

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2715 / March 5, 2008

INVESTMENT COMPANY ACT OF 1940
Release No. 28187 / March 5, 2008

Admin. Proc. File No. 3-12978

IN THE MATTER OF SCOTT E. DESANO, THOMAS H. BRUDERMAN, TIMOTHY J. BURNIEIKA, ROBERT L. BURNS, DAVID K. DONOVAN, EDWARD S. DRISCOLL, JEFFREY D. HARRIS, CHRISTOPHER J. HORAN, STEVEN P. PASCUCCI, and KIRK C. SMITH

The United States Securities and Exchange Commission (Commission) announced the issuance of an Order Instituting Administrative and Cease-and-Desist Proceedings and Notice of Hearing Pursuant to 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 (the Order) against Scott E. DeSano, Thomas H. Bruderman, Timothy J. Burnieika, Robert L. Burns, David K. Donovan, Edward S. Driscoll, Jeffrey D. Harris, Christopher J. Horan, Steven P. Pascucci, and Kirk C. Smith (collectively, the Respondents). The Division of Enforcement (Division) alleges that each of the Respondents was affiliated with FMR Co., Inc., a wholly owned subsidiary of Fidelity Management & Research Company (collectively, Fidelity), which provides portfolio management services to clients, including the registered investment companies marketed under the “Fidelity Investments” trade name (the Fidelity Funds). The Division alleges that, during the period from January 1, 2002 to October 2004 (the Relevant Period), the Respondents accepted, in aggregate, more than \$1.5 million in travel, entertainment, and gifts from brokerage firms that sought and obtained orders for securities transactions on behalf of the Fidelity Funds. The Division alleges that those brokerage firms each received millions of dollars in commission revenue for handling orders for Fidelity.

According to the Order, during the Relevant Period, Bruderman, Burnieika, Burns, Donovan, Driscoll, Harris, Horan, Pascucci, and Smith (the Respondent Traders) were employed as traders on Fidelity’s Boston domestic equity trading desk, and DeSano was senior vice president in charge of global equity trading responsible for supervising more than 30 equity traders, including the Respondent Traders. The Division further alleges that DeSano and the Respondent Traders variously accepted from brokers, in aggregate, dozens of expensive trips, frequently by private jet; family vacations to Bermuda, Nantucket and the Caribbean; weekends in Las Vegas; lodging and golf outings at fine hotels and exclusive golf clubs; and an extravagant, three-day bachelor party for Bruderman in Miami (which DeSano attended). In addition, the Division alleges that

Bruderman accepted illegal drugs from brokers, and Driscoll engaged in illegal gambling facilitated by a broker without disclosing that information to any manager at Fidelity.

According to the Order, DeSano personally accompanied certain of the Respondent Traders on several trips by private jet paid for by brokers, including Bruderman's elaborate bachelor party, personally solicited tickets from brokers for himself and others, and was aware of additional private jet trips and tickets provided to Respondent Traders by brokers. The Division further alleges that DeSano knew that certain Fidelity traders directed transactions to brokers who provided them with travel, entertainment and gifts, and also to brokers with whom certain Fidelity traders had a familial or romantic relationship. The Division alleges that DeSano failed reasonably to supervise the Respondent Traders plus another equity trader, Marc Beran, whose receipt of travel and gifts was set forth in a separate administrative proceeding instituted today. The Division further alleges that DeSano failed to ensure that Fidelity's disclosures regarding broker selection were amended to reflect facts of which he was aware. Further, the Order alleges that DeSano made false and misleading statements to certain Fidelity Fund trustees concerning broker selection.

The Order alleges that: the Respondents each willfully violated Section 17(e)(1) of the Investment Company Act, in that they received travel, entertainment and/or gifts (and illegal drugs for Bruderman and the facilitation of illegal gambling for Driscoll) from brokerage firms that sought and obtained brokerage business from Fidelity; that DeSano failed reasonably to supervise the Respondent Traders and Beran, within the meaning of Section 203(e)(6) of the Investment Advisers Act of 1940 ("Advisers Act"), with a view to preventing their violations of Section 17(e)(1) of the Investment Company Act; that DeSano aided and abetted and was a cause of Fidelity's violation of Section 206(1) and 206(2) through his materially false and misleading statements and omissions to the trustees of the Fidelity Funds concerning the factors considered in the selection of brokers and the bases upon which brokers competed for the Fidelity Funds' brokerage business; that DeSano was a cause of Fidelity's violation of Section 206(2) of the Advisers Act through its failure to seek best execution for its clients' securities transactions by allowing the traders' receipt of travel, entertainment and gifts and the traders' family or romantic relationships to enter into the traders' selection of brokers; DeSano was a cause of Fidelity's violation of Section 206(2) of the Advisers Act through its failure to disclose to its clients material conflicts of interest arising from certain Fidelity executives and traders' receipt of travel, entertainment and gifts paid for by brokers, and the traders' family or romantic relationships with brokers; that DeSano was also a cause of Fidelity's violations of Sections 204, 206(2) and 207 of the Advisers Act and Rule 204-1, thereunder, through its materially false and misleading statements and omissions in its Forms ADV about its selection of brokers; and that Bruderman and Driscoll were each a cause of Fidelity's violations of Section 206(2) of the Advisers Act by the receipt of illegal drugs for Bruderman from brokers, and the facilitation of illegal gambling for Driscoll by a broker.

A hearing will be held by an administrative law judge to determine whether the allegations contained in the Order are true, to provide the Respondents an opportunity to

dispute these allegations, and to determine what, if any, remedial sanctions are appropriate and in the public interest. The Order requires the Administrative Law Judge to 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. See also the Order in this matter.