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CHAIRMAN'S  
CORRESPONDENCE UNIT

**Creative Investment Research, Inc.**

*William Michael Cunningham*

*Social Investment Adviser*

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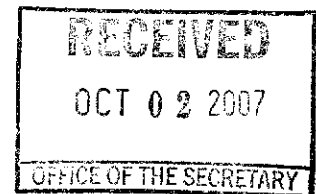
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Monday, October 1, 2007

The Honorable Christopher Cox, Chairman  
The Honorable Annette L. Nazareth, Commissioner  
The Honorable Kathleen L. Casey, Commissioner  
The Honorable Paul S. Atkins, Commissioner  
US Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549



RE: File Number S7-16-07 and S7-17-07

Dear Mr. Chairman and Commissioners

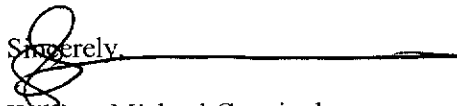
William Michael Cunningham and Creative Investment Research, Inc. (CIR) appreciate the time and effort the Commission has devoted to the proposed SEC rules issued as File Number S7-16-07 and S7-17-07, but we oppose the proposals for reasons detailed in the attached document.

We understand that:

“Comments sent via paper will be converted to PDF and then posted on our website. We do not edit personal identifying information from submissions; submit only information that you wish to make available publicly.”

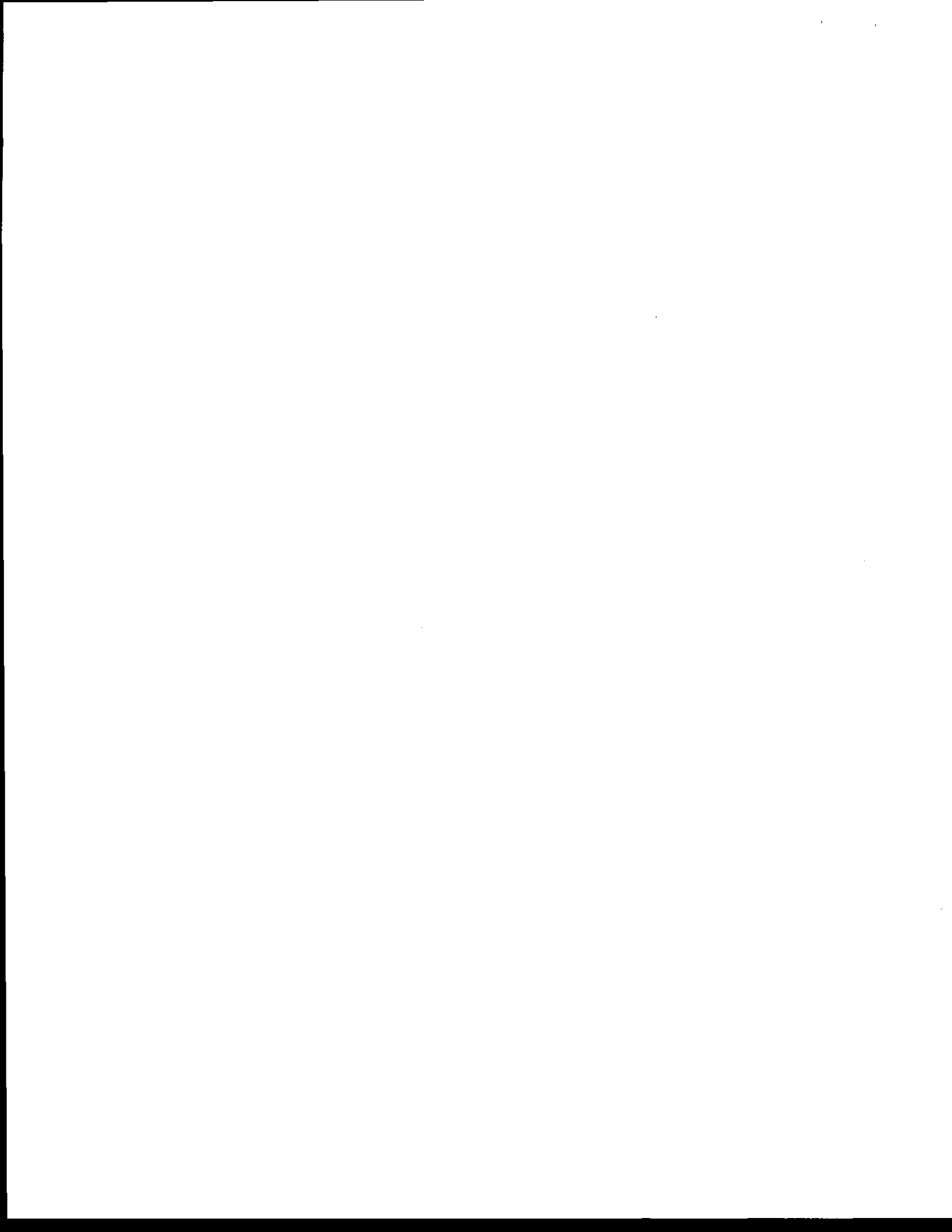
We do not wish to make the appendix sections (Appendix I and II) public, since they contain confidential and proprietary information. We will electronically submit a comment to the SEC without those attachments.

Thank you,

Sincerely,  


William Michael Cunningham  
Social Investing Adviser  
for William Michael Cunningham and Creative Investment Research, Inc.

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**Monday, October 1, 2007**

Ms. Nancy Morris

Secretary

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

100 F Street, NW

Washington, D.C. 20549-9303

RE: File Number S7-16-07 and S7-17-07

Dear Ms. Morris:

William Michael Cunningham and Creative Investment Research, Inc. (CIR) appreciate the time and effort the Commission has devoted to the proposed SEC rules issued as File Number S7-16-07 and S7-17-07, but we oppose the proposals for reasons detailed below.

The importance of these rule proposals is clear:

“..43 resolutions (asking companies how they will cope with climate change) were introduced to the shareholders meetings of American firms this year, according to the Investor Network on Climate Risk, a coalition of green investors.”<sup>1</sup>

While we support the Commission’s efforts, under the Chairman’s leadership, to revise “current proxy rules and related disclosure requirements,” if the proposed rules had been in place virtually none of these resolutions could have been offered. Yet, “a motion calling for Exxon Mobil, an American oil giant, to set targets for (greenhouse gas) emissions cuts, won the approval

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<sup>1</sup> “Climate Change. Heavy weather: Firms are coming under increasing pressure to say more about global warming.” *The Economist*, September 22, 2007. Page 76.

of 31% of shareholders."<sup>2</sup>

Given this, we conclude that the proposed revisions do not "more effectively serve the essential purpose of facilitating the exercise of shareholders' rights under state law." They constrict, rather than expand, shareholders rights.

We note that "the Commission held three roundtables in May 2007. This series of roundtables began with a re-examination of the fundamental principles of federalism that provide the context for our role under Section 14(a) of the Exchange Act." We urge the Commission to get opinions on these matters from a more culturally and economically diverse set of persons.

## Background

William Michael Cunningham registered with the U.S. Securities and Exchange Commission as an Investment Advisor on February 2, 1990. He registered with the D.C. Public Service Commission as an Investment Advisor on January 28, 1994. Mr. Cunningham manages an investment advisory and research firm, Creative Investment Research, Inc.

Creative Investment Research, Incorporated, a Delaware corporation, was founded in 1989 to expand the capacity of capital markets to provide capital, credit and financial services in minority and underserved areas and markets. We have done so by creating new financial instruments and by applying existing financial market technology to underserved areas. The Community Development Financial Institution Fund of the US Department of the Treasury certified the firm as a Community Development Entity on August 29, 2003. The Small Business Administration certified the firm as an 8(a) program participant on October 19, 2005. We have not received any revenue due to our participation in the 8(a) program.

Mr. Cunningham's understanding of capital markets is based on firsthand knowledge obtained in a number of positions at a diverse set of major financial institutions. He served as Senior Investment Analyst for an

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<sup>2</sup> Ibid.

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insurance company. Mr. Cunningham was an Institutional Sales Representative in the Fixed Income and Futures and Options Group for a leading Wall Street firm.

In 1991, Mr. Cunningham created the first systematic bank analysis system using social and financial data, the Fully Adjusted Return® methodology. In 1992, he developed the first CRA securitization, a Fannie Mae MBS security backed by home mortgage loans originated by minority banks and thrifts. .

In 2001, he helped create the first predatory lending remediation/repair MBS security.<sup>3</sup>

Mr. Cunningham also served as Director of Investor Relations for a New York Stock Exchange-traded firm. On November 16, 1995, his firm launched one of the first investment advisor websites. He is a member of the CFA Institute and of the Twin Cities Society of Security Analysts, Inc.

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Pool	Client	Originator	Social Characteristics
FN374870	Faith-based Pension Fund	National Mortgage Broker	Mortgages originated by minority and women-owned financial institutions serving areas of high social need.
FN296479			
FN300249			
GN440280	Utility Company Pension Fund	Minority-owned financial institutions	
FN374869			
FN376162			
FN254066	Faith-based Pension Fund	Local bank	Predatory lending remediation

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The firm and Mr. Cunningham have long been concerned with the integrity of the banking and securities markets:

- In September, 1998, Mr. Cunningham opposed the application, approved by the Federal Reserve Board on September 23, 1998, by Travelers Group Inc., New York, New York, to become a bank holding company by acquiring Citicorp, New York, New York, and to retain certain nonbanking subsidiaries and investments of Travelers, including Salomon Smith Barney Inc., New York, New York. Mr. Cunningham based his opposition on the fact that Salomon Smith Barney Inc. had a history of attempting to monopolize markets and defrauding investors. This single fact rendered the merger potentially injurious to the public welfare.

Specifically, Mr. Cunningham felt the merger was not consistent with 12 U.S.C. Section 1841 et. seq., the Bank Holding Company Act of 1956. The Act states that:

"The (Federal Reserve) Board shall not approve -  
(B) any other proposed acquisition or merger or consolidation under this section whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade.."

On April 28, 2003, Citigroup Global Markets Inc. and Salomon Smith Barney Inc. (SSB) settled an S.E.C. enforcement action involving conflicts of interest between research and investment banking operations. Citigroup Global Markets Inc. and Salomon Smith Barney Inc. paid fines totaling \$400 million. The firms were found, *again*, to be defrauding investors by operating schemes in restraint of trade.

- On Monday, April 11, 2005, Mr. Cunningham spoke on behalf of investors at a fairness hearing regarding the \$1.4 billion dollar Global Research Analyst Settlement. The hearing was held in Courtroom 11D of the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York. *No other investment advisor testified at the hearing.* On April 22, 2005, as

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a direct result of Mr. Cunningham's testimony, the Court extended the publication schedule and ordered that the notice schedule include publications directed at women and minorities. (See: <http://www.sec.gov/spotlight/globalsettlement/order042205.pdf> )

- Rather than support and engage in the types of predatory subprime lending practices that have negatively impacted the mortgage market and the country as a whole, we proposed to develop alternative, socially responsible methods to enhance homeownership opportunities for minorities and women. As an 8(a) firm, we submitted an unsolicited proposal to Department of Housing and Urban Development (HUD) on April 7, 2006. In our proposal, we offered to research and create a collaborative, market-based approach to increase market participation in a HUD-based socially responsible mortgage lending program. HUD replied that the "Office of Policy Development and Research (to whom we submitted the proposal) is not in a position to support this activity."

Recently, we have observed several cases where corporate management unfairly transferred value from outsider to insider shareholders.<sup>4</sup> These abuses have been linked to the abandonment of ethical principles. Faulty market practices mask a company's true value and misallocate capital by moving investment dollars from deserving companies to unworthy companies.

Signal market participants have abandoned ethical principles in the pursuit

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<sup>4</sup> Including, but not limited to, Adlephia Communications, Alliance Capital Management, American Express Financial, American Funds, AXA Advisors, Bank of America's Nations Funds, Bank One, Canadian Imperial Bank of Commerce, Canary Capital, Charles Schwab, Cresap, Inc., Empire Financial Holdings, Enron, Fannie Mae, Federated Investors, FleetBoston, Franklin Templeton, Fred Alger Management, Freddie Mac, Freemont Investment Advisors, Gateway, Inc., Global Crossing, H.D. Vest Investment Securities, Heartland Advisors, Homestore, Inc., ImClone, Interactive Data Corp., Invesco Funds Group Inc., Janus Capital Group Inc., Legg Mason, Limsco Private Ledger, Massachusetts Financial Services Co., Millennium Partners, Mutuals.com, PBHG Funds, Pilgrim Baxter, PIMCO, Prudential Securities, Putnam Investment Management LLC, Raymond James Financial, Samaritan Asset Management, Security Trust Company, N.A., State Street Research, Strong Mutual Funds, Tyco, UBS AG, Veras Investment Partners, Wachovia Corp., and WorldCom. Accounting firms, including Arthur Andersen and Ernst & Young aided and abetted efforts to do so. We believe there are hundreds of other cases.

of material well being. This has occurred in the most materially advantaged county ever. By 2007, marketplace ethics reached a new low.

We believe optimal public policies are based on facts. The following are the simple facts:

- On April 28, 2003, every major US investment bank, including Merrill Lynch, Goldman Sachs, Morgan Stanley, Citigroup, Credit Suisse First Boston, Lehman Brothers Holdings, J.P. Morgan Chase, UBS Warburg, and U.S. Bancorp Piper Jaffray, were found to have aided and abetted efforts to defraud investors. The firms were fined a total of \$1.4 billion dollars by the SEC, triggering the creation of a Global Research Analyst Settlement Fund.
- In May, 2003, the SEC disclosed that several "brokerage firms paid rivals that agreed to publish positive reports on companies whose shares..they issued to the public. This practice made it appear that a throng of believers were recommending these companies' shares." This was false. "From 1999 through 2001, for example, one firm paid about \$2.7 million to approximately 25 other investment banks for these so-called research guarantees, regulators said. Nevertheless, the same firm boasted in its annual report to shareholders that it had come through investigations of analyst conflicts of interest with its 'reputation for integrity' maintained."
- On September 3, 2003, the New York State Attorney General announced he has "obtained evidence of widespread illegal trading schemes, 'late trading' and 'market timing,' that potentially cost mutual fund shareholders billions of dollars annually. This, according to the Attorney General, "is like allowing betting on a horse race after the horses have crossed the finish line."
- On September 4, 2003, a major investment bank, Goldman Sachs, admitted that it had violated anti-fraud laws. Specifically, the firm misused material, nonpublic information that the US Treasury would suspend issuance of the 30-year bond. The firm agreed to "pay over \$9.3 million in penalties." On April 28, 2003, the same firm was found to have "issued research reports that were not based on principles of fair dealing and good faith .. contained exaggerated or unwarranted claims.. and/or contained opinions for which there were no reasonable bases." The firm was fined \$110 million dollars, for a total of \$119.3 million dollars in fines in six months.

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- On December 18, 2003, the Securities and Exchange Commission "announced an enforcement action against Alliance Capital Management L.P. (Alliance Capital) for defrauding mutual fund investors. The Commission ordered Alliance Capital to pay \$250 million. The Commission also ordered Alliance Capital to undertake certain compliance and fund governance reforms designed to prevent a recurrence of the kind of conduct described in the Commission's Order. Finally, the Commission found that "Alliance Capital breached its fiduciary duty to (it's) funds and misled those who invested in them."
- On October 8, 2004, the Securities and Exchange Commission "announced..enforcement actions against Invesco Funds Group, Inc. (IFG), AIM Advisors, Inc. (AIM Advisors), and AIM Distributors, Inc. (ADI). The Commission issued an order finding that IFG, AIM Advisors, and ADI violated the federal securities laws by facilitating widespread market timing trading in mutual funds with which each entity was affiliated. The settlements require IFG to pay \$215 million in disgorgement and \$110 million in civil penalties, and require AIM Advisors and ADI to pay, jointly and severally, \$20 million in disgorgement and an aggregate \$30 million in civil penalties."
- On November 4, 2004, the Securities and Exchange Commission "filed a settled civil action in the United States District Court for the District of Columbia against Wachovia Corporation (Wachovia) for violations of proxy disclosure and other reporting requirements in connection with the 2001 merger between First Union Corporation (First Union) and Old Wachovia Corporation (Old Wachovia). Under the settlement, Wachovia must pay a \$37 million penalty and is to be enjoined from future violations of the federal securities laws."
- On November 17, 2004, the Securities and Exchange Commission announced "charges concerning undisclosed market timing against Harold J. Baxter and Gary L. Pilgrim in the Commissions' pending action in federal district court in Philadelphia." Based on these charges, Baxter and Pilgrim agreed to "pay \$80 million - \$60 million in disgorgement and \$20 million in civil penalties."
- On November 30, 2004, the Securities and Exchange Commission announced "the filing..of charges against American International Group, Inc. (AIG) arising out of AIG's offer and sale of an earnings management product." The company "agreed to pay a total of \$126 million, consisting of a penalty of \$80 million, and disgorgement and prejudgment interest of \$46 million."

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- On December 22, 2004, "the Securities and Exchange Commission, NASD and the New York Stock Exchange announced..enforcement proceedings against Edward D. Jones & Co., L.P., a registered broker-dealer headquartered in St. Louis, Missouri." According to the announcement, "Edward Jones failed to adequately disclose revenue sharing payments that it received from a select group of mutual fund families that Edward Jones recommended to its customers." The company agreed to "pay \$75 million in disgorgement and civil penalties."
- On January 25, 2005, "the Securities and Exchange Commission announced the filing in federal district court of separate settled civil injunctive actions against Morgan Stanley & Co. Incorporated (Morgan Stanley) and Goldman, Sachs & Co. (Goldman Sachs) relating to the firms' allocations of stock to institutional customers in initial public offerings (IPOs) underwritten by the firms during 1999 and 2000."
- According to the Associated Press, on January 31, 2005, "the nation's largest insurance brokerage company, Marsh & McLennan Companies Inc., based in New York, will pay \$850 million to policyholders hurt by" corporate practices that included "bid rigging, price fixing and the use of hidden incentive fees." The company will issue a public apology calling its conduct "unlawful" and "shameful," according to New York State Attorney General Elliott Spitzer. In addition, "the company will publicly promise to adopt reforms."
- On Feb. 9, 2005, the Securities and Exchange Commission "announced the settlement of an enforcement action against Columbia Management Advisors, Inc. (Columbia Advisors), Columbia Funds Distributor, Inc. (Columbia Distributor), and three former Columbia executives in connection with undisclosed market timing arrangements in the Columbia funds. In settling the matter, the Columbia entities will pay \$140 million, all of which will be distributed to investors harmed by the conduct. The SEC also brought fraud charges against two additional former Columbia senior executives in federal court in Boston."
- On March 23, 2005, the Securities and Exchange Commission "announced that Putnam Investment Management, LLC (Putnam) will pay \$40 million. The Commission issued an order that finds Putnam failed to adequately disclose to the Putnam Funds' Board of Trustees and the Putnam Funds' shareholders the conflicts of interest that arose from..arrangements for

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increased visibility within the broker-dealers' distribution systems."

- On March 23, 2005, the Securities and Exchange Commission (Commission) "announced that it instituted and simultaneously settled an enforcement action against Citigroup Global Markets, Inc. (CGMI) for failing to provide customers with important information relating to their purchases of mutual fund shares."
- On April 19, 2005, the Securities and Exchange Commission "announced that KPMG LLP has agreed to settle the SEC's charges against it in connection with the audits of Xerox Corp. from 1997 through 2000." As part of the settlement, KPMG paid a fine totaling \$22.475 million.
- On April 12, 2005, the Securities and Exchange Commission "instituted and simultaneously settled an enforcement action against the New York Stock Exchange, Inc., finding that the NYSE, over the course of nearly four years, failed to police specialists, who engaged in widespread and unlawful proprietary trading on the floor of the NYSE." As part of the settlement, the "NYSE agreed to an undertaking of \$20 million to fund regulatory audits of the NYSE's regulatory program every two years through the year 2011." On that same date, the Commission "instituted administrative and cease-and-desist proceedings against 20 former New York Stock Exchange specialists for fraudulent and other improper trading practices."
- On April 19, 2005, the Securities and Exchange Commission announced "that KPMG LLP has agreed to settle the SEC's charges against it in connection with the audits of Xerox Corp. from 1997 through 2000. As part of the settlement, KPMG consented to the entry of a final judgment in the SEC's civil litigation against it pending in the U.S. District Court for the Southern District of New York. The final judgment..orders KPMG to pay disgorgement of \$9,800,000 (representing its audit fees for the 1997-2000 Xerox audits), prejudgment interest thereon in the amount of \$2,675,000, and a \$10,000,000 civil penalty, for a total payment of \$22.475 million."
- On April 28, 2005, the Securities and Exchange Commission announced "that it has instituted settled enforcement proceedings against Tyson Foods, Inc. and its former Chairman and CEO Donald "Don" Tyson. The SEC charged that in proxy statements filed with the Commission from 1997 to 2003, Tyson Foods made misleading disclosures of perquisites and personal benefits provided to Don Tyson both prior to and after his retirement as senior

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chairman in October 2001.”

- On May 31, 2005, the Securities and Exchange Commission “announced settled fraud charges against two subsidiaries of Citigroup, Inc. relating to the creation and operation of an affiliated transfer agent that has served the Smith Barney family of mutual funds since 1999. Under the settlement, the respondents are ordered to pay \$208 million in disgorgement and penalties and to comply with substantial remedial measures, including an undertaking to put out for competitive bidding certain contracts for transfer agency services for the mutual funds.”
- On June 2, 2005, the Securities and Exchange Commission “filed securities fraud charges against Amerindo Investment Advisors, Inc., Alberto William Vilar and Gary Alan Tanaka, Amerindo’s co-founders and principals, for misappropriating at least \$5 million from an Amerindo client.”
- On June 9, 2005, the Commission announced that “Roys Poyiadjis, a former CEO of AremisSoft Corporation, which was a software company with offices in New Jersey, London, Cyprus, and India, agreed to final resolution of fraud charges brought against him by the Securities and Exchange Commission in October 2001. In documents filed with the federal district court in Manhattan, Poyiadjis consented to disgorge approximately \$200 million of unlawful profit from his trading in AremisSoft stock -- among the largest recoveries the SEC has obtained from an individual.”
- On July 20, 2005, the Securities and Exchange Commission “announced a settled administrative proceeding against Canadian Imperial Bank of Commerce's (CIBC) broker-dealer and financing subsidiaries for their role in facilitating deceptive market timing and late trading of mutual funds by certain customers. The Commission ordered the subsidiaries, CIBC World Markets Corp. (World Markets), a New York based broker-dealer, and Canadian Imperial Holdings Inc. (CIHI), to pay \$125 million, consisting of \$100 million in disgorgement and \$25 million in penalties.”
- On August 15, 2005, the Securities and Exchange Commission “charged four brokers and a day trader with cheating investors through a fraudulent scheme that used squawk boxes to eavesdrop on the confidential order flow of major brokerages so they could ‘trade ahead’ of large orders at better prices.”