

JUDGE SWAIN

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

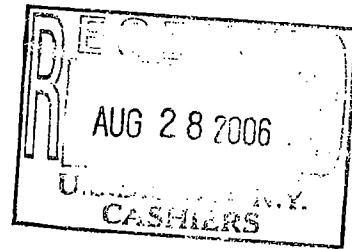
Plaintiff,

v.

FREDERICK J. O'MEALLY,  
JASON N. GINDER,  
MICHAEL L. SILVER and  
BRIAN P. CORBETT,

Defendants.

Civil Action No.



COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission") alleges the following against defendants Frederick J. O'Meally, Jason N. Ginder, Michael L. Silver, and Brian P. Corbett:

SUMMARY

1. Defendants O'Meally, Ginder, Silver and Corbett were registered representatives (*i.e.*, brokers) in branch offices of Prudential Securities, Inc. ("PSI") located in the New York City area. From at least January 2001 until September 2003, they defrauded dozens of mutual fund companies and the funds' shareholders in order to engage in thousands of "market timing" trades worth more than \$2.5 billion.

2. "Market timing" involves the frequent buying, selling or exchanging of mutual fund shares in order to exploit inefficiencies in mutual fund pricing. Though not illegal *per se*,

market timing can harm mutual fund shareholders in several respects, and beginning in the late 1990s, many mutual fund companies began to impose restrictions on excessive trading in their funds. If a fund company determined that a particular customer or broker had violated its trading limits, it typically refused to accept additional transactions from that customer or broker.

3. The defendants knew that certain mutual fund companies monitored activity in their funds for excessive trading. To make their market timing harder to detect, the defendants opened more than 750 accounts for what were, in reality, only a handful of customers, and they submitted trades using dozens of broker identification numbers (called "FA numbers" at PSI). When a fund company managed to identify certain accounts and FA numbers as engaged in market timing, the defendants used accounts and FA numbers that had not yet been blocked to evade the restrictions and continue trading. The defendants' use of multiple accounts and FA numbers concealed their and their customers' identities and thus misled the fund companies into processing trades from brokers and customers whose business they wanted to reject.

4. Through the activities alleged in this Complaint, defendants O'Meally, Ginder, Silver and Corbett 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.

5. Accordingly, the Commission seeks: (a) entry of a permanent injunction prohibiting the defendants from further violations of the relevant provisions of the Securities Act, the Exchange Act, and the rules thereunder; (b) disgorgement of the defendants' ill-gotten gains, plus prejudgment interest; and (c) the imposition of a civil penalty against each defendant due to the egregious nature of their violations.

## JURISDICTION

6. The Commission seeks a permanent injunction and disgorgement of ill-gotten gains pursuant to Section 20(b) of the Securities Act [15 U.S.C. §77t(b)] and Section 21(d)(1) of the Exchange Act [15 U.S.C. §78u(d)(1)]. The Commission seeks the imposition of civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

7. This Court has jurisdiction over this action pursuant to Sections 20(d) and 22(a) of the Securities Act [15 U.S.C. §§77t(d), 77v(a)] and Sections 21 and 27 of the Exchange Act [15 U.S.C. §§78u, 78aa]. Many of the acts and transactions alleged in this Complaint occurred in this District.

8. In connection with the conduct described in this Complaint, the defendants directly or indirectly made use of the mails or the means or instruments of transportation or communication in interstate commerce.

## DEFENDANTS

9. **O'Meally**, age 45, lives in Bay Shore, New York. He joined PSI in 1994. During the relevant period, he was employed by PSI as a registered representative, first in the Liberty Plaza branch in Manhattan and then in the Garden City branch on Long Island. His employment was terminated in October 2003 following an investigation by the joint venture that had purchased PSI's retail brokerage business.

10. **Ginder**, age 42, lives in New Fairfield, Connecticut. He joined PSI in early 2000. During the relevant period, he was employed by PSI as a registered representative in the "Special

Accounts” branch in Manhattan. His employment was terminated in October 2003 following the investigation mentioned above.

11. **Silver**, age 35, lives in Woodcliff Lake, New Jersey. He joined PSI in 1996. During the relevant period, he was employed by PSI as a registered representative in the Madison Avenue branch in Manhattan. He resigned from the joint venture mentioned above in March 2004.

12. **Corbett**, age 34, lives in Sea Cliff, New York. He joined PSI in 1995. During the relevant period, he was employed by PSI as a registered representative whose primary responsibility was to assist O’Meally. His employment was terminated in October 2003 following the investigation mentioned above.

#### **RELATED PARTY**

13. Prior to July 1, 2003, **Prudential Securities, Inc.** (“PSI”) was a registered broker-dealer and investment adviser that was a wholly-owned subsidiary of Prudential Financial, Inc. (“Prudential Financial”). Prudential Financial is a publicly-traded holding company whose operating subsidiaries offer a wide range of insurance, investment management services, and other financial products. On July 1, 2003, Prudential Financial transferred the assets relating to PSI’s retail brokerage operations in the United States to a newly-formed joint venture owned by Prudential Financial and Wachovia Corporation. (The joint venture is now named Wachovia Securities Financial Holdings, LLC.) In September 2003, the joint venture conducted an internal investigation of market timing by PSI brokers.

## STATEMENT OF FACTS

### Market Timing in Mutual Fund Shares

14. Market timing in mutual fund shares involves the frequent buying and selling of shares of the same mutual fund, or the frequent exchanging of mutual fund shares within the same fund complex, in order to exploit inefficiencies in mutual fund pricing. Though not illegal *per se*, market timing can harm mutual fund shareholders in several respects: (a) it can dilute the value of the shareholders' shares; (b) it can disrupt the management of the mutual fund's investment portfolio; and (c) it can impose significant administrative costs for the fund.

15. Beginning in the late 1990s, many mutual fund companies determined that market timing harmed their long-term shareholders. As a result, some began to impose restrictions on excessive trading. Some fund companies imposed a limit on the number of transactions that an account holder could effect within a certain time period (*i.e.*, no more than one exchange per quarter). Other fund companies formally reserved the right to reject "excessive" or "abusive" trading without providing a specific definition of those terms. In many instances, language concerning restrictions on excessive trading was added to the fund's prospectus.

16. To implement these restrictions on excessive trading, some fund companies began to monitor transactions in their funds, often screening for frequent transactions by the same customer, frequent transactions by the same broker, and transactions above a particular size (*i.e.*, transactions larger than \$50,000 or \$200,000). Typically, if a fund company determined that a particular customer or broker had violated its trading limits, it would refuse to accept additional transactions from that customer or broker (other than a redemption of the customer's investment).

### **The Defendants and Their Market Timing Customers**

17. O'Meally led a team of brokers and assistants who spent most of their time on market timing transactions. O'Meally rarely appeared in the office, though he was in frequent contact with his team by phone, and Corbett directed the team's day-to-day activities, even sending emails to other PSI personnel under O'Meally's name. All the team's market timing activities, including the opening of new customer accounts, the obtaining of new FA numbers, and the submission of mutual fund transactions using those accounts and FA numbers, were made at O'Meally's direction or in accordance with his instructions.

18. O'Meally had five principal customers for whom his team placed market timing transactions. The customers, each of whom acted as investment adviser for various hedge funds, were: (a) Atlantique Capital Advisors LLC ("Atlantique"), based in New York; (b) Canary Capital Partners ("Canary"), based in New York; (c) Heuristic Advisors LLC ("Heuristic"), based in New York and a subsidiary of Delphi Financial Group; (d) E.D.&F. Man, Inc., later known as Man Financial, Inc. ("Man Financial"), based in Chicago; and (e) Samaritan Asset Management Services LLC ("Samaritan"), based in Chicago. Man Financial and Samaritan each had two sub-advisers – Alastor Capital Management ("Alastor"), based in San Jose, California, and Johnson Capital Management ("Johnson"), based in Fairfax, Virginia.

19. O'Meally received permission from PSI to charge his market timing customers a fixed fee based on assets under management, rather than a commission on certain transactions. During the relevant period, PSI received approximately \$9.8 million in fees from O'Meally's market timing customers, of which O'Meally himself received approximately \$4.7 million, making him the top producing broker at PSI.

20. Ginder led a team of brokers and assistants who spent most of their time on market timing transactions. All the team's market timing activities, including the opening of new customer accounts, the obtaining of new FA numbers, and the submission of mutual fund transactions using those accounts and FA numbers, were made at Ginder's direction or in accordance with his instructions.

21. Ginder had two principal customers for whom his team placed market timing transactions. The customers, each of whom acted as investment adviser for various hedge funds, were: (a) Brandywine Asset Management, Inc. ("Brandywine"), based in Thornton, Pennsylvania; and (b) Millennium Partners, L.P. ("Millennium"), based in New York.

22. During the relevant period, PSI received approximately \$6.6 million in gross commissions from Ginder's market timing customers, of which Ginder himself received approximately \$1.3 million in net commissions, putting him in the top ten among PSI brokers.

23. Silver led a team of brokers and assistants who spent most of their time on market timing transactions. All the team's activities, including the opening of new customer accounts, the obtaining of new FA numbers, and the submission of mutual fund transactions using those accounts and FA numbers, were made at Silver's direction or in accordance with his instructions.

24. Silver had four principal customers for whom his team placed market timing transactions. The customers, each of whom acted as investment adviser for various hedge funds, were: (a) Granite Group Advisors, LLC ("Granite"), based in Purchase, New York; (b) Haidar Capital Management, LLC ("Haidar"), based in New York; (c) Millennium; and (d) Peconic Partners, LLC ("Peconic"), based in New York.

25. During the relevant period, PSI received approximately \$5.3 million in gross commissions from Silver's market timing customers, of which Silver himself received approximately \$1 million in net commissions, putting him in the top twenty among PSI brokers.

26. The defendants' customers invested in mutual funds offered by U.S. fund companies, routinely buying shares in one or two funds offered by a fund complex and then exchanging into other funds within that complex on a weekly and sometimes daily basis. Each customer made its decisions to buy, sell and exchange shares in certain mutual funds based on proprietary quantitative analysis of market information. The defendants and their teams played no role in the customers' quantitative analysis, but they sometimes recommended certain mutual funds or fund companies that might suit the customers' investment needs.

27. The customers' market timing activities generated hundreds, if not thousands, of separate transactions almost every day. Typically, the investment adviser for each customer would send a facsimile or email to the defendants listing hundreds of potential transactions, and later in the day (often shortly before the close of trading at 4:00 p.m.), the adviser would contact the defendants to activate certain of the trades. Information about the transactions was then entered into a computer system at PSI (called "BOSS 3000") for transmission to the fund companies. (The volume of O'Meally's market timing was so great that PSI supplied his team with a special computer software package, the "LIST" system, to facilitate the entry of mutual fund transactions and by-pass the BOSS 3000 system.)

28. The defendants typically submitted their mutual fund transactions through the National Securities Clearing Corporation ("NSCC"), a centralized trade clearance and settlement system. To place trades through NSCC, a PSI broker was required to identify himself by FA

number and to provide the number of the customer account for which the trade was placed. The FA number and account number usually included a prefix for the PSI branch which submitted the trade. On some occasions, transactions placed through NSCC included the name on the customer's account and/or the name of the broker(s) to whom the FA number belonged.

### **General Description of the Fraudulent Scheme**

29. Although it was comprised of thousands of separate transactions, the defendants' fraudulent scheme was really quite simple. They had customers who wanted to buy, sell or exchange millions of dollars of mutual fund shares on virtually a daily basis. They knew that some mutual fund companies monitored trading in their funds and imposed qualitative or quantitative restrictions on the frequency of purchases and exchanges. They knew that, if they placed their customers' hundreds of transactions involving millions of dollars using a single customer account and FA number for each customer, it was highly likely that certain fund companies would reject the transactions as excessive. As a result, the defendants devised a scheme to conduct their customers' trading through dozens of customer accounts and multiple FA numbers. By splitting a customer's transactions into many smaller components, submitted under different (and often misleading) customer names using different FA numbers, the defendants significantly increased the chances that the transactions would evade detection by the fund companies. Further, when a fund company did identify and attempt to block certain accounts or FA numbers from further activity due to excessive trading, the defendants often used the many accounts and FA numbers that had not yet been blocked to hide their and their customers' identities and thereby evade the restrictions and continue trading in the same company's funds.

### The Defendants' Use of Multiple Customer Accounts

30. The defendants used more than 750 customer accounts to process transactions for their market timing customers. Many accounts bore the names of shell entities that had no relation to the customer's actual name and thus fostered the misleading impression that transactions for the same customer were really for separate, unrelated entities. Many other accounts were opened as "confidential" accounts, for which no name at all appeared in transactions submitted to NSCC. Each team's account numbers used several different branch prefixes, thus compounding the illusion that the many accounts belonged to different customers.

a. O'Meally's team used nearly 300 accounts for Heuristic, more than seventy for Samaritan, more than fifty for Atlantique, twelve for Man Financial, and ten for Canary. Many of the accounts had misleading names such as "Greenbrook", "Horsepower", "Lighthouse", "Oracle", "Saltaire", "Slow Money" and "Tripod". The account numbers used seven different branch prefixes (075, 03N, 0EN, 0SU, 0SZ and 0YH for the Liberty Plaza branch, and 0AA for the Garden City branch). A list of the accounts used for market timing by O'Meally's customers is attached as **Exhibit A** hereto.

b. Ginder's team used nearly 150 accounts for Brandywine and more than eighty accounts for Millennium. Many of the accounts had misleading names such as "Auric Ventures", "Black Castle", "Ellewood", "Gahn & McElroy", "Hickory Notch", "Mazzard" and "Squashapenny". The account numbers used four different prefixes (ASG, BNG and CGL for the Special Accounts branch, and 0NT for the Long Island branch). A list of the accounts used for market timing by Ginder's customers is attached as **Exhibit B** hereto.

c. Silver's team used more than fifty accounts for Millennium, more than thirty accounts for Haidar, ten for Peconic, and nine for Granite. Many of the accounts had misleading names such as "Gilmore & Gillespie", "Jupiter", "Linkage", "Riverview" and "Wyatt Atwood". The account numbers used six different prefixes (05M, 0EC, BLM and HSK for the Madison Avenue branch, and AJX and TMP for the White Plains branch). A list of the accounts used for market timing by Silver's customers is attached as **Exhibit C** hereto.

31. The defendants did not open their customers' many accounts to pursue different investment strategies. On the contrary, as set forth below, the defendants frequently used two or more of a customer's accounts to buy shares of the same mutual fund at the same time. Similarly, the defendants frequently exchanged fund shares held in several of a customer's accounts at the same time, and on nearly every occasion, all of the customer's exchanges reflected the same investment decision (*i.e.*, a transfer from a money market fund to an equity fund in a particular sector, or vice versa).

#### **The Defendants' Use of Multiple FA Numbers**

32. FA numbers were used at PSI to open customer accounts, execute securities transactions, and track commissions. Each broker received a primary FA number, and PSI also provided brokers with "also" numbers, which were typically used so that one of the broker's customers could have online computer access to its account information or could receive a commission discount. In addition, two or more brokers could obtain a joint number to handle transactions and allocate commissions for a shared customer.

33. The defendants used many different FA numbers when opening new accounts and placing mutual fund transactions for their market timing customers.

a. O'Meally's team used thirty-two FA numbers to place market timing transactions during the relevant period. These included: (1) one primary and twenty-two "also" numbers belonging to O'Meally; and (2) nine numbers belonging to another broker in the Garden City branch. A list of the FA numbers used for market timing by O'Meally's customers is attached as **Exhibit D** hereto.

b. Ginder's team used twenty-five FA numbers to place transactions for his market timing customers during the relevant period. These included: (1) one primary and one "also" number belonging to Ginder; (2) nine primary or "also" numbers belonging to members of his team, to other brokers in the Special Accounts branch and, in one instance, to a broker in the Long Island branch; and (3) fourteen joint numbers that Ginder shared with a business partner (who lived in Boca Raton and had little direct involvement in market timing activities) and, in some instances, with other brokers as well. A list of the FA numbers used for market timing by Ginder's customers is attached as **Exhibit E** hereto.

c. Silver used twenty-one FA numbers to place transactions for his market timing customers during the relevant period. These included: (1) one primary and two "also" numbers belonging to Silver; (2) four primary or "also" numbers belonging to other brokers in the Madison Avenue branch; and (3) twelve joint numbers that Silver shared with a business partner (who handled wealthy individual clients and had little direct involvement in market timing activities) and, in some instances, with other brokers as well (including one broker in the White Plains, New York branch). A list of the FA numbers used for market timing by Silver's customers is attached as **Exhibit F** hereto.

34. The brokers who agreed to make their primary and “also” FA numbers available to O’Meally, Ginder and Silver for market timing received a small share of the resulting commissions. The same was true for the brokers whose joint FA numbers were used for market timing by Ginder and Silver. However, while joint FA numbers were sometimes used at PSI for the legitimate reason of facilitating the allocation of commissions for a shared customer, Ginder and Silver used many more joint FA numbers than would have been necessary for that purpose. For example, Ginder used eleven joint FA numbers that he shared with his partner, and Silver used five joint FA numbers that he shared with his partner.

**The Defendants’ Use of Multiple Accounts and FA Numbers to Buy and Exchange Mutual Fund Shares**

35. Between January 2001 and October 2003, the defendants used multiple accounts and FA numbers to buy mutual fund shares worth more than \$2.5 billion for their principal customers.

a. O’Meally’s team bought more than \$530 million in mutual fund shares for five customers (Atlantique, Canary, Heuristic, Man Financial and Samaritan). (They also purchased \$3 million in mutual fund shares for O’Meally and members of his family.) A table identifying the total purchases by O’Meally’s team from twenty-five leading fund companies, as well as the number of accounts and FA numbers used to make those purchases, is attached as **Exhibit G** hereto. (Details of each purchase appear in Exhibit J discussed below.)

b. Ginder’s team bought more than \$1.2 billion in mutual fund shares for two customers (Brandywine and Millennium). A table identifying the total purchases by Ginder’s team from twenty-five leading fund companies, as well as the number of accounts and FA

numbers used to make those purchases, is attached as **Exhibit H** hereto. (Details of each purchase appear in Exhibit K discussed below.)

c. Silver's team bought more than \$820 million in mutual fund shares for four customers (Granite, Haidar, Millennium and Peconic). A table identifying the total purchases by Silver's team from twenty-five leading fund companies, as well as the number of accounts and FA numbers used to make those purchases, is attached as **Exhibit I** hereto. (Details of each purchase appear in Exhibit L discussed below.)

36. The defendants and their teams regularly used multiple accounts and FA numbers to buy large amounts of a fund company's shares for the same customer on the same day or within a short period of time. Hundreds of examples are set forth in the company-by-company chronologies attached as **Exhibit J** (O'Meally's team), **Exhibit K** (Ginder's team), and **Exhibit L** (Silver's team) hereto. These include, without limitation, the following:

a. On May 15, 2001, O'Meally's team bought \$925,000 of the Franklin U.S. Government Fund for Heuristic using seventeen accounts. No account bought more than \$70,000.

b. On June 18 and June 19, 2001, O'Meally's team bought \$4.5 million of several American Funds funds for Heuristic using twenty-two accounts and four FA numbers.

c. On July 25, 2001, O'Meally's team bought \$1.2 million of the American Century Capital Preservation Fund for Heuristic using twelve accounts and three FA numbers.

d. On August 22, 2001, Silver's team bought more than \$1.2 million of the Putnam International New Opportunities Fund for Haidar using four accounts and two FA numbers.