributed by CME.

(9) CME shall not materially change its methodology for determining Cleared CDS margin levels without prior written approval from the Commission staff, and from FINRA with respect to customer margin requirements that would apply to broker-dealers.

(b) Exemption from Sections 5 and 6 of the Exchange Act.

(1) CME shall be exempt from the requirements of Sections 5 and 6 of the Exchange Act and the rules and regulations thereunder in connection with its calculation of settlement prices for Cleared CDS, subject to the following conditions:

(i) CME shall report the following information with respect to its determination of daily settlement prices for Cleared CDS to the Commission within 30 days of the end of each quarter, and preserve such reports for as long as CME offers CDS clearing services and for a period of at least five years thereafter:

(A) the total dollar volume of CDS transactions executed during the quarter pursuant to CME's price quality auction methodology, broken down by reference entity, security, or index; and

(B) the total unit volume or notional amount executed during the quarter pursuant to CME's price quality auction methodology, broken down by reference entity, security, or index;

(ii) CME shall establish and maintain adequate safeguards and procedures to protect participants' confidential trading information related to Cleared CDS. Such safeguards and procedures shall include:

(A) limiting access to the confidential trading information of participants to those CME employees who have a need to access such

information in connection with the provision of CME CDS clearing services or who are responsible for compliance with this exemption or any other applicable rules; and

(B) implementing policies and procedures for CME employees with access to such information with respect to trading for their own accounts. CME shall adopt and implement adequate oversight procedures to ensure that the policies and procedures established pursuant to this condition are followed; and

(iii) CME shall satisfy the conditions of the temporary exemption from Section 17A of the Exchange Act set forth in paragraphs (a)(1) – (9) of this Order.

(2) Any CME clearing member shall be exempt from the requirements of Section 5 of the Exchange Act to the extent such CME clearing member uses any facility of CME to effect any transaction in Cleared CDS, or to report any such transaction, in connection with CME's clearance and risk management process for Cleared CDS.

(c) Exemption for CME and certain eligible contract participants.

(1) Persons eligible. The exemption in paragraph (c)(2) is available to:

(i) CME; and

(ii) Any eligible contract participant (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), other than:

(A) an eligible contract participant that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons;

(B) an eligible contract participant that is a self-regulatory organization, as that term is defined in Section 3(a)(26) of the Exchange Act; or

(C) a broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof).

(2) Scope of exemption.

(i) In general. Subject to the condition specified in paragraph (c)(3), such persons generally shall, solely with respect to Cleared CDS, be exempt from the provisions of the Exchange Act and the rules and regulations thereunder that do not apply in connection with security-based swap agreements. Accordingly, under this exemption, those persons would remain subject to those Exchange Act requirements that explicitly are applicable in connection with security-based swap agreements (i.e., paragraphs (2) through (5) of Section 9(a), Section 10(b), Section 15(c)(1), subsections (a) and (b) of Section 16, Section 20(d), and Section 21A(a)(1), and the rules thereunder that explicitly are applicable to security-based swap agreements). All provisions of the Exchange Act related to the Commission's enforcement authority in connection with violations or potential violations of such provisions also remain applicable.

(ii) Exclusions from exemption. The exemption in paragraph (c)(2)(i), however, does not extend to the following provisions under the Exchange Act:

(A) Paragraphs (42), (43), (44), and (45) of Section 3(a);

(B) Section 5;

(C) Section 6;

(D) Section 12 and the rules and regulations thereunder;

(E) Section 13 and the rules and regulations thereunder;

(F) Section 14 and the rules and regulations thereunder;

(G) Paragraphs (4) and (6) of Section 15(b);

(H) Section 15(d) and the rules and regulations thereunder;

(I) Section 15C and the rules and regulations thereunder;

(J) Section 16 and the rules and regulations thereunder; and

(K) Section 17A (other than as provided in paragraph (a)).

(3) Condition for CME clearing members. Any CME clearing member relying on this exemption must be in material compliance with the rules of CME.

(d) Exemption for certain CME clearing members.

Any CME clearing member registered as a futures commission merchant pursuant to Section 4f(a)(1) of the Commodity Exchange Act (but that is not registered as a broker or dealer under Section 15(b) of the Exchange Act (other than paragraph (11) thereof)) that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS for other persons shall be exempt from the provisions of the Exchange Act and the rules and regulations thereunder specified in paragraph (c)(2), solely with respect to Cleared CDS, subject to the following conditions:

(1) The clearing member shall be in material compliance with the rules of CME (including Rules 971 and 973 relating to Segregation and Secured Requirements and

Customer Accounts with the Clearing House), and also shall be in material compliance with applicable laws and regulations, relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared CDS;

(2) The customers for whom the clearing member receives or holds such funds or securities shall not be natural persons;

(3) The clearing member shall disclose to such customers that the clearing member is not regulated by the Commission, that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities held by the clearing member to collateralize Cleared CDS positions, and that the applicable insolvency law may affect such customers' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding;

(4) Customer funds and securities received or held by the clearing member for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for such customers shall be held in one of the following manners:

(i) In an account established in accordance with section 4d of the Commodity Exchange Act and CFTC Rules 1.20 through 1.30 and 1.32 [17 CFR 1.20 through 1.30 and 1.32] thereunder;

(ii) In the absence of an Order from the Commodity Futures Trading Commission ("CFTC") permitting the use of an account specified in subparagraph (d)(4)(i) for holding such funds and securities, in an account that is part of a separate account class, specified by CFTC Bankruptcy Rules [17 CFR 190.01 et

seq.], established for a futures commission merchant to hold its customers' positions in cleared OTC derivatives (and funds and securities posted to margin, guarantee, or secure such positions); or

(iii) If the clearing member is unable to hold such funds and securities as specified in subparagraph (d)(4)(i) or (ii), the clearing member shall:

(A) hold such funds and securities in a separate account that is established in accordance with CFTC Rule 30.7 [17 CFR 30.7], and

(B) disclose to such customers that uncertainty exists as to whether they would receive priority in bankruptcy (vis-á-vis other customers) with respect to any funds or securities held by the clearing member to collateralize Cleared CDS positions.

(5) The clearing member annually shall provide CME with

(i) an assessment by the clearing member that it is in compliance with all the provisions of subparagraphs (d)(4)(i) through (iii) in connection with such activities, and

(ii) a report by the clearing member's independent third-party auditor that attests to, and reports on, the clearing member's assessment described in subparagraph (d)(5)(i) and that is:

(A) dated as of the same date as, but which may be separate and distinct from, the clearing member's annual audit report;

(B) produced in accordance with the auditing standards followed by the independent third-party auditor in its audit of the clearing member's financial statements.

(6) To the extent that the clearing member receives or holds funds or securities of customers for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions, the clearing member shall segregate such funds and securities of customers from the clearing member's own assets (i.e., the member may not permit such customers to "opt out" of applicable segregation requirements for such funds and securities even if regulations or laws would permit the customer to "opt out").

(e) Exemption for certain registered broker-dealers.

(1) In general. A broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof) shall be exempt from the provisions of the Exchange Act and the rules and regulations thereunder specified in paragraph (c)(2), solely with respect to Cleared CDS, except:

(i) Section 7(c);

(ii) Section 15(c)(3);

(iii) Section 17(a);

(iv) Section 17(b);

(v) Regulation T, 12 CFR 200.1 et seq.;

(vi) Rule 15c3-1;

(vii) Rule 15c3-3;

(viii) Rule 17a-3;

(ix) Rule 17a-4;

(x) Rule 17a-5; and

(xi) Rule 17a-13.

(2) Broker-dealers that also are futures commission merchants. A CME clearing member that is a broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof) and that is also registered as a futures commission merchant pursuant to Section 4f(a)(1) of the Commodity Exchange Act and that receives or holds customer funds and securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS in a futures account (as that term is defined in Rule 15c3-3(a)(15) [17 CFR 240.15c3-3(a)(15)]) also shall be exempt from Exchange Act Rule 15c3-3, subject to the following conditions:

(i) the clearing member shall comply with the conditions set forth in paragraphs (d)(1), (2), (4), (5), and (6) above;

(ii) the clearing member shall disclose to Cleared CDS customers that the U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to funds or securities held by the clearing member to collateralize Cleared CDS positions, and that the applicable insolvency law may affect such customers' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding; and

(iii) The CME clearing member shall collect from each customer the amount of margin that is not less than the amount required for Cleared CDS under the margin rule of the self-regulatory organization that is its designated examining authority.

(f) For purposes of this Order, "Cleared CDS" shall mean a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to CME, that is offered only to, purchased only by, and sold only to eligible contract participants (as defined in

Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), and in which:

(1) the reference entity, the issuer of the reference security, or the reference security is one of the following:

(i) an entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available;

(ii) a foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States;

(iii) a foreign sovereign debt security;

(iv) an asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or

(v) an asset-backed security issued or guaranteed by Fannie Mae, Freddie Mac, or Ginnie Mae; or

(2) the reference index is an index in which 80 percent or more of the index's weighting is comprised of the entities or securities described in subparagraph (f)(1).

IV. Paperwork Reduction Act

Certain provisions of this Order contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995.[67] The Commission has submitted the proposed amendments to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor,

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67 44 U.S.C. 3501 et seq.

and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Collection of Information

As discussed above, the Commission has found it to be necessary or appropriate in the public interest and consistent with the protection of investors to grant the temporary conditional exemptions discussed in this Order until November 30, 2010. Among other things, the Order requires CME clearing members that receive or hold customers' funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions to: (a) make certain disclosures to those customers; (b) make additional disclosures to those customers if the clearing member holds such funds and securities in an account established in accordance with Commodity Futures Trading Commission Rule 30.7 (which would be permitted only if certain other types of accounts are not available for holding the collateral); and (c) provide CME with a self-assessment as to its compliance with certain exemptive conditions, and obtain a separate report, as part of its annual audit report, as to its compliance with the conditions of the Order regarding protection of customer assets.

B. Proposed Use of Information

These collection of information requirements are designed to inform Cleared CDS customers that their ability to recover assets placed with the clearing member are dependent on the applicable insolvency regime, to provide additional information about the potential risks associated with 30.7 accounts, provide Commission staff with access to information regarding whether clearing members are complying with the conditions of this Order, and provide documentation helpful for the protection of Cleared CDS customers' funds and securities.

C. Respondents

Based on conversations with industry participants, the Commission understands that approximately 12 firms may be presently engaged as CDS dealers and thus may seek to become a clearing member of CME. In addition, 8 more firms may enter into this business. Consequently, the Commission estimates that CME, like the other CCPs that clear CDS transactions, may have up to 20 clearing members.

D. Total Annual Reporting and Recordkeeping Burden

Paragraph III.(d)(3) of the Order requires that any CME clearing member holding customer collateral in connection with cleared customer CDS transactions that seeks to rely on the exemptive relief specified in paragraph III.(d) of the Order to disclose to those customers that the clearing member is not regulated by the Commission, that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities its holds, and that the applicable insolvency law may affect the customers' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding. The Commission believes that clearing members could use the language in the Order that describes the disclosure that must be made as a template to draft the disclosure. Consequently the Commission estimates, based on staff experience, that it would take a clearing member approximately one hour to draft the disclosure. Further, the Commission believes clearing members will include this disclosure with other documents or agreements provided to cleared CDS customers, and estimates (based on staff experience) that a clearing member may take approximately one half hour to determine how the disclosure should be integrated into those

other documents or agreements, resulting in a one-time aggregate burden of 30 hours for all 20 clearing members to comply with this requirement.[68]

Paragraph III.(d)(4)(iii)(B) of this Order further provides that if a CME clearing member holds customer collateral in connection with cleared CDS transactions in an account established in accordance with CFTC Rule 30.7, the clearing member must disclose to those customers that uncertainty exists as to whether they would receive priority in bankruptcy (vis-á-vis other customers) with respect to any funds or securities held by the clearing member to collateralize cleared CDS positions.[69] Here too, the Commission believes that clearing members could use the language in this Order that describes the disclosure that must be made as a template to draft the disclosure. Consequently the Commission estimates, based on staff experience, that it would take a CME clearing member approximately one hour to draft the disclosure. Further, the Commission believes clearing members will include this disclosure with other documents or agreements provided to cleared CDS customers, and estimates (based on staff experience) that a clearing member may take approximately one half hour to determine how the disclosure should be integrated into those other documents or agreements, resulting in a one-time aggregate burden of 30 hours for all 20 clearing members to comply with this requirement.[70]

Paragraph III.(d)(5) of the Order requires CME clearing members that receive or hold customers' funds or securities for the purpose of purchasing, selling, clearing, settling, or holding

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[68] 30 hours = (1 hour per clearing member to draft the disclosure + ½ hour per clearing member to determine how the disclosure should be integrated into those other documents or agreements) x 20 clearing members.

[69] CME clearing members will not be allowed to hold customer assets relating to cleared CDS in a 30.7 account if certain other options for segregating cleared CDS customer assets (e.g., an account established in accordance with Section 4d of the Commodity Exchange Act) become available.

[70] 30 hours = (1 hour per clearing member to draft the disclosure + ½ hour per clearing member to determine how the disclosure should be integrated into those other documents or agreements) x 20 clearing members.

Cleared CDS positions annually to provide CME with an assessment that it is in compliance with all the provisions of paragraphs III.(d)(4)(i) through (iii) of that order in connection with such activities, and a report by the clearing member's independent third-party auditor, as of the same date as the firm's annual audit report,[71] that attests to, and reports on, the clearing member's assessment. The Commission estimates that it will take each clearing member approximately five hours each year to assess its compliance with the requirements of the order relating to segregation of customer assets and attest that it is in compliance with those requirements.[72] Further, the Commission estimates that it will cost each clearing member approximately $100,000 more each year to have its auditor prepare this special report as part of its audit of the clearing member.[73] Consequently, the Commission estimates that compliance with this requirement will result in an aggregate annual burden of 100 hours for all 20 clearing members, and that the total additional cost of this requirement will be approximately $2,000,000 each year.[74]

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[71] The Commission intends for this requirement to be performed in conjunction with the firm's annual audit report.

[72] This estimate is based on burden estimates published with respect to other Commission actions that contained similar certification requirements (see e.g., Securities Act Release No. 8138 (Oct. 9, 2002), 67 FR 66208 (Oct. 30, 2002), and the burden associated with the Disclosure Required by the Sarbanes-Oxley Act of 2002, including requirements relating to internal control reports).

[73] This estimate is based on staff conversations with an audit firm. That firm suggested that the cost of such an audit report could range from $10,000 to $1 million, depending on the size of the clearing member, the complexity of its systems, and whether the work included a review of other systems already being reviewed as part of audit work the firm is already providing to the clearing member. While this condition would require that the auditor create a separate report, the auditor already must review custody of customer assets pursuant to CFTC Rule 17 CFR 1.16(d)(1). Consequently, the Commission believes the cost of this requirement for FCMs will be lower than it would be for other types of entities that are not subject to a specific audit requirement to review custody of customer assets.

[74] 100 hours = (5 hours for each clearing member to assess its compliance with the requirements of the order relating to segregation of customer assets and attest that it is in compliance with those requirements x 20 clearing members). $2 million = $100,000 per clearing member x 20 clearing members.

In sum, the Commission estimates that the total additional burden associated with all of the conditions contained in the exemptive order would be approximately 160 hours,[75] and that the total additional cost associated with compliance with the exemptive order would be approximately $2 million.[76]

E. Collection of Information is Mandatory

The collections of information contained in the conditions to this Order are mandatory for any entity wishing to rely on the exemptions granted by that order.

F. Confidentiality

Certain of the conditions of the this Order that address collections of information require CME clearing members to make disclosures to their customers, or to provide other information to CME.

G. Request for Comment on Paperwork Reduction Act Issues

The Commission requests, pursuant to 44 U.S.C. 3506(c)(2)(B), comment on the collections of information contained in this Order to:

(i) evaluate whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility;

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[75] 160 hours = (30 hours to draft the general disclosure and determine how the disclosure should be integrated into those other documents or agreements + 30 hours to draft the 30.7-specific disclosure and determine how the disclosure should be integrated into those other documents or agreements + 100 hours per year to assess its compliance with the requirements of the order relating to segregation of customer assets and attest that it is in compliance with those requirements). This total burden includes one-time burdens of 60 hours (= 30 hours to draft the general disclosure and determine how the disclosure should be integrated into those other documents or agreements + 30 hours to draft the 30.7-specific disclosure and determine how the disclosure should be integrated into those other documents or agreements) and annual burdens of 100 hours (100 hours per year to assess its compliance with the requirements of the order relating to segregation of customer assets and attest that it is in compliance with those requirements).

[76] The estimated cost of the additional audit report. See footnote 74 and accompanying text.

(ii) evaluate the accuracy of the Commission's estimates of the burden of the collections of information;

(iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and

(iv) evaluate whether there are ways to minimize the burden of the collections of information on those required to respond, including through the use of automated collection techniques or other forms of information technology.

Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090, and refer to File No. S7-06-09. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this document in the Federal Register; therefore, comments to OMB are best assured of having full effect if OMB receives them within 30 days of this publication. The Commission has submitted the proposed collections of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-06-09, and be submitted to the Securities and Exchange Commission, Records Management Office, 100 F Street, NE, Washington, DC 20549.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61804 / March 31, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13646

In the Matter of **PETER C. DUNNE,** **Respondent.**	**ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

On October 13, 2009, the Securities and Exchange Commission ("Commission") issued a Corrected Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Notice of Hearing against Peter C. Dunne ("Dunne" or "Respondent").

II.

In connection with the above-captioned 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 Making Findings and Imposing Remedial Sanctions Pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

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

1. From March 2008 until August 2008, Dunne was a registered representative associated with Aura Financial Services, Inc. ("Aura"), a broker-dealer registered with the Commission. Dunne, 35 years old, is a resident of Medford, New York.

2. On September 15, 2009, a final judgment was entered against Dunne, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Aura Financial Services, Inc., et al., Civil Action Number 09-CIV-21592, in the United States District Court for the Southern District of Florida.

3. The Commission's complaint alleged that from April 2008 through August 2008, Dunne "churned" the accounts of Aura clients by engaging in excessive trading to generate commissions for himself rather than in the clients' interests. The complaint alleged that these actions operated as a fraud and deceit on the investors.

IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act that Respondent Dunne be, and hereby is barred from association with any broker or dealer with the right to reapply for association after five (5) 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.

Elizabeth M. Murphy
Secretary