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 **September 2009**, 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

48 Documents

Commissioner Aguilar
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
July 31, 2009

In the Matter of	:	
	:	
Gulf Alternative Energy Corporation	:	
	:	**ORDER OF SUSPENSION**
File No. 500-1	:	**OF TRADING**
	:	
	:	

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Gulf Alternative Energy Corporation (trading symbol: GAEC) because of questions regarding the accuracy and adequacy of information contained in press releases and on its website regarding the quality of the company's technology and the company's business prospects and agreements.

The Commission is of the opinion that the public interest and the protection of the investors require a suspension of trading in the securities of Gulf Alternative Energy Corporation.

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, July 31, 2009, through 11:59 p.m. EDT, on August 13, 2009.

By the Commission.

Florence E. Harmon

By: Florence E. Harmon
Deputy Secretary

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

August 12, 2009

In the Matter of **U.S. CANADIAN MINERALS, 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 U.S. Canadian Minerals, Inc. (OTC Bulletin Board symbol: USCN), a Nevada corporation. Questions have been raised about the accuracy and adequacy of publicly disseminated information concerning, among other things, U.S. Canadian Minerals' liabilities, stock issuances, recent merger transaction, business prospects, and recently acquired purported 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 U.S. Canadian Minerals, Inc.

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, August 12, 2009, through 11:59 p.m. EDT, on August 25, 2009.

By the Commission.

Elizabeth M. Murphy
Secretary

Florence E. Harmon

By: Florence E. Harmon
Deputy Secretary

2 of 48

Chairman Schapiro
not participating

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60601 / September 1, 2009

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3043 / September 1, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13607

In the Matter of **Patti Tay, 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 Patti Tay, CPA ("Tay" or "Respondent") 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 her 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. Tay, age 38, is a Certified Public Accountant licensed to practice in the State of New York. From 1998 until 2002, Tay served as Controller of Take-Two Interactive Software, Inc. ("Take-Two" or "the Company"), and served as Chief Accounting Officer of Take-Two beginning in 2002. On November 10, 2006, Tay resigned from Take-Two.

2. Take-Two was, at all relevant times, a Delaware corporation with its principal place of business in New York, New York. Take-Two develops, markets, publishes and distributes interactive entertainment software games for video game consoles and personal computers. Take-Two also publishes through its wholly-owned labels Rockstar Games, 2K Games, 2K Sports and 2K Play. Prior to July 31, 2006, Take-Two registered its common stock with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act") and traded on the NASDAQ NMS under the symbol "TTWO." Since July 31, 2006, Take-Two has registered its common stock with the Commission pursuant to Section 12(b) of the Exchange Act and has traded on the NASDAQ Global Market under the same symbol. The Company operates on an October 31 fiscal year.

3. On August 6, 2009, a final judgment was entered against Tay, permanently enjoining her from future violations of Sections 10(b), 13(b)(5), and 16(a) of the Exchange Act and Exchange Act Rules 10b-5, 13b2-1, 13b2-2, and 16a-3, and aiding and abetting violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, 13a-11, 13a-13, and 14a-9, in the civil action entitled Securities and Exchange Commission v. Kenneth Selterman, et al., Civil Action Number 09-CV-6813 (DLC), in the United States District Court for the Southern District of New York. Tay was also barred from serving as an officer or director of any public company and ordered to pay a $125,000 civil money penalty.

4. The Commission's Complaint alleged, among other things, that Tay enriched herself and others by knowingly or recklessly allowing Take-Two's former CEO/Chairman Ryan Brant ("Brant") to backdate the Company's stock option grants. The Complaint alleged that from at least as early as 1998, Tay knew, or was reckless in not knowing,

that exercise prices for stock options had been picked with hindsight, and that she created Company records which falsely indicated that grants had occurred on earlier dates when the Company's stock price had been at a low. Specifically, between 1998 and at least April 2002, Tay prepared and maintained (and thereafter until at least September 2003, was involved in maintaining) a Master Options List which she knew, or was reckless in not knowing, reflected false option grant information that had been provided to Tay by Brant. Accordingly, Tay knew, or was reckless in not knowing, that Take-Two filed materially false and misleading reports, proxy statements, and financial statements with the Commission and that Take-Two's filings falsely represented that Take-Two was properly accounting for stock option grants. In addition, the Complaint alleged that Tay received backdated "in-the-money" options.

IV.

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

Accordingly, it is hereby ORDERED, effective immediately, that:

Tay is suspended from appearing or practicing before the Commission as an accountant.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Chairman Schapiro not participating

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60600 / September 1, 2009

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3042 / September 1, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13606

In the Matter of **Kenneth Selterman, Esq.,** **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 Kenneth Selterman, Esq. ("Selterman" or "Respondent") 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 . . . attorney . . . 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. Selterman, age 59, is and has been an attorney licensed to practice in the State of New York. Selterman joined Take-Two Interactive Software, Inc. ("Take-Two" or "the Company") as General Counsel in 1999 where he worked until his resignation on February 28, 2007.

2. Take-Two was, at all relevant times, a Delaware corporation with its principal place of business in New York, New York. Take-Two develops, markets, publishes and distributes interactive entertainment software games for video game consoles and personal computers. Take-Two also publishes through its wholly-owned labels Rockstar Games, 2K Games, 2K Sports and 2K Play. Prior to July 31, 2006, Take-Two registered its common stock with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act") and traded on the NASDAQ NMS under the symbol "TTWO." Since July 31, 2006, Take-Two has registered its common stock with the Commission pursuant to Section 12(b) of the Exchange Act and has traded on the NASDAQ Global Market under the same symbol. The Company operates on an October 31 fiscal year.

3. On August 6, 2009, a final judgment was entered against Selterman, permanently enjoining him from future violations of Sections 10(b), 13(b)(5), and 16(a) of the Exchange Act and Exchange Act Rules 10b-5, 13b2-1, 13b2-2, and 16a-3, and aiding and abetting violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, 13a-11, 13a-13, and 14a-9, in the civil action entitled Securities and Exchange Commission v. Kenneth Selterman, et al., Civil Action Number 09-CV-6813 (DLC), in the United States District Court for the Southern District of New York. Selterman was also barred from serving as an officer or director of any public company and ordered to pay $363,185 in disgorgement of ill-gotten "in-the-money" gains from his exercise of backdated stock options, $111,115 in prejudgment interest, and a $125,000 civil money penalty.

4. The Commission's Complaint alleged, among other things, that Selterman enriched himself and others by knowingly or recklessly allowing Take-Two's former

CEO/Chairman Ryan Brant ("Brant") to backdate the Company's stock option grants. The Complaint alleged that Selterman knew, or was reckless in not knowing, that exercise prices for stock options had been picked with hindsight, and that he created Company records that falsely indicated that grants had occurred on earlier dates when the Company's stock price had been at a low. Specifically, the Complaint alleged that Selterman was, in part, responsible for ensuring that the options granting process complied with Take-Two's own stock option plans, including the 2002 Plan that he helped create and draft. The Complaint alleged that beginning in 2002 and continuing through the end of 2003, Selterman also was responsible for ensuring that the actions taken by the Company's Board or Compensation Committee to grant and approve stock options were properly documented in the Company's books and records, and he prepared or supervised the preparation of Board or Compensation Committee minutes for stock option grants. The Complaint alleged further that from at least as early as 2000, Selterman knew, or was reckless in not knowing, that stock options were being backdated, and from at least as early as January 2002, Selterman knew the accounting consequences of granting stock options at below fair market value. The Complaint alleged that in the instances before and beginning in 2002, when Selterman prepared Compensation Committee minutes for stock option grants, he knew, or was reckless in not knowing, that Brant was using hindsight to pick grant dates, yet, without inquiry, he simply recorded in the minutes what Brant told him about the granting and approval of option grants. Accordingly, the Complaint alleged that Selterman knew, or was reckless in not knowing, that Take-Two filed materially false and misleading reports, proxy statements, and financial statements with the Commission and that Take-Two's filings falsely represented that Take-Two was properly accounting for stock option grants. In addition, the Complaint alleged that Selterman received backdated "in-the-money" options.

IV.

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

Accordingly, it is hereby ORDERED, effective immediately, that:

Selterman is suspended from appearing or practicing before the Commission as an attorney.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

[Release No. PA-40; File No. S7-19-09]

Privacy Act of 1974: Establishment of a System of Records.

AGENCY: Securities and Exchange Commission.

ACTION: Notice to establish a system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Securities and Exchange Commission ("Commission" or "SEC") gives notice of a proposed Privacy Act system of records: "Ethics Conduct Rules Files (SEC-60)." This system will contain information related to applicable SEC Ethics Conduct Rules (currently found at 17 CFR Part 200 Subpart M), including outside employment and activities, and covered securities transactions, securities holdings and securities accounts.

DATES: The proposed system will become effective October 13, 2009, unless further notice is given. The Commission will publish a new notice if the effective date is delayed to review comments or if changes are made based on comments received. To be assured of consideration, comments should be received on or before **[insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/other.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-19-09 on the subject line.

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 Number S7-19-09. 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. 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 public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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: Barbara A. Stance, Chief Privacy Officer, Office of Information Technology, 202-551-7209.

SUPPLEMENTARY INFORMATION: The Commission gives notice of the proposed establishment of a system of records, entitled "Ethics Conduct Rules Files (SEC-60)." The system will contain information related to the SEC's "Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission" ("Ethics Conduct Rules"), currently located at 17 CFR Part 200 Subpart M, including outside employment and activities, and covered securities transactions, securities holdings and securities accounts.

On May 22, 2009, to consolidate related responsibilities, the Commission transferred all the Commission's Ethics Rules responsibilities that resided in the Office of Human Resources (consisting particularly of the administration of all of the SEC Ethics Conduct Rules files) to the Commission's Ethics Office. Consistent with the transfer of responsibilities, the Commission is establishing a system of records in the Ethics Office to maintain records related to the Ethics Conduct Rules applicable to Commission Members and employees, including reports on securities transactions, holdings, and accounts required by applicable Federal securities laws and regulations.

The Commission has submitted a report of the system of records to the Senate Committee on Homeland Security and Government Affairs, the House Committee on Government Reform, and the Office of Management and Budget, pursuant to 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, and Appendix I to OMB Circular A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," as amended on February 20, 1966 (61 FR 6435).

Accordingly, the Commission is establishing a system of records to read as follows:

SEC-60

SYSTEM NAME:

Ethics Conduct Rules Files

SYSTEM LOCATION:

Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SEC Members and employees, past and present.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to the SEC's "Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission" ("Ethics Conduct Rules"), currently located at 17 CFR Part 200 Subpart M, including outside employment and activities, and covered securities transactions, securities holdings and securities accounts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal securities laws (15 U.S.C. 77s, 78w, 77sss, 80a-37 and 80b-11) and the regulations promulgated thereunder, including the Ethics Conduct Rules currently located at 17 CFR Part 200 Subpart M.

PURPOSE(S):

For use by authorized SEC Ethics Office personnel, designated by the Ethics Counsel, and from time to time certain other SEC personnel, designated by the Ethics Counsel in his or her discretion, in connection with their official functions related to administering and supervising compliance with the Commission's Ethics Conduct Rules.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Commission as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To a Federal, State, or local law enforcement agency if the disclosing agency becomes aware of a violation or potential violation of law or regulation;

2. To a court or party in a court or Federal administrative proceeding if the Government is a party or in order to comply with a judge-issued subpoena;
3. To a source when necessary to obtain information relevant to a conflict of interest or securities law investigation or decision;
4. To the National Archives and Records Administration or the General Services Administration in records management inspections;
5. To the Office of Management and Budget during legislative coordination on private relief legislation;
6. To the Department of Justice or in certain legal proceedings when the disclosing agency, and employee of the disclosing agency, or the United States is a party to litigation or has an interest in the litigation and the use of such records is deemed relevant and necessary to the litigation;
7. To reviewing officials in a new office, department or agency when an employee transfers from one position to another subject to the Ethics Conduct Rules;
8. To a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record;
9. To interns, grantees, experts and contractors who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a;

10. When (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm; and
11. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic and paper format. Electronic records are stored in computerized databases and/or on computer disc. Paper records and records on computer disc are stored in locked file rooms and/or metal file cabinets.

RETRIEVABILITY:

Records may be retrieved by the individual's name or other personal identifiers, as well as non-identifying information. Information regarding individuals may be obtained through the use of cross-reference methodology.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24 hour security guard service. Access is limited to those personnel whose official duties require access. Paper records are maintained in limited access areas during duty hours and in locked file cabinets and/or locked offices or file rooms at all other times. Computerized records are safeguarded through use of access codes and information technology security.

RETENTION AND DISPOSAL:

These records will be maintained for 6 years or otherwise in accordance with records schedules of the Commission and as approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

The Ethics Counsel and the Designated Agency Ethics Official, Office of the General Counsel, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1050.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the FOIA/Privacy Act Officer, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5100.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the FOIA/Privacy Act Officer, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5100.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Information is provided by current Members and employees of the Commission or their designees in accordance with the requirements of the SEC Ethics Conduct Rules.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

By the Commission.

Florence E. Harmon

Elizabeth M. Murphy
Secretary

Date: September 1, 2009

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60616 / September 3, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13609

In the Matter of **UNIVERSAL EXPRESS, 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 Universal Express, Inc. (Universal Express" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, Respondent consents to the entry of this Order Instituting Proceedings 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. Universal Express, a Nevada corporation, has its principal place of business in Boca Raton, Florida. During 2001 through 2007, the company purported to operate a variety of developmental stage businesses, including WorldPost, a "private postal network" that supposedly negotiated group discounts on behalf of a network of independently owned postal stores. The common stock of USXP is registered with the Commission pursuant to Section 12(g) of the Exchange Act and until 2007 the company was required to file reports with the Commission on Forms 10-KSB and 10-QSB until February 2008, and thereafter on Form 10-K and Form 10-Q. The company's stock traded at relevant times on the OTC Bulletin Board. It is currently quoted on the "Pink Sheets" disseminated by Pink OTC Markets Inc.

B. Universal Express 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 or Form 10-KSB since June 2007 or periodic or quarterly reports on Form 10-Q or Form 10-QSB for any fiscal period subsequent to its fiscal quarter ending December 31, 2006.

C. On April 2, 2007, a final judgment was entered against Universal Express which enjoined the company from further violations of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; ordered the company to disgorge $9,959,829 in ill-gotten gains plus prejudgment interest of $1,986,827; and imposed civil penalties of $9,959,829 against the company pursuant to Section 20(d) of the Exchange Act in connection with the issuance of unregistered Universal Express stock and the issuance of false and misleading statements concerning the company's business operations, access to financing, and other matters between 2001 and 2004.

IV.

Section 12(j) of the Exchange Act provides as follows:

> The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means of instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

In view of the foregoing, the Commission finds that it is necessary and appropriate for the protection of investors to impose the sanction specified in Respondent's Offer.

Accordingly, it is hereby ORDERED, pursuant to Section 12(j) of the Exchange Act, that registration of each class of Respondent's securities registered pursuant to Section 12 of the Exchange Act be, and hereby is, revoked.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

VEREINIGTE STAATEN VON AMERIKA
vor der
SECURITIES AND EXCHANGE COMMISSION
[U.S.-Börsenaufsicht]
September 3, 2009

VERWALTUNGSVERFAHREN
Aktenzeichen 3-13611

In der Sache **New York Broker Deutschland AG,** **Beschuldigte.**	**BESCHLUSS ZUR EINLEITUNG EINES VERWALTUNGSVERFAHRENS UND LADUNG ZUM VERHANDLUNGSTERMIN GEMÄß ABSCHNITT 12(J) DES WERTPAPIERGESETZES (SECURITIES EXCHANGE ACT) VON 1934**

I.

Die Securities and Exchange Commission (U.S.-Börsenaufsicht – nachfolgend die „Commission") hält es für den Anlegerschutz für erforderlich und angemessen, dass ein öffentliches Verwaltungsverfahren gemäß Abschnitt 12(j) des Wertpapiergesetzes (Securities Exchange Act) von 1934 („Exchange Act") gegen die Beschuldigte New York Broker Deutschland AG einzuleiten ist und hiermit eingeleitet wird.

II.

Nach den erfolgten Ermittlungen erhebt die Division of Enforcement folgende Anschuldigungen:

A. BESCHULDIGTE

1. Die New York Broker Deutschland AG (CIK Nr. 1000047) ist ein deutsches Unternehmen mit Sitz in Düsseldorf, Deutschland, mit einer Aktienklasse, die gemäß Exchange Act, Abschnitt 12(g) bei der Commission angemeldet ist. Die New York Broker ist im Verzug hinsichtlich ihrer Periodeneingaben bei der Commission, da sie keine Periodenberichte eingereicht hat, seit sie ein 20-F-Formular für das am 31. Dezember 1999 abgeschlossene Jahr eingereicht hatte, in dem ein Nettoverlust von $977.280 für die vorhergehenden zwölf Monate gemeldet wurde.

B. VERSÄUMTE PERIODENEINGABEN

2. Wie oben näher beschrieben, ist die Beschuldigte im Verzug mit ihren Periodeneingaben (*siehe* Übersicht über die versäumten Eingaben, hier beigefügt als Anlage 1). Sie hat es mehrfach versäumt, ihren Pflichten zur rechtzeitigen Vorlage von

Periodenberichten nachzukommen und hat es versäumt, die von der Division of Corporation Finance an sie gesandten Verzugsschreiben zu beachten, in denen sie aufgefordert wurde, ihren Pflichten zur Periodeneingabe nachzukommen. Oder sie hat, wegen Verstoßes gegen ihre Pflicht, eine gültige Adresse bei der Commission zu pflegen, wie in den Regeln der Commission vorgeschrieben, diese Schreiben nicht erhalten.

3. In Abschnitt 13(a) des Exchange Act sowie in den kraft dieser Vorschrift erlassenen Regeln ist vorgeschrieben, dass Emittenten von Wertpapieren, die gemäß Abschnitt 12 des Exchange Act eingetragen sind, bei der Commission aktuelle und genaue Informationen in Periodenberichten einzureichen haben, auch wenn die Registrierung freiwillig gemäß Abschnitt 12(g) erfolgt. Konkret schreibt Regel 13a-1 vor, dass die Emittenten Jahresberichte einreichen, und Regel 13a-13 schreibt vor, dass inländische Emittenten Vierteljahresberichte einreichen. In Regel 13a-16 ist vorgeschrieben, dass ausländische private Emittenten die Commission mit vierteljährlichen und sonstigen Berichten als Anlagen zu dem Formular 6-K zu versorgen haben, wenn sie die Information nach ihrem Sitzrecht oder dort, wo sie eingetragen oder niedergelassen sind, veröffentlichen oder dort zur Veröffentlichung verpflichtet sind; wenn sie Informationen bei einer Börse einreichen oder einreichen müssen, an der ihre Wertpapiere gehandelt werden, und die Informationen von der Börse veröffentlicht wurden; oder wenn sie Informationen an die Inhaber ihrer Wertpapiere veröffentlichen oder veröffentlichen müssen.

4. Demnach hat es die Beschuldigte versäumt, die Vorschriften von Abschnitt 13(a) des Exchange Act und die dort aufgestellten Regeln 13a-1 und 13a-13 oder 13a-16 zu erfüllen.

III.

In Anbetracht der von der Division of Enforcement aufgestellten Beschuldigungen hält es die Commission für erforderlich und angemessen, im Interesse des Anlegerschutzes dieses öffentliche Verwaltungsverfahren einzuleiten, um festzustellen:

A. Ob die in Abschnitt II aufgestellten Beschuldigungen wahr sind und, im Zusammenhang damit, um der Beschuldigten die Gelegenheit zu geben, sich gegen diese Beschuldigungen zu verteidigen, sowie

B. Ob es für den Anlegerschutz erforderlich und angemessen ist, für einen Zeitraum von höchstens zwölf Monaten die Anmeldung jeder Wertpapierklasse der Beschuldigten gemäß Aufstellung in Abschnitt II, die gemäß Abschnitt 12 des Exchange Act angemeldet sind, auszusetzen oder zu widerrufen.

IV.

HIERDURCH WIRD BESCHLOSSEN, dass eine öffentliche Verhandlung zur Beweisaufnahme zu den in Abschnitt III dieses Schriftsatzes aufgeführten Fragen an einem noch festzulegenden Termin und Ort, vor einem Verwaltungsgericht, das durch einen weiteren Beschluss festzulegen ist, gemäß Regel 110 der Verfahrensregeln der Comission [17 C.F.R. § 201.110] abgehalten wird.

HIERDURCH WIRD FERNER BESCHLOSSEN, dass die Beschuldigte eine Antwort zu den in diesem Beschluss aufgestellten Beschuldigungen einreicht, innerhalb von zehn (10) Tagen nach Zustellung dieses Beschlusses, gemäß Regel 220(b) der Verfahrensregeln der Commission [17 C.F.R. § 201.220(b)].

Für den Fall, dass die Beschuldigte die angeordnete Antwort nicht einreicht oder nicht zur Verhandlung erscheint, nachdem sie ordnungsgemäß geladen wurde, kann gegen sie ein Versäumnisverfahren eröffnet werden, und das Verfahren gegen sie dem Beschluss folgend beschlossen und die Beschuldigungen des Beschlusses können als wahr erkannt werden, gemäß den Bestimmungen der Regeln 155(a), 220(f) und 310 der Verfahrensregeln der Commission [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), und 201.310].

Dieser Beschluss ist der Beschuldigten persönlich oder per Einschreiben oder per Eilzustellung oder mit anderen, die Zustellung nachweisbar machenden Mitteln, zuzustellen.

FERNER WIRD BESCHLOSSEN, dass das Verwaltungsgericht einen Einleitungsbeschluss spätestens 120 Tage ab dem Datum der Zustellung dieses Beschlusses fällt, gemäß Regel 360(a)(2) der Verfahrensregeln der Commission [17 C.F.R. § 201.360(a)(2)].

Sofern kein geeigneter Aufhebungsbeschluss vorliegt, ist es Funktionsträgern oder Angestellten der Commission, die mit der Durchführung von ermittelnden oder für das Verfahren zuständigen Funktionen in diesem oder in faktisch mit ihm verbundenen Verfahren befasst sind, nicht erlaubt, an Entscheidungen in dieser Sache teilzunehmen oder zu beraten, außer als Zeuge oder Anwalt in Verfahren, die entsprechend der Ladung abgehalten werden. Da dieses Verfahren nicht „regelsetzend“ im Sinne von Abschnitt 551 des Verwaltungsverfahrensgesetzes ist, gelten die Vorschriften von Abschnitt 553 über die Aufschiebung des Wirksamkeitstermins einer endgültigen Maßnahme der Commission hier als nicht anwendbar.

Für die Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Sekretärin

Anlage

Anlage 1

Übersicht über die versäumten Eingaben
New York Broker Deutschland AG

Firmenname	Formtyp	Frist beendet	Fallig am	Erhalten am	Monate versäumt (abgerundet)
New York Broker Deutschland AG					
	20-F	31.12.00	02.07.01	Nicht eingereicht	97
	20-F	31.12.01	01.07.02	Nicht eingereicht	85
	20-F	31.12.02	30.06.03	Nicht eingereicht	74
	20-F	31.12.03	30.06.04	Nicht eingereicht	62
	20-F	31.12.04	30.06.05	Nicht eingereicht	50
	20-F	31.12.05	30.06.06	Nicht eingereicht	38
	20-F	31.12.06	02.07.07	Nicht eingereicht	25
	20-F	31.12.07	30.06.08	Nicht eingereicht	14
	20-F	31.12.08	30.06.09	Nicht eingereicht	2

Versäumte Eingaben Gesamt **9**

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 3, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13611

In the Matter of **New York Broker Deutschland AG,** **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 New York Broker Deutschland AG.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. New York Broker Deutschland AG (CIK No. 1000047) is a German corporation located in Dusseldorf, Germany with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). New York Broker is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the year ended December 31, 1999, which reported a net loss of $977,280 for the prior twelve months.

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), have 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-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.

4. As a result of the foregoing, Respondent 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 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 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
New York Broker Deutschland AG

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
New York Broker Deutschland AG					
	20-F	12/31/00	07/02/01	Not filed	97
	20-F	12/31/01	07/01/02	Not filed	85
	20-F	12/31/02	06/30/03	Not filed	74
	20-F	12/31/03	06/30/04	Not filed	62
	20-F	12/31/04	06/30/05	Not filed	50
	20-F	12/31/05	06/30/06	Not filed	38
	20-F	12/31/06	07/02/07	Not filed	25
	20-F	12/31/07	06/30/08	Not filed	14
	20-F	12/31/08	06/30/09	Not filed	2
Total Filings Delinquent	**9**				

Commissioner Casey not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60628 / September 4, 2009

INVESTMENT ADVISERS ACT OF 1940
Release No. 2923 / September 4, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13612

In the Matter of LOUIS J. AKERS 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 Louis J. Akers ("Respondent" or "Akers").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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

Respondent

1. Akers, age 57, resides in Reisterstown, Maryland. He was a registered representative associated with certain broker-dealers from 1985 to 2007. From October 1998 until December 2001, Akers was associated with Ferris Baker Watts, Inc. ("Ferris") as the firm's Chief Executive Officer. During the period January 2003 through November 2005, Akers was associated with Ferris as the firm's Vice Chairman, a member of Ferris' Board of Directors, and Ferris' Private Client Group Director.

Other Relevant Entities

2. At all times relevant, Ferris was a Delaware corporation headquartered in Washington, D.C. that was both a registered broker-dealer and a registered investment adviser. Ferris has over 600 employees, including over 250 registered representatives working in over forty branch offices in eight states and the District of Columbia. On February 10, 2009, the Commission issued an order finding that Ferris failed reasonably to supervise registered representative Stephen Glantz ("Glantz") with a view to detecting and preventing Glantz's 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, and that Ferris willfully violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder by failing to file Suspicious Activity Reports ("SARs") regarding Glantz's misconduct.

3. Glantz, age 55, was formerly a resident of Chagrin Falls, Ohio. He was a registered representative associated with various broker-dealers from 1997 through 2005. During the period January 2003 through November 2005, Glantz was associated with Ferris. On September 4, 2007, Glantz pled guilty to one count of securities fraud and one count of making false statements to law enforcement officials. On December 14, 2007, Glantz was sentenced to 33 months in prison and ordered to pay $110,000 in restitution. On February 10, 2009, the Commission issued an order barring Glantz from association with any broker, dealer, or investment adviser.

4. Patrick J. Vaughan ("Vaughan"), age 54, resides in Cockeysville, Maryland. He was a registered representative associated with various broker-dealers from 1983 through the present. During the period January 2003 through November 2005, Vaughan was associated with Ferris as the firm's Director of Retail Sales. In that position, he reported directly to Akers. On February 10, 2009, the Commission issued an order finding that Vaughan failed reasonably to supervise Glantz with a view to detecting and preventing Glantz's violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

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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.

5. IPOF Fund ("IPOF") is an Ohio limited partnership, not registered with the Commission in any capacity. IPOF was formed by David A. Dadante ("Dadante") in 1999. Dadante operated IPOF as an investment company and solicited funds from investors purportedly to purchase stock in initial public offerings. Dadante caused IPOF to raise $50 million from at least 100 investors in unregistered securities offerings and used some of the proceeds to fund his lavish lifestyle and to make Ponzi scheme-type payments. Dadante deposited the remaining investor funds into brokerage accounts that he controlled in the names of IPOF and other entities at several broker-dealers, including Ferris. Glantz served as the registered representative for the Ferris accounts controlled by Dadante. On April 20, 2007, IPOF was permanently enjoined from violating Sections 5(a), 5(c), and 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 7(a) of the Investment Company Act of 1940 in SEC v. David A. Dadante et. al., Case No. 1:06-cv-0938 (N.D. Ohio).

6. Dadante, age 54, was formerly a resident of Gates Mills, Ohio. Dadante was the founder and general partner of IPOF. He was not registered with the Commission in any capacity. On August 6, 2007, Dadante pled guilty to two counts of securities fraud. On November 1, 2007, Dadante was permanently enjoined from violating Sections 5(a), 5(c), and 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 in SEC v. David A. Dadante et. al., Case No. 1:06-cv-0938 (N.D. Ohio). On November 29, 2007, the Commission barred Dadante from association with any investment adviser. On December 14, 2007, Dadante was sentenced to 156 months in prison and ordered to pay over $28 million in restitution.

7. Innotrac Corporation ("Innotrac") is a Georgia corporation with its principal place of business in Duluth, Georgia. Its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded under the symbol "INOC" on NASDAQ. Innotrac provides order processing, order fulfillment, and call center services to large corporations that outsource these functions.

Background

8. From at least August 2002 through November 2005, Glantz, Dadante, and a registered representative at another brokerage firm, all participated in a scheme to manipulate the market for the stock of Innotrac. All three pled guilty to violations of Section 10(b) of the Exchange Act and in their plea agreements, they all admitted that they artificially inflated and maintained the price for Innotrac stock. Glantz also admitted in his plea agreement that he engaged in unauthorized and unsuitable trading in his customers' accounts. During the period from August 2002 through November 2005, Dadante used IPOF to acquire more than 30% of the outstanding common stock of Innotrac, and through IPOF and other accounts controlled by him, controlled on average approximately 35% of the public float for Innotrac and typically accounted for between 35% and 50% of the approximate 11,000 share average daily trading volume in Innotrac. Dadante acquired a substantial portion of his Innotrac holdings during the period January 2003 through February 2004 in the IPOF account at Ferris for which Glantz was the registered representative. During the scheme, Glantz purchased Innotrac stock for certain of his other customers at Ferris, and, through their accounts, controlled approximately an additional 25% of

Innotrac's public float. Acting in concert, Glantz, Dadante, and the other registered representative employed a variety of manipulative trading practices, including marking the closing price for Innotrac stock, engaging in matched and wash trades, and attempting to artificially create downbids to suppress short selling of Innotrac. To perpetrate the manipulative scheme, and to generate income for himself, Glantz also engaged in unauthorized and unsuitable trading in Innotrac and certain other securities in the accounts of customers other than IPOF.

Akers' Failure to Supervise

9. Akers failed reasonably to supervise Glantz with a view toward preventing and detecting his violations of the federal securities laws by failing to respond reasonably to red flags regarding Glantz's misconduct and lack of supervision, as discussed below.

10. During Glantz's tenure at Ferris, Akers was the firm's Vice Chairman, a member of Ferris' Board of Directors, and Ferris' Private Client Group Director. Akers was one of the highest level supervisors for Ferris' retail brokers.

11. Akers and Vaughan recruited and hired Glantz, and Ferris Senior Executive A approved his hire. These senior executives all had the requisite degree of responsibility, ability or authority at Ferris to affect the conduct of Glantz.

12. When Glantz was hired, Akers, Vaughan and Senior Executive A knew that Glantz had ten customer complaints on his Form U-4. Several employees of the firm's Beachwood, Ohio office had also warned them that Glantz had a questionable reputation in the industry.

13. Despite Glantz's history, Akers, Vaughan and Senior Executive A permitted Glantz to work under a special arrangement which allowed him greater freedom of action than other registered representatives at Ferris. Glantz, a retail broker, was permitted to manage both retail and institutional accounts. Akers and Vaughan permitted Glantz, a retail broker assigned to Ferris' Beachwood branch office, to work at Ferris' Institutional Trading Desk in Baltimore several days a week. The special arrangement under which Glantz was permitted to work was extremely unusual at Ferris. Glantz took advantage of that special arrangement to evade Ferris' supervisory procedures.

14. Glantz began working for Ferris on January 2, 2003, and problems with his conduct arose very shortly after he started. On May 23, 2003, a Ferris compliance officer sent a memorandum (the "May 23 Memo") to certain senior executives, including Vaughan and Senior Executive A, but not Akers. The May 23 Memo reported, among other things, that a number of Glantz customer accounts held large positions in Innotrac, that Ferris customers owned approximately 40% of the total float and 19% of the outstanding shares of Innotrac, and that IPOF owned approximately 31% of the total float and 15% of the outstanding shares. This memorandum warned that there might be manipulative and unsuitable trading in Innotrac and that Glantz was not being properly supervised. This memorandum stated that "[w]hile the price of [Innotrac] has been in an up-trend, I believe this is largely due to the IPOF's accumulation of the shares in small lots

on almost a daily basis driving the price higher." The May 23 Memo also noted that Glantz was accumulating Innotrac shares in a similar manner in some of his other customer accounts, that IPOF was a "control person" of Innotrac but had not made the necessary filings with the Commission, and that the IPOF account had a margin debit of $9.381 million. The memorandum further reported that the trading in the IPOF account was not consistent with its investment objective of "growth and income." The May 23 Memo also contained a chart showing a high concentration of Innotrac stock and significant margin debts in other Glantz accounts, the majority of which were individual accounts or profit sharing plans whose investment objectives were reported as "growth and income." The May 23 Memo further stated that "without question, there is and has been a breakdown of supervisory responsibilities and who shares or owns supervisory responsibilities over the activity in the account and Mr. Glantz." Ferris' Credit Committee responded to the size of IPOF's margin debt by raising the margin requirements for the account.

15. Within approximately a week or two, Ferris' Compliance Director, the author of the May 23 Memo, and Senior Executive A had a conference call with Akers and Vaughan to discuss the May 23 Memo. Akers and Vaughan failed to take any action to address the issues raised in the May 23 Memo as a result of the conversation.

16. In late July and August 2003, the compliance department informed Senior Executive A that: (1) the Beachwood branch manager was continuing to have problems supervising Glantz because he was working out of Ferris' Baltimore office; (2) the IPOF account was continuing to acquire a significant number of Innotrac shares; (3) Dadante was manipulating the bid for Innotrac; and (4) Dadante had opened another account and engaged in free-riding, as a result of which the compliance department had restricted the account.

17. In late August 2003, Senior Executive A had a conversation with Akers, in which they discussed the compliance department's continued concerns regarding Glantz's supervision. Akers said that he was going to officially transfer Glantz from the Beachwood office to the Baltimore branch office.

18. On September 4, 2003, Senior Executive A met with Glantz, Akers and Vaughan, and they all discussed IPOF and the significant and unusual accumulation of Innotrac shares in IPOF and another Glantz customer account. However, neither Akers, Vaughan, nor Senior Executive A took any action to reasonably respond to the red flags discussed at this meeting.

19. By February 4, 2004, the margin balance in the IPOF account had grown to $18.1 million and the account posed a significant credit risk for Ferris. That same day, Senior Executive A wrote a memo to the Credit Committee, which he emailed to Vaughan, admitting that there continued to be "a lack of clear definition as to who has day to day supervisory responsibilities for Steve Glantz." The Credit Committee restricted the IPOF account by prohibiting the use of margin for any future purchases of Innotrac.

20. On February 5, 2004, a compliance officer sent Senior Executive A an email stating that Ferris' Innotrac market maker had received an order from another brokerage firm to buy 10,000 shares of Innotrac and they were "99% certain" that the order was related to IPOF. That

same day, Glantz sent an email to Akers and Vaughan that he did not want to worry about "taking the fall for a situation that is absolutely not my fault," and that he did not want to leave Ferris. On February 9, 2004, Akers met with Glantz, Dadante, and an attorney who represented both of them, to discuss the new restrictions being placed on the IPOF account. Akers, Vaughan, and Senior Executive A, however, all failed reasonably to respond to Glantz's lack of supervision and the other problems that had previously been brought to their attention with regard to Glantz's handling of his customer accounts.

21. Following the February 9, 2004 meeting, neither Dadante nor IPOF purchased any more Innotrac stock through Ferris. Glantz, however, continued to engage in manipulative, unsuitable and unauthorized trading in other customer accounts. Among other things, Glantz utilized excessive margin to make unauthorized purchases of speculative stocks for customer accounts. Glantz's use of margin and the nature and concentration of the stocks he purchased were unsuitable for his customers. Glantz did not disclose these facts, or the risks involved, to his customers. Glantz effected such trades deliberately for the purpose of increasing his own income.

22. In March 2004, many months after Glantz began splitting his time between Ferris' Baltimore office and the Beachwood office and eight months after Akers and Senior Executive A discussed transferring Glantz from the Beachwood office to the Baltimore branch office, he was officially transferred to Ferris' Baltimore branch office. No one informed the Baltimore branch manager ("Baltimore manager") of any issues involving Glantz or his handling of his customers' accounts.

23. In September 2004, two new Ferris compliance officers conducted the annual compliance audit for the Baltimore branch. When they reviewed Glantz's customer accounts, they became concerned that Glantz was engaging in unsuitable trading and was orchestrating transactions in his customers' accounts that were designed to artificially support the price of Innotrac. During the audit, the Baltimore manager told the compliance officers, among other things, that he was unable to supervise Glantz and that Glantz needed to be terminated. The compliance officers subsequently wrote a memorandum to Senior Executive A detailing their findings regarding Glantz. The memorandum discussed several Glantz customer accounts other than IPOF, the majority of which had been previously discussed in the May 23 Memo. This memorandum reported that all of these accounts had stated investment objectives of "growth and income" and had appeared on Ferris' "active account" report for the month of September 2004, and that most of the accounts had engaged in frequent, short-term trading during this period. The memorandum further stated that these accounts had a "preponderance for large share quantity, low-priced, speculative investments." The memorandum also reported that on September 30, 2004, Glantz cross traded 50,000 shares of Innotrac worth over $400,000 by selling these shares from one of his customer's accounts to four other customers' accounts, and that these trades were a "cause for concern." This memorandum concluded that "the appropriate supervisory oversight is currently not in place for Mr. Glantz."

24. On December 8, 2004, one of the compliance officers who participated in the compliance audit for the Baltimore branch discovered that Glantz had purchased 105,700 additional Innotrac shares worth approximately $927,000 for certain of his customers in December

and told Senior Executive A about these trades. This compliance officer called three of the customers whose accounts were involved in the trades.

25. On December 15, 2004, Senior Executive A wrote a memorandum to Akers and Vaughan detailing his concerns about Glantz and recommending that Glantz be terminated (the "Termination Memo"). He emailed the Termination Memo to Akers and Vaughan in the early morning hours of December 16, 2004. In the Termination Memo, Senior Executive A stated, among other things, that Glantz's investments and use of margin for the accounts of one of his individual customers was "clearly unsuitable" and that the trading in these accounts exposed Glantz and Ferris to "claims of churning." The Termination Memo also reported that the compliance department had contacted the customers for whose accounts Innotrac had been purchased in December 2004, that none of the customers had initiated the trades, that they did not know that the purchases had been made, and that there was no written discretionary authority for these accounts. The Termination Memo also stated that Glantz had structured the December trades to avoid disrupting the market for Innotrac. The Termination Memo further stated that Glantz had been "essentially unsupervised" during his tenure at Ferris and concluded by recommending that Glantz be terminated.

26. Senior Executive A and Ferris' Compliance Director at the time met with Akers and Vaughan to discuss the issues raised in the Termination Memo. Akers challenged the recommendation that Glantz be terminated and suggested that Glantz instead be placed on special supervision. At the end of the meeting, Senior Executive A retracted his recommendation that Glantz be fired and agreed with Akers to allow Glantz to be placed on special supervision. Vaughan acquiesced in that decision.

27. Pursuant to the memorandum outlining the details of Glantz's special supervision, Akers became Glantz' supervisor. That memorandum provided, among other things, that: (1) Glantz would report directly to Akers as his supervisory manager; (2) Glantz would prepare and give to Akers a daily client contact log; (3) Glantz would prepare a plan to diversify his clients' portfolios; (4) Glantz would send all clients who had margin balances a copy of the margin disclosures; (5) Glantz would reduce the margin in some accounts and eliminate it in others; and (6) Akers would contact at least three Glantz clients per month.

28. After being placed on special supervision, Glantz was assigned to work out of Ferris' Hunt Valley, Maryland branch. Akers, however, was Glantz's supervisor, not the Hunt Valley branch manager. Thus, Akers was responsible for supervising Glantz in accordance with the special supervision memorandum and Ferris' routine supervisory procedures.

29. Akers did not fulfill his responsibilities as Glantz's special supervisor. He did not contact Glantz's clients, and he did not monitor the daily client log. Akers also did not require Glantz to create a plan to diversify his clients' holdings, to send the margin disclosures to those clients with margin debits, or to comply with the special supervision agreement's requirements to reduce or eliminate margin use in customer accounts. Akers also failed to follow Ferris' routine supervisory procedures. Among other things, Akers failed to review Glantz's daily customer transactions or monthly account activity and active account reports.

30. While under Akers' supervision, Glantz continued to engage in unauthorized, unsuitable and manipulative trading in his customers' accounts. Akers did not discover Glantz's continuing fraud, because he was not reasonably performing his duties as Glantz's supervisor. If Akers had followed Ferris' routine supervisory procedures and the special supervisory procedures in the special supervision memorandum, he would have been able to detect and prevent Glantz's unsuitable, unauthorized, and manipulative trading.

31. Soon after being placed on special supervision, Glantz received a stock tip from an individual in Canada that positive news would soon be released about a company called ATC Healthcare, Inc. ("ATC Healthcare"). Based on this tip, on Friday, February 4, 2005, Glantz bought a total of 500,000 shares of ATC Healthcare for himself and for certain customers' accounts without their authorization. Glantz, however, did not allocate these shares at the time of the purchases. At the end of the day, Glantz allocated 480,000 shares among six customer accounts, and allocated 20,000 to his personal account. The next Monday and Tuesday, Glantz purchased an additional 480,000 shares of ATC Healthcare for his customers' accounts. Although no positive news was released about ATC Healthcare during this period, Glantz's purchases caused the stock price to increase from $0.30 to $0.46 a share in just a few days time. Glantz subsequently sold his 20,000 shares at a profit, but did not sell the remaining 960,000 shares that he purchased without authorization for his customers' accounts. Akers did not discover these and other manipulative and unauthorized transactions, because he was not reasonably performing his duties as Glantz's supervisor.

32. In June 2005, the Compliance Department's audit report for the Hunt Valley branch identified 18 Glantz customer accounts as requiring monitoring of their trading activity and suitability, stating that Ferris should monitor and review those 18 accounts "in regard to their investment objective(s), client profile, portfolio holdings, margin debit, gain/loss analysis...and commissions generated." Akers and Senior Executive A received this audit report but again failed reasonably to respond to these red flags.

33. Glantz remained an employee of Ferris until November 2005, at which time several IPOF investors filed a lawsuit and named Ferris as one of the defendants.

Violations

34. As a result of the conduct described above, Akers failed reasonably to supervise Glantz with a view to detecting and preventing Glantz's violations of Section 17(a) of the Securities Act and 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 sanctions agreed to in Respondent's Offer.

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

A. Respondent be, and hereby is, barred from association in a supervisory capacity with any broker, dealer, or investment adviser with the right to reapply for association in a supervisory capacity after 1 year to the appropriate self-regulatory organization, or if there is none, to the Commission.

B. 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.

C. Respondent shall pay disgorgement of $19,187, prejudgment interest of $5,973, and a civil penalty in the amount of $75,000 to the United States Treasury. Payment shall be made in the following installments: Respondent shall pay $20,032 within 30 days of the issuance of this Order. Respondent shall then make four payments of $20,032 each, which payments must be hand-delivered or post-marked no later than the 31st day of December 2009, and the 1st day of February 2010, June 2010, and September 2010, 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 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 Louis J. Akers 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

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

September 8, 2009

IN THE MATTER OF SUPER NOVA RESOURCES, 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 Super Nova Resources, Inc. because questions have arisen regarding the trading in the company's stock, and the accuracy and adequacy of publicly available information concerning, among other things, the company's business operations.

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 September 8, 2009, through 11:59 p.m. EDT, on September 21, 2009.

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. 60632 / September 8, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13613

In the Matter of **JAMIE P. LAKE,** **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 Jamie P. Lake ("Lake" 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. Lake, age 35, was the president and sole owner of JPL Financial ("JPL"), a financial services business located in Kingston, Pennsylvania. From December 2006 through March 2009, Lake was also a registered representative associated with Questar Capital Corporation ("Questar"), a broker-dealer registered with the Commission, and held Series 6 and 63 Licenses.

2. On June 1, 2009, Lake pled guilty to one count of mail fraud in violation of Title 18 United States Code, Section 1341 before the United States District Court for the Middle District of Pennsylvania, in United States v. Jamie P. Lake, Crim. Information No. 3:09-CR-168-01.

3. The counts of the criminal information to which Lake pled guilty alleged, among other things, that Lake defrauded investors and obtained money and property by means of materially false and fraudulent pretenses, representations and promises, and that he caused his customers to use the United States mails to deliver investors' checks to him. Lake executed the scheme and artifice to defraud by soliciting customers of Questar and JPL to invest money under false pretenses, by failing to invest their money as promised, and by misappropriating and converting their money to his own use without their knowledge and authorization.

IV.

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

Accordingly, it is hereby ORDERED:

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

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60643; File No. 4-590]

Securities Lending and Short Sale Roundtable

AGENCY: Securities and Exchange Commission.

ACTION: Notice of roundtable discussion; request for comment.

SUMMARY: The Commission will host a one and a half day roundtable to solicit the views of investors, issuers, financial services firms, self-regulatory organizations and the academic community regarding securities lending and short sales. The roundtable will include a comprehensive overview of securities lending and also analyze possible short sale pre-borrowing requirements and additional short sale disclosures.

The roundtable discussion will be held in the auditorium of the Securities and Exchange Commission headquarters at 100 F Street, NE, in Washington, DC on September 29, 2009 from 9:30 am to approximately 4:00 pm (securities lending) and September 30, 2009 from 9:30 am to approximately 12:30 pm (pre-borrowing and possible additional short sale disclosures). The public is invited to observe the roundtable discussion. Seating will be available on a first-come, first-served basis. The roundtable discussion also will be available via webcast on the Commission's Web site at www.sec.gov.

The roundtable will consist of panels focused on securities lending and possible short sale pre-borrowing requirements and additional short sale disclosures. The panelists will consider a range of securities lending topics, such as current lending practices and participants, compensation arrangements and conflicts, the benefits and risks of securities lending, risks related to cash collateral reinvestment, improvements to transparency, and consideration of whether the securities lending regulatory regime can be improved for the benefit of investors. The panelists will also consider short sale disclosure topics, such as whether investors would benefit from adding a short sale indicator to the tapes to which transactions are reported for exchange-listed securities, and requiring public disclosure of individual large short positions. In addition, the panelists will evaluate the potential impact of imposing a pre-borrow or enhanced "locate" requirement on short sellers, potentially on a pilot basis, as a way to curtail abusive "naked" short selling.

DATES: The roundtable discussion will take place on September 29, 2009 (securities lending) and September 30, 2009 (pre-borrowing and possible additional short sale disclosures). The Commission will accept comments regarding issues addressed in the roundtable discussion until October 30, 2009.

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 4-590 on the subject line.

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 Number 4-590. 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). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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: The Division of Trading and Markets, at (202) 551-5720, Securities and Exchange Commission, 100 F Street NE, Washington DC 20549-7561.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Dated: September 10, 2009

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60651; File Nos.10-193 and 10-194)

September 11, 2009

EDGX Exchange, Inc., and EDGA Exchange, Inc.; Notice of Filing of Applications, as Amended, for Registration as National Securities Exchanges under Section 6 of the Securities Exchange Act of 1934

On May 7, 2009, EDGX Exchange, Inc. ("EDGX"), and EDGA Exchange, Inc. ("EDGA," and, together with EDGX, the "Exchanges") submitted to the Securities and Exchange Commission ("Commission") Form 1 applications under the Securities Exchange Act of 1934 ("Exchange Act"), seeking registration as national securities exchanges under Section 6 of the Exchange Act.[1] On July 30, 2009, the Exchanges each submitted Amendment No. 1 to their Form 1 applications. The Commission is publishing this notice to solicit comments on the Exchanges' Form 1 applications, as amended. The Commission will take these comments into consideration in making its determination about whether to grant the Exchanges' requests to be registered as national securities exchanges. The Commission will grant the registrations if it finds that the requirements of the Exchange Act and the rules and regulations thereunder with respect to the Exchanges are satisfied.[2]

The Exchanges' Form 1 applications, as amended, provide detailed information on how they propose to satisfy the requirements of the Exchange Act. In general, the Exchanges, which are wholly-owned subsidiaries of Direct Edge Holdings LLC, will each operate separate fully automated electronic books for orders to buy or sell securities with continuous, automated

1 On September 11, 2009, the Commission issued an order granting EDGX and EDGA exemptive relief, subject to certain conditions, in connection with the filing of their Form 1 applications. See Securities Exchange Act Release No. 60650.

2 15 U.S.C. 78s(a).

matching functions.[3] Liquidity on the Exchanges will be derived from orders to buy and orders to sell submitted to the Exchanges electronically by their respective members from remote locations. Neither EDGX nor EDGA will have a trading floor, nor will they have exchange specialists or market makers. The Exchanges' Form 1 applications, as amended, are available at the Commission's Public Reference Room and www.sec.gov.

Interested persons are invited to submit written data, views, and arguments concerning the Exchanges' Form 1 applications, as amended, including whether the Exchanges' applications, as amended, are consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number(s) 10-193 (for EDGX) and 10-194 (for EDGA) on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number(s) 10-193 (for EDGX) and 10-194 (for EDGA). These file number(s) should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method.

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3 EDGX and EDGA represented that the Step-Up functionality, set forth in the Form 1 applications, is the same functionality as Enhanced Liquidity Provider ("ELP") functionality offered by Direct Edge ECN LLC ("DECN"). EDGX and EDGA also agreed to amend the Form 1 applications to comply with any Commission rulemaking in this area. See Letter from William O'Brien, Chief Executive Officer, Direct Edge Holdings LLC, DECN, EDGX, and EDGA, to James Brigagliano, Co-Acting Director, Division of Trading and Markets, Commission, dated August 10, 2009.

The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the Exchanges' Form 1 applications filed with the Commission, and all written communications relating to the application between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number(s) 10-193 (for EDGX) and 10-194 (for EDGA) and should be submitted on or before [insert date 45 days from publication in the Federal Register].

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60650)

Order Granting Application by EDGX Exchange, Inc. and EDGA Exchange, Inc. for a Conditional Exemption Pursuant to Section 36(a) of the Exchange Act from Certain Requirements of Rules 6a-1 and 6a-2 under the Exchange Act

September 11, 2009

I. Introduction

EDGX Exchange, Inc. ("EDGX") and EDGA Exchange, Inc. ("EDGA," and, together with EDGX, the "Applicants") each submitted to the Securities and Exchange Commission ("Commission") an application on Form 1 under the Securities Exchange Act of 1934 ("Exchange Act") to register as a national securities exchange. In addition, the Applicants, pursuant to Rule 0-12[1] under the Exchange Act, have requested an exemption under Section 36(a)(1) of the Exchange Act[2] from certain requirements of Rules 6a-1(a) and 6a-2 under the Exchange Act.[3] This order grants the Applicants' request for exemptive relief, subject to the satisfaction of certain conditions, which are outlined below.

II. Application for Conditional Exemption from Certain Requirements of Exchange Act Rules 6a-1 and 6a-2

A. Filing Requirements under Exchange Act Rule 6a-1(a)

Exchange Act Rule 6a-1(a) requires an applicant for registration as a national securities exchange to file an application with the Commission on Form 1. Exhibit C to Form 1 requires

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1 17 CFR 240.0-12.

2 15 U.S.C. 78mm(a)(1).

3 17 CFR 240.6a-1(a) and 6a-2. See letter from Eric W. Hess, General Counsel and Secretary, EDGA and EDGX, to Elizabeth Murphy, Secretary, Commission, dated July 30, 2009 ("Exemption Request").

the applicant to provide certain information with respect to each of its subsidiaries and affiliates.[4] For purposes of Form 1, an "affiliate" is "[a]ny person that, directly or indirectly, controls, is under common control with, or is controlled by, the national securities exchange…including any employees."[5] Form 1 defines "control" as "[t]he power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise…."[6] Form 1 provides, further, that any person that directly or indirectly has the right to vote 25% or more of a class of voting securities, or has the power to sell or direct the sale of 25% or more of a class of voting securities, is presumed to control the entity.[7]

Exhibit D to Form 1 requires an applicant for exchange registration to provide unconsolidated financial statements for the latest fiscal year for each subsidiary or affiliate. Exhibit D requires the financial statements to include, at a minimum, a balance sheet and an income statement with such footnotes and other disclosures as are necessary to avoid rendering the financial statements misleading. Exhibit D provides, in addition, that if any affiliate or subsidiary of the applicant is required by another Commission rule to submit annual financial

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4 Specifically, Exhibit C requires the applicant to provide, for each subsidiary or affiliate, and for any entity that operates an electronic trading system used to effect transactions on the exchange: (1) the name and address of the organization; (2) the form of organization; (3) the name of the state and statute citation under which it is organized, and the date of its incorporation in its present form; (4) a brief description of the nature and extent of the affiliation; (5) a brief description of the organization's business or function; (6) a copy of the organization's constitution; (7) a copy of the organization's articles of incorporation or association, including all amendments; (8) a copy of the organization's by-laws or corresponding rules or instruments; (9) the name and title of the organization's present officers, governors, members of all standing committees, or persons performing similar functions; and (10) an indication of whether the business or organization ceased to be associated with the applicant during the previous year, and a brief statement of the reasons for termination of the association.

5 Form 1 Instructions, Explanation of Terms, 17 CFR 249.1.

6 Id.

7 Id.

statements, a statement to that effect, with a citation to the other Commission rule, may be provided in lieu of the financial statements required in Exhibit D.

A Form 1 application is not considered filed until all necessary information, including financial statements and other required documents, have been furnished in the proper form.[8]

B. Filing Requirements under Exchange Act Rule 6a-2

Exchange Act Rule 6a-2(a)(2) requires a national securities exchange to update the information provided in Exhibit C within 10 days of any action that causes the information provided in Exhibit C to become inaccurate or incomplete. In addition, Exchange Act Rule 6a-2(b)(1) requires a national securities exchange to file Exhibit D on or before June 30 of each year, and Exchange Act Rule 6a-2(c) requires a national securities exchange to file Exhibit C every three years.

C. Exemption Request

On July 23, 2009, the Applicants requested that the Commission grant an exemption under Section 36 of the Exchange Act, subject to the conditions set forth below, from the requirement under Exchange Act Rule 6a-1 to file the information requested in Exhibits C and D to Form 1 for the "Foreign Indirect Affiliates," as defined below, of the Applicants.[9] In addition, the Applicants requested an exemption, subject to certain conditions, with respect to the Foreign Indirect Affiliates from the requirements under: (1) Exchange Act Rule 6a-2(a)(2) to amend Exhibit C within 10 days if the information in Exhibit C becomes inaccurate or incomplete; and (2) Exchange Act Rules 6a-2(b)(1) and (c) to file periodic updates to Exhibits C and D.

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8 17 CFR 202.3(b)(2). Defective Form 1 applications may be returned with a request for correction or held until corrected before being accepted as a filing. See 17 CFR 202.3(b)(2). See also Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) ("Regulation ATS Adopting Release") at note 329 and accompanying text.

9 See Exemption Request, supra note 3.

The Applicants are wholly-owned subsidiaries of Direct Edge Holdings LLC ("DE Holdings"). International Securities Exchange Holdings, Inc. ("ISE Holdings") owns a 31.54% ownership interest in DE Holdings.[10] ISE Holdings is a wholly-owned subsidiary of U.S. Exchange Holdings, Inc., which is wholly-owned by a German stock corporation, Eurex Frankfurt AG ("Eurex Frankfurt"). Eurex Frankfurt is wholly-owned by Eurex Zurich AG ("Eurex Zurich"), a Swiss stock corporation owned by SIX Swiss Exchange AG ("SIX Swiss Exchange"), and Deutsche Borse AG ("Deutsche Borse").[11] SIX Swiss Exchange is a wholly-owned subsidiary of SIX Group AG ("SIX Group"), a Swiss stock corporation. According to the Applicants, Eurex Frankfurt, Eurex Zurich, SIX Swiss Exchange, Deutsche Borse, and SIX Group (collectively, the "Foreign Direct Affiliates") hold ownership interests in excess of 25% in a large number of other foreign entities, some of which also own interests in excess of 25% in other entities (such Foreign Direct Affiliate-owned entities are referred to, collectively, as the "Foreign Indirect Affiliates").[12]

Because of the limited and indirect nature of their connection to the Foreign Indirect Affiliates, the Applicants believe that the corporate and financial information of the Foreign Indirect Affiliates required by Exhibits C and D of Form 1 would have little relevance to the Commission's review of the Applicants' Form 1 applications or to the Commission's ongoing oversight of the Applicants as national securities exchanges if the Commission approves the

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10 See Exemption Request, supra note 3, at 2-3. See also Securities Exchange Act Release No. 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (File No. SR-ISE-2008-85) (order approving ISE Holdings' purchase of an ownership interest in DE Holdings).

11 SIX Swiss Exchange, a Swiss stock corporation, and Deutsche Borse, a German stock corporation, each own approximately 50% of Eurex Zurich. See Exemption Request, supra note 3, at 2-3.

12 See Exemption Request, supra note 3, at 3.

Applicants' Form 1 applications.[13] In this regard, the Exemption Request states that the Foreign Indirect Affiliates have no ability to influence the management, policies, or finances of the Applicants and no obligation to provide funding to, or ability to materially affect the funding of, the Applicants.[14] The Exemption Request also states that (1) the Foreign Indirect Affiliates have no ownership interest in the Applicants or in any of the controlling shareholders of the Applicants; and (2) there are no commercial dealings between the Applicants and the Foreign Indirect Affiliates.[15] Further, the Exemption Request states that obtaining detailed corporate and financial information with respect to the Foreign Indirect Affiliates (1) is unnecessary for the protection of investors and the public interest and (2) would be unduly burdensome and inefficient because these affiliates are located in foreign jurisdictions and the disclosure of such information could implicate foreign information sharing restrictions in such jurisdictions.[16]

As a condition to the granting of exemptive relief, the Applicants have agreed to provide: (i) a listing of the names of the Foreign Indirect Affiliates; (ii) an organizational chart setting forth the affiliation of the Foreign Indirect Affiliates and the Foreign Direct Affiliates and the Applicants; and (iii) in Exhibit C of the Applicants' respective Form 1 applications, a description of the nature of the Foreign Indirect Affiliates' affiliation with the Foreign Direct Affiliates and the Applicants. In addition, as a condition to the granting of exemptive relief from the requirements of Exchange Act Rule 6a-2(a)(2), 6a-2(b)(1), and 6a-2(c), as described above, the Applicants have agreed to provide amendments to the information required under conditions (i)

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13 Id.

14 Id.

15 Id.

16 Id. The Applicants also believe that providing the information required by Exhibits C and D with respect to the Foreign Indirect Affiliates could raise confidentiality concerns because many of the Foreign Indirect Affiliates are not public companies. Id.

through (iii) above on or before June 30th of each year. Further, the Applicants note that they will provide the information required by Exhibits C and D for all of their affiliates other than the Foreign Indirect Affiliates, including the Foreign Direct Affiliates.[17]

III. Order Granting Conditional Section 36 Exemption

Section 6 of the Exchange Act[18] sets forth a procedure for an exchange to register as a national securities exchange.[19] Exchange Act Rule 6a-1(a)[20] requires an application for registration as a national securities exchange to be filed on Form 1 in accordance with the instructions in Form 1. A Form 1 application is not considered filed until all necessary information, including financial statements and other required documents, have been furnished in the proper form.[21] Exchange Act Rule 6a-2 establishes ongoing requirements to file certain amendments to Form 1.

Section 36(a)(1) of the Exchange Act provides that "the Commission, by rule, regulation, or order, may 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 of any rule or regulation thereunder, to

17 See Exemption Request, supra note 3, at 4.

18 15 U.S.C. 78f.

19 Specifically, Section 6(a) of the Exchange Act states that "[a]n exchange may be registered as a national securities exchange....by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors." Section 6 of the Exchange Act also sets forth various requirements to which a national securities exchange is subject.

20 17 CFR 240.6a-1(a).

21 17 CFR 202.3(b)(2). See also note 8, supra.

the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors."[22]

For the reasons discussed below, the Commission believes that it is appropriate in the public interest and consistent with the protection of investors to exempt the Applicants from the requirement under Exchange Act Rule 6a-1 to provide the information required in Exhibits C and D to Form 1 with respect to the Foreign Indirect Affiliates, subject to the following conditions:

(1) the Applicants must provide a list of the names of the Foreign Indirect Affiliates;

(2) the Applicants must provide an organizational chart setting forth the affiliation of the Foreign Indirect Affiliates and the Foreign Direct Affiliates and the Applicants; and

(3) as part of Exhibit C to the Applicants' respective Form 1 Applications, the Applicants must provide a description of the nature of the affiliation between the Foreign Indirect Affiliates and the Foreign Direct Affiliates and the Applicants.

The Commission believes, further, that it is appropriate in the public interest and consistent with the protection of investors to exempt the Applicants, with respect to the Foreign Indirect Affiliates, from the requirements under: (a) Exchange Act Rule 6a-2(a)(2) to amend Exhibit C within 10 days of any action that renders the information in Exhibit C inaccurate or incomplete; (b) Exchange Act Rules 6a-2(c) to provide periodic updates of Exhibit C; and (c) Exchange Act Rules 6a-2(b)(1) to provide periodic updates of Exhibits D, subject to the

22 15 U.S.C. 78mm(a)(1).

condition that the Applicants provide amendments to the information required under conditions (1) through (3) above on or before June 30th of each year.

As part of an application for exchange registration, the information included in Exhibits C and D is designed to help the Commission make the determinations required under Sections 6(b) and 19(a) of the Exchange Act with respect to the application. The updated Exhibit C and D information required under Exchange Act Rule 6a-2 is designed to help the Commission exercise its oversight responsibilities with respect to registered national securities exchanges. Specifically, Exhibit D is designed to provide the Commission with information concerning the financial status of an exchange and its affiliates and subsidiaries,[23] and Exhibit C provides the Commission with the names and organizational documents of these affiliates and subsidiaries.[24] Such information is designed to help the Commission determine whether an applicant for exchange registration would have the ability to carry out its obligations under the Exchange Act, and whether a registered national securities exchange continues to have the ability to carry out its obligations under the Exchange Act.

Since the most recent amendments to Form 1 in 1998,[25] many registered national securities exchanges that previously were member-owned organizations with few affiliated entities have demutualized. Some of these demutualized exchanges have been consolidated under holding companies with numerous affiliates that, in some cases, have only a limited and indirect connection to the registered national securities exchange, with no ability to influence the management or policies of the registered exchange and no obligation to fund, or to materially

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23 See Securities Exchange Act Release No. 18843 (June 25, 1982), 47 FR 29259 (July 6, 1982) (proposing amendments to Form 1); see also Form 1, 17 CFR 249.1, and Section II.A., supra.

24 Form 1, 17 CFR 249.1. See also note 4, supra.

25 See Regulation ATS Adopting Release, note 8, supra.

affect the funding of, the registered exchange. The Commission believes that, for these affiliated entities, the information required under Exhibits C and D would have limited relevance to the Commission's review of an application for exchange registration or to its oversight of a registered exchange.

Based on the Applicants' representations, the indirect nature of the relationship between the Applicants and the Foreign Indirect Affiliates, and the information that the Applicants will provide with respect to the Foreign Direct Affiliates and the Foreign Indirect Affiliates, the Commission believes that it will have sufficient information to review the Applicants' Form 1 applications and to make the determinations required under Sections 6(b) and 19(a) of the Exchange Act with respect to their applications for registration as national securities exchanges.[26] The Commission believes, further, that it would have the information necessary to oversee the Applicants' activities as national securities exchanges if the Commission approves the Applicants' Form 1 applications. In particular, the Commission notes that the Applicants have represented that they have no direct connection to the Foreign Indirect Affiliates, that the Foreign Indirect Affiliates have no ability to influence the management or policies of the Applicants, and that the Foreign Indirect Affiliates have no obligation to fund, or ability to materially affect the funding of, the Applicants. In addition, the Commission notes that the Applicants represented that: (1) the Foreign Indirect Affiliates have no ownership interest in the Applicants or in any of the controlling shareholders of the Applicants; and (2) there are no

26 15 U.S.C. 78f(b) and 78s(a). Section 6(b) of the Exchange Act enumerates certain determinations that the Commission must make with respect to an exchange before registering the exchange as a national securities exchange. The Commission will not register an exchange as a national securities exchange unless it is satisfied that the exchange meets these requirements. See Regulation ATS Adopting Release, supra note 8, at IV.B.

commercial dealings between the Applicants and the Foreign Indirect Affiliates.[27] The Commission also believes that, based on the Applicants' representations, it could be burdensome for the Applicants to obtain detailed corporate and financial information with respect to the Foreign Indirect Affiliates because these affiliates are located in foreign jurisdictions and the disclosure of such information could implicate foreign information sharing restrictions in such jurisdictions.[28] Given the limited and indirect relationship between the Applicants and the Foreign Indirect Affiliates and the location of the Foreign Indirect Affiliates in foreign jurisdictions, as described above, the Commission believes that the detailed corporate and financial information required in Exhibits C and D with respect to the Foreign Indirect Affiliates is unnecessary for the Commission's review of the Applicants' Form 1 applications and would be unnecessary for the Commission's oversight of the Applicants as registered national securities exchanges following any Commission approval of their Form 1 applications.

For the reasons discussed above, the Commission finds that the conditional exemptive relief requested by the Applicants is appropriate in the public interest and is consistent with the protection of investors.

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27 See Exemption Request, supra note 3, at 3.

28 See id.

IT IS ORDERED, pursuant to Section 36 of the Exchange Act,[29] and subject to the conditions described above, that the Applicants are exempt from the requirements to: (1) include in their Form 1 applications the information required in Exhibits C and D to Form 1 with respect to the Foreign Indirect Affiliates; and (2) with respect to the Foreign Indirect Affiliates, update the information in Exhibits C and D to Form 1 as required by Exchange Act Rules 6a-2(a)(2), 6a-2(b)(1), and 6a-2(c).

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

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29 15 U.S.C. 78mm.

Commissioner Casey
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60657 / September 11, 2009

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3048 / September 11, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13614

In the Matter of **DANA HOLDING CORPORATION (as successor registrant to DANA CORPORATION),** **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 Dana Holding Corporation (as successor registrant to Dana Corporation) ("Dana Holding" 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:

RESPONDENT

1. Prior to filing a voluntary petition for reorganization relief under Chapter 11 of the U.S. Bankruptcy Code on March 3, 2006, Dana Corporation was a Virginia corporation headquartered in Toledo, Ohio, that manufactured and supplied automotive parts and systems to vehicle manufacturers worldwide. Before bankruptcy, Dana Corporation's shares were registered under Section 12(b) of the Exchange Act and traded on the New York Stock Exchange. Trading of Dana Corporation's shares was suspended on March 3, 2006. The Commission granted the New York Stock Exchange's application to de-list Dana Corporation from the Exchange in April 2006. After being delisted, Dana Corporation's shares were deemed registered under Section 12(g) of the Exchange Act and traded on the Over-the Counter Bulletin Board. On or about February 1, 2008, upon its emergence from Chapter 11, a new holding company, Dana Holding Corporation assumed substantially all of the business and assets of Dana Corporation and the common stock of Dana Holding, which was registered under Section 12(b) of the Exchange Act, began trading on the New York Stock Exchange.

SUMMARY

2. From 2004 through mid-2005, contrary to Generally Accepted Accounting Principles ("GAAP"), Dana Corporation improperly recognized revenue or income on several transactions and delayed recording expenses in the appropriate period. Dana Corporation thus filed materially false and misleading periodic reports with the Commission for the fiscal year 2004 and the first two quarters of 2005. In total, Dana Corporation materially overstated its earnings before interest and taxes ("EBIT") by $88 million, or 73.9% of restated EBIT. This equates to an overstatement of $43 million or 39.8% of restated net income, as previously reported in Dana Corporation's Form 10-K/A and Forms 10-Q/A filed in December 2005.

3. During this period, former Dana Corporation employees of Commercial Vehicle Systems ("CVS"), a subdivision of one of Dana Corporation's two main business units, the Heavy Vehicle Technologies and Systems Group ("HVTSG"), engaged in a fraudulent scheme with former Dana Corporation employees of HVTSG to inflate CVS's financial results. As a result, Dana Corporation's financial statements were misstated, in part because the company: (1) recognized income on transactions where assets were never transferred or risk of ownership never passed, (2) recognized revenue for price increases on parts sales without agreement from the customers for the price increases, (3) improperly deferred the recognition of steel surcharge expenses, and (4) recorded other improper accounting entries, including decreasing debts owed to suppliers without any contractual support or agreement from the suppliers and recording entries

[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.

that increased income without any basis or supporting documentation. Dana Corporation overstated its EBIT by $31.6 million due to the fraud.

4. In addition to the fraud, Dana Corporation's financial statements from 2004 through the first two quarters of 2005 contained accounting errors amounting to $56.4 million. Dana Corporation failed to maintain accurate books and records. Dana Corporation also had materially deficient internal accounting controls that significantly contributed to the accounting irregularities and errors. As a result, Dana Corporation filed materially false and misleading periodic filings with the Commission for fiscal year 2004 and the first two quarters of 2005. In December 2005, Dana Corporation issued a Form 10-K/A and Forms 10-Q/A amending those filings.

FACTS

The Fraudulent Scheme to Overstate Earnings at CVS

5. The fraudulent misstatements in the financial results for CVS were ultimately incorporated into the financial statements for HVTSG and Dana Corporation. HVTSG's financial results and Dana Corporation's consolidated financial information were disclosed to the investing public in Dana Corporation's Form 10-K, Forms 10-Q, Forms 8-K and S-4 filings for 2004 through the second quarter of 2005. During this period, Dana Corporation overstated its EBIT by approximately $31.6 million or 26.5% because of the fraud at CVS, described below.

Improper Revenue Recognition of Price Increases

6. In the first and second quarter of 2005, Dana Corporation improperly recognized price increases for parts without any written agreement from two significant customers. When Dana Corporation accrued revenue for these price increases, employees were still negotiating the price increases with these customers. No written agreement was ever finalized, and no invoices for the amounts accrued were sent to the customers. Before revenue can be recognized, GAAP requires that persuasive evidence of an arrangement exists and that collectability be reasonably assured. *See* Staff Accounting Bulletin ("SAB") No. 104, *Revenue Recognition in Financial Statements*, Topic 13.A.1., citing Statement of Financial Accounting Concepts ("SFAC") 5, *Recognition and Measurement in Financial Statements of Business Enterprises*, ¶¶ 83 and 84. Thus, contrary to GAAP, Dana Corporation's EBIT was overstated by a total of $2 million and $8.6 million in the first and second quarter of 2005, respectively, when Dana Corporation recorded these price accruals without customer agreement.

Failure to Expense Steel Surcharge Costs

7. In 2004 and 2005, steel suppliers typically passed on the higher cost of steel to Dana Corporation in the form of steel surcharges, which were separately invoiced. During that time, former employees of CVS and HVTSG improperly delayed expensing the cost of steel surcharges by: (1) instructing HVTSG's purchasing department to request that suppliers delay sending steel surcharge invoices; (2) rejecting valid steel surcharge invoices and failing to record those expenses; and (3) expensing the base cost of steel at the time of the receipt of steel, but

delaying the recognition of the steel surcharge costs for three to four months. Expenses were not booked in conformity with GAAP because they were not recorded as they were incurred. *See* SFAC 6, *Elements of Financial Statements*, ¶80; SFAC 5, ¶85. Thus, because Dana Corporation's expenses were understated, its EBIT was overstated by $350,000 in 2004, and by $2.8 million and $4 million, in the first and second quarters of 2005, respectively.

<u>Improper Recording of Income from Sales Transactions</u>

8. In 2004, employees of CVS and HVTSG negotiated several transactions with a Kentucky supplier of automotive parts ("Kentucky Supplier") that resulted in improper recording of income. The first transaction took place at the end of the first quarter of 2004, at which time an agreement was signed which provided for the Kentucky Supplier's purchase of spare parts from Dana Corporation. Some of the spare parts purportedly sold to the Kentucky Supplier were to be used with equipment that the Kentucky Supplier did not yet own, but supposedly was to be acquired from Dana Corporation in the future. The signed agreement specifically provided, among other things, that: (1) the spare parts would remain at Dana Corporation's facilities pending the actual sale of equipment to the Kentucky Supplier; and (2) Dana Corporation would insure and assume the risk of loss on the spare parts while the parts were at Dana Corporation's facilities. Inclusion of these provisions in the agreement precluded the recording of income under GAAP. According to GAAP, income cannot be recorded if the goods are not delivered and risk of loss does not pass from the seller to the buyer. *See* SAB No. 104, Topic 13.A.1., citing SFAC 5, ¶¶ 83 and 84. Because income could not be recorded under GAAP, Dana Corporation overstated its EBIT in the first quarter of 2004 by $573,000.

9. In the second quarter of 2004, Dana Corporation agreed to sell its plant located in Toluca, Mexico to the Kentucky Supplier. Dana Corporation agreed to partially leaseback the Toluca plant. Dana Corporation recorded a $5 million gain on the sale and leaseback of Toluca. According to Statement of Financial Accounting Standards ("SFAS") No. 28, "any profits up to the amount of the present value of the leaseback rentals must be deferred and amortized" in a sale involving a leaseback provision over the life of the agreement. SFAS No. 28, *Accounting for Sales with Leasebacks*, ¶¶3 and 15. Contrary to GAAP, Dana Corporation improperly recorded the entire $5 million from the Kentucky Supplier as income, overstating its EBIT in the second quarter of 2004 by $2.8 million (the amount relating to the leaseback).

10. Finally, in the last half of 2004, CVS improperly recognized income based on upfront payments for an agreement to purchase equipment which was never delivered to the Kentucky Supplier. The written agreement stated that if Dana Corporation did not sell or deliver the equipment, Dana Corporation was liable to repay the upfront payment. GAAP requires that gains shall be realized or realizable and earned before it may be recognized. Those conditions are usually met by the time the product is delivered. *See* SAB No. 104, Topic 13.A.1., citing SFAC 5, ¶¶ 83 and 84. The gain from a non-refundable, upfront payment should be deferred if the goods, assets, or services contracted for have not been delivered. *See id.* The Kentucky Supplier paid a total of $3.3 million in September and December 2004 for the equipment, and Dana Corporation booked all of that as income instead of delaying recognition until the equipment was transferred as

required by GAAP. Thus, these improper accounting entries had the effect of overstating Dana Corporation's EBIT by $3.3 million.

Other Improper Accounting Entries

11. From late 2004 through the first quarter of 2005, CVS issued debit memoranda ("debit memos") to suppliers without their agreement or any contractual basis thus causing Dana Corporation to improperly increase its profits. Debit memos were invoices that were issued to its suppliers to reduce an outstanding payable amount and corresponding expense. If the supplier agreed to the issuance of the debit memo, Dana Corporation could properly reduce the payable amount and its inventory cost. However, in many instances during this timeframe, the suppliers who received the debit memos from CVS disputed them. Without supplier agreement or a contractual basis, Dana Corporation either improperly reduced its obligation to pay these liabilities or improperly recorded an increase in its receivables. As a result, Dana Corporation overstated its EBIT by $3.9 million from the last quarter of 2004 through 2005.

12. In addition, Dana Corporation's publicly reported financial results were inflated by a number of entries, some of which were made at the end of the month or quarter, which had no documentation or contractual basis. For example, in at least two instances in the first quarter of 2005, income was inappropriately recognized based solely on letters of intent to sell parts. Based on all of these improper entries, Dana Corporation's EBIT was overstated by $500,000 in 2004 and $3.1 million and $1.6 million the first and second quarter of 2005, respectively.

Other Accounting Errors at Dana Corporation

13. Dana Corporation also overstated its EBIT by approximately $56.4 million based on accounting errors from 2004 through the first two quarters of 2005.

14. Errors at Dana Corporation's CVS Division amounted to EBIT of $13.9 million. Those errors included approximately $4.1 million relating to the accounting for one of Dana Corporation's joint ventures; and approximately $9.8 million of errors in various reserve and expense accounts at CVS.

15. The largest error throughout all of Dana Corporation's divisions involved a $19 million EBIT overstatement relating to Dana Corporation's LIFO inventory reserve. Dana Corporation was required to increase its LIFO inventory reserve to correct its LIFO calculation. Erroneous information had been provided to Dana Corporation's corporate accounting department from many plants at various divisions regarding the costs for steel surcharges. During 2004, the plants were instructed to use a separate account to record surcharges in order to better track those costs and its recovery from customers. However, most plants submitted reports of their inventory costs to corporate accounting without including steel surcharge costs. Corporate accounting, in relying upon the erroneous information received from the plants, miscalculated Dana Corporation's LIFO inventory reserve.

16. The remaining errors in EBIT in the amount of $23.5 million were spread throughout Dana Corporation's divisions, including: (1) approximately $6.8 million in errors involving accounts at Dana Corporation's foreign facilities; (2) approximately $3.7 million in errors relating the accounting for assets and/or plants sold; and (3) approximately $13 million in errors in several of Dana Corporation's reserve and expense accounts.

Dana Corporation's Internal Controls Weaknesses

17. Dana Corporation's deficient system of internal controls contributed to the restatement of its financial statements for the first two quarters of fiscal year 2005, fiscal year 2004 and prior years. As identified by Dana Corporation in its Form 10-K/A filed on December 30, 2005, Dana Corporation had five material weaknesses in the design and operation of its internal controls: (1) Dana Corporation did not maintain an effective control environment at CVS; (2) the financial and accounting organization was not adequate to support the Dana Corporation's financial accounting and reporting needs; (3) Dana Corporation did not maintain effective controls over the completeness and accuracy of certain revenue and expense accruals; (4) Dana Corporation did not maintain effective controls over reconciliations of certain financial statement accounts; and (5) Dana Corporation did not maintain effective control over the valuation of certain inventory and the related cost of goods sold accounts.

18. Dana Corporation failed to maintain adequate internal controls at CVS sufficient to prevent and detect the improper accounting entries recorded, and thereby allowed the wrongdoing set forth above to occur, undetected. In particular, Dana Corporation failed to segregate duties concerning journal entries made at CVS. The inadequate controls at Dana Corporation left the CVS controller with the sole responsibility of directing the recording of journal entries, reviewing the entries, and ensuring that they were made in accordance with GAAP. Dana Corporation did not ensure that the HVTSG controller adequately reviewed the entries made by the CVS controller in order to verify the accuracy and propriety of the financial information. In addition, Dana Corporation relied upon the controllers for CVS and HVTSG to self-report any issues to corporate accounting.

19. Dana Corporation failed to maintain a proper system of internal controls and reporting structure sufficient to detect and prevent errors and accounting irregularities. Accounting personnel at Dana Corporation reported directly to the operations managers, not to accounting supervisors responsible for determining that the accounting was properly recorded in accordance with GAAP. This reporting structure allowed, for example, the CVS manager to threaten to fire the CVS controller if profit goals were not met. In addition, the lack of qualifications of accounting personnel at Dana Corporation contributed to the deficiencies in its internal controls.

20. Dana Corporation also had insufficient internal controls to prevent and detect improper revenue and expense accruals. For example, employees at CVS and HVTSG failed to follow controls which required the existence of a written agreement for price increases before significant accruals were entered. Invoices were similarly not expensed at the time incurred because employees circumvented controls requiring the same. Dana Corporation had insufficient

internal controls procedures to ensure adequate review of these significant revenue and expense accruals.

21. Lastly, Dana Corporation lacked effective controls over its inventory and cost of goods sold accounts. Dana Corporation's miscalculation of its LIFO inventory reserve resulted, in part, from corporate accounting's failure to properly instruct the plants to include the surcharge amounts in reporting the steel costs for the LIFO calculation, and to independently verify whether the steel surcharges in the separate accounts were included.

Dana Corporation's Restatement

22. As a result of the fraudulent entries and accounting errors discussed above, Dana Corporation's financial statements in its annual report on Form 10-K for 2004 and its quarterly reports on Forms 10-Q for the first two quarters of 2005 were materially inaccurate. On December 30, 2005, Dana Corporation filed a Form 10-K/A that restated its consolidated financial statements for fiscal year 2004 and Forms 10-Q/A for the first two quarters of 2005. The table below shows that in Dana Corporation's original financial statements, Dana Corporation's EBIT was $77 million for fiscal year 2004 and $130 million for the first two quarters of 2005. In its restated financial statements, Dana Corporation's EBIT was reduced by $44 million for fiscal year 2004 and $44 million for the first two quarters of 2005, resulting in a total reduction of $88 million in EBIT. This equates to an overstatement of $43 million or 39.8% of restated net income, as previously reported in Dana Corporation's Forms 10-K/A and 10-Q/A filed in December 2005.

(All dollar amounts in millions)	Yr. Ended 2004	Qtr. Ended 3/31/05	Qtr. Ended 6/30/05	Total
Dana Reported EBIT	77.0	38.0	92.0	207.0
Dana Restated EBIT	33.0	24.0	62.0	119.0
Total EBIT Overstatement	44.0	14.0	30.0	88.0
Overstatement as % of Restated EBIT	133.3%	58.3%	48.4%	73.9%

VIOLATIONS

23. As a result of the conduct described above, Dana Corporation violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 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, quarterly and current 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. Dana Corporation filed inaccurate periodic reports with the Commission that misstated material facts concerning its financial performance due to Dana Corporation's improper accounting for its revenue, expenses and income.

24. As a result of the conduct described above, Dana Corporation 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. Because Dana Corporation improperly recognized revenue or income and deferred expenses, its books, records and accounts did not, in reasonable detail, accurately reflect its transactions and dispositions of assets.

25. Lastly, as a result of the conduct described above, Dana Corporation 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 GAAP. Dana Corporation's internal controls were not sufficient to prevent the recording of numerous and widespread improper accounting entries described above. Thus, its internal accounting controls were not sufficient to reasonably assure that its transactions were recorded as necessary and its financial statements prepared in accordance with GAAP.

RESPONDENT'S REMEDIAL EFFORTS

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

IV.

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

Accordingly, it is hereby ORDERED that:

Pursuant to Section 21C of the Exchange Act, Respondent Dana Holding cease and desist from committing or causing any violations 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-1, 13a-11, and 13a-13 thereunder.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 230, 240 and 260

Release Nos. 33-9063; 34-60663; 39-2467; File No. S7-02-09

RIN 3235-AK26

EXTENSION OF TEMPORARY EXEMPTIONS FOR ELIGIBLE CREDIT DEFAULT SWAPS TO FACILITATE OPERATION OF CENTRAL COUNTERPARTIES TO CLEAR AND SETTLE CREDIT DEFAULT SWAPS

AGENCY: Securities and Exchange Commission.

ACTION: Interim final temporary rules; extension.

SUMMARY: We are adopting amendments to the expiration dates in our interim final temporary rules that provide exemptions under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939 for certain credit default swaps in order to facilitate the operation of one or more central counterparties for those credit default swaps. Under the amendments, the expiration dates of the interim final temporary rules will be extended to November 30, 2010.

DATES: Effective Date: Effective [insert date of publication in the Federal Register], the expiration dates for the interim final temporary rules and amendments published January 22, 2009 (74 FR 3967) is extended from September 25, 2009 to November 30, 2010.

FOR FURTHER INFORMATION CONTACT: Amy M. Starr, Senior Special Counsel, or Sebastian Gomez Abero, Attorney, Office of Chief Counsel, Division of Corporation Finance, at (202) 551-3500, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3628.

SUPPLEMENTARY INFORMATION: We are adopting amendments to the following rules: interim final temporary Rule 239T and Rule 146 under the Securities Act of 1933 ("Securities

Act"),[1] interim final temporary Rule 12a-10T and Rule 12h-1(h)T under the Securities Exchange Act of 1934 ("Exchange Act"),[2] and interim final temporary Rule 4d-11T under the Trust Indenture Act of 1939 ("Trust Indenture Act").[3]

I. BACKGROUND

In January 2009, we adopted interim final temporary Rule 239T and a temporary amendment to Rule 146 under the Securities Act, interim final temporary Rules 12a-10T and 12h-1(h)T under the Exchange Act, and interim final temporary Rule 4d-11T under the Trust Indenture Act (collectively, the "Interim Final Temporary Rules").[4] We adopted these rules in connection with temporary exemptive orders we issued to a clearing agency acting as a central counterparty ("CCP"), which exempted the CCP from the requirement to register as a clearing agency under Section 17A of the Exchange Act[5] solely to perform the functions of a clearing agency for certain credit default swap ("CDS") transactions. The exemptive orders also exempted certain eligible contract participants[6] and others from certain Exchange Act requirements with respect to certain CDS.[7] Also at that time, we temporarily exempted any exchange that effects transactions in certain CDS from the requirements under Sections 5 and 6 of the Exchange Act[8] to register as a national securities exchange, and any broker or dealer that effects transactions on an exchange in certain CDS from the requirements of Section 5 of the Exchange Act.

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1 15 U.S.C. 77a et. seq.

2 15 U.S.C. 78a et. seq.

3 15 U.S.C. 77aaa et. seq.

4 See Exchange Act Release No. 59246 (Jan. 14, 2009).

5 15 U.S.C. 78q-1.

6 See 7 U.S.C. 1a(12).

7 See Exchange Act Release Nos. 59164 and 59165 (Dec. 24, 2008).

8 15 U.S.C. 78e and 78f.

The Interim Final Temporary Rules, and the temporary exemptive orders we provided under the Exchange Act, were intended to facilitate the operation of one or more CCPs that clear and settle CDS transactions while enabling us to provide oversight to the CDS market.[9] Since the adoption of the interim final rules, only one CCP, ICE U.S. Trust LLC ("ICE Trust"), has been actively engaged as a CCP in clearing CDS transactions in the U.S. in accordance with our exemptions.[10] As of August 28, 2009, ICE Trust had cleared more than 22,800 CDS transactions with a notional value of $1.9 trillion.[11] We believe that the clearing of CDS transactions by ICE Trust has contributed and we anticipate will continue to contribute to increased transparency[12] and the reduction of systemic risk in the CDS market.[13]

We also granted exemptive orders to four other CCPs to clear CDS, two of which were approved in July 2009.[14] The Chicago Mercantile Exchange, to whom we granted an exemptive order in March 2009, has indicated that it continues to work with buy and sell participants in the

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9 For a discussion of concerns related to the market in CDS, and the development of the exemptive orders and interim temporary rules, see Exchange Act Release No. 59246 (Jan. 14, 2009).

10 See Exchange Act Release No. 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009) (temporary exemption for ICE U.S. Trust LLC).

11 See Historical Daily Volume Report – ICE Trust U.S., available at https://www.theice.com/marketdata/reports/ReportCenter.shtml?reportId=26.

12 See Testimony of Mark Lenczowski, Managing Director and Assistant General Counsel at JPMorgan Chase & Co., to the Senate Agriculture Committee (June 4, 2009) (In his testimony, Mr. Lenczowski indicated, in the context of CDS clearing by ICE Trust, that "[c]learing is a highly transparent process....").

13 As of June 30, 2009, ICE Trust had reduced the notional amount of CDS open interest, or net exposure, from over $1.3 trillion to $168.5 billion by clearing trades and netting positions. See, Quarterly Report on Form 10-Q for the quarter ended June 30, 2009 (filed on August 5, 2009). ICE Trust also has a guarantee fund that provides additional protection in the event of a clearing participant default. See Exchange Act Release No. 59527, supra Note 10.

14 See Exchange Act Release No. 60373 (July 23, 2009) (temporary exemption for Eurex Clearing AG); Exchange Act Release No. 60372 (July 23, 2009) (temporary exemption for ICE Clear Europe Limited); Exchange Act Release No. 59578 (Mar. 13, 2009) (temporary exemption for Chicago Mercantile Exchange Inc.); and Exchange Act Release No. 59164 (Dec. 24, 2008) (temporary exemption for LIFFE A&M and LCH.Clearnet Ltd.). LIFFE A&M and LCH Clearnet Ltd., to whom we granted exemptive orders in December 2008, indicated that they will suspend their plans to clear CDS. See, Alastair Marsh, NYSE Liffe and LCH.Clearnet close CDS clearing service (Aug. 12, 2009), available at http://www.risk.net/public/showPage.html?page=867491.

CDS market to promote its CCP.[15] ICE Clear Europe Limited ("ICE Europe") and Eurex Clearing AG ("Eurex") have begun clearing CDS transactions in Europe.[16]

Since the adoption of the Interim Final Temporary Rules, a number of legislative initiatives relating to the regulation of derivatives, including CDS, have been introduced by members of Congress and recommended by the United States Department of the Treasury ("Treasury").[17] Congress has not yet taken definitive action with respect to any of the legislative initiatives or the Treasury proposals. Separately, in July 2009, the Committee on Payment and Settlement Systems ("CPSS") and the Technical Committee of the International Organization of Securities Commissions ("IOSCO") established a working group to review the application of the CPSS-IOSCO Recommendations for Central Counterparties ("Recommendations") with respect to OTC derivatives.[18] The Recommendations set out standards for risk management of CCPs.

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15 See Christine Birkner, CDS Clearing Battle (Buy Side vs. Sell Side), Futures (July 1, 2009) ("A spokesperson for CME Group says, 'We continue to work with buy and sell participants to demonstrate the value of our offering.'").

16 See Press Release, IntercontinentalExchange, ICE Clear Europe Clears Euro 51 Billion in Third Week of European CDS Processing; Announces New CDS Clearing Member (Aug. 17, 2009), available at http://ir.theice.com/releasedetail.cfm?ReleaseID=403509. See also, Press Release, Eurex Clearing AG, Eurex Credit Clear Clears First Single Name CDS Worldwide (Aug. 28, 2009), available at http://www.eurexclearing.com/about/press/press_647_en.html.

17 See, e.g., Derivatives Trading Integrity Act of 2009 (S. 272) (introduced by Senator Tom Harkin in January 2009); The Derivatives Markets Transparency and Accountability Act (H.R. 977) (introduced by Representative Collin Peterson in February 2009); Authorizing the Regulation of Swaps Act (S. 961) (introduced by Senator Carl Levin and Senator Susan Collins in May 2009); Treasury's framework for regulatory reform (released in June 2009); Derivative Trading Accountability and Disclosure Act (H.R. 3300) (introduced by Representative Michael McMahon in July 2009); Description of Principles for OTC Derivatives Legislation (announced by Representative Barney Frank and Representative Collin Peterson in July 2009); Senator Charles Schumer's announcement that he is drafting a bill establishing central trade repositories for OTC derivatives markets (August 2009); and Over-the-Counter Derivatives Markets Act of 2009 (prepared by Treasury and sent to Congress in August 2009).

18 See Press Release, Bank for International Settlements, CPSS-IOSCO working group on the review of the "Recommendations for Central Counterparties" (July 20, 2009), available at http://www.bis.org/press/p090720.htm.

The working group plans to identify key issues that can arise when a CCP provides central clearing services for OTC derivatives transactions.[19]

At the time of adoption of the Interim Final Temporary Rules, we requested comment on various aspects of the rule provisions. We received a total of 15 letters, only two of which commented specifically on the interim temporary final rules. Those two letters generally supported allowing CCPs to clear and settle CDS transactions in accordance with the terms of the Interim Final Temporary Rules; but neither of the commenters specifically addressed the duration of the Interim Final Temporary Rules and temporary amendments.[20] The other commenters raised issues not directly related to this rulemaking.[21]

The Interim Final Temporary Rules expire on September 25, 2009. We have determined that it is necessary and appropriate to extend the expiration date of the Interim Final Temporary Rules to November 30, 2010.[22]

II. DISCUSSION OF THE FINAL TEMPORARY RULES

We are adopting amendments to the Interim Final Temporary Rules to extend the expiration date of each of the rules to November 30, 2010. We are not making any other changes to the Interim Final Temporary Rules.

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19 "Where necessary, the working group will propose guidance on how CCPs for OTC derivatives may meet the standards set out by the recommendations and will identify any areas in which the recommendations might be strengthened or expanded to better address risks associated with the central clearing of OTC derivatives. Participants in the working group include representatives of the central banks that are members of the CPSS, representatives of the securities regulators that are members of the IOSCO Technical Committee, and representatives of the International Monetary Fund and the World Bank." Id.

20 See letters from the Yale Law School Capital Markets and Financial Instruments Clinic (March 23, 2009) and from IDX Capital (March 23, 2009).

21 The public comments we received are available for inspection in the Commission's Public Reference Room at 100 F St. N.E., Washington, DC 20549 in File No. S7-02-09. They are also available online at http://www.sec.gov/comments/s7-02-09/s70209.shtml.

22 See Section III, infra, for a discussion of why the extension of time is necessary.

A. Securities Act Rule 239T and Rule 146.

Securities Act Rule 239T exempts from all provisions of the Securities Act, except the anti-fraud provisions of Section 17(a), certain CDS ("eligible CDS")[23] that are offered and sold only to "eligible contract participants,"[24] and that are being or will be issued or cleared by a CCP satisfying the conditions set forth in the CCP exemptions, or registered as a clearing agency under Section 17A of the Exchange Act ("Registered or Exempt CCP"). Hence, under Securities Act Rule 239T, the offer and sale of eligible CDS are exempt from the registration requirements of the Securities Act if the eligible CDS is or will be issued or cleared by a Registered or Exempt CCP, and offered and sold only to an eligible contract participant. Communications used in connection with such offers and sales are not subject to Section 12(a)(2) liability under the Securities Act. Securities Act Rule 239T assures the availability of information to buyers and sellers of CDS due to certain information conditions in the CCP exemptive orders.[25]

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23 An eligible CDS is a bilateral executory derivative contract not subject to individual negotiation:

(1) in which a buyer makes payments to the seller and, in return, receives a payout if there is a default or other credit event involving the reference obligation(s) or reference entity(ies) within a certain time; and

(2) the agreement for which includes the:

(i) specification of the reference obligation or obligor; or, in the case of a reference group or index thereof, all of the reference obligations or obligors comprising any such group or index;

(ii) term of the agreement;

(iii) notional amount upon which payment obligations are calculated;

(iv) credit-related events that trigger a settlement obligation; and

(v) obligations to be delivered if there is a credit-related event or, if it is a cash settlement, the obligations whose value is to be used to determine the amount of settlement obligation under the eligible CDS.

17 CFR 230.239T(d).

24 For purposes of Securities Act Rule 239T, "eligible contract participant" has the same meaning as in Section 1a(12) of the Commodity Exchange Act (the "CEA"), as in effect on the date of adoption of Rule 239T, except that the term does not include a person who is an "eligible contract participant" pursuant to Section 1a(12)(C) of the CEA. 17 CFR 230.239T(a)(2).

25 We note that among the conditions of the exemptions, or representations in the exemptive requests on which we are relying, from clearing registration are that: (1) information is available about the terms of the CDS, the creditworthiness of the CCP or any guarantor, and the clearing and settlement process for the CDS; and (2) the reference entity, the issuer of the reference security, or the reference security is one of the

As we noted in January 2009, absent this exemption, the Securities Act may require registration of the offer and sale of eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP. Without also exempting the offers and sales of the eligible CDS by a Registered or Exempt CCP from the registration requirements of the Securities Act and the Exchange Act and the provisions of the Trust Indenture Act, we believe that the CCPs would not be able to operate in the manner contemplated by the Exchange Act exemptive orders. In addition, the Securities Act, Exchange Act and Trust Indenture Act exemptions are intended to encourage market participants to clear their CDS through the CCPs.

Securities Act Rule 239T also provides that any offer or sale of an eligible CDS that is or will be issued or cleared by a Registered or Exempt CCP by or on behalf of the issuer of a security, an affiliate of such issuer, or an underwriter, if such security is delivered in settlement or whose value is used to determine the amount of the settlement obligation, will constitute a "contract for sale of," "sale of," "offer for sale," or "offer to sell" such security under Section 2(a)(3) of the Securities Act.[26] This provision is intended to ensure that an eligible CDS that is or will be issued or cleared by a Registered or Exempt CCP cannot be used by an issuer, affiliate of an issuer or underwriter to circumvent the registration requirements of Section 5 with respect to an issuer's security for such eligible CDS.[27] As a result, a transaction by such persons

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following: an entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available; a foreign private issuer that has securities listed outside the United States and has its principal trading market outside the United States; a foreign sovereign debt security; an asset-backed security, as defined in Regulation AB [17 CFR 229.1100], issued in a registered transaction with publicly available distribution reports; an asset-backed security issued or guaranteed by Fannie Mae, Freddie Mac or the Government National Mortgage Association; or indexes in which 80 percent or more of the index's weight is comprised of these reference entities or reference securities. See, e.g., Exchange Act Release No. 59527, supra Note 10.

[26] 17 CRF 230.239T(c).

[27] This provision is similar to the condition in the Securities Act exemption in Rule 238 for standardized options [17 CFR 230.238] and in Securities Act Section 2(a)(3) [15 U.S.C. 77b(a)(3)] relating to security futures products.

in an eligible CDS that is or will be issued or cleared by a Registered or Exempt CCP having such securities of the issuer also is a transaction in the issuer's securities that must be registered under the Securities Act, unless an exemption from registration is available.

We also adopted on an interim final temporary basis an amendment to Securities Act Rule 146. Under the temporary amendment to Rule 146, eligible contract participants that are sold eligible CDS in reliance on interim final temporary Securities Act Rule 239T are defined as "qualified purchasers" under Section 18(b)(3) of the Securities Act and thereby such eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP are considered "covered securities" under Section 18 of the Securities Act and exempt from state blue sky laws.[28]

B. Exchange Act Rule 12a-10T and Rule 12h-1(h)T

In January 2009, we also adopted two Interim Final Temporary Rules relating to Exchange Act registration of eligible CDS that are or have been issued or cleared by a Registered or Exempt CCP. Exchange Act Rule 12a-10T exempts eligible CDS that are or have been issued or cleared by a Registered or Exempt CCP from the provisions of Section 12(a) of the Exchange Act under certain conditions.[29] Exchange Act Rule 12h-1(h)T exempts eligible CDS that are or have been issued or cleared by a Registered or Exempt CCP from the provisions of Section 12(g) of the Exchange Act under certain conditions.[30]

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28 17 CFR 230.146(c)T. State securities regulation of covered securities generally is limited under Section 18(b). Under Section 18(b)(3), covered securities are securities offered and sold to qualified purchasers, as defined by the Commission.

29 15 U.S.C. 78l(a).

30 17 CFR 240.12h-1(h)T; 15 U.S.C. 78l(g).

C. Trust Indenture Act Rule 4d-11T

We also adopted a rule under Section 304(d) of the Trust Indenture Act that exempts any eligible CDS, as defined in Securities Act Rule 239T and offered and sold in reliance on Securities Act Rule 239T, from having to comply with the provisions of the Trust Indenture Act.[31]

III. AMENDMENT OF EXPIRATION DATE OF INTERIM FINAL TEMPORARY RULES

In January 2009, we adopted the interim final rules on a temporary basis until September 25, 2009 because we anticipated that this date would provide us with adequate time to evaluate the availability of the exemptions applicable to CDS CCPs and non-excluded CDS, and whether any conditions or provisions of such exemptions should be modified. At the time we adopted the Interim Final Temporary Rules, we indicated that we could act to extend the expiration date of such rules.[32]

We have now determined that it is necessary to extend the expiration date of the Interim Final Temporary Rules for the following reasons. First, we adopted the interim final rules to foster the development of CCPs by providing exemptions from certain regulatory provisions that might otherwise prevent them from engaging in such activities in the manner contemplated by the exemptive orders. To date, there has been only one CCP (ICE Trust) that has begun to clear and settle CDS transactions in the U.S. and two CCPs (ICE Europe and Eurex) that have begun to clear and settle CDS transactions in Europe. Extending the expiration date of our Interim

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[31] Rule 4d-11T. The Trust Indenture Act applies to debt securities sold through the use of the mails or interstate commerce. Section 304 of the Trust Indenture Act exempts from the Act a number of securities and transactions. Section 304(a) of the Trust Indenture Act exempts securities that are exempt under Securities Act Section 3(a), but does not exempt from the Trust Indenture Act securities that are exempt by Commission rule. Accordingly, while Securities Act Rule 239T exempts the offer and sale of eligible CDS satisfying certain conditions from all the provisions of the Securities Act (other than Section 17(a)), the Trust Indenture Act would continue to apply.

[32] See Section III of Exchange Act Release No. 59246 (Jan. 14, 2009).

Final Temporary Rules would not only allow ICE Trust, ICE Europe and Eurex to continue to clear and settle CDS transactions, it would also enable other CCPs to start clearing and settling CDS transactions in the manner contemplated by the exemptive orders. Competition among CCPs clearing CDS transactions could give participants more choice for their trading needs and may reduce clearing fees.[33] In addition, the extension would give us more time to evaluate the rule and assess its effect on the CDS market and the market participants. As reflected in the CPSS-IOSCO Recommendations, our fellow regulators around the world are also thinking about how to address the risks associated with the central clearing of OTC derivatives, and this remains an open and current topic of discussion for all securities regulators. Finally, Treasury has delivered financial regulatory reform proposals to Congress, and several bills to regulate derivatives and the derivatives markets have been introduced in Congress.

Absent an exemption, the offer and sale of eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP may have to be registered under the Securities Act, the eligible CDS that have been so issued or cleared may have to be registered as a class under the Exchange Act, and the provisions of the Trust Indenture Act may need to be complied with. We believe that the Interim Final Temporary Rules have facilitated and anticipate that they will continue to facilitate the use by eligible contract participants of CDS CCPs. Absent an extension of the expiration date of the interim final rules, we believe that the CCPs would not be able to operate in the manner contemplated by the exemptive orders. We note that the expiration dates

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33 See Harrington and Leising, supra note 15 (quoting Theo Lubke, an official with the Federal Reserve Bank of New York responsible for the central bank's efforts to curb risk in the CDS market, as stating that "A competitive [CCP clearing] environment, at least in the short run, is beneficial. We don't want the first mover to be the winner just because they're the first mover. We would like to see real choice in the market for a period of time to determine which is the better mousetrap."). See also, Financial Services: Cost of Trading Going Down, Survey Finds, Europolitics (July 17, 2009) (citing European Commissioner Charlie McCreevy, "I particularly welcome the [European Commission] study's findings concerning the decreases in costs for trading and clearing and to some extent also for settlement services since 2006. This confirms the positive impact on competition of the Markets in Financial Instruments Directive and the code of conduct on clearing and settlement.").

of certain of these exemptive orders currently extend until April 23, 2010. We are, therefore, adopting amendments to each of the interim final rules to extend the expiration date of the rules to November 30, 2010. Extending the expiration dates for this length of time will allow us to continue to monitor the development and operation of CCPs in the CDS market under the current, evolving regulatory and legislative environment.

IV. CERTAIN ADMINISTRATIVE LAW MATTERS

Section 553(b) of the Administrative Procedure Act ("APA")[34] generally requires an agency to publish notice of a proposed rule making in the Federal Register. This requirement does not apply, however, if the agency "for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."[35] The Commission finds good cause to act immediately to extend the expiration date of the Interim Final Temporary Rules. When we adopted the rules in January of this year, we sought sufficient time to evaluate the appropriateness of the exemptions and the role of CCPs in the CDS market. Since that time, we have granted orders to four additional CDS CCPs exempting them from the requirement to register as a clearing agency under Section 17A of the Exchange Act. Two of these orders were granted as recently as July 2009, and one CCP has started to clear CDS transactions in the U.S. and two have begun clearing CDS in Europe. In addition, there have been a number of recent and still developing legislative and regulatory initiatives relating to the regulation of derivatives, including CDS. Finally, we note that commenters had an opportunity to comment on the length of the temporary rules in January of this year and that this extension is of a limited duration. Therefore, we believe there is good cause to extend the exemption until November 30, 2010 and

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34 5 U.S.C. 553(b).

35 5 U.S.C. 553(b)(B).

find that notice and solicitation of comment on the extension to be impracticable, unnecessary, or contrary to the public interest.[36]

The APA also generally requires that an agency publish an adopted rule in the Federal Register 30 days before it becomes effective.[37] However, this requirement does not apply if the agency finds good cause not to delay the effective date.[38] For similar reasons to those explained above, the Commission finds good cause not to delay the effective date.

V. PAPERWORK REDUCTION ACT

The Interim Final Temporary Rules do not impose any new "collections of information" within the meaning of the Paperwork Reduction Act of 1995 ("PRA"),[39] nor do they create any new filing, reporting, recordkeeping, or disclosure reporting requirements for a CCP that is or will be issuing or clearing eligible CDS. Accordingly, we did not submit the Interim Final Temporary Rules to the Office of Management and Budget for review in accordance with the PRA.[40] We requested comment on whether our conclusion that there are no collections of information is correct, and we did not receive any comment. The extension of the expiration dates does not change our analysis.

VI. COST-BENEFIT ANALYSIS

In January 2009, we adopted the Interim Final Temporary Rules under the Securities Act, the Exchange Act and the Trust Indenture Act that exempt eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP and offered and sold only to eligible contract

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36 This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rule amendment to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are "impractical, unnecessary or contrary to the public interest," a rule "shall take effect at such time as the federal agency promulgating the rule determines").

37 5 U.S.C. 553(d).

38 5 U.S.C. 553(d)(3).

39 44 U.S.C. 3501 et seq.

40 44 U.S.C. 3507(d) and 5 CFR 1320.11.

participants from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provision, as well as from the registration requirements under Section 12 of the Exchange Act and from the provisions of the Trust Indenture Act. The Interim Final Temporary Rules were intended to facilitate the operation of one or more CCPs to act as a clearing agency in the CDS market to reduce some of the risks in the CDS market. Today, we are adopting amendments to such rules to extend their expiration date to November 30, 2010.

Since the adoption of the Interim Final Temporary Rules, one CCP (ICE Trust) has been actively engaged as a CCP in clearing CDS transactions in the U.S. in accordance with terms of the exemptive orders, and two other CCPs (ICE Europe and Eurex) have begun clearing CDS transactions in Europe. In addition, a number of legislative initiatives relating to the regulation of derivatives, including CDS, have been introduced by members of Congress and recommended by the United States Department of the Treasury.[41] Extending the expiration dates of the Interim Final Temporary Rules for this length of time will allow us to continue to monitor the development and operation of CCPs in the CDS market under the current, evolving regulatory and legislative environment.

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, 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 payment 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 synthetic positions in bonds or in segments of the debt market as represented

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41 See Section I, supra, for additional discussion of developments in this area since the adoption of the Interim Final Temporary Rules.

by an index, or to capitalize on the volatility in credit spreads during times of economic uncertainty. In recent years, CDS market volumes have rapidly increased.[42] This growth has coincided with a significant rise in the types and number of entities participating in the CDS market.[43]

In a CCP arrangement, both parties entering a CDS novate their trades to the CCP, and the CCP stands in as the counterparty to all parties of the CDS it clears. Through this novation process, the counterparty risk of a CDS is effectively concentrated in the CCP.

A. Benefits

We are extending the termination date of the Interim Final Temporary Rules that provide exemptions from certain provisions of the Securities Act, the Exchange Act and the Trust Indenture Act, subject to certain conditions described in the CCP exemptive orders and in the exemptions themselves to further facilitate the operation of CCPs in the CDS market. The conditions and representations in the CCP exemptive orders and exemptions require that information be available about the terms of the CDS, the creditworthiness of the CCP or any guarantor, and the clearing and settlement process for the CDS. Additionally, the conditions require that financial information about the reference entity, the issuer of the reference security, or the reference security be publicly available. We believe that the Interim Final Temporary Rules and the exemptions under the Exchange Act, have facilitated and we anticipate will continue to facilitate the operation of CCPs[44] while enabling us to provide oversight to the non-

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42 See Semiannual OTC derivatives statistics at end-December 2008, Bank for International Settlements ("BIS"), available at http://www.bis.org/statistics/otcder/dt1920a.pdf.

43 CDSs were initially created to meet the demand of banking institutions looking to hedge and diversify the credit risk attendant with their lending activities. However, other financial institutions such as insurance companies, pension funds, securities firms and hedge funds have entered the CDS market.

44 See Karen Brettell, Banks to submit 95 pct of eligible CDS for clearing (Sep. 1, 2009), available at http://www.reuters.com/article/euRegulatoryNews/idUSN0150814420090901?pageNumber=1&virtualBrandChannel=10522.

excluded CDS market.[45] We believe that the operation of at least one CCP over the last six months in accordance with our exemptions has increased transparency,[46] increased available information about exposures to particular reference entities or reference securities,[47] and reduced risks to participants in the market for CCP-cleared CDS.[48] Not extending the termination date could cause significant disruptions in this market. Therefore, we believe this extension provides important benefits.

Absent an exemption, the offer and sale of eligible CDS that are and will be issued or cleared by a Registered or Exempt CCP would have to be registered under the Securities Act, the eligible CDS that are or have been issued or cleared by a Registered or Exempt CCP would have to be registered as a class under the Exchange Act, and the provisions of the Trust Indenture Act would apply. We believe that the Interim Final Temporary Rules exempting the registration of eligible CDS issued or cleared by a Registered or Exempt CCP under certain conditions have facilitated and we anticipate will continue to facilitate the use by eligible contract participants of CDS CCPs. Without also exempting the offers and sales of eligible CDS issued or cleared by a Registered or Exempt CCP from the registration requirements of the Securities Act and the Exchange Act and the provisions of the Trust Indenture Act, we believe that the CCPs would not be able to operate in the manner contemplated by the exemptive orders.

The interim final temporary exemptions treat eligible CDS issued or cleared by a Registered or Exempt CCP under the Securities Act and the Exchange Act in the same manner as certain other types of derivative contracts, such as security futures products and standardized

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45 See e.g., Exchange Act Release No. 59527, supra Note 10 (our exemptions require that the CCPs provide us with, among other things, access to conduct on-site inspections of facilities, records and personnel).

46 See Testimony of Mark Lenczowski, supra Note 12.

47 See e.g., Exchange Act Release No. 59527, supra Note 26.

48 See IntercontinentalExchange, supra Note 13.

options.[49] A Registered or Exempt CCP issuing or clearing eligible CDS benefits from the temporary exemptions because it does not have to file registration statements with us covering the offer and sale of the eligible CDS. The registration form most applicable to a CCP is a Form S-20, which is the form that is used by options clearing houses that do not qualify for our exemption in Securities Act Rule 238[50] from registering the offer and sale of standardized options. If a CCP is not required to register the offer and sale of eligible CDS (on Form S-20, for example), it would not have to incur the costs of such registration, including legal and accounting costs. Some of these costs, of course, such as the costs of obtaining audited financial statements, may still be incurred as a result of the operations of the entity as a CCP and the regulatory oversight of the central counterparty operations. In addition, if any of the CCPs are entities that are subject to the periodic reporting requirements of the Exchange Act, the cost of filing a registration statement covering the eligible CDS would be lessened further as the information regarding the CCP already would be prepared. The availability of exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act also would mean that CCPs would not incur the costs of preparing disclosure documents describing eligible CDS and from preparing indentures and arranging for the services of a trustee.

B. Costs

The Interim Final Temporary Rules exempting offers and sales of eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP have facilitated and we anticipate will continue to facilitate the use by eligible contract participants of CDS CCPs that are the subject of exemptive orders at some costs to the CCP or investors.

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49 See, e.g., Securities Act Section 3(a)(14) [15 U.S.C. 77c(a)(14)], Securities Act Rule 238 [17 CFR 230.238]; Exchange Act Section 12(a) [15 U.S.C. 78l], and Exchange Act Rule 12h-1(d) and (e) [17 CFR 240.12h-1(d) and (e)].

50 17 CFR 230.238.

Absent an exemption, a CCP may have to file a registration statement covering the offer and sale of the eligible CDS, may have to satisfy the applicable provisions of the Trust Indenture Act, and may have to register the class of eligible CDS that it has issued or cleared under the Exchange Act, which would provide investors with civil remedies in addition to antifraud remedies. While a CCP registration statement covering eligible CDS (or the offer and sale of such eligible CDS) may provide certain information about the CCP, CDS contract terms, and the identification of reference entities or reference securities, it would not necessarily provide the type of information necessary to assess the credit risk of the reference entity or reference security. Further, while a CCP registration statement would provide information to the CDS market participants, as well as to the market as a whole, a condition of the clearing agency exemption in the exemptive orders is that the CCPs make their audited financial statements and other information about themselves publicly available.

We recognize that a consequence of the exemptions has been and will continue to be the unavailability of certain remedies under the Securities Act and the Exchange Act and certain protections under the Trust Indenture Act. While an investor would be able to pursue an antifraud action in connection with the purchase and sale of eligible CDS under Exchange Act Section 10(b),[51] it would not be able to pursue civil remedies under Sections 11 or 12 of the Securities Act.[52] We could still pursue an antifraud action in the offer and sale of eligible CDS issued or cleared by a CCP.[53] We believe that the incremental costs from the extension of the expiration date of the Interim Final Temporary Rules will be minimal because the amendments are merely an extension of such Interim Final Temporary Rules and such extension will not

[51] 15 U.S.C. 78j(b).

[52] 15 U.S.C. 77k and 77l.

[53] See 15 U.S.C. 77q and 15 U.S.C. 78j(b).

affect the information and remedies available to investors as a result of the Interim Final Temporary Rules.

VII. CONSIDERATION OF IMPACT ON THE ECONOMY, BURDEN ON COMPETITION AND PROMOTION OF EFFICIENCY, COMPETITION AND CAPITAL FORMATION

Section 23(a)(2) of the Exchange Act[54] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, Section 2(b)[55] of the Securities Act and Section 3(f)[56] of the Exchange Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to also consider whether the action will promote efficiency, competition, and capital formation.

The Interim Final Temporary Rules we are extending today exempt eligible CDS issued or cleared by a Registered or Exempt CCP from all provisions of the Securities Act, other than the Section 17(a) antifraud provision, as well as from the registration requirements under Section 12 of the Exchange Act and the provisions of the Trust Indenture Act. Because these interim final temporary exemptions are available to any Registered or Exempt CCP offering and selling eligible CDS, we do not believe that the exemptions impose a burden on competition. Although only one CCP is currently clearing and settling CDS in the U.S., we believe the extension will increase the opportunity for other CCPs to compete in the marketplace. We also believe that the ability to settle CDS through CCPs has improved and we anticipate will continue to improve the

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54 15 U.S.C. 78w(a)(2).

55 15 U.S.C. 77b(b).

56 15 U.S.C. 78c(f).

transparency of the CDS market and provide greater assurance to participants as to the capacity of the eligible CDS counterparty to perform its obligations under the eligible CDS. ICE Trust, for example, makes available on its website information about open interests, or net exposure, volume and pricing of CDS transactions. We believe that increased transparency in the CDS market could help to decrease further market turmoil and thereby facilitate the capital formation process.

VIII. REGULATORY FLEXIBILITY ACT CERTIFICATION

The Commission certified pursuant to 5 U.S.C. 605(b) that the Interim Final Temporary Rules would not have a significant economic impact on a substantial number of small entities. The Interim Final Temporary Rules exempt eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP. None of the entities that are eligible to meet the requirements of the exemption from registration under Section 17A is a small entity. We received no comments on the certification.

IX. STATUTORY AUTHORITY AND TEXT OF THE RULES AND AMENDMENTS

The amendments described in this release are being adopted under the authority set forth in Sections 18, 19 and 28 of the Securities Act; Sections 12(h), 23(a) and 36 of the Exchange Act; and Section 304(d) of the Trust Indenture Act.

List of Subjects

17 CFR Parts 230, 240 and 260

Reporting and recordkeeping requirements, Securities.

TEXT OF THE RULES AND AMENDMENTS

Accordingly, we are temporarily amending 17 CFR parts 230, 240, and 260 as follows and the expiration date for the interim final temporary rules published January 22, 2009 (74 FR 3967) is extended from September 25, 2009, to November 30, 2010.

PART 230 - GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

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§§ 230.146 and 230.239 [Amended]

2. In 17 CFR Part 230, remove the words "September 25, 2009" and add, in their place, the words "November 30, 2010" in the following places:

a. Section 230.146(c)T, last sentence; and

b. Section 230.239T(e).

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

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

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

* * * * *

§§ 240.12a-10T and 240.12h-1 [Amended]

4. In 17 CFR Part 240, remove the words "September 25, 2009" and add, in their place, the words "November 30, 2010" in the following places:

a. Section 240.12a-10T(b); and

b. Section 240.12h-1(h)T, last sentence

PART 260 - GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

5. The authority citation for Part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78ll(d), 80b-3, 80b-4, and 80b-11.

§ 260.4d-11T [Amended]

6. Section 260.4d-11T is amended by removing the words "September 25, 2009" and adding, in their place, the words "November 30, 2010" in the last sentence.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

September 14, 2009

Commissioner Aguilar and Commissioner Paredes not participating

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60676 / September 15, 2009

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3051 / September 15, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13617

In the Matter of BERDJ J. RASSAM, 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 Berdj J. Rassam ("Respondent" or "Rassam") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.[1]

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III. C. below, which are admitted,

[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.

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:

A. Berdj J. Rassam, age 43, was at all relevant times a certified public accountant licensed to practice in the state of California. He became Controller at Peregrine Systems, Inc. in November 2000. He was promoted to Vice President of Finance and Chief Accountant in September 2001 and served in that role until he resigned at management's request in June 2002.

B. Peregrine Systems, Inc. was, at the time of Rassam's employment, a Delaware corporation with principal offices in San Diego, California. Peregrine's primary business involved selling infrastructure management software. From its initial public offering in April 1997, until it merged with Hewlett-Packard in 2005, Peregrine's common stock was registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act"). It traded on the Nasdaq National Market System from its initial public offering until August 30, 2002, when it was delisted and quoted on the Pink Sheets. In February 2003, Peregrine announced the restatement of $509 million of revenue it had improperly recorded during the fraud.

C. On September 14, 2009, a final judgment was entered against Rassam, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5 and 13b2-1 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder, in the civil action entitled Securities and Exchange Commission v. Stephen P. Gardner et al., Civil Action No. 04 CV 2002 (S.D. Cal.). The Court also barred Rassam for ten years from serving as an officer or director of any issuer that has a class of securities registered with the Commission or that is required to file reports with the Commission.

D. The Commission's complaint alleged, among other things, that Peregrine and its senior officers fraudulently inflated the revenues Peregrine reported in its filings with the Commission and elsewhere. Peregrine improperly recorded millions of dollars of revenue based on non-binding arrangements with resellers. This ultimately caused uncollectible receivables from the non-binding arrangements to swell on Peregrine's balance sheet. The complaint further alleges that Peregrine's management, including Rassam, improperly wrote off the unpaid receivables by falsely characterizing the write-offs as unrelated acquisition costs. According to the complaint, by engaging in this and other conduct Rassam violated the antifraud provisions of the federal securities laws and the books and records, reporting, and internal accounting control provisions of the Exchange Act.

IV.

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

Accordingly, IT IS HEREBY ORDERED, effective immediately, that Rassam is suspended from appearing or practicing before the Commission as an accountant.

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. 60677 / September 16, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13534

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

I.

Consolidated Resources Group, Inc. ("Consolidated" or "Respondent"), pursuant to Rule 240(a) of the Rules of Practice of the Securities and Exchange Commission ("Commission") [17 C.F.R. § 201.240(a)], submitted an Offer of Settlement ("Offer") in the above-captioned proceeding instituted against Consolidated on July 2, 2009 by the Commission pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act"). The commission deems it appropriate and in the public interest to accept the Offer.

II.

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, Consolidated consents to the entry of this Order Making Findings, and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

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

A. Consolidated Resources, a Florida corporation headquartered in West Palm Beach, Florida, develops, markets and distributes artificial flowers and engages in transactions related to gasification and oxygen generation technologies. The common stock of Consolidated Resources has been registered under Section 12(g) of the Exchange Act since August 1999. Consolidated Resources stock was quoted on the Over-the-Counter Bulletin Board until October 21, 2002, and on the "Pink Sheets" operated by Pink OTC Markets, Inc. until November 5, 2008. Consolidated Resources stock currently trades in the over-the-counter markets (grey market).

B. Consolidated Resources 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 the fiscal year ended May 31, 2001 or periodic or quarterly reports on Form 10-Q for any fiscal period subsequent to its fiscal quarter ended February 28, 2002.

IV.

Section 12(j) of the Exchange Act provides as follows:

The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means of instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

In view of the foregoing, the Commission finds that it is necessary and appropriate for the protection of investors to impose the sanction specified in Respondent's Offer.

Accordingly, it is hereby ORDERED, pursuant to Section 12(j) of the Exchange Act, that registration of each class of Respondent's securities registered pursuant to Section 12 of the Exchange Act be, and hereby is, revoked.

By the Commission.

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 60681 / September 17, 2009

Admin. Proc. File No. 3-13519

In the Matter of

WAREHOUSE CLUB, INC., *et al.*,

WINTHROP RESOURCES CORP., Respondent.

ORDER DISMISSING WINTHROP RESOURCES CORP. FROM PROCEEDING

On June 16, 2009, the Commission issued an Order Instituting Proceedings ("OIP") against Winthrop Resources Corp. ("Winthrop") and four other respondents under Section 12(j) of the Securities Exchange Act of 1934.[1] The OIP alleged that Winthrop had "a class of securities registered with the Commission pursuant to Exchange Act Section 12(g)" and was delinquent in its filings with the Commission.

On August 4, 2009, the Division of Enforcement moved to dismiss Winthrop from the proceeding.[2] According to the Division, Winthrop has no securities registered with the Commission. The Division has attached to its motion an affidavit from the Division of Corporation Finance. According to the affidavit, on July 3, 1997, TCF Financial Corp. ("TCF"), Winthrop's corporate parent, filed a Form 15 with the Commission, thereby voluntarily deregistering Winthrop's securities. TCF, however, mistakenly used its own Central Index Key ("CIK") number[3] on the form, 814184, rather than Winthrop's CIK number, 886948. Because of TCF's error, Corporation Finance staff investigating the status of Winthrop's filings found no electronic record of the deregistration, making it appear to the staff that Winthrop was delinquent in its reporting obligations. Soon after the OIP was issued, however, TCF notified the Division that TCF had deregistered Winthrop's securities by filing the above-mentioned Form 15 in 1997. Corporation Finance confirmed TCF's filing.

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1 15 U.S.C. § 78*l*(j).

2 Winthrop has not responded to the Division's motion, nor has any other party.

3 The CIK number is a unique number assigned by the Commission to each entity that is required to file reports with the Commission.

The affidavit explains further that, when a corporate parent is "registered with the Commission and current with its reporting obligations," Corporation Finance may "recognize and treat as effective a valid Form 15 that is mistakenly filed under the CIK number of the acquiring issuer rather than its predecessor." According to the affidavit, this is the state of affairs with Winthrop. The Division represents and Corporation Finance confirms that, consistent with Corporation Finance's practice, the Form 15 filed by TCF for Winthrop in 1997 is effective, and Winthrop has no securities registered with the Commission.[4] Because revocation or suspension of registration are the only remedies available in this proceeding instituted pursuant to Exchange Act Section 12(j), we find it appropriate to dismiss Winthrop from this proceeding.[5]

Accordingly, it is ORDERED that the proceeding with respect to Winthrop Resources Corp. be, and it hereby is, dismissed.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Florence E. Harmon
Deputy Secretary

4 At the request of the Division and Corporation Finance, on July 10, 2009, TCF filed on behalf of Winthrop a Form 15 under Winthrop's CIK number.

5 *See TelcoBlue, Inc.*, Securities Exchange Act Rel. No. 58061 (June 30, 2008), 93 SEC Docket 7335 (dismissing Section 12(j) proceeding with respect to a respondent that "no longer [had] a class of securities registered under Section 12 of the Exchange Act").

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 28899 / September 9, 2009

In the Matter of	)
GE ASSET MANAGEMENT INCORPORATED GE INVESTMENT DISTRIBUTORS, INC. 3001 Summer Street Stamford, CT 06904-7900	)
File No. 812-13680	)

ORDER PURSUANT TO SECTION 9(c) OF THE INVESTMENT COMPANY ACT OF 1940 GRANTING A PERMANENT EXEMPTION FROM SECTION 9(a) OF THE ACT

GE Asset Management Incorporated ("GEAM") and GE Investment Distributors, Inc. ("GEID," collectively with GEAM, "Applicants") filed an application on August 4, 2009 and an amendment on August 11, 2009 requesting temporary and permanent orders under section 9(c) of the Investment Company Act of 1940 ("Act") exempting Applicants and any other company of which General Electric Company is or hereafter becomes an affiliated person (together with Applicants, "Covered Persons") from section 9(a) of the Act with respect to an injunction entered by the United States District Court for the District of Connecticut on August 11, 2009.

On August 11, 2009, the Commission simultaneously issued a notice of the filing of the application and a temporary conditional order exempting the Covered Persons from section 9(a) of the Act from August 11, 2009 until the Commission takes final action on the application for a permanent order (Investment Company Act Release No. 28845). The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued unless a hearing was ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the prohibitions of section 9(a) as applied to the Applicants would be unduly and disproportionately severe and the conduct of the Applicants has been such as not to make it against the public interest or protection of investors to grant the permanent exemption from the provisions of section 9(a) of the Act.

Accordingly,

IT IS ORDERED, pursuant to section 9(c) of the Act, on the basis of the representations contained in the application filed by GEAM and GEID (File No. 812-13680), as amended, that Covered Persons be and hereby are permanently exempted from the provisions of section 9(a) of the Act, operative solely as a result of an injunction, described in the application, entered by the United States District Court for the District of Connecticut on August 11, 2009.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Commissioner Casey not participating

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 2926 / September 17, 2009

Admin. Proc. File No. 3-13121

In the Matter of

MARTIN A. ARMSTRONG

Inmate Register Number 12518-050
FCI Fort Dix
Federal Correctional Institution
5735 Hartford & Pointeville Road
Fort Dix, New Jersey 08460

OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Conviction

Injunction

Former associated person with an investment adviser was convicted of conspiracy to commit securities fraud, wire fraud, and commodities fraud and 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 investment adviser.

APPEARANCES:

Martin A. Armstrong, pro se.

David Stoelting, and *Jill Slansky*, for the Division of Enforcement.

Appeal filed: March 26, 2009
Last brief received: September 8, 2009

I.

Martin A. Armstrong, the founder, chairman, and owner of Princeton Economics International Ltd ("Princeton Economics"), an unregistered investment adviser, appeals from the decision of an administrative law judge. The law judge barred Armstrong from association with any investment adviser based on Armstrong's conviction on a single count of conspiracy to commit securities fraud, wire fraud, and commodities fraud and his injunction from violation of antifraud provisions of the federal securities laws. We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal.

II.

On August 17, 2006, Armstrong, then fifty-six years old, pled guilty to one count of conspiracy to commit securities fraud, wire fraud, and commodities fraud.[1] The district court sentenced Armstrong to sixty months' imprisonment and three years supervised release, and ordered him to pay $80,000,001 in restitution to sixty defrauded customers.[2]

As part of his guilty plea, Armstrong entered a sworn allocution admitting to and describing his crime. In his allocution, Armstrong admitted that between 1992 and 1999, he sold promissory notes issued by Princeton Economics subsidiaries ("Princeton Notes") to investors, mostly Japanese corporations. Armstrong, through his agents, represented to the investors that the proceeds from the sale of the Princeton Notes would be held in accounts at Republic New York Securities ("Republic") and that those accounts "would be separate and segregated from Republic's own accounts and would not be available to Republic for its own benefit."

According to Armstrong's allocution, after he suffered "some millions of dollars of trading losses," he decided "not to disclose to investors that . . . substantial losses had been experienced in this trading of futures. And we did not disclose it." Armstrong also admitted that his concealment of his losses went beyond non-disclosure: "letters were sent by my company to investors concerning how much money was in fact in the accounts assigned to them. I . . . did send out those letters, even though . . . I knew the amounts in the accounts were less than the letters stated."

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1 *United States v. Armstrong*, No. 99 CR 00997 (S.D.N.Y. Aug. 17, 2006) (transcript of plea proceeding).

2 *United States v. Armstrong*, No. 99 CR 00997 (S.D.N.Y. Apr. 17, 2007) ("Judgment in a Criminal Case" adjudicating guilt and imposing sentence). Investor losses totaled more than $737 million. Armstrong is currently incarcerated and due to be released on September 2, 2011.

Armstrong then described how the segregation of the investors' accounts came under pressure from Republic:

> [I]n about August 1999, Republic requested that I merge the [] investors' segregated accounts with trading accounts in which I sustained . . . substantial trading losses. And Republic further requested that monies in the investor accounts be used to offset trading losses in the trading accounts. I agreed to these requests . . . . This was contrary to the promises I had made and the representations I . . . continued to make to investors that the accounts pertaining to the Princeton Notes were [not] and would not be accessible by Republic itself for any purposes.

Armstrong further stated "I did not inform investors that I had agreed to Republic's request to merge the funds . . . nor did I inform the investors that the merger had in fact occurred, nor . . . [did I] disclose . . . [to] the investors that funds in their accounts had been used to pay for the [trading] losses . . . ."

Armstrong stated that he was aware at the time he made them that "[his] representations to investors that the accounts would be kept separate was an important factor in the investors' decision to hold the Princeton Notes." Armstrong "understood at that time that by falsely representing the situation of Republic with respect to segregation of investors' funds [and] by falsely representing to the investors that my trading performance was better than it actually was . . . what I was doing was wrong and improper." Finally, Armstrong admitted, "[i]n taking these actions and agreeing with others to do so, I knew at the time that I was deceiving the investors in connection with the purchase of Princeton Notes . . . ."

On July 22, 2008, in a related injunctive action, Armstrong consented to the entry of a permanent injunction from future violations of antifraud provisions of the securities laws.[3]

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[3] *SEC v. Princeton Econ. Int'l Ltd.*, No. 99 Civ. 9667 (S.D.N.Y. July 22, 2008). Notwithstanding his consent to the entry of the injunction, Armstrong appealed the injunction to the United States Court of Appeals for the Second Circuit. *Princeton Econ. Int'l Ltd. v. SEC*, *appeal docketed*, No. 08-5902-CV (2d Cir. Dec. 2, 2008). The Second Circuit dismissed the appeal on the grounds that "any challenge to the civil proceedings are precluded by the terms of the consent judgment which includes an explicit waiver of the right to appeal." *SEC v. Princeton Econ. Int'l Ltd.*, No. 08-5902-CV (2d Cir. Apr. 10, 2009). The Division has moved that the Second Circuit's order, issued after the Initial Decision, be admitted to the record pursuant to Rule 452 of the Rules of Practice, 17 C.F.R. § 201.452. We hereby grant the Division's motion. Other challenges by Armstrong to the district court's finding that he was in civil contempt and his subsequent confinement have been denied. *Armstrong v. Guccione*, 470 F.3d 89, 113 (2d Cir. 2006), *cert. denied*, 128 S. Ct. 486 (2007) (denying habeas corpus petition and approving civil

(continued...)

Among the allegations of the complaint in that action were that Armstrong owned Princeton Economics; he controlled "all of Princeton Economics' subsidiaries;" among Princeton Economics' subsidiaries were "special purpose entities," which "issued the Princeton Notes and managed the funds derived from the sale of the Princeton Notes;" and "Princeton Economics acted as an unregistered investment adviser to each of the special-purpose entities . . . ."[4]

Following the entry of the consent injunction against Armstrong, the Commission issued an Order Instituting Proceedings ("OIP") pursuant to Section 203(f) of the Investment Advisers Act of 1940 on August 6, 2008. On February 25, 2009, the law judge, acting on the Division of Enforcement's motion for summary disposition pursuant to Rule of Practice 250(a),[5] found that Armstrong had been convicted of conspiracy to commit securities fraud, wire fraud, and commodities fraud while he was acting as an investment adviser and was enjoined. The law judge barred Armstrong from association with any investment adviser. This appeal followed.

III.

Advisers Act Sections 203(e) and (f) allow for imposition of sanctions on a person associated with an investment adviser, consistent with the public interest, if the person 1) has been convicted of any felony involving the purchase or sale of a security or a felony arising out of the conduct of the business of an investment adviser, or 2) has been permanently enjoined from engaging in any conduct or practice in connection with the purchase or sale of securities.[6] We find that Armstrong was convicted of conspiracy to commit securities fraud, wire fraud, and commodities fraud, a felony arising out of Armstrong's operation of Princeton Economics; and was permanently enjoined in connection with the purchase or sale of securities.

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[3] (...continued)
contempt findings); *Armstrong v. Grondolsky*, 290 Fed. Appx. 451 (3d. Cir. 2008) (affirming district court's denial of a habeas corpus petition and denying criminal-sentence credit for period of civil-contempt confinement).

[4] *SEC v. Princeton Econ. Int'l Ltd.*, No. 99 CR 00997 (S.D.N.Y. Sep. 13, 1999) (Complaint). The complaint was not in the record. Accordingly, on June 12, 2009, we directed the Division to supplement the record by providing a copy of the injunctive complaint, and the Division did so.

[5] 17 C.F.R. § 201.250(a).

[6] 15 U.S.C. §§ 80b-3(e) and (f).

We also find that Armstrong was associated with Princeton Economics at the time of the conduct addressed in the criminal and injunctive proceedings and that Princeton Economics was an investment adviser.[7] Armstrong has denied before the law judge and before us on appeal that he acted as an investment adviser. Armstrong's denial conflicts with the facts alleged in the complaint underlying the settlement agreement in which he consented to the entry of the injunction against him.[8] The complaint alleged that Princeton Economics acted as an unregistered investment adviser, that Armstrong controlled all of Princeton Economics' subsidiaries, and that the subsidiaries managed the funds derived from the Princeton Notes.[9] We have repeatedly held that a party may not collaterally attack the factual allegations in an injunctive complaint brought by the Commission when, as is the case here, the party has consented to the entry of an injunction on the basis of such allegations.[10] Consequently, we find that Armstrong satisfies the statutory requirements for imposition of sanctions.

To determine the appropriate remedial sanction we evaluate the following factors: the egregiousness of respondent's actions; the isolated or recurrent nature of the infraction; the degree of scienter involved; the sincerity of respondent's assurances against future violations; the respondent's recognition of the wrongful nature of his conduct; and the likelihood that

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[7] Advisers Act Section 203(f) covers all investment advisers, registered or not. *Teicher v. SEC*, 177 F.3d 1016, 1017 (D.C. Cir. 1999).

[8] *See* discussion *supra* p. 4; *see also Marshall E. Melton*, 56 S.E.C. 695, 712 (2003) (stating that, "[d]efendants in Commission injunctive actions must understand that, if the Commission institutes an administrative proceeding against them based on an injunction to which they consented after issuance of this opinion, they may not dispute the factual allegations of the injunctive complaint in the administrative proceeding"); 17 C.F.R. § 202.5(e) (stating that respondent who consents to judgment may not deny allegations of the complaint).

[9] *See* 15 U.S.C. § 80b-2(a)(11) (defining an "investment adviser" as "any person who, for compensation, engages in the business of advising others, . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities").

[10] *See, e.g.*, *Schield Mgmt. Co.*, Securities Exchange Act Rel. No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 859 (precluding respondents from disputing allegations in injunctive complaint after consenting to entry of injunction); *see also Gary M. Kornman*, 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).

respondent's occupation will present opportunities for future violations.[11] No single factor is dispositive.[12]

We have consistently found that antifraud violations, such as those committed by Armstrong, are "especially serious and subject to the severest sanctions."[13] We are responsible for protecting the public interest, and "[f]idelity to the public interest" requires severe sanctions for fraudulent conduct because the "securities business is one in which opportunities for dishonesty recur constantly."[14] In fact, "ordinarily, and in the absence of evidence to the contrary, it will be in the public interest to . . . bar from participation in the securities industry . . . a respondent who is enjoined from violating the antifraud provisions."[15] We have found that "an antifraud injunction can, in the first instance, indicate the appropriateness in the public interest of . . . [a] bar from participation in the securities industry."[16]

In this case, Armstrong's actions were egregious and recurrent. He conspired to defraud sixty investors to whom he has been required to pay approximately $80 million in restitution. Armstrong was also sentenced to sixty months' imprisonment for his crime, a sentence that reflected the district court judge's view of the seriousness of Armstrong's misconduct. Armstrong's conduct was not a brief, isolated, event; his fraudulent activity lasted from 1992 until 1999 involving multiple misrepresentation to numerous clients.

Armstrong's actions show a high degree of scienter. At the time he conspired to commingle investors' accounts with other accounts to cover trading losses and to conceal the account commingling, he "knew . . . that [he] was deceiving the investors in connection with the purchase of Princeton Notes" and knew that "[t]his was contrary to the promises [he] had made and the representations [he] . . . continued to make to investors . . . ." Armstrong admitted that he "understood at that time that by falsely representing the situation of Republic . . . [and] by falsely representing to the investors that my trading performance was better than it actually was . . . what [he] was doing was wrong and improper."

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11 *Scott B. Gann*, Exchange Act Rel. No. 59729 (Apr. 8, 2009), 95 SEC Docket 15818, 15823 (citing *SEC v. Steadman*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981)), *appeal filed*, No. 09-60435 (5th Cir. June 5, 2009).

12 *Gann*, 95 SEC Docket at 15823.

13 *Jose P. Zollino*, Exchange Act Rel. No. 55107 (Jan. 16, 2007), 89 SEC Docket 2598, 2608; *Melton*, 56 S.E.C. at 713.

14 *Richard C. Spangler, Inc.*, 46 S.E.C. 238, 252 (1976).

15 *Melton*, 56 S.E.C. at 713.

16 *Id.* at 710.

Not only has Armstrong given no assurances against future violations, he denies that he has engaged in any wrongful conduct; he stated in his answer to the OIP that "what I pled to was still not a crime." Armstrong devotes his extensive briefs before the law judge and us exclusively to arguments addressing issues in the criminal, injunctive, and civil contempt proceedings. He argues, for example, that the district courts lacked subject-matter jurisdiction over the disputes and alleges that federal prosecutors, Commission staff, and the receiver engaged in misconduct. Armstrong also argues that his conduct was neither criminal nor fraudulent. He is precluded from relitigating these issues before us.[17] As we have clearly stated in multiple contexts, a follow-on proceeding is not the proper forum to contest the factual and legal findings of the underlying proceedings.[18] Indeed, Armstrong has availed himself of the opportunity to raise these issues in the courts that heard his criminal and injunctive cases.[19]

We further find that there is a likelihood that Armstrong would, after his release from prison, be able and inclined to re-enter the securities industry where he would confront opportunities to violate the law again.[20] Upon his release from prison he would be in his early sixties and must pay approximately $80 million in restitution.

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17 *See, e.g., Kornman*, 95 SEC Docket at 14257 (precluding collateral attacks on criminal conviction); *Melton*, 56 S.E.C. at 712 (precluding relitigation of injunctive action).

18 *See, e.g., James E. Franklin*, Exchange Act Rel. No. 56,649 (Oct. 12, 2007), 91 SEC Docket 2708 ("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."); *Melton*, 56 S.E.C. at 712 (stating that defendants in Commission injunctive actions may not dispute the factual allegations of the injunctive complaint in the administrative proceeding after consenting to the entry on an injunction in that proceeding); *see also* 17 C.F.R. § 202.5(e) ("announc[ing Commission] policy not to permit a defendant . . . to consent to a judgment . . . or order that imposes a sanction while denying the allegations in the complaint . . . .").

19 *See* cases cited *supra*, note 3.

20 *Spangler*, 46 S.E.C. at 252 (stating that "securities business is one in which opportunities for dishonesty recur constantly").

Based on a consideration of the relevant factors, and all of the circumstances in this case, we find that barring Armstrong from association with any investment adviser serves the public interest and is remedial because, as discussed, it will protect the investing public from the likelihood that Armstrong will commit future violations of the federal securities laws.

An appropriate order will issue.[21]

By the Commission (Chairman SHAPIRO and Commissioners WALTER, PAREDES, and AGUILAR); Commissioner CASEY not participating.

Elizabeth M. Murphy
Secretary

Florence E. Harmon

By: Florence E. Harmon
Deputy Secretary

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[21] 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

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 2926 /September 17, 2009

Admin. Proc. File No. 3-13121

In the Matter of

MARTIN A. ARMSTRONG
Inmate Register Number 12518-050
FCI Fort Dix
Federal Correctional Institution
5735 Hartford & Pointeville Road
Fort Dix, New Jersey 08460

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Martin A. Armstrong be, and he hereby is, barred from association with any investment adviser.

By the Commission.

Elizabeth M. Murphy
Secretary

Florence E. Harmon

By: Florence E. Harmon
Deputy Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 242

[Release No. 34-60684; File No. S7-21-09]

RIN 3235-AK40

Elimination of Flash Order Exception from Rule 602 of Regulation NMS

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is concerned that the exception for flash orders from quoting requirements under the Securities Exchange Act of 1934 ("Exchange Act"), which originated in the context of manual trading floors for quotations that were considered "ephemeral," is no longer necessary or appropriate in today's highly automated trading environment. Accordingly, the Commission is proposing to amend Rule 602 of Regulation NMS under the Exchange Act to eliminate an exception for the use of flash orders by equity and options exchanges. In general, flash orders are communicated to certain market participants and either executed immediately or withdrawn immediately after communication. If the proposed amendment were adopted, the Commission would apply Rule 301(b) of Regulation ATS under the Exchange Act in a consistent manner with regard to the use of flash orders by alternative trading systems. The Commission also would apply the restrictions on locking or crossing quotations in Rule 610(d) of Regulation NMS in a consistent manner to prohibit the practice of displaying marketable flash orders.

DATES: Comments should be received on or before [insert date 60 days after date of publication in Federal Register]

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/proposed.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. S7-21-09 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 Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. S7-21-09. 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. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/proposed.shtml). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 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: Theodore S. Venuti, Special Counsel, at (202) 551-5658, Arisa Tinaves, Special Counsel, at (202) 551-5676, Gary M. Rubin, Attorney, at (202) 551-5669, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-7010.

SUPPLEMENTARY INFORMATION:

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I. Introduction

Rule 602 of Regulation NMS[1] and Rule 301(b) of Regulation ATS[2] require exchanges and alternative trading systems ("ATSs"), respectively, to provide their best-priced quotations to the consolidated quotation data that is widely disseminated to the public.[3] The Commission is proposing to amend Rule 602 to eliminate the exception for the use of flash orders by equity and options exchanges. If the proposed amendment were adopted, the Commission would apply Rule 301(b) in a consistent manner regarding the use of flash orders by ATSs. Finally, the Commission would also apply the restrictions on locking or crossing quotations in Rule 610(d) of Regulation NMS[4] in a consistent manner to prohibit the practice of displaying flash orders

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1 17 CFR 242.602.

2 17 CFR 242.301(b).

3 Consolidated quotation data captures the best-priced quotations from exchanges, ATSs, and other trading centers for listed equities and options. This core data for a security is consolidated and distributed to the public by a single central processor pursuant to Commission rules.

4 17 CFR 242.610(d).

with marketable prices. The practical result of the proposal, if adopted, would be that any flash orders with non-marketable prices would need to be included in the consolidated quotation data and that the more frequently used practice of flashing orders with marketable prices to certain market participants would be prohibited. Exchanges and ATSs would be required to handle marketable orders that they are unable to execute at the best displayed prices in another manner, such as by routing marketable orders away to execute against the best displayed quotations at another exchange or ATS.

As discussed in section III below, Rule 602 generally requires exchanges to make their best bids and offers in U.S.-listed securities available in the consolidated quotation data that is widely disseminated to the public. Paragraph (a)(1)(i)(A) of Rule 602, however, excludes bids and offers communicated on an exchange that either are executed immediately after communication or cancelled or withdrawn if not executed immediately after communication. Rule 602 has included this language since the original adoption of its predecessor rule in 1978. The exception was intended to facilitate manual trading in the crowd on exchange floors by excluding quotations that then were considered "ephemeral" and impractical to include in the consolidated quotation data.[5] As securities trading became much more automated in recent years, automated markets began to disseminate information electronically concerning orders that either were to be executed immediately or withdrawn if not executed immediately. These electronically disseminated orders had a duration that was even shorter than the ephemeral manual quotations that were contemplated in 1978. The orders qualifying for the "immediate execution or withdrawal" exception from Rule 602 now are widely referred to as "flash orders."

5 See infra note 19.

The Commission is concerned that the exception for flash orders, whether manual or automated, from Exchange Act quoting requirements is no longer necessary or appropriate in today's highly automated trading environment. The consolidated quotation data is designed to provide investors with a single source of information for the best prices in a listed security, rather than forcing investors to obtain such information by subscribing to all of the data feeds of the many exchanges and ATSs that trade listed securities. The flashing of order information could lead to a two-tiered market in which the public does not have access, through the consolidated quotation data streams, to information about the best available prices for U.S.-listed securities that is available to some market participants through proprietary data feeds. In addition, flash orders may significantly detract from incentives for market participants to display their trading interest publicly, though flash orders do offer potential benefits to certain types of market participants.[6] The Commission therefore is proposing to eliminate the exception for flash orders from Exchange Act quoting requirements.

II. Description of Flash Orders

As noted in section IV.B.1 below, the phrases "executed immediately" or "withdrawn if not executed immediately" in Rule 602(a)(1)(i)(A) can cover a variety of different trading mechanisms on both a manual trading floor and an automated trading system. In general, however, the particular type of electronic flash order that equity and options markets now use the most has the following basic features:

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6 See infra notes 54-56 and accompanying text.

First, the use of a flash order type is voluntary. Markets that offer flash order types also offer order types that provide order routers with the ability to access liquidity at the market without using a flash order type.[7]

Second, flash orders almost always are "marketable"[8] – they are buy orders that are immediately executable at the price of the national best offer and sell orders that are immediately executable at the price of the national best bid.[9] For example, if the national best bid and national best offer ("NBBO") in a listed security are $20.10 and $20.15, respectively, marketable buy orders are executable at $20.15 and marketable sell orders are executable at $20.10. Marketable orders can be said to "take" liquidity. The submitter wants to trade immediately and is willing to pay the "spread" between the NBBO (in the example, the five cent difference between $20.10 and $20.15) for the opportunity to trade immediately. In contrast, non-

7 The basic type of order that accesses a market's liquidity without the possibility of a flash is the "immediate-or-cancel" ("IOC") order. An IOC order only seeks to take any liquidity that is currently available at a market when the order arrives with no possibility of further action by the market with the order. In contrast, a flash order is transmitted to other market participants in an effort to attract additional liquidity to the market. See, e.g., Rule 600(b)(3) of Regulation NMS (for a quotation to qualify as an "automated quotation" that can be protected against trade-throughs, the trading center displaying the quotation must provide an immediate-or-cancel functionality); Chicago Board Stock Exchange ("CBSX") Rule 52.6(a) (immediate-or-cancel orders will not be flashed).

8 See, e.g., Letter dated June 3, 2009 from William O'Brien, Chief Executive Officer, Direct Edge ECN LLC ("Direct Edge") to Elizabeth M. Murphy, Secretary, Commission ("Direct Edge Letter") at 1 (Direct Edge's Enhanced Liquidity Provider program provides optional display period for marketable orders); International Securities Exchange ("ISE") Rule 803, Supplementary Material .02 (prior to sending a Linkage Order to another exchange, a Public Customer Order shall be exposed at the national best bid for a sell order or national best offer price for a buy order).

9 The term "national best bid and national best offer" is defined in Rule 600(b)(42) of Regulation NMS as the highest priced bid and the lowest priced offer disseminated in the consolidated quotation data. The characteristics of marketable and non-marketable orders are discussed at length in the Commission's Concept Release on Market Fragmentation. Securities Exchange Act Release No. 42450 (February 23, 2000) 65 FR 10577 (February 28, 2000) (SR-NYSE-99-48) ("Concept Release on Market Fragmentation").

marketable orders – for example, those orders that establish the national best bid and offer – are "resting" orders that seek to trade at better prices than those that are immediately available and to earn the NBBO spread rather than pay it. These resting orders provide quotation information for investors and add liquidity and depth to the market. Non-marketable orders run the risk, however, of missing an execution if they are unable to interact with contra side marketable order flow. That is why the Commission long has been concerned with promoting the opportunity for publicly displayed orders to interact with contra side marketable order flow.[10]

Third, on arrival at a market and prior to being flashed, flash orders first will interact immediately with any available contra side trading interest at the exchange that receives the order.[11] For example, a marketable flash order to buy can execute immediately against a

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10 See, e.g., Securities Exchange Act Release No. 51808 (June 9, 2005) 70 FR 37496, 37502 (June 29, 2005) ("NMS Release") ("[T]he Commission believes that a rule establishing price protection on an order-by-order basis for all NMS stocks is needed to protect the interests of investors, promote the display of limit orders, and thereby improve the efficiency of the NMS as a whole."); Concept Release on Market Fragmentation, supra note 9, at 10577 ("The Commission is concerned, however, that customer limit orders and dealer quotes may be isolated from full interaction with other buying and selling interest in today's markets. . . . To the extent that the price-setting customer's limit order remains unexecuted and subsequent buying interest is filled at the customer's price, the customer's order has been isolated, and the incentive of customers to improve prices potentially compromised."); Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290, 48297 (September 12, 1996) ("Order Handling Rules Release") ("In 1975, Congress envisioned an NMS in which public limit orders in qualified securities would have a central role. Congress anticipated that the NMS would make all specialists and market makers aware of public customer limit orders held anywhere in the system, and provide enhanced protection and priority for limit orders in stocks qualified for trading in the national market system."); see also S. Report No. 90-75, 94th Cong., 1st Sess. 18 (1975) ("The Committee is satisfied that S. 249 grants the Commission complete and effective authority to implement a system for the satisfaction of public limit orders.").

11 See, e.g., CBSX Rule 52.6(a) (under CBSX flash order rule, the CBSX system will automatically attempt to match market orders against orders at the best price in the CBSX book unless filling the order would result in an execution of a trade-through of another exchange's protected quotation); Boston Options Exchange Rules, ch. 5, sec. 16(b)(iii)(2)

displayed order at the receiving exchange that is priced at the national best offer. As a result, the public is able to interact with such orders at that market – prior to the order being flashed – by submitting a non-marketable resting order that is priced at the national best bid for buy orders and the national best offer for sell orders.

Fourth, if a market does not have available trading interest at the national best offer when a marketable flash order to buy arrives, or at the national best bid when a marketable flash order to sell arrives, the market will flash the order to its market participants at the national best offer for flash orders to buy and the national best bid for flash orders to sell.[12] The markets disseminate the order information as part of their data feeds. Some distribute the data only to members, and some provide the data to anyone who wants to receive it.[13]

Fifth, market participants that receive the flashed order information have a very brief period in which to respond with their own order to execute against the flashed order at a price that matches the NBBO price (that is, the national best offer for flash orders to buy and the national best bid for flash orders to sell). The time periods vary in length, but generally are one second or less.[14] As a result, although all those who take a market's data feed will receive the flashed order information, only market participants with pre-programmed systems capable of

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(under BOX flash order rule, if there is a quote on BOX that is equal to the NBBO, then the order will be executed against the relevant quote).

12 See, e.g., CBSX Rule 52.6(a) (orders "flashed to CBSX Traders at the NBBO price for a period of time not to exceed 500 milliseconds as determined by CBSX"); ISE Rule 803, Supplementary Material .02 (before a Linkage Order is sent to another exchange, "a Public Customer Order shall be exposed at the current NBBO price to all Exchange Members for a time period established by the Exchange not to exceed one (1) second").

13 See, e.g., Direct Edge Letter, supra note 8, at 4 (Direct Edge provides its data feed with flash order information at no charge to any recipient who wishes to receive the data).

14 See, e.g., BOX Rules, ch. 5, sec. 16(b)(iii)(2(a) (one second); CBSX Rule 52.6(a) (no more than 500 milliseconds); ISE Rule 803, Supplementary Material .02 (not to exceed one second).

responding very rapidly will have a realistic opportunity, as a practical matter, to respond to a flashed order. In other words, only those who have invested in sophisticated trading systems are able to effectively access flash orders.

Sixth, if there is an order responding to the flashed order, the flash order will execute against the response. If there is no response to the flashed order, markets generally will route orders away to execute against the best-priced quotations on other markets.[15]

III. Flash Order Exception from Quoting Requirements

Rule 602 generally requires exchanges to make available to vendors, including the central processors for the consolidated quotation data that is widely disseminated to the public, the best bids and best offers for listed securities that are communicated on an exchange by any responsible broker or dealer.[16] The consolidated quotation data streams are the primary vehicles for public price transparency in the U.S. equity and options markets. The central processors for these data streams collect the best bids and best offers from the exchanges and Financial Industry Regulatory Authority ("FINRA")[17] and distribute them in consolidated data streams that are widely available to the public. The consolidated data streams are designed to assure that the

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15 See, e.g., CBSX Rule 52.6(a) ("CBSX System shall route [intermarket sweep orders] on behalf of the market order to all Protected Quotations priced better than the CBSX disseminated price"); ISE Rule 803, Supplementary Material .02(d) (if an order cannot be executed in full after exposure, "the Primary Market Maker will proceed to send a Linkage Order on the customer's behalf for the balance of the order" if it is marketable against the then-current NBBO).

16 The term "responsible broker or dealer" is defined in Rule 600(b)(65) of Regulation NMS.

17 FINRA collects quotation data from over-the-counter market participants, including ATSs.

public has affordable, accurate, and reliable real-time information on the best prices available for listed securities.[18]

Paragraph (a)(1)(i)(A) of Rule 602, however, excepts "any bid or offer executed immediately after communication and any bid or offer communicated by a responsible broker or dealer other than an exchange market maker which is cancelled or withdrawn if not executed immediately after communication." This language was included in the predecessor to Rule 602 when it originally was adopted in 1978 and was intended to accommodate the "ephemeral" quotations of non-specialist participants in exchange crowds.[19] As a result, bids and offers that either are immediately executed or, if not executed, immediately cancelled or withdrawn are not required to be included in the consolidated quotation data.

By its terms, Rule 602(a)(1)(i)(A) applies only to exchanges. The relevant parts of Rule 602 in the over-the-counter context apply to national securities associations and OTC market makers. As a result, ATSs generally are not directly subject to Rule 602 requirements. Rule 301(b)(3)(ii) of Regulation ATS, however, requires certain ATSs to include their best priced orders displayed to more than one person in the consolidated quotation data made available to

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18 The consolidated quotation data streams and their policy objectives are fully described in the Commission's Concept Release on Regulation of Market Information Fees and Revenues. Securities Exchange Act Release No. 42208 (December 9, 1999) 64 FR 70613 (December 17, 1999).

19 See Securities Exchange Act Release No. 14415 (January 26, 1978), 43 FR 4342 (February 1, 1978) ("This determination is consistent with the Commission's intent in providing this exception for 'ephemeral' quotations in the 1977 Proposal; that is, that the Rule as adopted reflects the fact that certain non-specialist participants in exchange 'crowds' have bids and offers which, while narrowing the exchange quotation for an instant in time, never in fact become part of the quoted market on the exchange because they are withdrawn immediately if not accepted."). Rule 602 originally was designated as Rule 11Ac1-1 under the Exchange Act. It was redesignated as Rule 602 as part of the adoption of Regulation NMS in 2005, but its substance was unchanged.

the public pursuant to Rule 602.[20] Consistent with the language in Rule 602 excepting exchanges from including flash orders in the consolidated quotation data, the Commission has not applied Rule 301 to require ATSs to include flash orders in the consolidated quotation data.

Similarly, the Commission has not applied the Rule 610(d) restrictions on displaying quotations that "lock" or "cross" another market's displayed quotation, to flash orders with marketable prices.[21] For many years, the restrictions on locking and crossing quotations for exchange-listed equities were imposed in the Intermarket Trading System ("ITS") Plan.[22] In 2005, the Commission adopted Rule 610(d) of Regulation NMS to address locking and crossing quotations for NMS stocks. Among other things, Rule 610(d) requires the self-regulatory organizations ("SROs") to adopt rules that prohibit their members from engaging in a pattern or practice of displaying quotations that lock or cross protected quotations in NMS stocks.[23]

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20 In general, ATSs that meet a 5% volume threshold in NMS stocks are required to include their best-priced displayed orders in the consolidated quotation data. See infra note 64.

21 A "locking" quotation has a price that equals the price of the previously displayed contra side NBBO. For example, if the national best offer to sell were $20, a subsequent bid to buy with a price of $20 would be a locking quotation. A "crossing" quotation has a price that is higher or lower than the price of the previously displayed contra side NBBO. For example, if the national best offer to sell were $20, a subsequent bid to buy with any price higher than $20 would be a crossing quotation. Conversely, if the national best bid to buy were $19, a subsequent offer to sell with any price lower than $19 would be a crossing quotation.

22 All equities exchanges and the NASD were participants in the ITS Plan. The ITS Plan is described in the NMS Release, supra note 10, at 37501.

23 Restrictions on locking and crossing quotations for exchange-listed options currently are imposed in the Options Linkage Plan. The Options Linkage Plan is a Commission-approved national market system plan. Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (Order Approving the National Market System Plan Relating to Options Order Protection and Locked/Crossed Markets Submitted by the Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., NYSE Amex LLC, and NYSE Arca, Inc.) ("Options Linkage Plan"). Similar to Rule 610(d), Section 6 of the Options Linkage Plan requires the options exchanges to

In January 2004, the Commission approved an exchange rule filing for orders in listed options that were flashed electronically to market participants for a three-second period, rather than manually on the floor of an exchange.[24] The Commission generally has sought to interpret its rules in such a way that they promote fair competition between manual and automated markets.[25] The Commission noted that the electronic flash process was designed to protect against trading through better displayed prices at other markets, and that the process would allow exchange participants to provide efficient and competitive executions for flashed orders.[26] Subsequently, other options exchanges adopted similar rules.[27]

In September 2006, the Commission approved an exchange rule filing for the use of flash orders on the equity trading platform of the Chicago Board Options Exchange ("CBOE").[28] The Commission received no comments on the CBOE proposal. In May 2009, two more exchanges

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adopt rules that prohibit their members from engaging in a pattern or practice of displaying locking or crossing quotations.

24 The first exchange to use the flash order exception for electronically communicated orders was the Boston Options Exchange ("BOX") facility of the Boston Stock Exchange ("BSE"). Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR-BSE-2002-15). BOX flashed orders as part of a process called an "NBBO filter."

25 See id. at 2776-2777 ("Overall, the Commission believes that approving the BSE's proposal to establish trading rules for the BOX facility should confer important benefits to the public and provide U.S. market participants with a new market in which to trade standardized options. As a fully electronic options market with relatively lower barriers to access, BOX's entry into the options marketplace may potentially reduce the costs of trading to investors and market professionals, enhance innovation, and increase competition between and among the options exchanges, resulting in better prices and executions for investors.") (citations omitted).

26 Id. at 2783.

27 See, e.g., Securities Exchange Act Release Nos. 51544 (April 14, 2005) 70 FR 20613 (April 20, 2005) (SR-Phlx-2005-03); 53167 (January 23, 2006) 71 FR 5094 (January 31, 2006) (SR-CBOE-2005-89); 57812 (May 12, 2008) 73 FR 28846 (May 19, 2008) (SR-ISE-2008-28).

28 Securities Exchange Act Release No. 54422 (September 11, 2006) 71 FR 54537 (September 15, 2006) (SR-CBOE-2004-21).

– Nasdaq and BATS – filed proposed rule changes to begin offering flash orders for equity trading.[29] The proposed rule changes of Nasdaq and BATS cited the Commission's previous approval of the CBSX filing and were filed as immediately effective pursuant to Exchange Act Rule 19b-4(f)(6).[30] In this regard, the Nasdaq and BATS filings fell within the interpretive guidance issued by the Commission last year that was designed to streamline the handling of SRO proposed rule changes, particularly for exchange trading rules.[31]

Commenters opposed to the Nasdaq and BATS filings raised serious concerns about the effect of flash orders on investors and on the integrity of the markets.[32] NYSE Euronext noted that in today's trading environment, "where trading and reaction time are discussed in micro

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29 Securities Exchange Act Release Nos. 60040 (June 3, 2009) 74 FR 27577 (June 10, 2009) (SR-BATS-2009-014); 59875 (May 6, 2009) 74 FR 22794 (May 14, 2009) (SR-NASDAQ-2009-043); 60039 (June 3, 2009) 74 FR 27635 (June 9, 2009 (SR-NASDAQ-2009-050); and 60037 (June 3, 2009) 74 FR 27367 (June 9, 2009) (SR-NASDAQ-2009-048).

30 Rule 19b-4(f)(6) permits a proposed rule change to become immediately effective so long as each policy issue raised by the proposed trading rule: (1) has been considered previously by the Commission when the Commission approved another exchange's trading rule; and (2) the rule change resolves such policy issue in a manner consistent with such prior approval. Securities Exchange Act Release No. 58092 (July 3, 2008) 73 FR 40144, 40147 (July 11, 2008).

31 See id. at 40147 ("[T]he Commission recognizes that national securities exchanges registered under section 6(a) of the Exchange Act face increased competitive pressures from entities that trade the same or similar financial instruments – such as foreign exchanges, futures exchanges, ECNs, and ATSs. These competitors can change their trading rules or trade new products without filing them with the Commission.").

32 Letter dated May 28, 2009 from Janet M. Kissane, Senior Vice President – Legal & Corporate Secretary, Office of the General Counsel, NYSE Euronext to Elizabeth M. Murphy, Secretary, Commission ("NYSE Euronext Letter"); Letter dated June 4, 2009 from Stephen Schuler and Daniel Tierney, Managing Members, Global Electronic Trading Company to Elizabeth M. Murphy, Secretary, Commission ("GETCO Letter"); Letter dated June 4, 2009 from Ann Vlcek, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association to Elizabeth M. Murphy, Secretary, Commission ("SIFMA Letter"); and Letter dated June 17, 2009 from William P. Neuberger and Andrew F. Silverman, Managing Directors, Global Co-Heads of Morgan Stanley Electronic Trading to Elizabeth M. Murphy, Secretary, Commission ("Morgan Stanley Letter").

seconds, an order that is held for even 500 milliseconds cannot be deemed an "immediate" execution."[33] GETCO was concerned that flash orders reduce the incentive to display aggressively priced liquidity, noting that "[m]arket participants interested in finding the best priced orders to execute against would be encouraged to join the disparate system of 'step-up' order display systems on the various exchanges so that they could execute against better priced 'step-up' orders without displaying limit orders on the public markets."[34] Similarly, Morgan Stanley stated that "[w]e believe that the [proposed rule changes] will provide a material disincentive to publicly display limit orders on exchanges, thereby impairing price discovery."[35] Further, SIFMA sought a fuller public discussion of issues raised by the proposed rule changes, including "the creation of essentially a two tiered market (with some able to pay for a non-public direct data feed to trade with better-priced quotes versus those quotes that are accessible to the general public), thus raising fair access issues and issues re: investor confidence, transparency and our market structure in general."[36]

In contrast, Direct Edge – an alternative trading system – submitted a comment letter supporting the proposed rule changes.[37] The letter noted that Direct Edge offers a pre-routing display product to its participants – the Enhanced Liquidity Provider ("ELP") program – pursuant to which marketable orders are displayed to any of its participants who wish to receive the information in a data feed for which there is no charge.[38] It stated that "[l]iquidity-

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33 NYSE Euronext Letter at 3; see also GETCO Letter at 3; Morgan Stanley Letter at 5-6.

34 GETCO Letter at 4; see also NYSE Euronext Letter at 6 ("reducing publicly available liquidity in this way may impact bid-offer spreads and the execution costs to customers").

35 Morgan Stanley Letter at 4.

36 SIFMA Letter at 2.

37 See Direct Edge Letter, supra note 8.

38 Direct Edge Letter at 4.

aggregation products like Direct Edge's ELP program seek to bring together traditional and non-traditional liquidity in a consolidated, easy-to-access manner designed to maximize the potential for execution, reduce implicit and explicit transaction costs, and otherwise improve execution quality for our customers."[39] Another commenter, Woodbine Associates, was concerned that flash orders could have an "undesirable impact" if offered by market centers with a majority of order flow, but recommended that the Commission "allow flash orders, monitor their use, and study the effect on the market."[40]

For listed equities and listed options in July 2009, the Commission estimates that the total volume of flash orders that received an execution during the flash process was approximately 3.1% and 1.9%, respectively, of total trading volume.[41] BATS, Nasdaq, and Nasdaq OMX BX decided to discontinue offering a flash order type as of September 1, 2009.[42] Accordingly, the total volume of executed flash orders may have declined as of that date.

IV. Proposed Elimination of Flash Order Exception

A. Concerns About Flash Orders

The Commission is proposing to eliminate the flash order exception from Exchange Act quoting requirements. The Commission is concerned that the use of flash orders by exchanges

39 Direct Edge Letter at 2.

40 Letter dated June 30, 2009 from Woodbine Associates ("Woodbine Letter") at 1, 2.

41 The Commission's estimate of flash order trading volume in July 2009 reflects discussions with the markets that offered flash orders during that time – CBSX, Direct Edge, BATS, Nasdaq, and Nasdaq OMX BX for equity trading, and BOX, CBOE, and ISE for options trading. These volume estimates reflect executions by market participants in response to flashed order information.

42 See Securities Exchange Act Release Nos. 60569 (August 26, 2009), 74 FR 45268 (September 1, 2009) (SR-BATS-2009-028); 60570 (August 26, 2009), 74 FR 45504 (September 2, 2009) (SR-NASDAQ-2009-079); 60571 (August 26, 2009), 74 FR 45502 (September 2, 2009) (SR-BX-2009-051). The Commission notes that, if the proposal is adopted, exchanges with flash order rules would need to file proposed rule changes to eliminate flash orders from their rule books.

and other markets, particularly if it were to expand in trading volume, could detract from the fairness and efficiency of the national market system.[43] In its analysis of flash order types, the Commission will consider the interests of long-term investors and the extent to which they are helped or harmed by these orders, rather than on the interests of professional short-term traders that may have invested in sophisticated trading systems capable of responding to flash orders. The interests of long-term investors and professional short-term traders in fair and efficient markets often will coincide. Indeed, vigorous competition among professional short-term traders can itself lead to very important benefits for long-term investors, including narrower spreads and greater depth. If, however, the interests of long-term investors and professional short-term traders conflict, the Commission previously has emphasized that "its clear responsibility is to uphold the interests of long-term investors."[44] The Commission preliminarily believes that, in today's highly automated trading environment, the exception for flash orders from Exchange Act quoting requirements may no longer serve the interests of long-term investors and could detract from the efficiency of the national market system.

Today, the overwhelming majority of trading volume in listed equities and listed options is routed and executed through highly automated systems. Among other things, these sophisticated systems have dramatically reduced the time period for collecting and disseminating quotations.[45] In contrast to the primarily manual trading when the Commission originally adopted the exception for flash orders in 1978, flash orders no longer are clearly distinguishable

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43 See also supra note 32.

44 NMS Release, supra note 10, at 37500 (noting that "it makes little sense to refer to someone as 'investing' in a company for a few seconds, minutes, or hours"). The Commission further noted that giving priority to the interests of long-term investors is consistent with both the legislative history of the Exchange Act and the strong policy goal to reduce the cost of capital for U.S.-listed companies. Id. at 37499-37500.

45 See NYSE Euronext Letter at 4.

from quotations that are disseminated in the consolidated quotation data. As a result, the rationale for requiring markets to include their best-priced quotations in the consolidated quotation data and for prohibiting the practice of displaying quotations with prices that lock previously displayed quotations would appear to apply equally to flash orders in today's trading environment.

The Commission also is concerned that flash orders may create a two-tiered market in which the public does not have access, through the consolidated quotation data streams, to information about the best available prices for listed securities. A flash order generally is displayed at a marketable price that will be better than the best displayed price for the security in the consolidated quotation data. For example, a flash order to buy would be displayed at a higher price than the national best bid, and a flash order to sell would be displayed at a lower price than the national best offer. Yet the public does not receive this flashed order information in the consolidated quotation data. Instead, only those market participants that receive a market's individual data feed have access to the improved price information. The consolidated quotation data streams are intended to provide a single source of information on the best prices for a listed security across all markets, rather than force the public to obtain data from many different exchanges and other markets to learn the best prices.[46] This objective would not be met if exchanges and ATSs disseminate pricing information that, due to the technological evolution of the markets, is functionally quite similar to quotations, yet is not required to be included in the consolidated quotation data.

In addition, the Commission is concerned about the extent to which flash orders may discourage the public display of trading interest and harm quote competition among markets.

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46 See Rule 603(b) of Regulation NMS (providing for the dissemination of all consolidated information for an individual NMS stock through a single plan processor).

The Commission long has emphasized the need to encourage displayed liquidity in the form of publicly displayed limit orders.[47] Such orders establish the current "market" for a stock and thereby provide a critical reference point for investors. Flash orders, however, generally are executed by a market at prices that match the best displayed prices for a stock at another market. In this respect, flash orders potentially deprive those who publicly display their interest at the best price from receiving a speedy execution at that price. The opportunity to obtain the fastest possible execution at a price is the primary incentive for the display of trading interest.[48] Particularly if flash orders were offered by all major markets for a security and greatly expanded in trading volume, they could significantly undermine the incentives to display limit orders and to quote competitively, and thereby detract from the efficiency of the national market system.

For example, the flash process provides a vehicle for certain market participants to match displayed prices on an order-by-order basis by responding to flashes. It therefore gives these participants a "last-mover" advantage over displayed orders in other markets. Rather than displaying their orders or quotations in advance of incoming marketable order flow to attract an execution, these market participants can wait to receive the flashed order and program their systems to pick and choose when to execute. The availability of this "flash" alternative to quoting as a means to supply liquidity may reduce their incentives to display liquidity.

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47 See, e.g., NMS Release, supra note 10, at 37527 ("The Commission believes, however, that the long-term strength of the NMS as a whole is best promoted by fostering greater depth and liquidity, and it follows from this that the Commission should examine the extent to which it can encourage the limit orders that provide this depth and liquidity to the market at the best prices."); Order Handling Rules Release, supra note 10, at 48293 ("[T]he display of customer limit orders advances the national market system goal of the public availability of quotation information, as well as fair competition, market efficiency, best execution, and disintermediation.").

48 See NMS Release, supra note 10, at 37505.

Moreover, the flash process diverts a certain amount of order flow that otherwise might be routed directly to execute against displayed quotations in other markets. The Commission recognizes that orders in listed equities may be routed to venues that do not display their trading interest in the consolidated quotation data.[49] Certain benefits, including adding liquidity, may result from routing orders to undisplayed venues. Given the importance of displayed quotations for market efficiency,[50] however, the Commission is particularly concerned about additional marketable order flow – orders that are immediately executable at the national best bid or offer – that may be diverted from the public quoting markets and that could further reduce the incentives for the public display of quotations.

The Commission also is concerned that the flashing of orders at marketable prices may undermine the purposes of Rule 610(d) of Regulation NMS, which is designed to protect displayed quotations from being locked by equal-priced contra side quotations.[51] Marketable prices are, by definition, prices that at least equal the best contra side quotation for a stock. For example, a marketable flash order to buy will be displayed at the price of the national best offer and a marketable flash order to sell will be displayed at the price of the national best bid. In

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49 For example, some of these undisplayed venues are called "dark pools," which are reported to execute approximately 8% of total trading volume in listed equities. See, e.g., Nina Mehta, Inching Toward Dark Pool Reporting Standards, Traders Magazine Online News, June 26, 2009, http://tradersmagazine.com/news/dark-pool-reporting-103943-1.html. In addition, some exchanges, when they do not have available trading interest to execute marketable orders at the best displayed prices, give participants a choice of routing their orders in response to "indications of interest" from undisplayed venues that are not included in the consolidated quotation data. See, e.g., NYSE Arca, "Client Notice: NYSE Arca to Provide Indication of Interest (IOI) Routing" (March 12, 2008) (routing service for "non-displayed liquidity pools").

50 See supra note 10.

51 As noted in note 23 supra, the Options Linkage Plan includes a prohibition on a pattern or practice of displaying locking or crossing quotations in listed options that is analogous to Rule 610(d).

adopting Rule 610(d), the Commission emphasized that "giving priority to the first-displayed quotation will encourage the posting of quotations and contribute to fair and orderly markets."[52] The Commission preliminarily believes that flash orders may be inconsistent with this policy. The flashing of orders is no longer distinguishable in today's highly automating trading from the dissemination of automated quotations. If marketable flash orders were included in the consolidated quotation data, for example, such orders clearly would be locking quotations in violation of Rule 610(d). The practical result of the Commission's proposal, therefore, would be that flash orders could no longer be displayed to anyone at prices that equal the best priced contra side quotation in a stock. A market that was unable to execute incoming marketable orders at the best prices would need to handle them in another fashion. Depending on the order router's wishes, a market could route the order away to access the best displayed prices on other exchanges, reprice and display the order at a permissible price, or cancel the order back to the order router. It also is possible, however, that the order may be routed to a dark venue.[53]

The proposed elimination of the exception for flash orders from Exchange Act quoting requirements also likely would affect the competition among exchanges and ATSs for trading volume. Much of a market's revenue is generated, directly or indirectly, through the execution of trades. Accordingly, markets have strong incentives to maximize their executed volume, both by attracting the largest possible volume of order flow and by executing as much of that order flow as possible. Flash orders give markets an additional opportunity to execute marketable orders even if they do not have available contra trading interest at the best displayed prices when the flash order arrives. In this respect, flash orders can be viewed as one competitive strategy to

52 NMS Release, supra note 10, at 37547.

53 As noted in section V below, the Commission's staff is reviewing other forms of dark trading interest that are not included in the consolidated public quotation data, and the Commission expects to consider initiatives in this area in the near future.

maximize a market's trading volume and revenues, which would be curtailed by adoption of the proposal.

The Commission preliminarily believes, however, that any limitation on a market's competitive choices would be justified by other effects of the proposal that would promote competition, protect investors, and enhance efficiency. As an initial matter, it is important to recognize that, both currently and if the proposal were adopted, all exchanges and ATSs would operate under the same rules for flash orders. Currently, the availability of the flash order type benefits markets that do not have available contra side trading interest at the best displayed prices when an order arrives by giving them a second chance to execute the order. In this respect, the current rule tends to benefit those markets that have the least available trading interest at the best prices, including displayed limit orders. If adopted, the proposal would give markets even greater incentives to attract trading interest at the best displayed prices, including displayed limit orders, in advance of the arrival of marketable orders, as well as better opportunities to attract marketable order flow by displaying the best prices. It thereby would promote competition for the displayed liquidity that is vital to the fairness and efficiency of the listed securities markets. In addition, the proposal would help protect the interests of investors who are willing to display their trading interest publicly.

Finally, the flashing of orders to many market participants creates a risk that recipients of the information could act in ways that disadvantage the flashed order. With today's sophisticated order handling and execution systems, those market participants with the fastest systems are able to react to information in a shorter time frame than the length of the flash order exposures. As a result, such a participant would be capable of receiving a flashed order and reacting to it before the flashed order, if it did not receive a fill in the flash process, could be executed elsewhere. For example, a recipient of a flash order that was quoting on another exchange would be capable of adjusting its quotes to avoid being hit by the flash order if it subsequently were routed to that exchange. Alternatively, a recipient would be capable of rapidly transmitting orders that would take out trading interest at other exchanges before an unfilled flash order could be routed to those exchanges. In both cases, a flashed order that did not receive an execution in the flash process would also be less likely to receive a quality execution elsewhere.

Of course, flash orders are voluntary on the part of order routers. They involve a willing decision on the part of order routers to disseminate the order information to a group that generally will include highly sophisticated professional traders. Those who choose to use the flash order type (which often will be a broker that owes a duty of best execution to its customer for the routing decision) probably already consider the extent to which flashed orders may contain significant information content that could lead the recipients of flash order information to act contrary to the interests of the orders. Stated another way, those who are highly concerned about information leakage generally would be unlikely to flash their order information to a large number of professional traders. As a result, there is an inverse relationship between the extent to which flash orders are used beneficially by order submitters and the extent to which the recipients of flash orders could gain an information advantage. If used beneficially by order submitters, the information leakage and information advantage would be minimized for the user of the flash order. If not used beneficially, however, the flash order type appears to raise particular risks for customers whose order information is flashed.

The Commission recognizes that flash orders offer potential benefits to certain types of market participants. For those seeking liquidity, the flash mechanism may attract additional liquidity from market participants who are not willing to display their trading interest publicly. Flash orders thereby may provide an opportunity for a better execution than if they were routed elsewhere.[54] There is no guarantee, for example, that an order routed to execute against a displayed quotation will, in fact, obtain an execution. The displayed quotation may already be executed against or cancelled before the routed order arrives. Of course, the delay in routing during a flash period may further decrease the likelihood of an execution in the displayed market for the flash order because prices at the displayed market may move away from the flash order during the flash process. Those who route flash orders, however, may use them selectively in those contexts where they believe an order is less likely to receive a full execution if routed elsewhere.

In addition, many markets that display quotations charge fees (often known as "take" fees) for accessing those quotations. Flash orders may be executed through the flash process for lower fees than the fees charged by many markets for accessing displayed quotations. Indeed, some markets have offered rebates on orders that are executed during a flash, so that the order, rather than paying a fee, will earn a rebate.[55] The combined difference between receiving a rebate for an executed flash order versus paying a fee for accessing a displayed quotation may be a significant incentive for traders to submit flash orders.[56]

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54 See Direct Edge Letter at 2.

55 NASDAQ OMX, Flash Functionality, http://www.nasdaqtrader.com/content/ProductsServices/Trading/Flash_factsheet.pdf and BATS Global Markets, BATS Exchange Releases BOLT, http://www.batstrading.com/resources/press_releases/BATS_Exchange_Announces_BOLT_FINAL.pdf. As noted supra note 42, Nasdaq and BATS have announced that they will no longer offer a flash order functionality as of September 1, 2009.

56 When it adopted Rule 610(d), the Commission specifically considered and disapproved the practice of deliberately locking a displayed quotation to obtain a liquidity rebate. NMS Release, supra note 10, at 37547 (restriction on locking quotations was intended to

Finally, some market participants that choose to receive and respond to flash orders may represent large institutional investors that are reluctant to display quotations publicly to avoid revealing their full trading interest to the market, but are willing to step up on an order-by-order basis and provide liquidity to flash orders. Such investors may have the sophisticated systems themselves to respond to flash orders or may rely on the systems of their brokers. Executions against flash orders could help lower the transaction costs of these institutional investors.

The Commission expects that any negative effect of the elimination of the exception for flash orders from Exchange Act quoting requirements would be mitigated by the ability of market participants to adapt their trading strategies to the new rules. In addition, higher incentives to display liquidity and alternative forms of competition for order flow could mitigate any negative effect of the proposal.

To summarize, the Commission recognizes that flash orders may have some benefits, but preliminarily believes that, in the context of today's highly automated trading environment, those benefits do not justify the negative aspects of flash orders. In reaching this preliminary view, the Commission also has considered the potential damage to public confidence in the securities markets caused by practices that may give professional short-term traders an unfair advantage over long-term investors. Professional short-term traders inevitably have advantages in the active trading of securities – that is, buying and selling securities repeatedly throughout the trading day. Active trading is a highly competitive endeavor, and many professional short-term traders devote substantial resources to develop the systems and expertise to trade successfully. Ultimately, this competition among professional short-term traders can greatly benefit long-term

address a market participant that "chooses to lock rather than execute the already-displayed quotation to receive a liquidity rebate").

investors if it leads to better execution quality (such as narrower spreads and greater liquidity) when investors enter the market to establish or liquidate their positions in a security.

Practices that may give professional short-term traders undue advantages without creating sufficient corollary benefits to long-term investors, or that can undermine the goals of Commission rules, for example promoting displayed liquidity, may cause damage to public confidence in the fairness of the markets, and this must be considered by the Commission in fulfilling its regulatory responsibility under the Exchange Act. Indeed, the Congressional concern to maintain and promote public confidence in the fairness of the securities markets has been a hallmark of the federal securities laws for the last 75 years.[57]

The Commission also has considered the potential costs and benefits of flash orders at the level of individual transactions. When an order is flashed and receives an execution, three different market participants are most directly affected: (1) the submitter of the flash order that received an execution; (2) the receiver of the flashed information that supplied dark liquidity to the order; (3) and the market participant that was willing to supply liquidity through a publicly displayed quotation establishing the best price for a security, yet did not receive an execution at that price. Although the first two parties received the benefits of a desired trade, potentially with lower fees than they otherwise might have paid, the third party that established the best displayed price did not receive an execution and thereby suffered a cost. Moreover, displayed liquidity is a public good that benefits investors and traders generally.[58] When the market participants that generate this public good are harmed by a missed trading opportunity, it creates an externality

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57 See, e.g., Section 2(a) of the Exchange Act (securities transactions are affected with a national public interest which makes it necessary to "insure the maintenance of fair and honest markets in such transactions").

58 NMS Release, supra note 10, at 37516.

that can detract from the efficiency of the securities markets.[59] Though the costs of failing to reward the public display of liquidity are difficult to quantify, the Commission's practical experience over the years with initiatives to promote the public display of liquidity have demonstrated their value for investors.[60]

Given all of these factors, the Commission preliminarily believes that the benefits of flash orders for some market participants do not justify their costs to other market participants, the national market system, and the public interest. It therefore is proposing to eliminate the exception for flash orders from Exchange Act quoting requirements.

B. Description of Proposal

1. Proposed Amendment of Rule 602

Under the proposal, paragraph (a)(1)(i)(A) of Rule 602 would be eliminated in its entirety. The Commission recognizes that a number of exchanges currently offer a variety of trading services other than flash orders that conceivably could be affected by the elimination of the paragraph. These may include price improvement auctions and various types of facilitation and exposure mechanisms for large orders.[61] The Commission preliminarily believes that the status of these trading mechanisms under Rule 602 would not be altered by the proposed amendment. For example, the Commission preliminarily believes that orders exposed as part of a competitive auction that provides an opportunity to obtain better prices than displayed

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59 Id.

60 See, e.g., Concept Release on Market Fragmentation, supra note 9, at 10584 n. 53 (citing academic studies finding that the required display of customer limit orders, by providing greater price transparency and enhancing public price discovery, led to substantial reductions in transaction costs for both retail and institutional investors).

61 See, e.g., BOX Rules, ch. V, sec. 18 (Price Improvement Mechanism); CBOE Rule 6.13A (Simple Auction Liaison); and ISE Rule 716(d) (Facilitation Mechanism).

quotations generally would not constitute bids and offers that must be provided to the consolidated quotation stream, nor would the responses to those orders if they were actionable only with respect to the exposed order. Comment is requested on the potential impact of the proposal on exchange trading services other than flash orders.

As noted in section III above, the language in Rule 602(a)(1)(i)(A) originally was adopted to accommodate ephemeral quotations on manual trading floors. Historically, exchange members located on trading floors have conducted on the spot discussions of price which could not practically be reflected in the published quotation and were generally understood to fall within the exemption of Rule 602(a)(1)(i)(A). Although trading floors have changed dramatically in recent years, some of the historical practices may still be necessary for the effective functioning of a trading floor. For example, when floor brokers represent large discretionary orders they must be able to discuss terms of a prospective trade. If it were necessary to make such terms public, it would interfere with, and might make impossible, the effective representation of such large orders on a trading floor. Similarly, floor brokers can "request a market" in a security either hypothetically (or conditionally) or with a view to executing a particular order in hand. In either case, the response of the "trading crowd" can be different than the published quotation. It may be impractical to require such responses to be published. Even if publication were technically feasible, it could significantly impair floor brokers' ability to represent large orders effectively. There may be other examples as well of floor practices that are necessary for floors to function effectively, but that could be viewed as conflicting with Rule 602 as proposed to be amended.

The Commission preliminarily believes that the concerns about flash orders discussed above apply both with respect to the electronic flashing of orders and the manual flashing of orders to exchange crowds. These concerns include particularly the danger of a two-tiered market in which the public does not have access, through the consolidated quotation data streams, to information about the best available prices, and the effect on incentives to display trading interest publicly. In addition, the Commission has sought to establish a regulatory framework that maintains fair competition between automated markets and manual markets. The Commission requests comment on whether the elimination of the flash order exception for both automated trading systems and manual trading floors would seriously detract from the viability of trading floors in the modern, mostly electronic, trading environment. It also requests comment on whether Rule 602 should permit trading floors to continue manual "flashing" of orders if electronic "flashing" is prohibited and what, if any, conditions should apply.

In sum, the proposed amendment of Rule 602 conceivably could affect a number of practices of both electronic exchanges and manual trading floors. To the extent that particular practices do not raise the policy concerns of flash orders under specific circumstances, but would be constrained or eliminated by the proposed amendment, the Commission requests comment on whether it should adopt a narrower regulatory approach than the full elimination of the flash order exception.[62] In addition, the Commission could grant exemptions from the requirements of Rule 602, as necessary and appropriate, pursuant to Rule 602(d).[63]

2. Application of Rule 301(b)

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62 See section V below for a more detailed discussion of alternative regulatory approaches.

63 Rule 602(d) provides that such exemptions may be granted either unconditionally or on specified terms and conditions, if the Commission determined that such exemptions were consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system. See, e.g., Letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, to Michael J. Simon, Senior Vice President and General Counsel, ISE, dated December 8, 2004 (Commission staff acting by delegated authority to grant ISE a limited exemption from its obligations under Rule 602(a) in connection with ISE's Price Improvement Mechanism).

If the Commission adopts the proposed elimination of the flash order exception from Rule 602, the Commission would apply Rule 301(b) of Regulation ATS in a consistent manner to ATSs that use flash orders. Rule 301(b) sets forth requirements for ATSs, one of which is order display and execution access. Paragraph (b)(3)(ii) of Rule 301 requires an ATS that meets a 5% volume threshold in an NMS stock[64] to provide to a national securities exchange or national securities association the prices and sizes of the orders at the highest buy price and the lowest sell price for such NMS stock, displayed to more than one person in the ATS, for inclusion in the quotation data made available by such exchange or association pursuant to Rule 602 of Regulation NMS. The Commission has sought to promote fair competition between exchanges and ATSs, consistent with their varying regulatory responsibilities.[65] The Commission has not applied Rule 301(b) in a manner inconsistent with Rule 602, with respect to flash orders or otherwise.

Accordingly, if the proposed amendment to Rule 602 is adopted, the Commission would consider orders that a threshold ATS displays to more than one person in the ATS that either are immediately executed or withdrawn if not immediately executed to be orders covered by Rule 301(b)(3)(ii) that must be provided to a national securities exchange or national securities association for inclusion in the consolidated quotation data. Such orders would be covered

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64 An ATS becomes subject to the Regulation ATS display requirement if, during at least four of the preceding six calendar months, it had an average daily trading volume of 5% or more of the aggregate average daily share volume for such NMS stock as reported by an effective transaction reporting plan. 17 CFR 242.301(b)(3)(i)(B).

65 See, e.g., Section 11A(a)(1)(c)(ii) of the Exchange Act (one of the objectives of the national market system is to assure fair competition "between exchange markets and markets other than exchange markets").

regardless of the particular term that an ATS might use to characterize the order, such as "indication of interest."[66]

3. Application of Rule 610(d)

Finally, if the Commission adopts the proposed amendment to Rule 602, the Commission would apply the restrictions on locking or crossing quotations in Rule 610(d) in a consistent manner to prohibit the practice of displaying marketable flash orders. Rule 610(d) requires each national securities exchange and national securities association to establish, maintain, and enforce rules that, among other things, prohibit members from engaging in a pattern or practice of displaying quotations that lock or cross any "protected quotation," as defined in Rule 600(b)(57), in an NMS stock.[67] Under the proposed amendment of Rule 602, flash orders would no longer be excepted from the requirement to include best-priced quotations and orders in the consolidated quotation data. If that amendment is adopted, the Commission would consider the display by SRO members of quotations that either are immediately executed or withdrawn if not immediately executed to be the display of quotations that are subject to the locking and crossing restrictions of Rule 610(d), like any other quotation required by Rule 602(a) to be included in the consolidated quotation data. As a result, flash orders with non-marketable prices would not be locking or crossing quotations and would need to be included in the consolidated quotation data.

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66 See Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844, 70850 (December 22, 1998) ("Regulation ATS Adopting Release") ("The label put on an order – 'firm' or 'not firm' – is not dispositive. For example a system claiming it displays only "indications of interest" that are not orders, may be covered by the new interpretation of 'exchange' if those indications are, in fact, firm in practice.)

67 As noted in note 23 supra, the Options Linkage Plan includes a prohibition of a pattern or practice of displaying locking or crossing quotations in listed options that is analogous to Rule 610(d). If flash orders for listed options were no longer excepted from Rule 602 and therefore required to be included in the OPRA quotations data, the Commission also would consider the Option Linkage Plan's restrictions on locking or crossing quotations to apply to the display of marketable flash orders.

Orders with marketable prices, however, could no longer be flashed, because if displayed they would be subject to the locking and crossing restrictions in Rule 610(d).

V. Request for Comments

The Commission seeks comment and data on all aspects of the proposed amendment of Rule 602, including its implications for the application of Rule 301(b) and Rule 610(d). In particular, comment and data are requested on the effect of flash orders on the fairness and efficiency of the markets for listed securities and on the interests of long-term investors in these securities. If adopted, would the proposal promote investor confidence by addressing the potential for a two-tiered market with respect to access to information about the best prices for listed securities? Would the proposal help to promote the display of quotations in public markets by eliminating one type of trading in which "dark" liquidity is provided that matches the prices of previously displayed public quotations? Would the proposal reduce the potential for information leakage that could detract from the execution quality of marketable orders? Conversely, would the proposal deprive investors of a trading tool that, if used beneficially, can lead to improved quality of execution for marketable orders?

Comment and data also are requested on the following questions. What are some of the trading strategies that employ flash orders? Is the use of flash orders in the best interests of these traders and how would the inability to use flash orders affect these traders? Are there alternatives to using flash orders in such trading strategies? How are market participants likely to change their behavior if unable to use flash orders? What are the likely effects of these changes? Which market centers are likely to benefit from any changes in order routing practices? How would the proposal affect transaction costs incurred by various market participants? How would overall transaction costs change? In the absence of flash orders, would the limit orders setting the best displayed price benefit with faster or more probable executions?

Comment and data also are requested on the use of flash orders by exchanges for listed options and whether concerns about flash orders should be assessed differently in that context. For example, trades in listed options are required to be executed on an exchange that has public quoting responsibilities rather than at over-the-counter venues that are not required to publish quotations. In addition, the incentives for the display of liquidity for derivative instruments such as listed options may be different from such incentives for cash equities. Finally, listed options are priced largely on the value of the underlying securities; market participants typically update quotations prices as the underlying prices change. Given these differences and others between equity and options trading, should the Commission adopt a different approach for flash orders in listed options than for flash orders in listed equities?

The Commission also requests comment and data on narrower regulatory approaches than a complete elimination of the exception for flash orders from Exchange Act quoting requirements. Section IV.B.1 above, for example, requests comment on issues relating to manual trading floors and the extent to which such floors, as they currently operate, continue to need the exception for flash orders. In addition, are there additional features or limitations that could be added to the use of flash orders that would significantly alter the respective costs and benefits discussed in this release? For example, would requiring broader dissemination of flashed order information – such as in the consolidated quotation data – address concerns about two-tiered access to information about the best prices for listed securities? Could these concerns about two-tiered access be addressed by conditioning a market's provision of a flash order type on its making available flash order information to anyone without charge, even though the data would not be in a single consolidated feed? If flash order information were more broadly disseminated, how should the Commission assess the policy objectives behind existing restrictions on the display of locking quotations? Also, could exchanges address concerns about the misuse of flash order information through tailored surveillance or other regulatory procedures? Could concerns about information leakage be addressed by requiring brokers to provide detailed disclosure to a customer about the risks, or requiring the customer's affirmative consent, before allowing the customer's order to be flashed? Would requiring the recipient of a flash order to offer price improvement ameliorate any of the concerns discussed above?

The Commission further seeks comment on the application of Rule 301(b) of Regulation ATS and Rule 610(d) of Regulation NMS consistent with the proposed amendment to Rule 602, if adopted. Are there any special considerations applicable to ATSs that would justify applying a different standard from exchanges with respect to the inclusion of ATS orders in the consolidated quotation data? Are there any special considerations applicable to flash quotes that would justify applying a different standard from other types of displayed quotations for purposes of the locking and crossing restrictions?

The Commission strongly encourages commenters to respond within the designated comment period. It intends to act quickly in reviewing the comments and assessing further action. In this regard, the Commission also is actively reviewing other forms of "dark" trading interest (that is, trading interest that is not included in the consolidated public quotation data) that may be detrimental to the fairness and efficiency of the national market system. Dark trading interest, as well as the information that some undisplayed venues currently disseminate to market participants concerning such trading interest, is not generally available to the public.[68] Comment and data are requested on the use of flash orders as a mechanism to interact with dark liquidity and whether other mechanisms for accessing dark liquidity either do or do not raise policy concerns that are analogous to flash orders. The Commission is developing initiatives in this area, as well as reviewing other market structure issues, including those concerning Regulation ATS thresholds, direct market access, high frequency trading, and co-location.

VI. Paperwork Reduction Act

The Commission believes that eliminating the flash order exception, if adopted, would not substantively or materially change collection burdens under the requirements of Rule 602 of Regulation NMS. If adopted, the proposal would prohibit the practice of displaying marketable flash orders. Exchanges would be required to handle marketable orders that they are unable to execute at the best displayed prices in another manner, such as by routing marketable orders away to execute against the best displayed quotations at another exchange or ATS. Because exchanges would not be permitted to display these orders in the consolidated quotation data, no new collection of information would be required under Rule 602 with regard to marketable flash orders. In contrast, non-marketable flash orders would be required to be displayed in the consolidated quotation data. The Commission preliminarily believes, however, that the additional burden of including non-marketable flash orders with the large volume of quotations

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68 See, e.g., Oversight Hearing on Current State and Agenda, Hearing Before the Subcomm. on Capital Markets, Insurance and Government-Sponsored Enterprises of the House of Representatives Comm. on Financial Services, 111th Cong. (July 14, 2009) (testimony of Mary L. Schapiro, Chairman, Commission); Mary L. Schapiro, Chairman, Commission, Address before the New York Financial Writers' Association Annual Awards Dinner (June 18, 2009) (transcript available at www.sec.gov).

that exchanges already include in the consolidated quotation data under Rule 602 would not be material.[69]

In addition, the Commission does not believe that the application of Rule 301(b) of Regulation ATS and Rule 610(d) of Regulation NMS consistent with the proposed amendment to Rule 602 contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995.[70] Rule 301(b) of Regulation ATS would apply to the use of flash orders by alternative trading systems. The Commission believes that this would affect fewer than ten entities. Rule 610(d) of Regulation NMS would prohibit the practice of displaying flash orders with prices that lock or cross previously displayed quotations. The Commission believes that Rule 610(d) does not contain a collection of information requirement as defined by the Paperwork Reduction Act. Accordingly, the Commission believes that the application of Rule 301(b) of Regulation ATS and Rule 610(d) of Regulation NMS consistent with the proposed amendment to Rule 602 imposes no new collection of information requirements. The Commission encourages comments on this point.

VII. Consideration of Costs and Benefits

We are sensitive to the costs and benefits of our proposal to eliminate the exception for flash orders from Exchange Act quoting requirements. We request comment on the costs and benefits associated with the proposed amendment. The Commission has identified certain costs and benefits of the proposal and requests comment on all aspects of its preliminary cost-benefit analysis, including identification and assessments of any costs and benefits not discussed in this

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69 The information collection contained in Rule 602, entitled "Dissemination of Quotations – Rule 11Ac1-1," the precursor to Rule 602, has been assigned control number 3235-0461. The Commission, however, will be updating the overall burden estimate for this collection of information to account for an increase in the number of exchanges subject to the Rule.

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

analysis. The Commission also seeks comments on the value of any of the benefits identified and welcomes comments on the accuracy of any of the costs described in each section of this cost-benefit analysis, as well as elsewhere in this release. Finally, the Commission requests that commenters provide data and any other information or statistics that the commenters relied on to reach any conclusions on such estimates.

A. Benefits

As discussed above, the proposal is intended to prevent a two-tiered market in which the public does not have access, through the consolidated quotation data streams, to information about the best available prices for listed securities, to promote the goals of the consolidated quotation system, and to help promote public confidence in the fairness of the listed securities markets.[71] A flash order generally is displayed at a marketable price that will be better than the best displayed price for the security in the consolidated quotation data. For example, a flash order to buy would be displayed at a higher price than the national best bid, and a flash order to sell would be displayed at a lower price than the national best offer. Yet the public does not receive this flash order information in the consolidated quotation data. Instead, only the participants of a particular market that receive the market's data feed have access to the improved price information. The consolidated quotation data streams are intended to provide a single source of information on the best prices from all markets, rather than force the public to obtain data from many different exchanges and other markets to learn the best prices. A single source of data facilitates investor access to the best prices in the national market system, and helps promote best execution.[72] This objective would be undermined if exchanges and ATSs

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71 See supra notes 18 and 57.

72 See supra note 18 and accompanying text.

disseminate pricing information that is functionally quite similar to quotations, yet is not required to be included in the consolidated quotation data.

The proposal is intended to promote the public display of trading interest and quote competition among markets. The Commission long has emphasized the need to encourage displayed liquidity in the form of publicly displayed limit orders.[73] Such orders establish the current "market" for a stock and thereby provide a critical reference point for investors. Flash orders, however, generally are executed by a market at prices that match the best displayed prices for a stock at another market. In this respect, flash orders potentially deprive those who publicly display their interest at the best prices from receiving a speedy execution, or any execution, at that price. The opportunity to obtain the fastest possible execution at a price is the primary incentive for the display of trading interest. Particularly if flash orders were offered by all major markets for a security and greatly expanded in trading volume, they could significantly undermine the incentives to display limit orders and to quote competitively, and thereby detract from the efficiency of the national market system.

For example, the flash process provides a vehicle for certain market participants to match displayed prices on an order-by-order basis by responding to flashes. It therefore gives these participants a "last-mover" advantage over displayed orders in other markets. Rather than displaying their orders or quotations in advance of incoming marketable order flow to attract an execution, these market participants can wait to receive the flashed order and program their systems to pick and choose when to execute. The availability of this "flash" alternative to quoting as a means to supply liquidity may reduce their incentives to display liquidity.

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73 <u>See</u> <u>supra</u> note 47.

Moreover, the flash process diverts a certain amount of order flow that otherwise might be routed directly to execute against displayed orders and quotations in other markets. The Commission recognizes that some markets route orders to dark venues rather than to displayed trading venues.

Certain benefits, including adding liquidity, may result from routing orders to undisplayed venues. Given the importance of displayed quotations for market efficiency[74], however, the Commission is particularly concerned about additional marketable order flow – orders that are immediately executable at the national best bid or offer – that may be diverted from the public quoting markets and that could further reduce the incentives for the public display of quotations.

The Commission also is concerned that the flashing of orders at marketable prices may undermine the purposes of Rule 610(d) of Regulation NMS, which is designed to protect displayed quotations from being locked by equal-priced contra side quotations. Marketable prices are, by definition, prices that at least equal the best contra side quotation for a stock. For example, a marketable flash order to buy will be displayed at the price of the national best offer and a marketable flash order to sell will be displayed at the price of the national best bid. In adopting Rule 610(d), the Commission emphasized that "giving priority to the first-displayed quotation will encourage the posting of quotations and contribute to fair and orderly markets."[75] The Commission preliminarily believes that flash orders may be inconsistent with this goal because the flashing of orders is no longer distinguishable, in certain key respects, from the dissemination of automated quotations. If marketable flash orders were included in the consolidated quotation data, for example, such orders clearly would be locking quotations in

74 See supra note 10.

75 See supra note 52.

violation of Rule 610(d). The practical result of the proposal, therefore, would be that flash orders could no longer be displayed to anyone at prices that equal the best priced contra side quotation in a stock. A market that was unable to execute incoming marketable orders at the best prices would need to handle them in another fashion, such as by routing the order away to access the best displayed prices on other exchanges, or cancelling the order back to the submitter. It is also possible that the order may be routed to a dark venue.[76]

The elimination of flash orders would also change markets' competitive strategies to maximize trading volume and revenues. Currently, the availability of the flash order type benefits markets that do not have available contra side trading interest at the best displayed prices when an order arrives by giving them a second chance to execute the order. In this respect, the current rule tends to benefit those markets that have the least available trading interest at the best prices, including displayed limit orders. If adopted, the proposal would give markets even greater incentives to attract trading interest at the best displayed prices, including displayed limit orders, in advance of the arrival of marketable orders. It thereby would promote competition for the displayed liquidity that is so vital to the fairness and efficiency of the listed securities markets.

Finally, the flashing of orders to many market participants creates a risk that recipients of the information could act in ways that disadvantage the flashed order. With today's sophisticated order handling and execution systems, those market participants with the fastest systems are able to react to information in a shorter time frame than the length of the flash order exposures. As a result, such a participant would be capable of receiving a flashed order and

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76 As noted in section V above, the Commission's staff is reviewing other forms of dark trading interest that are not included in the consolidated public quotation data, and the Commission expects to consider initiatives in this area in the near future.

reacting to it before the flashed order, if it did not receive a fill in the flash process, could be executed elsewhere. For example, a recipient of a flash order that was quoting on another exchange could adjust its quotes to avoid being hit by the flash order if it subsequently were routed to that exchange. Alternatively, a recipient rapidly could transmit orders that would take out trading interest at other exchanges before an unfilled flash order could be routed to those exchanges. In both cases, a flashed order that did not receive an execution in the flash process would also be less likely to receive a quality execution elsewhere.

At the same time, because flash orders are voluntary on the part of order routers, they involve a willing decision on the part of order routers to disseminate the order information to a group that generally will include highly sophisticated professional traders. Those who choose to use the flash order type (which often will be a broker that owes a duty of best execution to its customer for the routing decision) probably already consider the extent to which flashed orders may contain significant information content that could lead the recipients of flash order information to act contrary to the interests of the orders. Stated another way, those who are highly concerned about information leakage generally would be unlikely to flash their order information to a large number of professional traders. As a result, there is an inverse relationship between the extent to which flash orders are used beneficially by order submitters and the extent to which the recipients of flash orders could gain an information advantage. If used beneficially, the information leakage and information advantage would be minimized. If not used beneficially, however, the flash order type appears to raise particular risks for customers whose order information is flashed.

The Commission seeks comment on the anticipated benefits of the proposal, including whether the proposal will: (1) help prevent a two-tiered market in terms of access to information about the best available prices for listed securities; (2) promote the public display of trading interest; (3) help prevent displayed quotations from being locked by equal-priced contra-side quotations; (4) promote competition among markets for displayed liquidity; (5) reduce the risk of detrimental information leakage about customer orders. The Commission further seeks comment on whether the anticipated benefits differ between the equity markets and the options markets.

B. Costs

The proposed elimination of the exception for flash orders from Exchange Act quoting requirements could preclude potential benefits that flash orders offer to certain market participants. For those seeking liquidity, the flash mechanism may attract additional liquidity from market participants who are not willing to display their interest publicly. Flash orders thereby may provide an opportunity for a better execution than if they were routed elsewhere. There is no guarantee, for example, that an order routed to execute against a displayed quotation will, in fact, obtain an execution. The displayed quotation may already be executed against or cancelled before the routed order arrives. Of course, the delay in routing during a flash period may further decrease the likelihood of an execution for the flash order elsewhere because prices may move away from the flash order during the flash process. Those who route flash orders, however, may use them selectively in those contexts where they believe an order is less likely to receive a full execution if routed elsewhere.

Another potential cost to market participants is that many markets that display quotations charge fees (often known as "take" fees) for accessing those quotations. Flash orders may be executed through the flash process for lower fees than the fees charged by many markets for accessing displayed quotations. Professional short-term traders with large trading volume may be particularly sensitive to the level of these fees.

For example, the Commission estimates an average daily volume in listed equities of 8.8 billion shares per day[77] and that flash volume accounts for 0.8% of this volume.[78] The Commission believes that access fees for executed flash orders in the equities markets range from $0.0010 per share to $0.0029 per share.[79] It estimates that the average access fee is $0.0015 per share. In contrast, it estimates that the average access fee for accessing a displayed quotation is $0.0029 per share.[80] The total cost from increased fees for all flash order users on a yearly basis in listed equities, therefore, would be approximately $24,837,120 (8.8 billion shares x .8% x $0.0014 per share increase in access fee x 252 trading days). The Commission believes this estimate is an upper bound since market participants would adapt their strategies to minimize transaction costs under the new conditions.

In addition, some options exchanges offer lower access fees for market participants using flash orders. The Commission estimates an average daily volume in listed options of 13,898,735 contracts per day[81] and that flash volume accounts for 1.9% of this volume.[82] The Commission believes that access fees for executed flash orders in the options markets range from $0.00 per contract to $0.15 per contract.[83] It estimates that an average access fee is $.01 per contract.[84] In

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77 Source: www.arcavision.com (consolidated volume in July 2009).

78 The estimate of the volume of flash order trading is based on discussions with markets that continue to offer flash orders as of September 2009.

79 See Direct Edge Fee Schedule, http://www.directedge.com/fee_schedule.aspx; CBSX Fee Schedule, http://www.cboe.com/publish/cbsxfeeschedule/cbsxfeeschedule.pdf.

80 Id.

81 The Options Clearing Corporation, Volume Statistics, http://www.optionsclearing.com/market/vol_data/2009/daily/jul_09.jsp.

82 The Commission estimates average daily volume of executed flash orders in July at 265,052 contracts. This figure reflects discussions with the relevant markets.

83 See BOX, CBOE, and ISE fee schedules.

84 See BOX, CBOE, and ISE fee schedules.

contrast, the average access fee for accessing a displayed quotation costs the market participant $0.21 per contract.[85] The total cost from increased fees for all flash order users on a yearly basis in listed options, therefore, would be approximately $13,309,429 (13,898,735 contracts x 1.9% x $0.20 per contract increase in access fee x 252 trading days) . As noted above, the Commission expects the actual cost may be lower as market participants would minimize the impact by refining their trading strategies.

The Commission recognizes that some market participants that choose to receive and respond to flash orders may represent large institutional investors that are not willing to display their interest to avoid revealing their trading interest to the market, but are willing to step up on an order-by-order basis and provide liquidity to flash orders. Such investors may have the sophisticated systems themselves to respond to flash orders or may rely on the systems of their brokers. Executions against flash orders could help lower the transaction costs of these institutional investors. In addition, as discussed below in Section VIII, flash orders give markets an additional opportunity to execute marketable orders even if they do not have available contra trading interest at the best displayed prices when the flash order arrives. In this respect, flash orders can be viewed as a market's competitive strategy to maximize trading volume and revenues that would be eliminated by adoption of the proposed amendments.

The Commission expects that any negative effect of the elimination of the exception for flash orders from Exchange Act quoting requirements would be mitigated by the ability of market participants to adapt their trading strategies to the new rules. Also, higher incentives to display liquidity and alternative forms of competition for order flow additionally could mitigate any negative effect of the proposal.

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85 This figure represents the approximate charge for a Linkage Order derived from discussions with the relevant markets.

The markets with five trading systems that offer an electronic flash order functionality would need to make systems changes to comply with the proposed elimination of the exception for flash orders from Exchange Act quoting requirements. The Commission estimates that a programming change for a market requires approximately 20-30 hours per market of coding[86] at an average hourly cost of $193 to eliminate the flash order functionality.[87] The Commission estimates that the aggregate cost of programming changes for these markets to be approximately $19,300-$28,950.

In addition, the Commission believes that three exchanges currently have rules in place that provide for flash orders on five trading systems. The Commission estimates that these markets will each need to file proposed rule changes to remove the flash order functionality from their respective rule books for each system, for a total of five rule changes. The Commission estimates that a routine rule change requires approximately 34 hours for an exchange to complete[88] at an average hourly cost of $305.[89] The Commission estimates that the aggregate cost of one proposed rule change for each trading system would total approximately $51,850.

Finally, the five exchanges that operate trading floors for equities or options may need to reflect manual trading interest at non-marketable prices in the consolidated quotation data if they

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86 This figure reflects discussions with the relevant markets.

87 $ 193 per hour figure for a Programmer Analyst is from SIFMA's Management & Professional Earnings in the Securities Industry 2008, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

88 See Securities Exchange Act Release No. 50486 (October 4, 2004), 69 FR 60287, 60294 (October 8, 2004) (File No. S7-18-04) (adopting release requiring SROs to file proposed rule changes electronically with the Commission).

89 $ 305 per hour figure for an Attorney is from SIFMA's Management & Professional Earnings in the Securities Industry 2008, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

currently rely on the flash order exception for any such floor activity. The Commission preliminarily believes that the five exchanges currently have systems and procedures for floor members to include trading interest in the exchanges' automated systems. Accordingly, the elimination of the flash order exception should not impose a material new systems burden on these exchanges.

The Commission requests comment on any direct or indirect costs of the proposed amendment and asks commenters to quantify those costs, where possible. Specifically, the Commission requests comments on the following questions:

- What are some of the trading strategies that employ flash orders? Is the use of flash orders in the best interest of these traders and how would the inability to use flash orders impact these traders?
- How are market participants likely to change their behavior in the absence of flash orders? What are the likely costs of these changes?
- How will the proposal impact transaction costs incurred by various market participants? On net, how will overall transaction costs change?
- How would the proposal affect competition between trading venues? What costs will be imposed as a result?
- In the absence of flash orders, will the limit orders setting the best price benefit with faster or more probable executions?

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

Section 3(f) of the Exchange Act[90] requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or

[90] 15 U.S.C. 78c(f).

appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition. Exchange Act Section 23(a)(2) also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[91] As discussed below, the Commission's preliminary view is that the proposed amendment should promote efficiency and competition and will have minimal impact, if any, on promotion of capital formation.

The proposed elimination of the exception for flash orders from Exchange Act quoting requirements would affect the competition among exchanges and ATSs for trading volume. Much of a market's revenue is generated, directly or indirectly, through the execution of trading volume. Accordingly, markets have strong incentives to maximize their volume, both by attracting the largest possible volume of order flow and by executing as much of that order flow as possible after it arrives at the exchange. Flash orders give markets an additional opportunity to execute marketable orders even if they do not have available contra trading interest at the best displayed prices when the flash order arrives. In this respect, flash orders can be viewed as a market's competitive strategy to maximize trading volume and revenues that would be eliminated by adoption of the proposed amendments.

The Commission preliminarily believes, however, that any limitation on a market's competitive choices would be justified by other effects of the proposal that would promote competition and enhance efficiency. As an initial matter, it is important to recognize that, both currently and if the proposal were adopted, all markets (including exchanges and ATSs) would

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91 15 U.S.C. 78w(a)(2).

operate under the same rules for flash orders. Currently, the availability of the flash order type benefits markets that do not have available contra side trading interest at the best displayed prices when an order arrives by giving them a second chance to execute the order. In this respect, the current rule tends to benefit those markets that have the least available trading interest at the best prices, including displayed limit orders. If adopted, the proposal would give markets even greater incentives to attract trading interest at the best displayed prices, including displayed limit orders, in advance of the arrival of marketable orders.[92] It thereby would promote competition for the displayed liquidity that is vital to the fairness and efficiency of the listed securities markets. Encouraging the use of displayed limit orders should help improve the price discovery process, and in turn, contribute to increased liquidity and depth in the markets.[93] The deeper and more liquid the markets are, the more willing the public may be to invest its capital, thus promoting capital formation.

The proposal also is designed to promote efficiency by giving a further incentive for markets to compete to attract displayed limit orders and generally to encourage the public display of trading interest.[94] Given that the overwhelming majority of trading volume in listed securities is routed and executed through highly automated systems, flash orders are no longer clearly distinguishable from the best bids and offers for listed securities that are required to be collected and disseminated in the consolidated quotation stream. There is little practical reason to treat

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92 See NMS Release, supra note 10, at 37516 ("Displayed limit orders benefit all market participants by establishing the best prices…")

93 See supra note 47.

94 See Order Handling Rules Release, supra note 10, at 48293 ("[T]he display of customer limit orders advances the national market system goal of the public availability of quotation information, as well as fair competition, market efficiency, best execution, and disintermediation.").

flash orders differently from other bids and offers with respect to Exchange Act quoting requirements.

Yet those who display bids and offers appear to be harmed by the disparity in regulatory treatment between flash orders and displayed bids and offers. For example, the flash order process permits market participants to wait to receive the flashed orders and program their systems to pick and choose when to execute. The exception for flash orders may thereby undermine the incentives for market participants to display their trading interest. If adopted, the proposal could lead market participants to display more of their trading interest. Such a result would be consistent with the Commission's emphasis on the need to encourage displayed liquidity – a critical reference point for investors.[95] Additionally, because the flash order process diverts a certain amount of order flow that might otherwise be routed directly to execute against displayed quotations in other markets, the exception for flash orders may further reduce the incentives for the public display of quotations.[96] While some flash orders may be cancelled or routed to trading venues that do not display their trading interest in the consolidation quotation stream, the Commission preliminarily believes that eliminating the exception for flash orders would result in more order flow being routed to execute against displayed trading interest and would promote the fairness and efficiency of the listed securities markets.[97]

Based on the analysis above, the Commission preliminarily believes that the proposed elimination of the exception for flash orders from Exchange Act quoting requirements would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of

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95 See supra note 58.

96 See supra note 49.

97 See NMS Release, supra note 10, at 37505 ("[M]arket orders need only be routed to markets displaying quotations that are truly accessible").

the Exchange Act. The Commission requests comment on all aspects of this analysis and, in particular, on whether the proposed elimination of the exception for flash orders would place a burden on competition, as well as the effect of the proposal on efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

IX. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or "SBREFA,"[98] the Commission must advise the OMB as to whether the proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in: (1) an annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment or innovation.

The Commission requests comment on the potential impact of the proposed rule amendment on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

X. Regulatory Flexibility Act

The Commission hereby certifies, pursuant to 5 U.S.C. 603(b), that the proposed amendment to the Exchange Act quoting requirements and consistent application of Rule 610(d), if adopted, would not have a significant economic impact on a substantial number of small entities to which it applies. The proposed amendment to Rule 602 and consistent application of Rule 610(d) would apply to national securities exchanges, none of which is a small entity as

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98 Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

defined by Commission rules.[99] The consistent application of Rule 610(d) also would affect one national securities association, which is not a small entity as defined by 13 CFR 121.201. In addition, the consistent application of Rule 301(b) would only affect ATSs, none of which are small entities as defined by Commission Rules.[100]

The Commission encourages written comments regarding this certification. The Commission requests that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

XI. Statutory Authority

Pursuant to the Exchange Act and particularly, Sections 2, 3(b), 5, 6, 11, 11A, 15, 15A, 17(a) and (b), 19, 23(a), and 36 thereof, 15 U.S.C. 78b, 78c(b), 78e, 78f, 78k, 78k-1, 78o, 78o-3, 78q(a) and (b), 78s, 78w(a), and 78mm, the Commission proposes to amend Rule 602 of Regulation NMS.

XII. Text of Proposed Rule Amendment

List of Subjects in 17 CFR Part 242

Brokers, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows.

Part 242 REGULATIONS M, SHO, ATS, AC, AND NMS AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

1. The authority citation for Part 242 continues to read as follows:

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99 See 17 CFR 240.0–10(e).

100 See 17 CFR 240.0–10(c).

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k-1(c), 78l, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd-1, 78mm, 80a-23, 80a-29, and 80a-37.

2. Section 242.602 is amended by removing and reserving paragraph (a)(1)(i)(A).

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Dated: September 18, 2009

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-28903; File No. S7-20-09]

RIN 3235-AK33

Disclosure of Certain Money Market Fund Portfolio Holdings

AGENCY: Securities and Exchange Commission.

ACTION: Interim final temporary rule; request for comment.

SUMMARY: The Securities and Exchange Commission ("Commission" or "SEC") is adopting an interim final temporary rule under the Investment Company Act of 1940 to require a money market fund to report its portfolio holdings and valuation information to the Commission under certain circumstances. The new reporting requirement is designed to provide information substantially similar to that submitted by certain money market funds under the Temporary Guarantee Program for Money Market Funds established by the Department of the Treasury ("Treasury Department"), which will expire on September 18, 2009.

DATES: Effective Date: September 18, 2009 through September 17, 2010.

Comment Date: Comments should be received on or before October 26, 2009.

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/final.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-20-09 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 Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-20-09. 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. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/final.shtml). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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: If you have questions about the rule, please contact one of the following members of the staff in the Division of Investment Management, at the Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-8549: Adam B. Glazer, Senior Counsel, or Hunter Jones, Assistant Director at (202) 551-6792; for technical questions related to the submission of portfolio information to the Commission, in the Office of Information Technology, Rick Heroux, at (202) 551-8168.

SUPPLEMENTARY INFORMATION: The Commission is adopting new rule 30b1-6T under the Investment Company Act of 1940 ("Investment Company Act" or "Act")[1] as an interim final temporary rule. We are soliciting comments on all aspects of the interim final temporary rule.

[1] 15 U.S.C. 80a. Unless otherwise noted, all references to statutory sections are to the Investment Company Act, and all references to rules under the Investment Company Act, including rule 2a-7, will be to Title 17, Part 270 of the Code of Federal Regulations [17 CFR 270].

We will carefully consider the comments that we receive and intend to respond to them in a subsequent release.

I. BACKGROUND

Money market funds are open-end management investment companies that invest in short-term obligations and have a principal investment objective of maintaining a net asset value of $1.00 per share.[2] Since October 2008, most money market funds have participated in the Treasury Department's Temporary Guarantee Program for Money Market Funds ("Guarantee Program"), which has guaranteed the $1.00 share value of accounts held by investors as of September 19, 2008 in participating money market funds.[3] The Guarantee Program was established to help stabilize money market funds following a period of substantial redemptions that threatened the ability of some money market funds to maintain the $1.00 share value.[4] The program will expire on September 18, 2009.[5]

Money market funds participating in the Guarantee Program have been required, in certain circumstances, to submit their portfolio schedules and related information each week to

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2 See generally Valuation of Debt Instruments and Computation of Current Price Per Share by Certain Open-End Investment Companies (Money Market Funds), Investment Company Act Release No. 13380 (July 11, 1983) [48 FR 32555 (July 18, 1983)]. Most money market funds seek to maintain a stable net asset value per share of $1.00, but a few seek to maintain a stable net asset value per share of a different amount, e.g., $10.00. For convenience, throughout this release, the discussion will simply refer to the stable net asset value of $1.00 per share.

3 Our staff estimates that approximately 79 percent of money market funds participated in the Guarantee Program, and that the money market funds that did not participate in the program were mostly funds that invest predominately in U.S. Treasury and U.S. Government securities.

4 See Press Release, U.S. Department of the Treasury, Treasury Announces Guaranty Program for Money Market Funds (Sept. 19, 2008), available at http://www.treas.gov/press/releases/hp1147.htm.

5 See Press Release, U.S. Department of the Treasury, Treasury Announces Extension of Temporary Guarantee Program for Money Market Funds (Nov. 24, 2008), available at http://www.treas.gov/press/releases/hp1290.htm; Press Release, U.S. Department of the Treasury, Treasury Announces Extension of Temporary Guarantee Program for Money Market Funds (Mar. 31, 2009), available at http://www.treas.gov/press/releases/tg76.htm.

the Treasury Department and the Commission.[6] The Commission has found these reports very useful in monitoring money market funds, and we believe that continuing to receive this information will further our mission to protect investors. When the program expires, however, money market funds will no longer be required to submit such portfolio information, and we will not receive current information about money market fund holdings.

In June 2009, the Commission proposed new rules and rule amendments to reform the regulation of money market funds.[7] The proposal included a new rule and a new form N-MFP, on which money market funds would report to the Commission detailed information about their portfolio holdings, which we would use to monitor the funds.[8] We proposed to require that all money market funds submit more detailed information than we currently receive under the Guarantee Program, and we proposed that the information be filed in a format that would permit us to create a searchable database of money market fund information.[9] The proposed requirement that money market funds report detailed portfolio information to the Commission was designed to improve our ability to oversee those funds.[10]

We have received more than 125 comments on the money market fund amendments we proposed in June 2009. Of the approximately 40 commenters who addressed the proposals to

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6 See section 5(b) of the Guarantee Agreement that money market funds participating in the Treasury's Guarantee Program were required to sign ("Guarantee Agreement"), available at http://www.treas.gov/offices/domestic-finance/key-initiatives/money-market-docs/Guarantee-Agreement_form.pdf (requiring a fund to submit reports when their market-based net asset value is less than $.9975).

7 Money Market Fund Reform, Investment Company Act Release No. 28807 (June 30, 2009) [74 FR 32688 (July 8, 2009)] ("2009 Proposing Release"). The 2009 Proposing Release includes an extensive discussion of the market developments leading to the Commission's proposals. See id. at Section I.

8 Id. (proposing new rule 30b1-6 and Form N-MFP).

9 Id. at Section II.F.2.

10 Id. at text preceding n.81.

require the reporting of portfolio holdings to the Commission, 33 generally supported such reporting.[11] Some commenters, however, expressed concerns about the specific information required,[12] the timing of the disclosure,[13] and our intent to make the information publicly available.[14]

We will continue to review these comment letters, and any additional comments we receive in response to our additional request for comment in this Release below. These comments will help us to determine whether, and if so how, to construct a permanent reporting regime that best meets our regulatory needs in protecting investors, while imposing no more regulatory burdens than are necessary. In the meantime, however, because of the importance of the information about money market fund portfolios, we are adopting an interim final temporary rule, rule 30b1-6T, that requires the reporting of basic securities portfolio information to the Commission in certain limited circumstances, as described below. The interim final temporary rule is designed to maintain our ability, as it currently exists under the Guarantee Program, to

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11 See, e.g., American Institute of Certified Public Accountants Comment Letter (Sept. 8, 2009); Bankers Trust Company, N.A. Comment Letter (Aug. 28, 2009); BlackRock Inc. Comment Letter (Sept. 4, 2009). Five commenters who addressed the reporting of portfolio holdings to the Commission did not generally support or oppose the proposal. One commenter expressed strong support for the Commission's efforts and offered specific comments on the proposed reporting of portfolio securities to the Commission. See Data Communiqué Comment Letter (Sept. 8, 2009). Two commenters opposed the reporting of portfolio holdings to the Commission. See The Dreyfus Corporation Comment Letter (Sept. 8, 2009); Vera B. Lichtenberger Comment Letter (Sept. 3, 2009). See also American Benefits Council Comment Letter (Sept. 8, 2009) (expressing general support for the Commission's proposals); AARP Comment Letter (Sept. 8, 2009) (expressing general support for Commission's efforts to step up oversight of money market funds).

12 See, e.g., Federated Investors, Inc. Comment Letter (Sept. 8, 2009); Fidelity Investments Comment Letter (Aug. 24, 2009); Fifth Third Asset Management, Inc. Comment Letter (Sept. 8, 2009); Investment Company Institute Comment Letter (Sept. 8, 2009).

13 See, e.g., Investment Company Institute Comment Letter (Sept. 8, 2009); T. Rowe Price Associates, Inc. Comment Letter (Sept. 8, 2009); The Vanguard Group, Inc. Comment Letter (Aug. 19, 2009).

14 See, e.g., BlackRock Inc. Comment Letter (Sept. 4, 2009); Federated Investors, Inc. Comment Letter (Sept. 8, 2009); T. Rowe Price Associates, Inc. Comment Letter (Sept. 8, 2009).

monitor money market funds while we consider whether to adopt the amendments we proposed in June 2009.

II. Discussion

A. Rule 30b1-6T

Rule 30(b)1-6T requires money market funds to provide the Commission weekly portfolio and valuation information substantially similar to what money market funds participating in the Guarantee Program provided to us and the Treasury Department under the program, if their market-based net asset value per share was below $.9975. Each money market fund that is required to report must provide a portfolio schedule as of the last business day of each week that includes, with respect to the fund: (A) the name of the money market fund; (B) the fund's SEC file number; (C) the net asset value per share used to effect shareholder transactions; (D) the most recent market-based net asset value (including the value of any capital support agreement); (E) the most recent market-based net asset value (excluding the value of any capital support agreement); (F) the date as of which the most recent market-based net asset value was calculated; (G) the total assets of the fund; (H) the total net assets of the fund; and (I) the number of shares outstanding. The portfolio schedule also must include, with respect to each security held: (A) the name of the security; (B) CUSIP number (if any); (C) principal amount; (D) maturity date; (E) final maturity date, if different from the maturity date as determined under rule 2a-7; (F) categorization of the security's status as a "First Tier Security," "Second Tier Security" or a security that is no longer an "Eligible Security" under rule 2a-7; (G) the most recent market-based price (including the value of any capital support agreement), or appropriate substitute for such price, in which case the portfolio schedule or an exhibit to it must describe with reasonable specificity the appropriate substitute; (H) the most recent market-based price (excluding the value of any capital support agreement), or appropriate substitute for such price, in which case the portfolio schedule or an exhibit to it must describe with reasonable specificity the appropriate substitute; (I) the amortized cost value of the security; and (J) in the case of a tax-exempt security, whether there is a demand feature.[15]

As was the case under the Guarantee Program, only a money market fund with market-based net asset value per share ("market-based NAV") below $.9975 must report information under the rule.[16] Such a fund must notify the Commission by electronic mail and provide a portfolio schedule to the Commission promptly, but in no event later than the next business day.[17] Subsequently, the fund must report its portfolio schedule as of the last business day of the week, and submit it no later than the second day of the following week, until the fund's market-based NAV at the end of the week is $.9975 or greater.[18] This information will enable us to identify funds that present a greater risk that they will be unable to maintain their primary investment objectives.

The portfolio information would be provided to the Commission as an attachment in Microsoft Excel format.[19] Excel format is the format that money market funds have been

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15 See rule 30b1-6T(b)(3). Some items of information that money market funds report under the Guarantee Program are not included in rule 30b1-6T. These items, such as the identity of the fund's subadviser, are items to which we have access through other means.

16 Rule 30b1-6T(a). In the Proposing Release, we requested comment on whether we should also require funds to provide us market-based portfolio value information on a nonpublic basis. In addition, we asked for comment on whether a certain price level of NAV (e.g., $.9975) should trigger such disclosure, and how frequently money market funds should be required to provide this information (e.g., weekly or daily). See 2009 Proposing Release, supra note 7, at text accompanying and following n.253.

17 Rule 30b1-6T(a)(1).

18 Rule 30b1-6T(a)(2).

19 Rule 30b1-6T(b)(3).

required to use for submissions under the Guarantee Program.[20]

B. Nonpublic Nature of Information Reported

The information provided to the Commission may be sent by secure encrypted electronic mail[21] to the address we have established for this purpose.[22] In light of the nature of the information that will be provided to the Commission under rule 30b1-6T and the purposes for which the Commission is requiring the information, we have determined to maintain the confidentiality of the information submitted to the Commission,[23] and the rule states that the information will be nonpublic to the extent permitted by law.[24]

C. Effective Date and Expiration of the Rule

Rule 30b1-6T will be effective as of September 18, 2009, so that the Commission will continue to receive the information that it has received in the past year under the Guarantee Program. The rule, by its terms, will expire on September 17, 2010.[25] Setting a termination date of one year for the rule will necessitate further Commission action no later than the end of that

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20 Section 1(q) of the Guarantee Agreement, supra note 6.

21 The reports may be sent through secure encrypted electronic mail by registering for an account at the following URL: https://web1.zixmail.net/s/login?b=sec. The Guarantee Program similarly allows for submission of encrypted information by electronic mail.

22 The address we have established is mmfweeklyholdings@sec.gov. A money market fund providing information under rule 30b1-6T should not submit a confidential treatment request to the Commission, but must label its submission to the Commission as non-public.

23 In the 2009 Proposing Release, we requested comment on whether portfolio holdings information filed with the Commission on proposed Form N-MFP should be submitted in nonpublic reports to the Commission, and we continue to consider comments on that rulemaking. See 2009 Proposing Release, supra note 7, at paragraph following n.251 and at text accompanying and following n.253.

24 See rule 30b1-6T(c). The Freedom of Information Act ("FOIA") provides at least two pertinent exemptions under which the Commission has authority to withhold certain information. FOIA Exemption 4 provides an exemption for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. 552(b)(4). FOIA Exemption 8 provides an exemption for matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions." 5 U.S.C. 552(b)(8).

25 Rule 30b1-6T(d).

period if the Commission determines to continue the same, or similar, requirements contained in the temporary rule.

III. REQUEST FOR COMMENT

The Commission requests comment on interim final temporary rule 30b1-6T. We will carefully consider the comments that we receive and intend to respond to them in a subsequent release. We may revise the rule in a number of ways, including (i) making the rule permanent, (ii) revising the circumstances that trigger a reporting obligation, (iii) revising the information that a fund must report under the rule, and (iv) revising the method of reporting the information to the Commission.

We seek comment generally on all aspects of the temporary rule, including the following:

Expiration. Rule 30b1-6T is a temporary rule and is set to expire on September 17, 2010. Should we remove the expiration provision of the rule and make the rule permanent? Should we extend the expiration date of the rule? If so, for how long? Should we allow the rule to expire?

Timing. The rule requires the submission of portfolio and valuation information to the Commission on a weekly basis. Should funds be required to provide the information more frequently (e.g., daily) or less frequently (e.g., monthly or biweekly)? The information must be provided within two business days after the end of the week, and we understand that funds that have submitted this information under the Guarantee Program have not encountered difficulties meeting the two-day deadline. Has the deadline imposed hardships in the past? Do money market funds anticipate future difficulties in meeting this deadline if they become subject to the reporting requirement? Should the rule allow a longer delay in submitting the information (e.g., three days or five days)? Should it require a shorter delay in submitting the information (e.g., one day)?

Reporting Threshold. The rule requires a money market fund to submit portfolio and valuation information to the Commission if its market-based NAV declines below \$.9975. Is this an appropriate threshold to trigger reporting? Should the threshold be lower (e.g., \$.9970) or higher (e.g., \$.9980 or \$.9985)?

Reporting Items. Should we omit any of the disclosure requirements of rule 30b1-6T? If so, what information should be omitted from the proposed requirement, and why? Should we require additional or alternative information, such as the money market fund's client concentration levels, the percentage of the issue held by the fund, or last trade price and trade volume for each security?

Regulatory Alternatives. We request comment on feasible alternatives that would minimize the reporting burdens on money market funds.[26] We also request comment on the utility of the reports to the Commission in relation to the costs to money market funds of providing the reports.[27] In addition, we request comment on whether funds should be permitted to submit a hard copy of their portfolio schedule information to satisfy the initial or weekly reporting requirement.

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26 See section 30(c)(2)(A) of the Investment Company Act (requiring Commission to consider and seek public comment on feasible alternatives to the required filing of information that minimize reporting burdens on funds).

27 See section 30(c)(2)(B) of the Investment Company Act (requiring Commission to consider and seek public comment on the utility of information, documents and reports to the Commission in relation to the associated costs).

IV. Other Matters

The Administrative Procedure Act ("APA") generally requires an agency to publish notice of a proposed rulemaking in the Federal Register.[28] This requirement does not apply, however, if the agency "for good cause finds … that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."[29] The APA also generally requires that an agency publish an adopted rule in the Federal Register 30 days before it becomes effective.[30] This requirement also does not apply, however, if the agency finds good cause for making the rule effective sooner.[31]

For the reasons discussed in this release, we believe that we have good cause to act immediately to adopt this rule on an interim final temporary basis. We believe it is important for the Commission to continue to receive information from money market funds in certain circumstances so that we can monitor these funds. Adoption of the rule with an immediate effectiveness will minimize any disruption to the normal reporting schedule of money market funds that meet the reporting threshold. Avoiding such disruption should obviate the need for those funds to stop and restart their reporting procedures, and will allow us uninterrupted access to the information in the reports. This information will permit us to identify funds that present a greater risk that they will be unable to maintain their primary investment objectives.

The temporary rule takes effect on September 18, 2009 and will expire on September 17, 2010. For the reasons discussed above, we have acted on an interim final basis. We emphasize that we are requesting comment on the temporary rule. We will carefully consider the comments

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28 5 U.S.C. 553(b).

29 Id.

30 5 U.S.C. 553(d).

31 5 U.S.C. 553(d)(3).

we receive, and we intend to respond to them in a subsequent release.

We find that there is good cause to have the temporary rule take effect on September 18, 2009, and that notice and public procedure in advance of effectiveness of the rule are impracticable, unnecessary, and contrary to the public interest.

V. Paperwork Reduction Act Analysis

Interim final rule 30b1-6T under the Investment Company Act contains a "collection of information" within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[32] The title for the new collection of information is "Rule 30b1-6T under the Investment Company Act of 1940, Weekly portfolio report for certain money market funds." We submitted burden estimates to the Office of Management and Budget ("OMB") for review and approval in accordance with 44 U.S.C. 3507(j) and 5 CFR 1320.13. Separately, we submitted the burden estimates to OMB for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. OMB has approved the burden estimates related to our adoption of rule 30b1-6T on an emergency basis. Our new rule is designed to improve our ability to oversee money market funds with a greater risk that they will be unable to maintain their primary investment objectives. 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.

Rule 30b1-6T requires a money market fund whose market-based net asset value is less than $.9975 to electronically (i) notify the Commission promptly and submit a portfolio schedule within one business day, and (ii) submit a portfolio schedule within two business days after the end of each week until such time as the fund's market-based net asset value equals or exceeds $.9975. The rule is intended to facilitate our oversight of money market funds. The respondents

[32] 44 U.S.C. 3501-3521.

to rule 30b1-6T are investment companies that are regulated as money market funds under rule 2a-7. Compliance with the rule is mandatory for any money market fund whose market-based NAV is less than $.9975. Responses to the disclosure requirements will be kept confidential.

We estimate, based on past experience under the Guarantee Program, that at any given time 10 money market funds will be required by rule 30b1-6T to provide weekly reports disclosing certain information regarding the fund's portfolio holdings. We estimate that money market funds would require an average of approximately 6 burden hours to compile and electronically submit the initial required portfolio holdings information, and an average of approximately 4 burden hours in subsequent reports.[33] Based on these estimates, we estimate the annual burden will be 210 hours per money market fund that is required to provide the information.[34] Based on an estimate of 10 money market funds submitting information under the rule, we estimate that, in the aggregate, rule 30b1-6T would result in 2100 hours, for all money market funds required to submit portfolio schedules.

VI. COST BENEFIT ANALYSIS

The Commission is sensitive to the costs and benefits imposed by its rules. We have identified certain costs and benefits of rule 30b1-6T and request comment on all aspects of this cost benefit analysis, including identification and assessment of any costs and benefits not discussed in this analysis. Where possible, we request that commenters provide empirical data to

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33 We understand that the required information is currently maintained by money market funds pursuant to other regulatory requirements or in the ordinary course of business. Accordingly, for the purposes of our analysis, we do not ascribe any time to gathering the required information.

34 Because one report is required each week, a fund would submit 52 reports in one year. The first report would require 6 hours and subsequent reports would require 4 hours each. The difference between the hours is due to the fact that funds generally would not incur the additional start-up time applicable to the first report. The annual burden of the reporting requirement would be 210 hours (1 report x 6 hours = 6 hours, 51 reports x 4 hours = 204 hours, and 6 hours + 204 hours = 210 hours).

support any positions advanced.

A. Benefits

We are adopting rule 30b1-6T to enable the Commission staff to continue to have effective oversight of money market funds. The rule would also improve the efficiency and effectiveness of the Commission's oversight by providing useful information about money market funds that report under the rule, and by enabling the staff to manage and analyze money market fund portfolio information more quickly and at a lower cost than is possible without electronic submissions of portfolio schedules.

B. Costs

Rule 30b1-6T will impose some costs on funds. For the purposes of the PRA, we estimated that the rule will result in an increase of 2100 burden hours per year. We estimate that these burden hours will cost a total of $590,100.[35] We do not believe that rule 30b1-6T will impose other significant costs, especially given the nonpublic nature of the reports required under the rule.

In the 2009 Proposing Release, we requested comment on the costs and benefits of requiring money market funds to report certain portfolio holdings information to the Commission.[36] Commenters generally supported the proposed reporting obligation, but some expressed concerns about the costs associated with specific disclosure items, the timing and frequency of the reports (particularly in view of the amount of disclosure required), and the

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35 This estimate is based on the following calculation: 2100 hours x $281/hour (senior database administrator) = $590,100. This hourly wage estimate is from the Securities Industry and Financial Markets Association Report on Management & Professional Salaries Data (Sept. 2008), modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

36 See 2009 Proposing Release, supra note 7, at Section V.

public availability of the reports.[37] We believe that these concerns are not applicable to rule 30b1-6T because the rule's reporting requirement will be triggered only on the relatively rare occasion that a fund's net asset value fell below $.9975. In addition, the reports themselves will require less information and will remain nonpublic.

C. Request for Comment

We request comment on all aspects of this cost-benefit analysis. Commenters should address in particular whether rule 30b1-6T will generate the anticipated benefits or impose any other costs on money market funds or other market participants. We also request comment as to any costs or benefits associated with rule 30b1-6T that we may not have considered here, including whether the rule will have a disproportionate effect on any particular types of fund complexes. Commenters are specifically invited to share quantified costs and benefits.

VII. CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[38] We requested comment on whether the proposed reporting requirement, if adopted, would promote efficiency, competition, or capital formation. One commenter on the 2009 Proposing Release asserted that the extensive reporting requirements under proposed rule 30b1-6 would have an adverse effect on competition for sub-

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37 See, e.g., Committee of Annuity Insurers Comment Letter (Sept. 8, 2009); Data Communiqué Comment Letter (Sept. 8, 2009); The Dreyfus Corporation Comment Letter (Sept. 8, 2009); Fidelity Investments Comment Letter (Aug. 24, 2009).

38 15 U.S.C. 80a-2(c).

advised funds.[39] As noted above, however, rule 30b1-6T requires less disclosure than rule 30b1-6, which we are continuing to consider. In addition, although rule 30b1-6T requires more frequent (i.e., weekly) disclosure, it applies to far fewer funds, because only funds whose market-based net asset value is less than $.9975 would be required to submit reports. Thus, we believe that the concerns expressed by the commenter are less applicable to rule 30b1-6T.

Rule 30b1-6T is intended to facilitate oversight of money market funds that present a greater risk that they will be unable to maintain their primary investment objectives. As noted above, the nonpublic reports are designed to improve the efficiency and effectiveness of the Commission's oversight of such money market funds, which may also provide reassurance to investors, which may in turn promote capital formation. We do not believe that the rule will have any effect on competition.

VIII. REGULATORY FLEXIBILITY ACT CERTIFICATION

Section 3(a) of the Regulatory Flexibility Act of 1980 ("RFA")[40] requires the Commission to undertake an initial regulatory flexibility analysis of the effect of its rules on small entities unless the Commission certifies that the rules do not have a significant economic impact on a substantial number of small entities.[41] Pursuant to section 605(b) of the RFA, the Commission hereby certifies that Investment Company Act rule 30b1-6T does not have a significant impact on a substantial number of small entities.[42]

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39 Committee of Annuity Insurers Comment Letter (Sept. 8, 2009) ("Some of these Committee members believe that preparation of Form N-MFP on a monthly basis would place an undue burden on sub-advised underlying money market funds. This is because a number of the information items required by proposed Form N-MFP require information that typically is in the possession of the sub-adviser that actually manages the portfolio.").

40 5 U.S.C. 603(a).

41 5 U.S.C. 605(b).

42 Although the requirements of the RFA do not apply to rules adopted under the APA's "good cause" exception, see 5 U.S.C. 601(2) (defining "rule" and notice requirement under the APA),

Rule 0-10 of the Investment Company Act defines a "small entity" for purposes of the Act as an investment company that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. Rule 30b1-6T applies only to money market funds, and none of these funds meet the definition of a small entity under the Act.[43]

We solicit comment on the certification. Commenters are asked to describe the nature of any impact on small entities and provide any empirical data.

IX. Statutory Authority

The Commission is adopting new rule 30b1-6T pursuant to authority set forth in Sections 8(b), 30(b), 31(a), and 38(a) of the Investment Company Act [15 U.S.C. 80a-8(b), 80a-29(b), 80a-30(a), and 80a-37(a)].

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

TEXT OF RULE

For reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 270 – RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a-1 et seq., 80a-34(d), 80a-37, and 80a-39, unless otherwise noted.

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we have nevertheless provided this certification.

43 We note that we included a certification under the RFA in the 2009 Proposing Release on the grounds that none of the money market funds met the definition of a small entity under the Act, and we encouraged written comment regarding this certification. See 2009 Proposing Release, supra note 7, at Section VII. No commenters on that rulemaking have addressed the Regulatory Flexibility Act certification.

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2. Section 270.30b1-6T is added to read as follows:

§ 270.30b1-6T Weekly portfolio report for certain money market funds.

(a) Notice and portfolio reports. If the market-based NAV of a money market fund on any business day ("report date") is less than 99.75 percent of the fund's stable net asset value per share or stable price per share pursuant to § 270.2a-7(c)(1) ("stable NAV"), the fund must, by electronic mail sent to the electronic address mmfweeklyholdings@sec.gov:

(1) Notify the Commission that its NAV is less than 99.75 percent of its stable NAV, and provide the Commission with a portfolio schedule as of the report date, promptly but in no event later than the next business day after the report date (unless the fund is currently submitting reports pursuant to this section); and

(2) Provide the Commission a portfolio schedule as of the last business day of each week, no later than the second business day of the following week, until the fund's market-based NAV as of such day is 99.75 percent of its stable NAV or greater.

(b) Definitions. For purposes of this section:

(1) Market-based NAV means a money market fund's net asset value per share calculated using available market quotations or an appropriate substitute approved by the fund's board of directors as specified in the procedures that the fund has adopted in accordance with § 270.2a-7(c)(7) or, if the fund does not value securities using the amortized cost method, the fund's current net asset value per share calculated in accordance with § 270.2a-4 (without regard to § 270.2a-7).

(2) Money market fund means an open-end management investment company or series thereof that is registered under the Investment Company Act and is regulated as a money

market fund under § 270.2a-7.

(3) Portfolio schedule means a document prepared in Microsoft Excel format that contains the following information:

(i) With respect to each money market fund and class thereof,

(A) Name of the money market fund and class;

(B) SEC file number of the money market fund;

(C) Net asset value per share used to effect shareholder transactions;

(D) Most recent market-based net asset value (including the value of any capital support agreement);

(E) Most recent market-based net asset value (excluding the value of any capital support agreement);

(F) Date as of which the most recent market-based net asset value was calculated;

(G) Total assets of the fund;

(H) Total net assets of the fund; and

(I) Number of shares outstanding; and

(ii) With respect to each security held by the money market fund:

(A) Name of the security;

(B) CUSIP number (if any);

(C) Principal amount;

(D) Maturity date as determined under § 270.2a-7;

(E) Final maturity date, if different from the maturity date as determined under § 270.2a-7;

(F) Categorization of the security's status as a "First Tier Security," "Second Tier

Security" or a security that is no longer an "Eligible Security" under § 270.2a-7;

(G) The most recent market-based price (including the value of any capital support agreement), or appropriate substitute for such price, in which case the portfolio schedule or an exhibit to it must describe with reasonable specificity the appropriate substitute;

(H) The most recent market-based price (excluding the value of any capital support agreement), or appropriate substitute for such price, in which case the portfolio schedule or an exhibit to it must describe with reasonable specificity the appropriate substitute;

(I) The amortized cost value; and

(J) In the case of a tax-exempt security, whether there is a demand feature, as defined in § 270.2a-7(a)(8).

(c) Nonpublic information. Information provided to the Commission pursuant to this section shall be nonpublic to the extent permitted by law.

(d) Expiration. This section will expire on September 17, 2010.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Dated: September 18, 2009

Commissioner Aguilar and Commissioner Paredes not participating

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60693 / September 18, 2009

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3054 / September 18, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13619

In the Matter of DANIEL F. STULAC, 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 Daniel F. Stulac ("Respondent" or "Stulac") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.[1]

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III. 3. below, which are admitted, Respondent consents to the entry

[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 . . . [p]ermanently 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 an abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

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. Daniel F. Stulac, age 45, was at all relevant times a certified public accountant licensed to practice in the state of California. Stulac became a partner at Arthur Andersen in September 2000 and was the engagement partner on the audit of Peregrine Systems Inc. ("Peregrine") from September 2000 to September 2001.

2. At the time Stulac was the engagement partner on the audit, Peregrine was a Delaware corporation with principal offices in San Diego, California. Peregrine's primary business involved selling infrastructure management software. From its initial public offering in April 1997, until it merged with Hewlett-Packard in 2005, Peregrine's common stock was registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act"). It traded on the Nasdaq National Market System from its initial public offering until August 30, 2002, when it was delisted and quoted on the Pink Sheets. In February 2003, Peregrine announced the restatement of $509 million of revenue it had improperly recorded.

3. On September 14, 2009, a final judgment was entered against Stulac, permanently enjoining him from future violations of Sections 10(b) of the Exchange Act and Rule 10b-5 thereunder, and from aiding and abetting violations of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder, in the civil action entitled Securities and Exchange Commission v. Stephen P. Gardner, et al., Civil Action No. 04 CV 2002 (S.D. Cal.).

4. The Commission's Complaint alleged, among other things, that Peregrine and its senior officers fraudulently inflated the revenues Peregrine reported in its filings with the Commission and elsewhere. Peregrine improperly recorded millions of dollars of revenue based on non-binding arrangements with resellers. This ultimately caused uncollectible receivables from the non-binding arrangements to swell on Peregrine's balance sheet. The Complaint further alleged that Peregrine's management improperly wrote off unpaid receivables by falsely characterizing the write-offs as "acquisition costs and other." According to the Commission's Complaint, Stulac knew, or was reckless in not knowing, that the receivables Peregrine intended to write off were unrelated to acquisitions and should not have been recorded as "acquisition costs and other." The Complaint also alleged that Stulac knew, or was reckless in not knowing, that Peregrine's 2001 financial statements improperly recognized millions of dollars of revenue from agreements with resellers. The Complaint alleged that, by engaging in this and other conduct, Stulac violated the anti-fraud provisions of the Exchange Act, and aided and abetted

violations of the reporting provisions of the Exchange Act.

IV.

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

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Respondent is suspended from appearing or practicing before the Commission as an accountant.

B. After five (5) 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

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60689 / September 18, 2009

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3053 / September 18, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13412

In the Matter of William D. Shovers (CPA), Respondent.	CORRECTED ORDER 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") instituted public administrative proceedings against William D. Shovers ("Respondent" or "Shovers") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice and imposed an Order of Temporary Suspension on March 18, 2009. On April 6, 2009, Respondent filed a Petition to Lift Temporary Suspension. On May 6, 2009, the Commission entered an Order Denying the Motion to Lift Temporary Suspension, directing that a hearing be held pursuant to Rule 102(e)(3)(iii) 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 hearing, 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 (3) below, which are admitted, Respondent consents to the entry of this Order 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. Shovers, age 54, served as Chief Financial Officer of Hayes-Lemmerz International, Inc. ("Hayes") from approximately 1993 until October 2001. He also was Chief Accounting Officer at least during the period of October 2000 through October 2001. From October 2001 until mid-2003, Shovers remained an officer with Hayes Lemmerz. He was first licensed as a CPA in Wisconsin in 1980 however his license has been expired since 1995 and he is not currently practicing.

2. On December 18, 2008, the U.S. District Court for the Eastern District of Michigan entered a final judgment against Shovers. The Final Judgment followed a jury trial in which the jury found that Shovers had violated the following provisions of the securities laws and rules and regulations promulgated thereunder: (1) Section 10(b) of the Securities Exchange Act of 1934) ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 204.10b-5] thereunder; (2) Section 17(a)(3) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)(3)]; and (3) Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)], and Rules 13b2-1 [17 C.F.R. § 240.13b2-1] and 13b2-2 [17 C.F.R. § 240.13b2-2] thereunder. The jury also found that he aided and abetted certain of Hayes' violations of the federal securities laws.

3. The Final Judgment permanently enjoined Shovers from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 204.10b-5] thereunder; Section 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(3)]; Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)], and Rules 13b2-1 [17 C.F.R. § 240.13b2-1] and 13b2-2 [17 C.F.R. § 240.13b2-2] thereunder; and from aiding and abetting violations of Section 13(a), Section 13(b)(2)(A), and Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. §78m(a), §78m(b)(2)(A), and §78m(b)(2)(B)], and Rules 12b-20, 13a-1, and 13a-13 [17 CFR §240.12b-20, 17 CFR § 240.13a-1, and 17 CFR § 240.13a-13] thereunder. The Final Judgment also barred Shovers, for a period of five (5) 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 [15 U.S.C. § 78l] or that is

required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)], and ordered him to pay a civil money penalty of $50,000.

4. The Commission's Complaint in this matter alleged that by early 2001, Shovers learned about fraudulent accounting practices that had occurred at Hayes, that Shovers concealed information about the improper accounting practices from Hayes' outside independent auditor and Hayes' Audit Committee and Board of Directors, that Shovers made affirmative misrepresentations to the company's outside independent auditor about Hayes' financial statements, and that Shovers caused Hayes to make Commission filings containing material misrepresentations, such as the company's annual report on Form 10-K for the fiscal year ending January 31, 2001, and the quarterly report on Form 10-Q for the quarterly period ended April 30, 2001.

IV.

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

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Shovers is suspended from appearing or practicing before the Commission as an accountant.

B. After five years from the date of this order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;

(c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is 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

Commissioner Casey not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9065 / September 21, 2009

SECURITIES EXCHANGE ACT OF 1934
Release No. 60699 / September 21, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13618

In the Matter of **Regions Bank,** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND 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 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Regions Bank ("Regions" 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 8A of the Securities Act of 1933 and 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

1. These proceedings involve the role of a United States-based bank as trustee of an investment plan through which unregistered broker-dealers, U.S. Pension Trust Corp. and U.S. College Trust Corp. (collectively, "USPT") defrauded approximately 14,000 investors by charging exorbitant, undisclosed commissions and fees in connection with the sale of mutual funds. Using a network of approximately 2,000 unregistered sales agents, USPT offers and sells to investors residing primarily in Latin America mutual funds available from well-known U.S. fund companies, through a trust created at a U.S. bank. USPT sells the funds through a series of retirement and college investment plans that provide investors with a choice of making either annual contributions for multiple years or a single, lump-sum contribution. Until March 2006, USPT did not disclose to new investors that it took up to 85% of investors' annual contributions, and as much as 18% of investors' lump-sum contributions. USPT used these contributions to gain profits for itself, and pay commissions to its sales agents and insurance premiums to an insurance company USPT's principals owned. As one aspect of the plans, individuals established trust accounts at Regions, which served to "hold" the assets in which individuals had invested. A primary selling point for USPT's plans is the assurance that investors' funds would be safe because investors would have a direct trust relationship with a major U.S. bank.

2. Regions (or a predecessor, Union Planters Bank, collectively "Regions" or the "Bank") has served as trustee of the plans since October 2001 and, in that capacity, entered into individual trust agreements ("Trust Agreement") with each investor and followed USPT's instructions to distribute a portion of the investors' contributions to USPT and use the remainder of the contributions to purchase mutual funds. In that regard, Regions has subtracted from each contribution the amounts of USPT's commissions and fees and deposited those amounts in USPT's operating account, in accordance with USPT's instructions. Regions knew or should have known, however, that these exorbitant commissions and fees were not disclosed in USPT's marketing materials or in any other document USPT provided to investors. Further, the trust agreement was misleading because it stated, among other things, that fees "may be paid" to USPT – when they always were – and, although it discloses Regions' own, comparatively nominal trust fees, did not disclose the nature and amounts of the exorbitant commissions and fees USPT charged to investors. Finally, a Regions employee signed a certificate that USPT sent each investor after every contribution. This certificate identified the mutual funds held in trust,

[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.

but reflected the amount of the total contribution without disclosing any of the commissions and fees charged.

Respondent

3. Respondent Regions is an Alabama state-charted bank providing banking services in sixteen states. Regions is the primary banking subsidiary of Regions Financial Corporation. Regions Financial's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act. Regions became the trustee in connection with USPT's investment plans after it merged with Union Planters Corp. in July 2004. Union Planters began serving as trustee in October 2001, assuming the trustee duties from another national bank; the former trustee bank thereafter transferred the trust accounts maintained in connection with USPT's plans to Union Planters.

Other Relevant Entities

4. U.S. Pension Trust Corp. is a Florida corporation formed in December 1995, with its principal place of business in Coral Gables, Florida. U.S. Pension has never been registered with the Commission as a broker, dealer, or in any other capacity. On September 28, 2007, the Commission filed a civil injunctive action against U.S. Pension Trust and its principals in the United States District Court for the Southern District of Florida, charging them with violations of the antifraud and broker-dealer registration provisions under the federal securities laws. *SEC v. U.S. Pension Trust Corp.*, 07-22570-CIV-MARTINEZ (Sept. 28, 2007).

5. U.S. College Trust Corp. is a Florida corporation formed in September 1997, with its principal place of business in Coral Gables, Florida. U.S. College has never been registered with the Commission as a broker, dealer, or in any other capacity. U.S. College is also charged with violations of the antifraud and broker-dealer registration provisions in the civil injunctive action filed by the Commission.

USPT's Fraudulent Offering

6. Since December 1995, USPT has offered and sold to investors residing primarily in Latin America mutual funds (and at least one hedge fund) available from well-known U.S. fund companies, through several retirement and college investment plans. USPT's investment plans provide investors with the choice of making either monthly or annual contributions for multiple years or a single, lump-sum contribution, and a choice of up to ten different mutual funds in which to invest their funds. USPT's investment plans also include an insurance component for the annual-plan investors, which provides for payment of any remaining contribution amounts due under the plan should the investor die or become disabled.

7. Since 1996, USPT has contracted with several U.S. banks in connection with its investment plans. USPT's marketing materials state that the U.S. bank acts as a trustee on behalf of investors by safeguarding their contributions pursuant to a Trust Agreement each investor

executes with the bank. The marketing materials tout USPT's investment experience and "high quality financial products" offered through its plans, and the safety of investing with USPT to Latin American investors by, among other things, emphasizing the importance of the trustee relationship that will be created between investors and the U.S. trustee bank through its investment plans.

8. From the inception of the plans until June 2006, USPT did not disclose anywhere in the marketing materials, or any other documents given to prospective investors, the exorbitant fees, commissions, and costs that it charged for the investments. Specifically, since its inception, USPT has charged annual plan investors fees ranging from 70% to 85% from investors' first year's contributions, 22% to 35% from investors' second through fifth year contributions, and up to 23% from investors' sixth through tenth year contributions. On lump-sum plans, USPT has charged from 12% to 18% from investors' single contributions. These fees are used to pay exorbitant commissions to sales agents, insurance premiums for annual plan investors, and a "net profit" on every contribution for USPT. The only fees disclosed in the USPT marketing materials are those charged by the U.S. bank for its trust services. Although USPT revised its marketing materials in 2006 to disclose the commissions, fees, and profits they deduct from investors' contributions each year, it did not provide any of these new disclosures to existing investors who have continued to make contributions under their investment plans. Moreover, USPT continues to represent to existing investors that their contributions have generated returns from the time they began to participate in the investment plans.

Regions As Trustee of USPT's Trust Plans

9. Commencing in October 2001, Regions (or, more precisely, Union Planters) began serving as trustee to individual investors in connection with USPT's plans pursuant to a master agreement executed with USPT (the "Master Agreement"), under which Regions agreed to enter into individual trust agreements with each investor. The Master Agreement specified that as trustee, Regions would receive "contributions" from each investor, deposit those funds into a separate Regions bank account pending instructions from USPT and, thereafter, deposit to USPT's operating account that portion of the contribution to be used for payment of agent commissions, insurance premiums, and USPT's "net profit." The Master Agreement further provided that Regions would use the remaining balance of each contribution to purchase shares of the mutual funds selected by the investor. The Master Agreement, which is in English, was not provided to prospective investors.

10. The Master Agreement also authorized USPT to "make use of [Regions'] name on the trust, and in the marketing and distribution" of USPT's investment plans. The agreement further provided that any advertising or marketing materials mentioning Regions' name "shall be subject to prior written approval" by Regions. Regions' representatives reviewed the description of the Bank in USPT's marketing materials and drafted information about the Bank, and a description of its role as trustee, for inclusion in USPT's marketing brochure. Regions also developed a form Trust Agreement for use by the individual investors and a summary entitled

"To the Participants of the Plan" ("Trust Summary"), based on the trust agreement and trust summary used by the predecessor bank trustee, and placed its logo and name on each document.

11. Although USPT used different marketing brochures for its investment plans, its description of Regions and its role is consistent. USPT's marketing brochures emphasize the safety of investing through USPT's plans because Regions, a major U.S. bank "is one of the oldest financial services companies . . . [s]erving as a trustee for more than a century . . ." USPT's brochure further states that Regions applies "the most prudent approach" in the "management of assets." The brochures further claim that USPT's plans are subject to oversight by "the Federal Reserve Bank, the Comptroller of the Currency, internal and external auditors, and regulation by the Securities and Exchange Commission." These statements are misleading because Regions did not "manage" trust assets, but rather, served as directed trustee. Moreover, USPT's investment plans were not subject to regulatory review. Finally, until June 2006, USPT's marketing brochures did not disclose the actual commissions, administrative costs, and other fees charged to investors.

12. The only disclosure of fees to investors was in the Trust Agreement, which set forth Regions' fee for trust services, specifically, 1.5% of the value of the total assets held in trust, plus an additional $40 administrative fee Regions charged for each contribution. The Trust Agreement did not disclose the commissions and other fees charged by USPT in connection with the plans. Rather, the Trust Agreement informed investors that USPT or its affiliates "*may be* paid fees by this trust, or the funds paid by the Grantor to the Trustee, for insurance placement, advisory, and other services provided to the Trustee or Grantor" (emphasis added). This statement is misleading because it states that fees "may be" paid when, in fact, fees and commissions have always been charged from every contribution.

13. The other trust document given to investors, the Trust Summary, set forth a summary of Regions' services as trustee in connection with USPT's plan. The Trust Summary explained that, as trustee, Regions would be responsible for receiving the investors' contributions to the plan, and that "[o]nce the contributions are received, they will be allocated pursuant to USPT's instructions, that is, to pay insurance premiums, fees, and for investments in the mutual fund selected by you from the list of funds made available." The Trust Summary did not provide any additional information about the nature or amount of fees, including substantial commissions, which Regions withdrew from each contribution and credited to USPT's operating account at USPT's direction. Moreover, the Spanish version of the Trust Summary —translated by USPT—omitted the word "fees" altogether.

14. At the commencement of the relationship, Regions also created a short video that USPT posted on its website. The video featured two employees from Regions' trust department who touted the history of the bank and Regions' trust services. The video welcomed USPT and its "customers" and claimed that Regions' trust department had been protecting trust clients' interests for over 100 years. The video served to assure prospective investors of the safety of investing with USPT because of Regions' role as trustee.

15. From October 2001 through January 1, 2008 (when Regions ceased accepting new trust relationships), Regions processed the investors' packages and contributions for USPT's plans. Upon receiving the investor's contribution and completed application package (which included the Trust Agreement, executed Trust Summary, and application for insurance, if applicable), Regions created individualized investor trust accounts at the Bank. Regions then deposited the contribution into a Regions' bank account, and disbursed those funds in accordance with instructions provided by USPT. Pursuant to USPT's instructions, Regions directed a portion of each contribution to USPT's operating account for payment of commissions, insurance premium, and USPT's "net profit." Regions used the remaining portion of the contribution to purchase the mutual fund shares for investors.

16. A Regions representative signed a certificate (prepared by USPT) after it received and processed each investor contribution. The certificate acknowledged the creation of a trust account, and identified the insurance policies and the mutual funds being held in trust on the investor's behalf. The certificate was misleading, however, because it showed the total amount of an investor's contribution, but did not reflect the amounts deducted from the contribution to pay sales commissions, insurance, and USPT's fees.

17. Regions holds the mutual fund shares in its name in omnibus accounts it created for each mutual fund offered by USPT. Although Regions ceased accepting new investor trust relationships in January 2008, it continued to receive additional contributions due under existing plans, as well as plan renewals, and processed each investor contribution in the same manner until August, 2009. At that point, Regions ceased accepting or processing new investor contributions or renewals under the USPT plans.

18. Since 1995 to the present, approximately 14,000 investors, mostly residing in Latin America, have invested over $255 million through USPT's investment plans. Regions, which has been trustee since October 2001, currently holds approximately $95 million in mutual fund assets on behalf of approximately 11,000 investors.

Violations

19. As a result of the conduct described above, USPT violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit any person from obtaining money by means of an untrue statement or material omission in the offer or sale of securities; and any transaction, practice, or course of business which would operate as a fraud or deceit upon actual or potential purchasers. A violation of these provisions may be established by a showing of negligence. *Aaron v. SEC*, 446 U.S. 680, 697 (1980).

20. Also as a result of the conduct described above, USPT violated Section 15(a)(1) of the Exchange Act, which prohibits any broker or dealer from making "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.

21. Section 8A of the Securities Act and Section 21C of the Exchange Act provide that the Commission may issue a cease-and-desist order against a person who is "a cause of [another person's] violation, due to an act or omission the person knew or should have known would contribute to such violation . . . ." Based on the conduct described above, Regions was a cause[2] of USPT's violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, and Section 15(a)(1) of the Exchange Act.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Regions' Offer.

Accordingly, it is hereby ORDERED that:

Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Regions cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, and Section 15(a)(1) of the Exchange Act.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

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2 *KPMG, LLP v. SEC*, 289 F.3d 109 (D.C. Cir. 2002) (negligence alone is sufficient to establish causing liability for non-scienter violations).

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60702 / September 21, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13620

In the Matter of **POLAR MOLECULAR HOLDING CORPORATION,** **Respondent.**	**ORDER INSTITUTING 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 Polar Molecular Holding Corporation.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

Polar Molecular Holding Corporation ("Polar" or "Respondent") is a Delaware corporation with its principal office in Denver, Colorado. Polar, through the operations of its wholly-owned subsidiary, Polar Molecular Corporation ("PMC"), is in the business of developing and marketing fuel additives. Since 2003, Polar has had one class of securities, common stock, registered with the Commission pursuant to Section 12(g) of the Exchange Act. Polar's stock was quoted on the OTCBB until June 2005, at which time such quotation was halted due to Polar's failure to file periodic reports with the Commission. Polar's stock is currently quoted on the Pink Sheets, which is operated by Pink OTC Markets Inc. under the symbol "POMH." According to Polar's most recent Form 10-K, it has over 600 shareholders of record.

B. DELINQUENT FILINGS

1. 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. Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

2. Polar is delinquent in its periodic filings with the Commission. Polar has not filed an annual report on Form 10-K for any fiscal period subsequent to its fiscal year ending December 31, 2004, or quarterly reports on Form 10-Q for any fiscal period subsequent to its fiscal quarter ending September 30, 2004.

3. Exchange Act Section 13(a) and Rule 13a-11 thereunder require an issuer of securities registered pursuant to Exchange Act Section 12 to file a current report on Form 8-K if a bankruptcy court assumes jurisdiction over substantially all of its assets.

4. Polar's sole operating subsidiary, PMC, filed for bankruptcy protection on January 11, 2008, and, following the dismissal of that petition, filed a second petition on August 4, 2008. Polar has never filed a Form 8-K current report disclosing either of PMC's bankruptcy proceedings.

5. As a result of the foregoing, Polar has failed to comply with Exchange Act Section 13(a) and Rules 13a-1, 13a-11, 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 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 to 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, 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 twenty (20) 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 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

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. 60705 / September 22, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-12133

In the Matter of Veras Capital Master Fund, VEY Partners Master Fund, Veras Investment Partners, LLC, Kevin D. Larson, and James R. McBride, Respondents.	ORDER DISCHARGING PLAN ADMINISTRATOR AND TERMINATING FAIR FUND

On August 10, 2006, the Commission published a Notice of the Plan of Distribution ("Plan") proposed by the Division of Enforcement in connection with this proceeding (Securities Exchange Act of 1934 Release No. 54299). The Plan of Distribution proposed that a Fair Fund consisting of $37,700,488.00 in disgorgement and civil penalties, plus any accrued interest, be distributed to the mutual funds affected by the Veras hedge funds' trading (the Affected Mutual Funds) based on the sum of the disgorgement amount to a pro-rata apportionment of the penalty, prejudgment interest, and accrued interest. The Plan also provided that the Commission arrange for the Financial Management Service, United States Department of the Treasury to issue checks or electronically transfer funds to each Affected Mutual Fund its share of the Fair Fund.

On October 4, 2006, the Commission issued a Corrected Order Approving Distribution Plan of a Fair Fund (Securities Exchange Act of 1934 Release No. 54568A) and appointed Peter J. Henning, Esq., as Plan Administrator. On February 27, 2007, the Commission issued an Order Directing Disbursement of Fair Fund (Securities Exchange Act of 1934 Release No. 55363) providing for distribution of the funds pursuant to the Plan. On March 21, 2007, the distribution of $38,755,624.80 was made to 817 Affected Mutual Funds. On June 1, 2007, the Commission issued a Second Order Directing Disbursement of Fair Fund (Securities Exchange Act of 1934 Release No. 55847) providing for distribution to one additional Affected Mutual Fund in the amount of $756.65, which was made on May 2, 2007.

The Plan Administrator submitted a Final Accounting pursuant to Rule 1105(f) of the Commission's Rules on Fair Fund and Disgorgement Plans, which was approved by the

Commission. Pursuant to the Plan Administrator's Final Accounting all tax liabilities have been satisfied and the $204,667.65 remaining in the Fair Fund held by the SEC is to be transmitted to the U.S. Treasury.

Accordingly, IT IS ORDERED the Fair Fund is terminated.

IT IS FURTHER ORDERED THAT the Plan Administrator is discharged.

By the Commission.

Elizabeth M. Murphy
Elizabeth M. Murphy
Secretary

Commissioner Casey not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 23, 2009

In the Matter of

AEI Transportation Holdings, Inc.
The Alcar Chemicals Group, Inc.
China Adnet Enterprises Inc.
Innolife Pharma, Inc.
KSW Industries, Inc.
Level Vision Electronics, Ltd.
Life Exchange, Inc.
Lotta Coal, Inc.
Magellan Energy Ltd.
Marinas International, Inc.
Microlink Solutions, Inc.
UDS Group, Inc.
United Environmental Energy Corp.
Uptrend Corp.
VShield Software Corp.
World Hockey Association Corp.
WW Energy, Inc.

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 AEI Transportation Holdings, Inc., which are quoted on the Pink OTC Markets under the prior name of Doll Technology Group, Inc. using the ticker symbol DTGP. Trading in the securities of AEI Transportation Holdings, Inc. appears to be predicated on apparent misstatements. Certain persons appear to have usurped the identity of a defunct or inactive publicly-traded corporation, initially by reinstating the corporation without authority, and then by obtaining a new CUSIP number and ticker symbol based on the apparently false representation that they were duly authorized officers, directors and/or agents of the original publicly-traded corporation.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of The Alcar Chemicals Group, Inc., which trade in the grey market under the ticker symbol ALCX. Trading in the securities of The Alcar Chemicals Group, Inc. appears to be predicated on apparent misstatements. Certain persons appear to have usurped the identity of a defunct or inactive publicly-traded corporation, initially by incorporating a new entity using the same name, and then by obtaining a new CUSIP number and ticker symbol based on the apparently false representation that they were duly authorized officers, directors and/or agents of the original publicly-traded corporation.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Adnet Enterprises, Inc., which are quoted on the Pink OTC Markets under the ticker symbol CAEJ. Trading in the securities of China Adnet Enterprises, Inc. appears to be predicated on apparent misstatements. Certain persons appear to have usurped the identity of a defunct or inactive publicly-traded corporation, initially by incorporating a new entity using the same name, and then by obtaining a new CUSIP number and ticker symbol based on the apparently false representation that they were duly authorized officers, directors and/or agents of the original publicly-traded corporation.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Innolife Pharma, Inc., which are quoted on the Pink OTC Markets under the ticker symbol INNP. Trading in the securities of Innolife Pharma, Inc. appears to be predicated on apparent misstatements. Certain persons appear to have usurped the identity of a defunct or inactive publicly-traded corporation, initially by incorporating a new entity using the same name, and then by obtaining a new CUSIP number and ticker symbol based on the apparently false representation that they were duly authorized officers, directors and/or agents of the original publicly-traded corporation.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of KSW Industries, Inc., which trade in the grey market under the ticker symbol KSWJ. Trading in the securities of KSW Industries, Inc. appears to be predicated on apparent misstatements. Certain persons appear to have usurped the identity of a defunct or inactive publicly-traded corporation, initially by incorporating a new entity using the same name, and then by obtaining a new CUSIP number and ticker symbol based on the apparently false representation that they were duly authorized officers, directors and/or agents of the original publicly-traded corporation.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Level Vision Electronics, Ltd., which are quoted on the Pink OTC Markets under the ticker symbol LVLV. Trading in the securities of Level Vision Electronics, Ltd. appears to be predicated on apparent misstatements. Certain persons appear to have usurped the identity of a defunct or inactive publicly-traded corporation, initially by incorporating a new entity using the same name, and then by obtaining a new CUSIP number and ticker symbol based on the apparently false representation that they were duly authorized officers, directors and/or agents of the original publicly-traded corporation.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Life Exchange, Inc. which are quoted on the Pink OTC Markets and OTC Bulletin Board under the ticker symbol LFXG. Trading in the securities of Life Exchange, Inc. appears to be predicated on apparent misstatements. Certain persons appear to have usurped the identity of a defunct or inactive publicly-traded corporation, initially by reinstating the company without authority, and then by obtaining a new CUSIP number and ticker symbol based on the apparently false representation that they were duly authorized officers, directors and/or agents of the original publicly-traded corporation.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Lotta Coal, Inc., which are quoted on the Pink OTC Markets under the ticker symbol LCOL. Trading in the securities of Lotta Coal, Inc. appears to be predicated on apparent misstatements. Certain persons appear to have usurped the identity of a defunct or inactive publicly-traded corporation, initially by incorporating a new entity using the same name, and then by obtaining a new CUSIP number and ticker symbol based on the apparently false representation that they were duly authorized officers, directors and/or agents of the original publicly-traded corporation.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Magellan Energy Ltd., which are quoted on the Pink OTC Markets under the ticker symbol MGLG. Trading in the securities of Magellan Energy Ltd. appears to be predicated on apparent misstatements. Certain persons appear to have usurped the identity of a defunct or inactive publicly-traded corporation, initially by incorporating a new entity using the same name, and then by obtaining a new CUSIP number and ticker symbol based on the apparently false representation that they were duly authorized officers, directors and/or agents of the original publicly-traded corporation.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Marinas International, Inc., which trade in the grey market under the ticker symbol MNSI. Trading in the securities of Marinas International, Inc. appears to be predicated on apparent misstatements. Certain persons appear to have usurped the identity of a defunct or inactive publicly-traded corporation, initially by incorporating a new entity using the same name, and then by obtaining a new CUSIP number and ticker symbol based on the apparently false representation that they were duly authorized officers, directors and/or agents of the original publicly-traded corporation.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Microlink Solutions, Inc., which trade in the grey market under a prior name, Pocketop Corp., using the ticker symbol PKTO. Trading in the securities of Microlink Solutions, Inc. appears to be predicated on apparent misstatements. Certain persons appear to have usurped the identity of a defunct or inactive publicly-traded corporation, initially by incorporating a new entity using the same name, and then by obtaining a new CUSIP number and ticker symbol based on the apparently false representation that they were duly authorized officers, directors and/or agents of the original publicly-traded corporation.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of UDS Group, Inc., which are quoted on the Pink OTC Markets under the ticker symbol UDSG. Trading in the securities of UDS Group, Inc. appears to be predicated on apparent misstatements. Certain persons appear to have usurped the identity of a defunct or inactive publicly-traded corporation, initially by reinstating the company without authorization, and then by obtaining a new CUSIP number and ticker symbol based on the apparently false representation that they were duly authorized officers, directors and/or agents of the original publicly-traded corporation.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of United Environmental Energy Corp., which are quoted on the Pink OTC Markets under the ticker symbol UTEM. Trading in the securities of United Environmental Energy Corp. appears to be predicated on apparent misstatements. Certain persons appear to have usurped the identity of a defunct or inactive publicly-traded corporation, initially by incorporating a new entity using the same name, and then by obtaining a new CUSIP number and ticker symbol based on the apparently false representation that they were duly authorized officers, directors and/or agents of the original publicly-traded corporation.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Uptrend Corp., which are quoted on the Pink OTC Markets under the ticker symbol UPCP. Trading in the securities of Uptrend Corp appears to be predicated on apparent misstatements. Certain persons appear to have usurped the identity of a defunct or inactive publicly-traded corporation, initially by reinstating the company without authorization, and then by obtaining a new CUSIP number and ticker symbol based on the apparently false representation that they were duly authorized officers, directors and/or agents of the original publicly-traded corporation.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of VShield Software Corp., which are quoted on the Pink OTC Markets under the ticker symbol VSHE. Trading in the securities of VShield Software Corp. appears to be predicated on apparent misstatements. Certain persons appear to have usurped the identity of a defunct or inactive publicly-traded corporation, initially by incorporating a new entity using the same name, and then by obtaining a new CUSIP number and ticker symbol based on the apparently false representation that they were duly authorized officers, directors and/or agents of the original publicly-traded corporation.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of World Hockey Association Corp., which are quoted on the Pink OTC Markets under the ticker symbol WHKA. Trading in the securities of World Hockey Association Corp. appears to be predicated on apparent misstatements. Certain persons appear to have usurped the identity of a defunct or inactive publicly-traded corporation, initially by incorporating a new entity using the same name, and then by obtaining a new CUSIP number and ticker symbol based on the apparently false representation that they were duly authorized officers, directors and/or agents of the original publicly-traded corporation.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of WW Energy, Inc., which are quoted on the Pink OTC Markets under the ticker symbol WWNG. Trading in the securities of WW Energy, Inc. appears to be predicated on apparent misstatements. Certain persons appear to have usurped the identity of a defunct or inactive publicly-traded corporation, initially by incorporating a new entity using the same name, and then by obtaining a new CUSIP number and ticker symbol based on the apparently false representation that they were duly authorized officers, directors and/or agents of the original publicly-traded corporation.

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

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 23, 2009, through 11:59 p.m. EDT on October 6, 2009.

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. 60709 /September 23, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13621

In the Matter of **Pacific Lease Group, 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 proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act"), against Pacific Lease Group, Inc. ("PLG" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

1. Pacific Lease Group, Inc. (CIK No. 0001111286) is a New Jersey corporation located in Surrey, British Columbia, Canada. The nature of PLG's business operation is unclear, although pursuant to its Form 10-KSB filed on April 16, 2007, it purports to "engage in any lawful corporate undertaking, including, but not limited to, selected mergers and acquisitions." The common stock of PLG has been registered with the Commission under Exchange Act Section 12(g) since June 12, 2000. The company's common stock is not publicly traded or quoted.

2. While its common stock was registered with the Commission, PLG failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-15 thereunder in that it failed to make disclosures in its Form 10-KSB for the fiscal year ended December 31, 2007, filed with the Commission on April 16, 2008, concerning its internal control over financial reporting and disclosure controls and procedures, as required by Items 307 and 308T of Regulation S-B.

3. While its common stock was registered with the Commission, PLG failed to comply with Exchange Act Section 13(a) and Rule 13a-13 thereunder in that it has not filed any periodic or quarterly reports on Form 10-Q for any fiscal period subsequent to its fiscal quarter ended September 30, 2007.

4. While its common stock was registered with the Commission, PLG failed to comply with Exchange Act Section 13(a) and Rule 13a-1 thereunder in that it failed to file an annual report on Form 10-K for the fiscal year ended December 31, 2008.

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 twenty (20) 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

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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 24, 2009

In the Matter of **DTVN Holdings, Inc.,** **Employee Solutions, Inc.,** **Falcon Natural Gas Corp.,** **Internet Commerce & Communications, Inc.,** **Osage Systems Group, Inc.,** **Payless Cashways, Inc.,** **PC Service Source, Inc.,** **Play by Play Toys & Novelties, Inc.,** **Powerbrief, Inc.,** **Southern Energy Company, Inc.,** **Strategia Corp.** **(n/k/a Catthai Corp.), and** **TTI Industries, 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 DTVN Holdings, Inc. because it has not filed any periodic reports since the period ended June 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Employee Solutions, 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 Falcon Natural Gas Corp. because it has not filed any periodic reports since the period ended September 30, 2006.

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

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Osage Systems Group, 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 Payless Cashways, Inc. because it has not filed any periodic reports since the period ended May 26, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of PC Service Source, 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 Play by Play Toys & Novelties, 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 Powerbrief, Inc. because it has not filed any periodic reports since the period ended June 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Southern Energy Company, Inc. because it has not filed any periodic reports for the period ended March 31, 1999 through the period ended September 30, 2008, or for the period ended June 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Strategia Corp. (n/k/a Catthai Corp.) 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 TTI Industries, Inc. because it has not filed any periodic reports since the period ended February 29, 2000.

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 September 24, 2009, through 11:59 p.m. EDT on October 7, 2009.

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. 60714 / September 24, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13624

In the Matter of DTVN Holdings, Inc., Employee Solutions, Inc., Falcon Natural Gas Corp., Internet Commerce & Communications, Inc., Osage Systems Group, Inc., Payless Cashways, Inc., PC Service Source, Inc., Play by Play Toys & Novelties, Inc., Powerbrief, Inc., Southern Energy Company, Inc., Sparta Surgical Corp., Strategia Corp. (n/k/a Catthai Corp.), and TTI Industries, 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 DTVN Holdings, Inc., Employee Solutions, Inc., Falcon Natural Gas Corp., Internet Commerce & Communications, Inc., Osage Systems Group, Inc., Payless Cashways, Inc., PC Service Source, Inc., Play by Play Toys & Novelties, Inc., Powerbrief, Inc., Southern Energy Company, Inc., Sparta Surgical Corp., Strategia Corp. (n/k/a Catthai Corp.), and TTI Industries, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. DTVN Holdings, Inc. ("DTVN")[1] (CIK No. 908246) is a void Delaware corporation located in Irving, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). DTVN 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, 2002, which reported a net loss of $3,310,536 for the prior six months. On October 1, 2002, DTVN filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of Texas, which was terminated on April 28, 2005. As of September 17, 2009, the common stock of DTVN 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).

2. Employee Solutions, Inc. ("EPYSQ") (CIK No. 904897) is a dissolved Arizona corporation located in Phoenix, Arizona with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). EPYSQ 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 $22,771,000 for the prior nine months. On February 26, 2001, EPYSQ filed a Chapter 7 petition in the U.S. Bankruptcy Court for the District of Arizona, which was terminated on May 25, 2006. As of September 17, 2009, the common stock of EPYSQ 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. Falcon Natural Gas Corp. ("FNGC") (CIK No. 1167764) is a Nevada corporation located in Houston, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). FNGC 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 $9,199,277 for the prior nine months. As of September 17, 2009, the common stock of FNGC 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).

4. Internet Commerce & Communications, Inc. ("ICCXQ") (CIK No. 1003282) is a void Delaware corporation located in Greenwood Village, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ICCXQ 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, 2001, which reported a net loss of $12,419,761 for the prior six months. On July 31, 2001, ICCXQ filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Colorado, which was converted to a Chapter 7 petition, and was terminated on May 12, 2006. As of September 17, 2009, the common stock of ICCXQ 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).

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

5. Osage Systems Group, Inc. ("OSYM") (CIK No. 898802) 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). OSYM 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 $3,790,000 for the prior nine months. On February 15, 2001, OSYM 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 terminated on June 8, 2007. As of September 17, 2009, the common stock of OSYM 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).

6. Payless Cashways, Inc. ("PCSH") (CIK No. 76744) is a dissolved Delaware corporation located in Lee's Summit, Missouri with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). PCSH 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 26, 2001, which reported a net loss of $58,056,000 for the prior twenty-six weeks. On June 4, 2001, PCSH filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Western District of Missouri, which was terminated on June 24, 2005. As of September 17, 2009, the common stock of PCSH 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).

7. PC Service Source, Inc. ("PCSSQ") (CIK No. 919999) is a void Delaware corporation located in Dallas, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). PCSSQ 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 $475,000 for the prior three months. On August 29, 2000, PCSSQ filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of Texas, which was converted into a Chapter 7 petition, and was terminated on August 22, 2007. As of September 17, 2009, the common stock of PCSSQ 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).

8. Play by Play Toys & Novelties, Inc. ("PBYPQ") (CIK No. 945276) is a forfeited Texas corporation located in San Antonio, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). PBYPQ 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 $19,814,542 for the prior nine months. On October 31, 2001, PBYPQ filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Western District of Texas, which was converted into a Chapter 7 petition, and was terminated on March 23, 2006. As of September 17, 2009, the common stock of PBYPQ 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).

9. Powerbrief, Inc. ("PWRB") (CIK No. 807144) is a forfeited Texas corporation located in Houston, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). PWRB 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,

2001, which reported a net loss of $7,330,373 for the prior six months. On October 2, 2001, PWRB filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Southern District of Texas, which was terminated on August 22, 2003. As of September 17, 2009, the common stock of PWRB 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).

10. Southern Energy Company, Inc. ("SOCI") (CIK No. 771642) is a Nevada corporation located in Reno, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). SOCI is delinquent in its periodic filings with the Commission, having filed no periodic reports with the Commission from the period ended March 31, 1999 through the period ended September 30, 2008. SOCI filed a Form 10-Q for the period ended March 31, 2009, which reported a net loss of $10,237 for the prior three months. As of September 17, 2009, the common stock of SOCI was quoted on the Pink Sheets, had fourteen market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-(11)(f)(3).

11. Sparta Surgical Corp. ("SPSGQ") (CIK No. 819981) is a void Delaware corporation located in Greenwood Village, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). SPSGQ 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, 2007, which reported a net loss of $66,954 for the prior nine months. On November 6, 2006, SPSGQ filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Colorado which was still pending as of September 17, 2009. As of September 17, 2009, the common stock of SPSGQ was traded on the over-the-counter markets.

12. Strategia Corp. (n/k/a Catthai Corp.) ("CTHI") (CIK No. 797221) is an inactive Kentucky corporation located in Tempe, Arizona with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). CTHI 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 $147,661 for the prior nine months. On June 11, 2008, the company changed its corporate domicile from Kentucky to Nevada by merging with a newly-formed Nevada corporation of the same name. During July and August 2008, the company changed its name in the State of Nevada and the Pink Sheets to Catthai Corp. None of these changes were properly reported to the Commission. As of September 17, 2009, the common stock of CTHI 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).

13. TTI Industries, Inc. ("TTIA") (CIK No. 759401) is a Texas corporation located in Dallas, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). TTIA 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 February 29, 2000, which reported a net loss of $165,690 for the prior six months. On March 19, 2002, TTIA filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of California, which was converted to a Chapter 7 petition, and was terminated on April 16, 2004. As of September 17, 2009, the common stock of TTIA 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).

B. DELINQUENT PERIODIC FILINGS

14. 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.

15. 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.

16. As a result of the foregoing, Respondents, and any successors under Exchange Act Rules 12b-2 and/or 12g-3, 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 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 them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, 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

Attachment

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

Appendix 1

Chart of Delinquent Filings

In the Matter of DTVN Holdings, Inc., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
DTVN Holdings, Inc.					
	10-QSB	09/30/02	11/14/02	Not filed	82
	10-KSB	12/31/02	03/31/03	Not filed	78
	10-QSB	03/31/03	05/15/03	Not filed	76
	10-QSB	06/30/03	08/14/03	Not filed	73
	10-QSB	09/30/03	11/14/03	Not filed	70
	10-KSB	12/31/03	03/30/04	Not filed	66
	10-QSB	03/31/04	05/17/04	Not filed	64
	10-QSB	06/30/04	08/16/04	Not filed	61
	10-QSB	09/30/04	11/15/04	Not filed	58
	10-KSB	12/31/04	03/31/05	Not filed	54
	10-QSB	03/31/05	05/16/05	Not filed	52
	10-QSB	06/30/05	08/15/05	Not filed	49
	10-QSB	09/30/05	11/14/05	Not filed	46
	10-KSB	12/31/05	03/31/06	Not filed	42
	10-QSB	03/31/06	05/15/06	Not filed	40
	10-QSB	06/30/06	08/14/06	Not filed	37
	10-QSB	09/30/06	11/14/06	Not filed	34
	10-KSB	12/31/06	04/02/07	Not filed	29
	10-QSB	03/31/07	05/15/07	Not filed	28
	10-QSB	06/30/07	08/14/07	Not filed	25
	10-QSB	09/30/07	11/14/07	Not filed	22
	10-KSB	12/31/07	03/31/08	Not filed	18
	*10-Q**	03/31/08	05/15/08	Not filed	16
	*10-Q**	06/30/08	08/14/08	Not filed	13
	*10-Q**	09/30/08	11/14/08	Not filed	10
	*10-K**	12/31/08	03/31/09	Not filed	6
	*10-Q**	03/31/09	05/15/09	Not filed	4
	*10-Q**	06/30/09	08/14/09	Not filed	1
Total Filings Delinquent	28				

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Employee Solutions, Inc.					
	10-K	12/31/00	04/02/01	Not filed	101
	10-Q	03/31/01	05/15/01	Not filed	100
	10-Q	06/30/01	08/14/01	Not filed	97
	10-Q	09/30/01	11/14/01	Not filed	94
	10-K	12/31/01	04/01/02	Not filed	89
	10-Q	03/31/02	05/15/02	Not filed	88
	10-Q	06/30/02	08/14/02	Not filed	85
	10-Q	09/30/02	11/14/02	Not filed	82
	10-K	12/31/02	03/31/03	Not filed	78
	10-Q	03/31/03	05/15/03	Not filed	76
	10-Q	06/30/03	08/14/03	Not filed	73
	10-Q	09/30/03	11/14/03	Not filed	70
	10-K	12/31/03	03/30/04	Not filed	66
	10-Q	03/31/04	05/17/04	Not filed	64
	10-Q	06/30/04	08/16/04	Not filed	61
	10-Q	09/30/04	11/15/04	Not filed	58
	10-K	12/31/04	03/31/05	Not filed	54
	10-Q	03/31/05	05/16/05	Not filed	52
	10-Q	06/30/05	08/15/05	Not filed	49
	10-Q	09/30/05	11/14/05	Not filed	46
	10-K	12/31/05	03/31/06	Not filed	42
	10-Q	03/31/06	05/15/06	Not filed	40
	10-Q	06/30/06	08/14/06	Not filed	37
	10-Q	09/30/06	11/14/06	Not filed	34
	10-K	12/31/06	04/02/07	Not filed	29
	10-Q	03/31/07	05/15/07	Not filed	28
	10-Q	06/30/07	08/14/07	Not filed	25
	10-Q	09/30/07	11/14/07	Not filed	22
	10-K	12/31/07	03/31/08	Not filed	18
	10-Q	03/31/08	05/15/08	Not filed	16
	10-Q	06/30/08	08/14/08	Not filed	13
	10-Q	09/30/08	11/14/08	Not filed	10
	10-K	12/31/08	03/31/09	Not filed	6
	10-Q	03/31/09	05/15/09	Not filed	4
	10-Q	06/30/09	08/14/09	Not filed	1
Total Filings Delinquent	35				

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Falcon Natural Gas Corp.					
	10-KSB	12/31/06	04/02/07	Not filed	29
	10-QSB	03/31/07	05/15/07	Not filed	28
	10-QSB	06/30/07	08/14/07	Not filed	25
	10-QSB	09/30/07	11/14/07	Not filed	22
	10-KSB	12/31/07	03/31/08	Not filed	18
	*10-Q**	03/31/08	05/15/08	Not filed	16
	*10-Q**	06/30/08	08/14/08	Not filed	13
	*10-Q**	09/30/08	11/14/08	Not filed	10
	*10-K**	12/31/08	03/31/09	Not filed	6
	*10-Q**	03/31/09	05/15/09	Not filed	4
	*10-Q**	06/30/09	08/14/09	Not filed	1
Total Filings Delinquent	11				
Internet Commerce & Communications, Inc.					
	10-Q	09/30/01	11/14/01	Not filed	94
	10-K	12/31/01	04/01/02	Not filed	89
	10-Q	03/31/02	05/15/02	Not filed	88
	10-Q	06/30/02	08/14/02	Not filed	85
	10-Q	09/30/02	11/14/02	Not filed	82
	10-K	12/31/02	03/31/03	Not filed	78
	10-Q	03/31/03	05/15/03	Not filed	76
	10-Q	06/30/03	08/14/03	Not filed	73
	10-Q	09/30/03	11/14/03	Not filed	70
	10-K	12/31/03	03/30/04	Not filed	66
	10-Q	03/31/04	05/17/04	Not filed	64
	10-Q	06/30/04	08/16/04	Not filed	61
	10-Q	09/30/04	11/15/04	Not filed	58
	10-K	12/31/04	03/31/05	Not filed	54
	10-Q	03/31/05	05/16/05	Not filed	52
	10-Q	06/30/05	08/15/05	Not filed	49
	10-Q	09/30/05	11/14/05	Not filed	46
	10-K	12/31/05	03/31/06	Not filed	42
	10-Q	03/31/06	05/15/06	Not filed	40
	10-Q	06/30/06	08/14/06	Not filed	37
	10-Q	09/30/06	11/14/06	Not filed	34
	10-K	12/31/06	04/02/07	Not filed	29
	10-Q	03/31/07	05/15/07	Not filed	28
	10-Q	06/30/07	08/14/07	Not filed	25

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Internet Commerce & Communications, Inc. (continued)	*10-Q*	09/30/07	11/14/07	Not filed	22
	10-K	12/31/07	03/31/08	Not filed	18
	10-Q	03/31/08	05/15/08	Not filed	16
	10-Q	06/30/08	08/14/08	Not filed	13
	10-Q	09/30/08	11/14/08	Not filed	10
	10-K	12/31/08	03/31/09	Not filed	6
	10-Q	03/31/09	05/15/09	Not filed	4
	10-Q	06/30/09	08/14/09	Not filed	1
Total Filings Delinquent	32				
Osage Systems Group, Inc.					
	10-K	12/31/00	04/02/01	Not filed	101
	10-Q	03/31/01	05/15/01	Not filed	100
	10-Q	06/30/01	08/14/01	Not filed	97
	10-Q	09/30/01	11/14/01	Not filed	94
	10-K	12/31/01	04/01/02	Not filed	89
	10-Q	03/31/02	05/15/02	Not filed	88
	10-Q	06/30/02	08/14/02	Not filed	85
	10-Q	09/30/02	11/14/02	Not filed	82
	10-K	12/31/02	03/31/03	Not filed	78
	10-Q	03/31/03	05/15/03	Not filed	76
	10-Q	06/30/03	08/14/03	Not filed	73
	10-Q	09/30/03	11/14/03	Not filed	70
	10-K	12/31/03	03/30/04	Not filed	66
	10-Q	03/31/04	05/17/04	Not filed	64
	10-Q	06/30/04	08/16/04	Not filed	61
	10-Q	09/30/04	11/15/04	Not filed	58
	10-K	12/31/04	03/31/05	Not filed	54
	10-Q	03/31/05	05/16/05	Not filed	52
	10-Q	06/30/05	08/15/05	Not filed	49
	10-Q	09/30/05	11/14/05	Not filed	46
	10-K	12/31/05	03/31/06	Not filed	42
	10-Q	03/31/06	05/15/06	Not filed	40
	10-Q	06/30/06	08/14/06	Not filed	37
	10-Q	09/30/06	11/14/06	Not filed	34
	10-K	12/31/06	04/02/07	Not filed	29
	10-Q	03/31/07	05/15/07	Not filed	28
	10-Q	06/30/07	08/14/07	Not filed	25
	10-Q	09/30/07	11/14/07	Not filed	22
	10-K	12/31/07	03/31/08	Not filed	18

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Osage Systems Group, Inc. (continued)	*10-Q*	03/31/08	05/15/08	Not filed	16
	10-Q	06/30/08	08/14/08	Not filed	13
	10-Q	09/30/08	11/14/08	Not filed	10
	10-K	12/31/08	03/31/09	Not filed	6
	10-Q	03/31/09	05/15/09	Not filed	4
	10-Q	06/30/09	08/14/09	Not filed	1
Total Filings Delinquent	35				
Payless Cashways, Inc.					
	10-Q	08/26/00	10/10/00	Not filed	107
	10-K	11/25/00	02/23/01	Not filed	103
	10-Q	02/24/01	04/10/01	Not filed	101
	10-Q	05/26/01	07/10/01	Not filed	98
	10-Q	08/25/01	10/09/01	Not filed	95
	10-K	11/24/01	02/22/02	Not filed	91
	10-Q	02/23/02	04/09/02	Not filed	89
	10-Q	05/25/02	07/09/02	Not filed	86
	10-Q	08/31/02	10/15/02	Not filed	83
	10-K	11/30/02	02/28/03	Not filed	79
	10-Q	03/01/03	04/15/03	Not filed	77
	10-Q	05/31/03	07/15/03	Not filed	74
	10-Q	08/30/03	10/14/03	Not filed	71
	10-K	11/29/03	02/27/04	Not filed	67
	10-Q	02/28/04	04/13/04	Not filed	65
	10-Q	05/29/04	07/13/04	Not filed	62
	10-Q	08/28/04	10/12/04	Not filed	59
	10-K	11/27/04	02/25/05	Not filed	55
	10-Q	02/26/05	04/12/05	Not filed	53
	10-Q	05/28/05	07/12/05	Not filed	50
	10-Q	08/27/05	10/11/05	Not filed	47
	10-K	11/26/05	02/24/06	Not filed	43
	10-Q	02/25/06	04/11/06	Not filed	41
	10-Q	05/27/06	07/11/06	Not filed	38
	10-Q	08/26/06	10/10/06	Not filed	35
	10-K	11/25/06	02/23/07	Not filed	31
	10-Q	02/24/07	04/10/07	Not filed	29
	10-Q	05/26/07	07/10/07	Not filed	26
	10-Q	08/25/07	10/09/07	Not filed	23
	10-K	11/24/07	02/22/08	Not filed	19
	10-Q	02/23/08	04/08/08	Not filed	17

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Payless Cashways, Inc. (continued)	*10-Q*	05/31/08	07/15/08	Not filed	14
	10-Q	08/30/08	10/14/08	Not filed	11
	10-K	11/29/08	02/27/09	Not filed	7
	10-Q	02/28/09	04/14/09	Not filed	5
	10-Q	05/30/09	07/14/09	Not filed	2
Total Filings Delinquent	36				
PC Service Source, Inc.					
	10-Q	06/30/00	08/14/00	Not filed	109
	10-Q	09/30/00	11/14/00	Not filed	106
	10-K	12/31/00	04/02/01	Not filed	101
	10-Q	03/31/01	05/15/01	Not filed	100
	10-Q	06/30/01	08/14/01	Not filed	97
	10-Q	09/30/01	11/14/01	Not filed	94
	10-K	12/31/01	04/01/02	Not filed	89
	10-Q	03/31/02	05/15/02	Not filed	88
	10-Q	06/30/02	08/14/02	Not filed	85
	10-Q	09/30/02	11/14/02	Not filed	82
	10-K	12/31/02	03/31/03	Not filed	78
	10-Q	03/31/03	05/15/03	Not filed	76
	10-Q	06/30/03	08/14/03	Not filed	73
	10-Q	09/30/03	11/14/03	Not filed	70
	10-K	12/31/03	03/30/04	Not filed	66
	10-Q	03/31/04	05/17/04	Not filed	64
	10-Q	06/30/04	08/16/04	Not filed	61
	10-Q	09/30/04	11/15/04	Not filed	58
	10-K	12/31/04	03/31/05	Not filed	54
	10-Q	03/31/05	05/16/05	Not filed	52
	10-Q	06/30/05	08/15/05	Not filed	49
	10-Q	09/30/05	11/14/05	Not filed	46
	10-K	12/31/05	03/31/06	Not filed	42
	10-Q	03/31/06	05/15/06	Not filed	40
	10-Q	06/30/06	08/14/06	Not filed	37
	10-Q	09/30/06	11/14/06	Not filed	34
	10-K	12/31/06	04/02/07	Not filed	29
	10-Q	03/31/07	05/15/07	Not filed	28
	10-Q	06/30/07	08/14/07	Not filed	25
	10-Q	09/30/07	11/14/07	Not filed	22
	10-K	12/31/07	03/31/08	Not filed	18
	10-Q	03/31/08	05/15/08	Not filed	16

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
PC Service Source, Inc. (continued)	*10-Q*	06/30/08	08/14/08	Not filed	13
	10-Q	09/30/08	11/14/08	Not filed	10
	10-K	12/31/08	03/31/09	Not filed	6
	10-Q	03/31/09	05/15/09	Not filed	4
	10-Q	06/30/09	08/14/09	Not filed	1
Total Filings Delinquent	37				
Play by Play Toys & Novelties, Inc.					
	10-K	07/31/01	10/29/01	Not filed	95
	10-Q	10/31/01	12/17/01	Not filed	93
	10-Q	01/31/02	03/18/02	Not filed	90
	10-Q	04/30/02	06/14/02	Not filed	87
	10-K	07/31/02	10/29/02	Not filed	83
	10-Q	10/31/02	12/16/02	Not filed	81
	10-Q	01/31/03	03/17/03	Not filed	78
	10-Q	04/30/03	06/16/03	Not filed	75
	10-K	07/31/03	10/29/03	Not filed	71
	10-Q	10/31/03	12/15/03	Not filed	69
	10-Q	01/31/04	03/16/04	Not filed	66
	10-Q	04/30/04	06/14/04	Not filed	63
	10-K	07/31/04	10/29/04	Not filed	59
	10-Q	10/31/04	12/15/04	Not filed	57
	10-Q	01/31/05	03/17/05	Not filed	54
	10-Q	04/30/05	06/14/05	Not filed	51
	10-K	07/31/05	10/31/05	Not filed	47
	10-Q	10/31/05	12/15/05	Not filed	45
	10-Q	01/31/06	03/17/06	Not filed	42
	10-Q	04/30/06	06/14/06	Not filed	39
	10-K	07/31/06	10/30/06	Not filed	35
	10-Q	10/31/06	12/15/06	Not filed	33
	10-Q	01/31/07	03/19/07	Not filed	30
	10-Q	04/30/07	06/14/07	Not filed	27
	10-K	07/31/07	10/29/07	Not filed	23
	10-Q	10/31/07	12/17/07	Not filed	21
	10-Q	01/31/08	03/17/08	Not filed	18
	10-Q	04/30/08	06/16/08	Not filed	15

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Play by Play Toys & Novelties, Inc. (continued)	*10-K*	07/31/08	10/29/08	Not filed	11
	10-Q	10/31/08	12/15/08	Not filed	9
	10-K	12/31/08	03/31/09	Not filed	6
	10-Q	01/31/09	03/17/09	Not filed	6
	10-Q	04/30/09	06/16/09	Not filed	3
Total Filings Delinquent	33				
Powerbrief, Inc.					
	10-Q	09/30/01	11/14/01	Not filed	94
	10-K	12/31/01	04/01/02	Not filed	89
	10-Q	03/31/02	05/15/02	Not filed	88
	10-Q	06/30/02	08/14/02	Not filed	85
	10-Q	09/30/02	11/14/02	Not filed	82
	10-K	12/31/02	03/31/03	Not filed	78
	10-Q	03/31/03	05/15/03	Not filed	76
	10-Q	06/30/03	08/14/03	Not filed	73
	10-Q	09/30/03	11/14/03	Not filed	70
	10-K	12/31/03	03/30/04	Not filed	66
	10-Q	03/31/04	05/17/04	Not filed	64
	10-Q	06/30/04	08/16/04	Not filed	61
	10-Q	09/30/04	11/15/04	Not filed	58
	10-K	12/31/04	03/31/05	Not filed	54
	10-Q	03/31/05	05/16/05	Not filed	52
	10-Q	06/30/05	08/15/05	Not filed	49
	10-Q	09/30/05	11/14/05	Not filed	46
	10-K	12/31/05	03/31/06	Not filed	42
	10-Q	03/31/06	05/15/06	Not filed	40
	10-Q	06/30/06	08/14/06	Not filed	37
	10-Q	09/30/06	11/14/06	Not filed	34
	10-K	12/31/06	04/02/07	Not filed	29
	10-Q	03/31/07	05/15/07	Not filed	28
	10-Q	06/30/07	08/14/07	Not filed	25
	10-Q	09/30/07	11/14/07	Not filed	22
	10-K	12/31/07	03/31/08	Not filed	18
	10-Q	03/31/08	05/15/08	Not filed	16
	10-Q	06/30/08	08/14/08	Not filed	13

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Powerbrief, Inc.	*10-Q*	09/30/08	11/14/08	Not filed	10
(continued)	*10-K*	12/31/08	03/31/09	Not filed	6
	10-Q	03/31/09	05/15/09	Not filed	4
	10-Q	06/30/09	08/14/09	Not filed	1
Total Filings Delinquent	32				
Southern Energy Company, Inc.					
	10-QSB	03/31/99	05/17/99	Not filed	124
	10-QSB	06/30/99	08/16/99	Not filed	121
	10-QSB	09/30/99	11/15/99	Not filed	118
	10-KSB	12/31/99	03/30/00	Not filed	114
	10-QSB	03/31/00	05/15/00	Not filed	112
	10-QSB	06/30/00	08/14/00	Not filed	109
	10-QSB	09/30/00	11/14/00	Not filed	106
	10-KSB	12/31/00	04/02/01	Not filed	101
	10-QSB	03/31/01	05/15/01	Not filed	100
	10-QSB	06/30/01	08/14/01	Not filed	97
	10-QSB	09/30/01	11/14/01	Not filed	94
	10-KSB	12/31/01	04/01/02	Not filed	89
	10-QSB	03/31/02	05/15/02	Not filed	88
	10-QSB	06/30/02	08/14/02	Not filed	85
	10-QSB	09/30/02	11/14/02	Not filed	82
	10-KSB	12/31/02	03/31/03	Not filed	78
	10-QSB	03/31/03	05/15/03	Not filed	76
	10-QSB	06/30/03	08/14/03	Not filed	73
	10-QSB	09/30/03	11/14/03	Not filed	70
	10-KSB	12/31/03	03/30/04	Not filed	66
	10-QSB	03/31/04	05/17/04	Not filed	64
	10-QSB	06/30/04	08/16/04	Not filed	61
	10-QSB	09/30/04	11/15/04	Not filed	58
	10-KSB	12/31/04	03/31/05	Not filed	54
	10-QSB	03/31/05	05/16/05	Not filed	52
	10-QSB	06/30/05	08/15/05	Not filed	49
	10-QSB	09/30/05	11/14/05	Not filed	46
	10-KSB	12/31/05	03/31/06	Not filed	42
	10-QSB	03/31/06	05/15/06	Not filed	40
	10-QSB	06/30/06	08/14/06	Not filed	37
	10-QSB	09/30/06	11/14/06	Not filed	34
	10-KSB	12/31/06	04/02/07	Not filed	29
	10-QSB	03/31/07	05/15/07	Not filed	28

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Southern Energy Company, Inc.	*10-QSB*	06/30/07	08/14/07	Not filed	25
(continued)	*10-QSB*	09/30/07	11/14/07	Not filed	22
	10-KSB	12/31/07	03/31/08	Not filed	18
	*10-Q**	03/31/08	05/15/08	Not filed	16
	*10-Q**	06/30/08	08/14/08	Not filed	13
	*10-Q**	09/30/08	11/14/08	Not filed	10
	*10-Q**	06/30/09	08/14/09	Not filed	1
Total Filings Delinquent	40				
Sparta Surgical Corp.					
	10-KSB	02/29/08	05/29/08	Not filed	16
	*10-Q**	05/31/08	07/15/08	Not filed	14
	*10-Q**	08/31/08	10/15/08	Not filed	11
	*10-Q**	11/30/08	01/14/09	Not filed	8
	*10-K**	02/28/09	05/29/09	Not filed	4
	*10-Q**	05/31/09	07/15/09	Not filed	2
Total Filings Delinquent	6				
Strategia Corp. (n/k/a Catthai Corp.)					
	10-KSB	12/31/00	04/02/01	Not filed	101
	10-QSB	03/31/01	05/15/01	Not filed	100
	10-QSB	06/30/01	08/14/01	Not filed	97
	10-QSB	09/30/01	11/14/01	Not filed	94
	10-KSB	12/31/01	04/01/02	Not filed	89
	10-QSB	03/31/02	05/15/02	Not filed	88
	10-QSB	06/30/02	08/14/02	Not filed	85
	10-QSB	09/30/02	11/14/02	Not filed	82
	10-KSB	12/31/02	03/31/03	Not filed	78
	10-QSB	03/31/03	05/15/03	Not filed	76
	10-QSB	06/30/03	08/14/03	Not filed	73
	10-QSB	09/30/03	11/14/03	Not filed	70
	10-KSB	12/31/03	03/30/04	Not filed	66
	10-QSB	03/31/04	05/17/04	Not filed	64
	10-QSB	06/30/04	08/16/04	Not filed	61
	10-QSB	09/30/04	11/15/04	Not filed	58
	10-KSB	12/31/04	03/31/05	Not filed	54
	10-QSB	03/31/05	05/16/05	Not filed	52

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Strategia Corp. (n/k/a Catthai Corp.) (continued)	*10-QSB*	06/30/05	08/15/05	Not filed	49
	10-QSB	09/30/05	11/14/05	Not filed	46
	10-KSB	12/31/05	03/31/06	Not filed	42
	10-QSB	03/31/06	05/15/06	Not filed	40
	10-QSB	06/30/06	08/14/06	Not filed	37
	10-QSB	09/30/06	11/14/06	Not filed	34
	10-KSB	12/31/06	04/02/07	Not filed	29
	10-QSB	03/31/07	05/15/07	Not filed	28
	10-QSB	06/30/07	08/14/07	Not filed	25
	10-QSB	09/30/07	11/14/07	Not filed	22
	10-KSB	12/31/07	03/31/08	Not filed	18
	*10-Q**	03/31/08	05/15/08	Not filed	16
	*10-Q**	06/30/08	08/14/08	Not filed	13
	*10-Q**	09/30/08	11/14/08	Not filed	10
	*10-K**	12/31/08	03/31/09	Not filed	6
	*10-Q**	03/31/09	05/15/09	Not filed	4
	*10-Q**	06/30/09	08/14/09	Not filed	1
Total Filings Delinquent	35				
TTI Industries, Inc.					
	10-Q	05/31/00	07/17/00	Not filed	110
	10-K	08/31/00	11/29/00	Not filed	106
	10-Q	11/30/00	01/16/01	Not filed	104
	10-Q	02/28/01	04/16/01	Not filed	101
	10-Q	05/31/01	07/16/01	Not filed	98
	10-K	08/31/01	11/29/01	Not filed	94
	10-Q	11/30/01	01/14/02	Not filed	92
	10-Q	02/28/02	04/15/02	Not filed	89
	10-Q	05/31/02	07/15/02	Not filed	86
	10-K	08/31/02	11/29/02	Not filed	82
	10-Q	11/30/02	01/14/03	Not filed	80
	10-Q	02/28/03	04/14/03	Not filed	77
	10-Q	05/31/03	07/15/03	Not filed	74
	10-K	08/31/03	12/01/03	Not filed	69
	10-Q	11/30/03	01/14/04	Not filed	68
	10-Q	02/29/04	04/14/04	Not filed	65
	10-Q	05/31/04	07/15/04	Not filed	62
	10-K	08/31/04	11/29/04	Not filed	58
	10-Q	11/30/04	01/14/05	Not filed	56
	10-Q	02/28/05	04/14/05	Not filed	53

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
TTI Industries, Inc.	*10-Q*	05/31/05	07/15/05	Not filed	50
(continued)	*10-K*	08/31/05	11/29/05	Not filed	46
	10-Q	11/30/05	01/17/06	Not filed	44
	10-Q	02/28/06	04/14/06	Not filed	41
	10-Q	05/31/06	07/17/06	Not filed	38
	10-K	08/31/06	11/29/06	Not filed	34
	10-Q	11/30/06	01/16/07	Not filed	32
	10-Q	02/28/07	04/16/07	Not filed	29
	10-Q	05/31/07	07/16/07	Not filed	26
	10-K	08/31/07	11/29/07	Not filed	22
	10-Q	11/30/07	01/14/08	Not filed	20
	10-Q	02/29/08	04/14/08	Not filed	17
	10-Q	05/31/08	07/15/08	Not filed	14
	10-K	08/31/08	12/01/08	Not filed	9
	10-Q	11/30/08	01/14/09	Not filed	8
	10-Q	02/28/09	04/14/09	Not filed	5
	10-Q	05/31/09	07/15/09	Not filed	2
Total Filings Delinquent	37				

*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 Casey not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60715 / September 24, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13625

In the Matter of CHRISTOPHER A. BLACK, 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 Christopher A. Black (Black or Respondent).[1]

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the Offer), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings 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.

[1] In addition, the Commission has contemporaneously filed a complaint in the United States District Court for the Southern District of Indiana, New Albany Division, charging Black with aiding and abetting American Commercial Lines, Inc.'s violations of Section 13(a) of the Exchange Act and Regulation FD and seeking civil penalties. Without admitting or denying the Commission's allegations, Black has consented to the entry of a final judgment by the Court that would require Black to pay a $25,000 civil penalty. See SEC v. Christopher A. Black, Case No. 09-CV-0128 (S.D. Ind.)(filed September 24, 2009).

III.

On the basis of this Order and Respondent's Offer, the Commission finds[2] that:

Respondent

1. Christopher A. Black (Black), age 46, is a resident of Louisville, Kentucky. He served as a senior vice president and the chief financial officer of American Commercial Lines, Inc. (ACL) from February 2005 until April 2008. He has never been licensed as a certified public accountant. Black is not registered with the Commission in any capacity and has no disciplinary history.

Related Party

2. American Commercial Lines, Inc. is a Delaware corporation headquartered in Jeffersonville, Indiana. ACL is a marine transportation and manufacturing company that operates a domestic fleet of barges and tow boats on the U.S. inland waterways, as well as shipping ports and shipyards. Approximately 80% of the company's business involves moving dry and liquid commodities by barge up and down the inland waterways. The other 20% of its business consists of manufacturing barges. ACL became a public company in October 2005, when it conducted an initial public offering of its stock. On October 7, 2005, its stock began trading on the NASDAQ National Market System under the trading symbol ACLI. The company's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act. ACL has no disciplinary history.

Summary

3. On Saturday, June 16, 2007 Black, ACL's former senior vice president and chief financial officer (CFO), caused ACL's violation of Section 13(a) of the Exchange Act and Regulation FD, when he, acting in his capacity as the company's designated investor relations contact, selectively disclosed material, nonpublic information regarding ACL's second quarter 2007 earnings forecast to a limited number of analysts without simultaneously making that information available to the public. ACL did not publicly disclose the information until late in the trading day on Monday, June 18, 2007 when it filed a Form 8-K with the Commission.

Background

4. Black joined ACL in February 2005 as vice-president and CFO.

5. Prior to joining ACL, Black worked at a public company that manufactured semi trailers (Black's "previous employer"). Black served as his previous employer's treasurer.

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[2] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

6. Black first became familiar with Regulation FD when he served as an investor relations contact for his previous employer. Black first learned of the requirements of Regulation FD by reviewing a publication on investor relations. As an investor relations contact for his previous employer, Black participated in investor conference calls and fielded questions from the analysts who covered the stock of the company.

7. After ACL conducted an initial public offering of its stock in October 2005, the company designated Black and its chief executive officer (CEO) as the company's investor relations contacts. As an investor relations contact for ACL, Black participated in investor conference calls and maintained a dialogue with analysts. Moreover, Black put together ACL's investor relations policy, which included a section addressing the requirements of Regulation FD.

8. After joining ACL in February 2005, Black received additional guidance regarding the requirements of Regulation FD. On at least two occasions, first in June 2005 and again in April 2007, Black received training from ACL's counsel which included material addressing Regulation FD.

9. After ACL became a public company, it settled on a policy with respect to earnings guidance. The management team, led by Black and ACL's CEO, decided to offer forward-looking, year end guidance only once each year during its February investor conference call.[3] The company chose not to provide quarterly earnings guidance because management felt that the seasonal and volatile nature of ACL's business made quarterly earnings too difficult to predict.

10. In accordance with this earnings guidance policy, ACL announced its earnings forecast for year-end 2007 during the company's February 2007 investor conference call. The company projected annual earnings per share (EPS) in the range of $1.75-$1.95.

11. By May 2007, however, Black and others within ACL's management realized that the company's earnings for the year likely would be significantly below its publicly announced guidance. Further, in assessing the company's performance through May 2007, management anticipated that ACL would fall far short of analysts' second quarter expectations as well. Analysts expected an EPS of $0.34 for ACL's second quarter.

12. As a result, ACL, at the direction of Black and ACL's CEO, decided to issue a press release providing both revised annual earnings guidance for 2007 as well as a general forecast for the second quarter. Black played an integral role in preparing the press release and participated in most, if not all, of the management meetings leading up to its release. Black knew that the analysts and the general public were not yet aware of the revised estimates and that the estimates had to be kept confidential until publicly announced.

13. On Monday, June 11, 2007, ACL issued a press release revising its annual earnings guidance for 2007, projecting annual EPS in the range of $1.45-1.65. Significantly, the press release also included general earnings guidance for the second quarter of 2007, stating that the

[3] ACL's fiscal year ends on December 31.

company expected the "2007 second quarter results to look similar to the first quarter." (Emphasis added). Based on ACL's first quarter 2007 Form 10-Q, the company's EPS for the first quarter was $0.20.[4]

14. After ACL issued the press release, Black and ACL's CEO traveled together from Tuesday, June 12, 2007 through Thursday, June 14, 2007, on a previously scheduled trip to meet with analysts who covered the company. Throughout the course of the trip Black and ACL's CEO answered questions about various aspects of ACL's operations as well as the guidance contained in the June 11, 2007 press release.

15. Upon their return, Black proposed sending an e-mail to all of the analysts summarizing the information discussed in their meetings since they had not had an opportunity to meet with all of the analysts as a single group. ACL's CEO agreed and asked Black to send the e-mail by close of business on Friday, June 15, 2007. According to ACL's CEO, he directed Black to provide a draft of the e-mail to outside counsel prior to sending it.

16. Black was unable to finalize the e-mail to the analysts before the end of the day on Friday, June 15, 2007. As a result, he sent a draft of it to his personal e-mail address so that he could finish it from home during the weekend.

17. Sometime before leaving work on June 15, 2007, however, Black received an updated internal analysis indicating that ACL's EPS for the second quarter could be as low as $0.13, significantly below ACL's already reduced projections for the second quarter of 2007 announced in the June 11, 2007 press release.

18. On Saturday, June 16, 2007, Black sent an e-mail from his home only to the eight sell-side analysts who covered the company. Black's e-mail, titled "ACL Guidance Revision Notes," stated that he wanted to provide "some additional color" regarding the earnings guidance announced in the June 11, 2007 press release. In the e-mail, among other things, Black provided additional details about the statement in the June 11, 2007 press release concerning "weakness in the spot grain markets over first quarter levels." Black explained that the company expected the second quarter "to be significantly impacted by the 40% reduction in grain volume during the first two months of the second quarter and the double digit pricing grain rate reduction compared to the second quarter of last year." Most significantly, Black explained that the company expected the "EPS for the second quarter will likely be in the neighborhood of about a dime below that of the first quarter based on this pressure." (Emphasis added). Since ACL's first quarter EPS was $0.20, Black's e-mail to analysts suggested that ACL's second quarter EPS would be around $0.10.

19. Black's June 16, 2007 e-mail represented a significant departure from ACL's second quarter guidance in its June 11, 2007 press release, when the company stated that the second quarter would "look similar to the first quarter." Black never provided his June 16, 2007 e-mail to anyone else at ACL, or to counsel, prior to sending it to analysts.

[4] The $0.20 EPS figure is based on ACL's diluted shares of common stock and excludes a significant debt retirement expense taken during the quarter.

20. At the time Black sent the June 16, 2007 e-mail on behalf of ACL, Black understood the requirements of Regulation FD and was aware that Regulation FD governed his communications with analysts and investors on behalf of ACL. Black knew that Regulation FD prohibited selective disclosure of material nonpublic information about ACL.

21. Black also knew that information regarding ACL's earnings guidance was material information. Black put together ACL's investor relations policy. The policy included a section addressing the requirements of Regulation FD and stated, "unless, after consultation with counsel, there is reason to believe otherwise, information regarding the following topics should always be assumed to be 'material' (i) earnings, . . ."

22. Black also knew that the analysts who received the e-mail had no duty of confidentiality regarding the information Black provided.

23. Black's June 16, 2007 e-mail and the resulting analysts reports triggered a significant drop in the price of ACL's stock. On Monday, June 18, 2007, the first trading day after Black's e-mail, ACL's stock price dropped 9.7% on unusually heavy volume. Specifically, the stock price dropped from $27.13 at the close of trading on Friday, June 15, 2007 to $24.50 at the close of trading on Monday, June 18, 2007. The trading volume in ACL on June 18, 2007 was approximately 10.4 million shares, which represented a nearly 300% increase from the average daily trading volume in ACL's stock up to that point in the month of June.

24. ACL's CEO learned of Black's e-mail on the morning of Monday, June 18, 2007. ACL publicly disclosed the content of Black's e-mail by filing a Form 8-K at the end of the trading day on June 18, 2007.

25. As a result of the conduct described above, Black caused ACL's violation of Section 13(a) of the Exchange Act and Regulation FD, which prohibit selective disclosure of material nonpublic information about an issuer.

Black's Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Black and cooperation afforded the Commission staff.

IV.

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

Accordingly, it is hereby ORDERED that:

Pursuant to Section 21C of the Exchange Act, Respondent Black cease and desist from causing any violations and any future violations of Section 13(a) of the Exchange Act and Regulation FD.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Walter
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60719 / September 25, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-12432

In the Matter of **BISYS Fund Services, Inc.,** **Respondent.**	**ORDER APPROVING DISTRIBUTION PLAN, APPOINTING A FUND ADMINISTRATOR, AND WAIVING BOND**

On September 26, 2006, the Commission instituted settled administrative and cease-and-desist proceedings against BISYS Fund Services, Inc. ("BISYS") for aiding and abetting antifraud and other violations in connection with a kickback scheme with 27 mutual fund advisers. See Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order pursuant to Section 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 BISYS Fund Services, Inc., Admin. Proc. File No. 3-12432, Investment Advisers Release No. 2554 (September 26, 2006) ("Order"). Among other things, the Commission ordered BISYS to pay a total of $21,402,816.66 in disgorgement, prejudgment interest, and penalty. The Order further ordered that BISYS retain an independent distribution consultant ("IDC"), not unacceptable to the staff, to develop a distribution plan for the Fair Fund. BISYS retained Alan Friedman, Vice President of CRA International, Inc., as the IDC, and submitted the Distribution Plan to the Division of Enforcement, which filed the plan with the Commission.

On May 29, 2009, the Commission published a "Notice of Proposed Plan of Distribution and Opportunity for Comment" (Exchange Act Release No. 60011) ("Notice") in connection with this proceeding pursuant to Rule 1103 of the Commission's Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. § 201.1103. This Notice advised interested parties that they could obtain a copy of a proposed plan of distribution ("Distribution Plan" or "Plan") of monies placed into a Fair Fund authorized by the Commission, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, by printing a copy from the Commission's public website or submitting a written request to Lorraine B. Echavarria in the Commission's Los Angeles Regional Office.

The Notice also advised that all persons desiring to comment on the Distribution Plan could submit their views to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549-1090; by using the Commission's internet comment form (http://www.sec.gov/litigation/admin.shtml); or by sending an e-mail to rule-comments@sec.gov, in writing, no later than June 29, 2009. The Commission received no comments on the Distribution Plan.

As stated in the Distribution Plan, the Fair Fund will be distributed by the methodology described in the Plan to benefit the 27 mutual fund families (for the benefit of their shareholders) that had marketing arrangements that are the subject of the Order. The Distribution Plan describes the procedures that will be used to identify the entities that will receive distributions under the Distribution Plan. The Distribution Plan further describes the procedures that will be used to calculate the total amounts to be paid to the harmed entities and distribute those amounts to those harmed entities. The Distribution Plan also proposes that Rust Consulting, Inc. be appointed Fund Administrator.

Rust Consulting has not posted the bond generally required of third parties under Fair Fund Rule 1105(e). Rather, 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 Bureau of 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 Bank, as defined in paragraph 14.c of the Plan, 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 Bank; and (5) both the 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 approve the Distribution Plan, appoint Rust Consulting as the Fund Administrator of the Distribution Plan as proposed by the Plan, and waive the bond requirement for the Fund Administrator for the good cause shown in the Plan.

Accordingly, pursuant to Fair Fund Rule 1104, it is hereby ORDERED that the Distribution Plan is approved.

It is hereby ORDERED, pursuant to Fair Fund Rules 1105(a) and (c), 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

Florence E. Harmon

By: Florence E. Harmon
Deputy Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60718; File No. S7-35-08)

September 25, 2009

Order Pursuant to Section 36 of the Securities Exchange Act of 1934 Extending Temporary Exemptions from Sections 5 and 6 of the Exchange Act for Broker-Dealers and Exchanges Effecting Transactions in Credit Default Swaps

On December 24, 2008, in connection with its efforts to facilitate the establishment of one or more central counterparties for clearing credit default swap ("CDS") transactions,[1] the Securities and Exchange Commission ("Commission") granted temporary, conditional exemptions from the registration requirements under Sections 5 and 6 of the Securities Exchange Act of 1934 ("Exchange Act") to certain exchanges and broker-dealers ("December Order").[2] Subject to conditions specified in the December Order, any exchange that effects or reports transactions in CDS that are not swap agreements ("non-excluded CDS")[3] and is not otherwise subject to the requirements

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1 A CDS is a bilateral contract between two parties, known as counterparties. The value of this financial contract is based on underlying obligations ("reference obligations") of a single entity (a "reference entity") or on a particular security or other debt obligation ("reference security"), or an index of several such entities, securities, or obligations. The obligation of a seller under a CDS 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 capitalize on the volatility in credit spreads during times of economic uncertainty. The over-the-counter ("OTC") market for CDS poses systemic risk to the financial system as well as operational risks, risks relating to manipulation and fraud, and regulatory arbitrage risks.

2 Securities Exchange Act Release No. 59165 (December 24, 2008), 74 FR 133 (January 2, 2009).

3 Section 3A of the Exchange Act limits the Commission's authority over swap agreements, as defined in Section 206A of the Gramm-Leach-Bliley Act. 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-

under Sections 5 and 6 of the Exchange Act,[4] and the rules and regulations thereunder, is exempt from the requirement to register as a national securities exchange.[5] In addition, any broker or dealer that effects or reports transactions in non-excluded CDS on such an exchange is exempt from the prohibition on trading activity in Section 5 of the Exchange Act. The December Order expires on September 25, 2009. Pursuant to its authority under Section 36 of the Exchange Act,[6] for the reasons described herein, the Commission is today extending the exemption granted in the December Order until March 24, 2010.

Section 5 of the Exchange Act states that "[i]t 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 . . . ." Section 6 of the Exchange Act

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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.

4 15 U.S.C. 78e and 78f.

5 A national securities exchange that effects transactions in 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 this 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) of the Exchange Act, 15 U.S.C. 78c(a)(2).

6 15 U.S.C. 78mm.

sets forth a procedure whereby an exchange[7] may register as a national securities exchange.[8]

Section 36 of the Exchange Act provides that the Commission, "by rule, regulation, or order, may 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 of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors."[9] To facilitate the establishment of one or more exchanges for non-excluded CDS, the Commission in the December Order exercised its authority under Section 36 to temporarily exempt any exchange, broker, or dealer that effects transactions in non-excluded CDS from the prohibition in Section 5 of the Exchange Act and (in the case of exchanges) the requirements in Section 6 of the Exchange Act and the rules and regulations thereunder.

The exemptions were conditioned on an exchange providing notice to the Commission of its reliance on the December Order, and certain other requirements that generally mirror those applicable to alternative trading systems under Regulation ATS.[10]

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7 Section 3(a)(1) of the Exchange Act, 15 U.S.C. 78c(a)(1), defines "exchange." Rule 3b-16 under the Exchange Act, 17 CFR 240.3b-16, defines certain terms used in the statutory definition of exchange. See Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) ("Regulation ATS Adopting Release") (adopting Rule 3b-16 in addition to Regulation ATS).

8 15 U.S.C. 78f. Section 6 of the Exchange Act also sets forth various requirements to which a national securities exchange is subject.

9 15 U.S.C. 78mm(a)(1).

10 See Regulation ATS, 17 CFR 242.300 et seq. In 1998, the Commission exercised its exemptive authority under Section 36 of the Exchange Act and its general authority under Section 11A of the Exchange Act, 15 U.S.C. 78k-1, to establish a regulatory framework for "alternative trading systems," which perform many of

As we noted at the time, the temporary exemptions from Sections 5 and 6 of the Exchange Act in the December Order were designed to allow brokers, dealers, and exchanges to effect transactions in non-excluded CDS on exchanges, while providing an opportunity for the Commission to gain experience with the CDS marketplace and consider public input regarding appropriate regulation and oversight.

During the ensuing period, the Commission has reviewed the CDS marketplace and been in contact with various market participants. Our effort has been to understand the operation of the CDS marketplace, evaluate the application of the exemptions in the December Order, and consider whether the conditions we imposed should be modified. In particular, consistent with our December Order, we have considered whether Regulation ATS, with or without modifications, should apply to systems that match orders in non-excluded CDS of multiple buyers and sellers.

Based on its review of the CDS marketplace, the Commission preliminarily believes that an exchange effecting transactions in non-excluded CDS should register under Sections 5 and 6 of the Exchange Act or structure itself as an alternative trading system and comply with the requirements of Regulation ATS. Among other things, Regulation ATS requires that the operator of an alternative trading system be registered as a broker-dealer. The Commission preliminarily believes that broker-dealer registration for exchanges that trade non-excluded CDS, as for other alternative trading systems,

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the same functions as exchanges. Under this framework, an entity that, like an exchange, matches the orders in securities of multiple buyers and sellers according to established, non-discretionary methods is exempt from the definition of "exchange" if it instead registers as a broker-dealer and complies with Regulation ATS. Regulation ATS is designed, among other things, "to adopt a regulatory framework that addresses [the Commission's] concerns without jeopardizing the commercial viability of these markets." Regulation ATS Adopting Release, supra note 7, 63 FR at 70846.

provides important regulatory benefits, is in the public interest, and is consistent with the protection of investors. In particular, regulated broker-dealers that operate alternative trading systems are also required to be FINRA members.[11] Membership in FINRA would allow FINRA to integrate trading of CDS on alternative trading systems into its surveillance of trading in economically similar investments, such as debt securities.

As noted, the conditions set out in the December Order under which CDS exchanges must operate are otherwise substantially similar to the requirements established under Regulation ATS.[12] Like the December Order, Regulation ATS would require a CDS exchange to keep records about its operations, its subscribers, and their orders;[13] provide the Commission with trading information on a quarterly basis;[14] establish procedures to ensure the confidential treatment of trading information;[15] permit the Commission to examine its premises, systems, and records; and cooperate with the examination of its subscribers.[16] In addition, the CDS exchange could not: (a) set rules governing the conduct of subscribers other than the conduct of such subscribers trading

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11 The Financial Industry Regulatory Authority ("FINRA") is a national securities association registered with the Commission under Section 15A of the Exchange Act, 15 U.S.C. 78o-3, and thus is a self-regulatory organization ("SRO"), as defined in Section 3(a)(26) of the Exchange Act, 15 U.S.C. 78c(a)(26). As an SRO, FINRA has authority to regulate and supervise its members for compliance with FINRA rules and the federal securities laws generally.

12 See December Order, supra note 2, 74 FR at 136; Regulation ATS, 17 CFR 242.300 et seq. Generally, these requirements are designed to allow the Commission to monitor market developments, to ascertain how new entrants are affecting the national market system, and to promote compliance with the federal securities laws generally.

13 See 17 CFR 242.301(b)(8), 242.302, and 242.303.

14 See 17 CFR 242.301(b)(9).

15 See 17 CFR 242.301(b)(10).

16 See 17 CFR 242.301(b)(7).

on such exchange; or (b) discipline subscribers under the Exchange Act other than by exclusion from trading.[17] Thus, with regard to these requirements, compliance with Regulation ATS should not create any significant additional regulatory burden for a CDS exchange now relying on the December Order.

The Commission is sensitive not to disrupt existing CDS markets unnecessarily or impose unreasonable burdens on market participants providing or using CDS exchanges. We recognize that restructuring current business activity and registration as a national securities exchange or alternative trading system may reasonably be expected to take some time. Accordingly, the Commission has determined to extend the December Order through March 24, 2010 to permit exchanges facilitating transactions in non-excluded CDS sufficient time to register pursuant to Sections 5 and 6 of the Exchange Act, or comply with the requirements of Regulation ATS, which include registration as a broker-dealer. The conditions specified in the December Order will continue to apply.[18]

Likewise, the Commission is extending the exemption it granted in the December Order to brokers and dealers effecting transactions in non-excluded CDS on an exchange that is not a national securities exchange because of that exchange's reliance on the December Order. Absent an exemption, Section 5 of the Exchange Act would prohibit

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17 These prohibitions are based on the Commission's belief that an organization, association, or group of persons that could exercise self-regulatory authority over its subscribers should be registered as an SRO and subject to the full responsibilities and supervision that registration entails. The Commission continues to believe that rules governing exchange subscriber conduct may be imposed and enforced only by SROs because of the potential that they may be applied for anti-competitive purposes. However, like any alternative trading system, a CDS exchange could apply credit standards to its subscribers or require subscribers to provide financial information relevant to their activity on the system. See Regulation ATS Adopting Release, supra note 7, 63 FR at 70859.

18 See December Order, supra note 2, 74 FR at 138-39.

brokers and dealers from effecting transactions in non-excluded CDS on such an exchange. As we found in the December Order, the temporary exemption for brokers and dealers is necessary and appropriate in the public interest and is consistent with the protection of investors because it will facilitate brokers' and dealers' use of CDS exchanges, which, for reasons noted in the December Order, the Commission believes would be beneficial. This exemption also provides legal certainty to broker-dealers effecting transactions in CDS. Without also exempting brokers and dealers from this Section 5 requirement, the Commission's temporary exemption of CDS exchanges would be ineffective, because brokers and dealers would not be permitted to effect transactions on those exchanges.

Section 5 of the Exchange Act recognizes that there are situations where brokers and dealers should be permitted to trade on an exchange that is not registered as a national securities exchange. Section 5 provides in relevant part that brokers and dealers may effect transactions on an exchange that the Commission, by reason of the limited volume of transactions effected on such exchange, has exempted from registration under Section 6. Brokers and dealers are also permitted to effect transactions on alternative trading systems, which are exempted from the definition of "exchange" and thus do not fall within the restriction of Section 5. Therefore, the Commission finds that it is consistent with the public interest and the protection of investors to extend the December Order, which granted a temporary exemption from Section 5 of the Exchange Act to any broker or dealer that effects transactions in non-excluded CDS, or reports such transactions, on an exchange that is exempted pursuant to the December Order.

Finally, the Commission notes that, absent comments that articulate a substantial need for further relief, the Commission is unlikely to further extend the December Order beyond March 24, 2010.

Accordingly,

IT IS ORDERED, pursuant to Section 36 of the Exchange Act,[19] that any exchange that effects transactions in non-excluded CDS and is not otherwise subject to the requirements under Sections 5 and 6 of the Exchange Act,[20] and the rules and regulations thereunder, will continue to be exempt from the requirement to register as a national securities exchange under Section 6 of the Exchange Act, and from the prohibition in Section 5 of the Exchange Act against effecting transactions as an exchange unless it is registered as a national securities exchange or exempt from registration due to the limited volume of its transactions through March 24, 2010, subject to the following conditions:

(1) The exchange must not: (a) set rules governing the conduct of subscribers other than the conduct of such subscribers trading on such exchange; or (b) discipline subscribers other than by exclusion from trading;

(2) The exchange must make and keep for a period of not less than three years, the first two years in an easily accessible place, the following records:

- A record of subscribers in the exchange (identifying any affiliations between the exchange and subscribers in the exchange, including common directors, officers, or owners);

[19] 15 U.S.C. 78mm.

[20] 15 U.S.C. 78e and 78f.

- Daily summaries of trading, including (a) information identifying CDS in which transactions are effected; and (b) transaction volume, expressed in terms of number of trades and total U.S. dollar notional value; and
- Time-sequenced records of order information, including: (a) identity of the party entering an order; (b) identification of non-excluded CDS contract (including the reference entity, security, or index, and notional value); (c) date and time that order was received; (d) price (whether expressed as credit spread, rate, strike, or coupon); (e) whether the order is to buy or sell and any order conditions; (f) any subsequent modification or cancellation of the order; (g) date and time the order was executed, the size (e.g., notional value amount) executed, and the price; and (h) identity of the parties to the transaction;

(3) The exchange must preserve the following records:

- For a period of not less than three years, the first two years in an easily accessible place, all notices provided by such exchange to subscribers generally, whether written or communicated through automated means, including, but not limited to, notices addressing hours of system operations, system malfunctions, changes to system procedures, maintenance of hardware and software, instructions pertaining to access to the market and denials of, or limitations on, access to the exchange; and
- During the life of the enterprise and of any successor enterprise, the exchange's organizational documents and copies of reports filed with the Commission pursuant to this exemption;

(4) An exchange must, within five days of commencing operation, submit a notice to the Commission that includes the following information:

- Full legal name of the exchange;
- A description of the exchange's ownership structure;
- Contact person and contact information;
- A general description of what CDS contracts trade on the exchange; and
- A description of how the exchange operates;

(5) An exchange must report the following information to the Commission within 30 days of the end of each quarter:

- The total dollar volume of transactions executed during the quarter, broken down by reference entity, security, or index;
- The total unit volume and/or notional amount executed during the quarter, broken down by reference entity, security, or index; and
- A list of all subscribers that effected transactions on the exchange during the quarter;

(6) The exchange must establish adequate safeguards and procedures to protect subscribers' confidential trading information. Such safeguards and procedures shall include: (a) limiting access to the confidential trading information of subscribers to those employees of the exchange who are operating the system or responsible for its compliance with this exemption or any other applicable rules; and (b) implementing standards controlling employees of the exchange trading for their own accounts. The exchange must adopt and implement adequate oversight procedures to ensure that the safeguards and procedures established pursuant to this condition are followed; and

(7) The exchange must provide access to the Commission to conduct on-site inspections of its facilities (including automated systems and systems environment), records, and personnel related to exchange activities. The exchange must cooperate with the Commission in connection with the investigation of any exchange subscribers.

IT IS FURTHER ORDERED, pursuant to Section 36 of the Exchange Act,[21] that until March 24, 2010, a broker or dealer that effects transactions in non-excluded CDS, or reports such transactions, on an exchange that is exempted pursuant to this Order will also continue to be exempt from the prohibition on trading activity in Section 5 of the Exchange Act.

By the Commission.

Florence E. Harmon
Deputy Secretary

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21 15 U.S.C. 78mm.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60723 / September 25, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13626

In the Matter of **Warwick Insurance Managers, Inc.,** **Watermarc Food Management Co.,** **Welcome Home, Inc.,** **Whitehall Limited, Inc.,** **Word-Tronics Corp.,** **Worksafe Industries, Inc.,** **World Commerce Online, Inc.,** **Worldwide Film Funding, Inc.,** **Worldwide Web Networx Corp., and** **Wulf International, Ltd.,** **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 Warwick Insurance Managers, Inc., Watermarc Food Management Co., Welcome Home, Inc., Whitehall Limited, Inc., Word-Tronics Corp., Worksafe Industries, Inc., World Commerce Online, Inc., Worldwide Film Funding, Inc., Worldwide Web Networx Corp., and Wulf International, Ltd.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Warwick Insurance Managers, Inc. (CIK No. 710849) is a New Jersey corporation located in Morristown, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Warwick 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, 1993, which reported a loss of over $1 million for the year ended December 31, 1993.

2. Watermarc Food Management Co. (CIK No. 884131) is a Texas corporation located in Houston, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Watermarc 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 28, 1999, which reported a net loss of over $1.4 million for the prior thirteen weeks.

3. Welcome Home, Inc. (CIK No. 922817) is a Delaware corporation located in Wilmington, North Carolina with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Welcome Home 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 1, 2000, which reported a net loss of over $1.8 million for the prior three months.

4. Whitehall Limited, Inc. (CIK No. 839848) is a dissolved Florida corporation located in Sarasota, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Whitehall 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, 2005.

5. Word-Tronics Corp. (CIK No. 311268) is an inactive New York corporation located in Prospect Park, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Word-Tronics 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 December 31, 1995, which reported a net loss of $160,575 for the prior nine months.

6. Worksafe Industries, Inc. (CIK No. 31079) is a void New York corporation located in Huntington Station, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Worksafe 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 $267,580 for the prior three months.

7. World Commerce Online, Inc. (CIK No. 1064133) is a delinquent Delaware corporation located in Orlando, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). World Commerce 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 over $13 million for the prior three months. On August 20, 2001, 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 May 8, 2002.

8. Worldwide Film Funding, Inc. (CIK No. 1259877) 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). Worldwide Film 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 September 18, 2003, which reported a net loss of $108,153 from inception on July 24, 2003 to August 15, 2003.

9. Worldwide Web Networx Corp. (CIK No. 1064525) is a void Delaware corporation located in King of Prussia, Pennsylvania with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Worldwide Web 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, 2001.

10. Wulf International, Ltd. (CIK No. 108633) is a delinquent Colorado corporation located in Fort Worth, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Wulf International 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, 2002, which reported a net loss of over $1.5 million for the prior twelve 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 (*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.

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 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

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Attachment

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60724 / September 28, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13627

In the Matter of **TVI CORPORATION,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE 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 TVI Corporation ("TVI" or "Respondent").

II.

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

III.

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

A. TVI Corporation (CIK No. 352079) is a Maryland corporation headquartered in Glenn Dale, Maryland, and its business includes selling emergency response equipment. At all relevant times, TVI's common stock was registered with the Commission pursuant to Section 12 of the Exchange Act. TVI's common stock initially was registered under Section 12(g) and traded on the NASDAQ SmallCap Market under the symbol "TVIN," and then the stock was registered under Section 12(b) when the NASDAQ became an "exchange." On April 1, 2009, TVI filed a voluntary Chapter 11 bankruptcy petition. In July 2009, TVI's stock was delisted from the NASDAQ SmallCap Market and deregistered from Section 12(b). The stock currently is registered under Section 12(g) and quoted on the Pink Sheets under the symbol "TVINQ.PK".

B. TVI 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 March 20, 2008 or periodic or quarterly reports on Form 10-Q for any fiscal period subsequent to its fiscal quarter ending September 30, 2008.

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.

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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.

Accordingly, it is hereby ORDERED, pursuant to Section 12(j) of the Exchange Act, that registration of each class of Respondent's securities registered pursuant to Section 12 of the Exchange Act be, and hereby is, revoked.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

September 29, 2009

IN THE MATTER OF	:	
Consumers Financial Corporation	:	**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 Consumers Financial Corporation because it has not filed any periodic reports since the period ended December 31, 2005.

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 September 29, 2009, through 11:59 p.m. EDT, on October 12, 2009.

By the Commission.

Florence E. Harmon

Elizabeth M. Murphy
Secretary

By: Florence E. Harmon
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60729 / September 29, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13628

In the Matter of **Consumers Financial Corporation,** **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 Consumers Financial Corporation ("CFC").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Consumers Financial Corporation (CIK No. 0000100320) is a dually-registered Pennsylvania and Nevada corporation with a principal place of business in Cedarhurst, New York. Its common stock, symbol CNSF, is registered with the Commission pursuant to Section 12(g) of the Exchange Act. As of August 19, 2009, the company's stock was quoted on the Pink Sheets, operated by Pink OTC Markets Inc. ("Pink Sheets"), had nine market makers, and was eligible for the "piggyback" exception under Rule 15c2-11(f)(3) of the Exchange Act.

B. DELINQUENT PERIODIC FILINGS

2. CFC is delinquent in its periodic filings with the Commission and has repeatedly failed to meet its obligation to file timely reports, having not filed any periodic or other required reports since it filed, on March 23, 2007, a Form 10-KSB for the year ended December 31, 2005.

3. 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).

4. As a result of the foregoing, CFC 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 CFC 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 CFC identified in Section II. and 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 CFC 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 CFC fails to file the directed Answers, or fails to appear at a hearing after being duly notified, CFC 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 CFC personally or by certified 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

Florence E. Harmon

By: Florence E. Harmon
Deputy Secretary

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60731 / September 29, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13629

In the Matter of UNIVERSAL FOOD & BEVERAGE CO., Respondent.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Universal Food & Beverage Co. ("Universal" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

A. Universal, a Nevada corporation headquartered in St. Charles, Illinois, developed and bottled sports drinks and other beverages. Universal's common stock is registered with the Commission pursuant to Exchange Act Section 12(g) and was traded on NASDAQ Stock Market, Inc.'s OTC Bulletin Board until it was delisted on June 25, 2006 for Universal's failure to file its First Quarter 2006 Form 10-QSB. Universal ceased operations in July 2007 and, on August 31, 2007, filed a petition for relief under Chapter 11 of the U.S. Bankruptcy Code. The Court dismissed the bankruptcy on December 16, 2008, finding that no assets of value remained to distribute.

B. Universal has failed to file annual reports on Form 10-KSB for the years ended December 31, 2006 and December 31, 2007.

C. Universal has failed to file quarterly reports on Form 10-QSB for the quarters ended March 31, 2006, June 30, 2006, September 30, 2006, March 31, 2007, June 30, 2007, September 30, 2007, March 31, 2008, June 30, 2008, and September 30, 2008.

III.

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. Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

As a result of the conduct described above, Universal has failed to comply with Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder.

IV.

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 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. Whether, pursuant to Section 12(j) of the Exchange Act, 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 Universal registered pursuant to Section 12 of the Exchange Act.

V.

IT IS HEREBY ORDERED that a public hearing, for the purpose of taking evidence on the issues raised above, shall be convened at a place and time 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 Universal file an answer to the allegations contained in this Order within twenty 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 Universal fails to file an answer or fails to appear at a hearing after being duly notified, it 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) and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), and 201.310].

This Order shall be promptly served upon Universal 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.

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 upon this matter, except as witness or counsel in the 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. 60734 / September 29, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13632

In the Matter of **National Venture Capital Fund, Inc., Nationsmart Corp., Nationwide Capital Corp., NeoStar Retail Group, Inc., Nesco, Inc., Netship Fulfillment, Inc., New Zealand Petroleum Co., Ltd. (n/k/a Abano Healthcare Group, Ltd.), and Nexiq Technologies, Inc. (f/k/a WPI Termiflex, 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 National Venture Capital Fund, Inc., Nationsmart Corp., Nationwide Capital Corp., NeoStar Retail Group, Inc., Nesco, Inc., Netship Fulfillment, Inc., New Zealand Petroleum Co., Ltd. (n/k/a Abano Healthcare Group, Ltd.), and Nexiq Technologies, Inc. (f/k/a WPI Termiflex, Inc.).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. National Venture Capital Fund, Inc. (CIK No. 1061063) is a dissolved Colorado corporation located in Castle Rock, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). National Venture 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, 2000, which reported a net loss of $30,005 since the company's July 12, 1997 inception.

2. Nationsmart Corp. (CIK No. 896502) is a dissolved Missouri corporation located in St. Louis, Missouri with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Nationsmart 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 2, 1995, which reported a net loss of over $1.9 million for the prior thirteen weeks. As of September 28, 2009, the company's stock (symbol "MART") was traded on the over-the-counter markets.

3. Nationwide Capital Corp. (CIK No. 1130276) is a revoked Nevada corporation located in Houston, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Nationwide 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, 2002, which reported a net loss of $20,833 for the prior six months. As of April 16, 2009, the company's stock (symbol "NCCN") was traded on the over-the-counter markets.

4. NeoStar Retail Group, Inc. (CIK No. 932790) is a forfeited Delaware corporation located in Grapevine, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). NeoStar 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 August 3, 1996, which reported a net loss of over $29.8 million for the prior six months. On September 16, 1996, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of Texas, which was terminated on June 17, 1998. As of September 28, 2009, the company's stock (symbol "NEOSQ") was traded on the over-the-counter markets.

5. Nesco, Inc. (CIK No. 922868) is a Oklahoma corporation located in Tulsa, Oklahoma with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Nesco 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 over $11.4 million for the prior three months. On November 26, 2001, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of Oklahoma, and the case was terminated on July 11, 2007. As of September 28, 2009, the company's stock (symbol "NESCQ") was traded on the over-the-counter markets.

6. Netship Fulfillment, Inc. (CIK No. 1089081) is an Oklahoma corporation located in Oklahoma City, Oklahoma with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Netship 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 $127,900 from inception on October 29, 1996. As of April 16, 2009, the company's stock (symbol "NSHF") was traded on the over-the-counter markets.

7. New Zealand Petroleum Co., Ltd. (n/k/a Abano Healthcare Group Ltd.) (CIK No. 71715) is a New Zealand corporation located in Auckland, New Zealand with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). New Zealand Petroleum 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 May 31, 1994, which reported a net loss of over $2.5 million (New Zealand dollars) for the prior twelve months. As of September 28, 2009, the company's stock (symbol "ANHGF") was traded on the over-the-counter markets.

8. Nexiq Technologies, Inc. (CIK No. 881771) (f/k/a WPI Termiflex, Inc.) (CIK No. 726431) is a dissolved New Hampshire corporation located in Sterling Heights, Michigan with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Nexiq 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, which reported a net loss of over $19 million for the prior nine months. On October 11, 2002, the company filed a Chapter 7 petition in the U.S. Bankruptcy Court for the Eastern District of Michigan, and the case was terminated on August 9, 2004. As of September 28, 2009, the company's stock (symbol "NEXQQ") was traded on the over-the-counter markets.

B. DELINQUENT PERIODIC FILINGS

9. 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.

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 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

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendix 1

Chart of Delinquent Filings
National Venture Capital Fund, Inc., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
National Venture Capital Fund, Inc.					
	10-QSB	10/31/00	12/15/00	Not filed	105
	10-QSB	01/31/01	03/19/01	Not filed	102
	10-KSB	04/30/01	07/30/01	Not filed	98
	10-QSB	07/31/01	09/14/01	Not filed	96
	10-QSB	10/31/01	12/17/01	Not filed	93
	10-QSB	01/31/02	03/18/02	Not filed	90
	10-KSB	04/30/02	07/29/02	Not filed	86
	10-QSB	07/31/02	09/16/02	Not filed	84
	10-QSB	10/31/02	12/16/02	Not filed	81
	10-QSB	01/31/03	03/17/03	Not filed	78
	10-KSB	04/30/03	07/29/03	Not filed	74
	10-QSB	07/31/03	09/15/03	Not filed	72
	10-QSB	10/31/03	12/15/03	Not filed	69
	10-QSB	01/31/04	03/16/04	Not filed	66
	10-KSB	04/30/04	07/29/04	Not filed	62
	10-QSB	07/31/04	09/14/04	Not filed	60
	10-QSB	10/31/04	12/15/04	Not filed	57
	10-QSB	01/31/05	03/17/05	Not filed	54
	10-KSB	04/30/05	07/29/05	Not filed	50
	10-QSB	07/31/05	09/14/05	Not filed	48
	10-QSB	10/31/05	12/15/05	Not filed	45
	10-QSB	01/31/06	03/17/06	Not filed	42
	10-KSB	04/30/06	07/31/06	Not filed	38
	10-QSB	07/31/06	09/14/06	Not filed	36
	10-QSB	10/31/06	12/15/06	Not filed	33
	10-QSB	01/31/07	03/19/07	Not filed	30
	10-KSB	04/30/07	07/30/07	Not filed	26
	10-QSB	07/31/07	09/14/07	Not filed	24
	10-QSB	10/31/07	12/17/07	Not filed	21
	10-QSB	01/31/08	03/17/08	Not filed	18
	10-KSB	04/30/08	07/29/08	Not filed	14
	*10-Q**	07/31/08	09/15/08	Not filed	12
	*10-Q**	10/31/08	12/15/08	Not filed	9

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
National Venture Capital Fund, Inc.					
	*10-Q**	01/31/09	03/17/09	Not filed	6
	*10-K**	04/30/09	07/29/09	Not filed	2
	*10-Q**	07/31/09	09/14/09	Not filed	0
Delinquent	**36**				
Nationsmart Corp.					
	10-QSB	10/01/95	11/15/95	Not filed	166
	10-KSB	12/31/95	04/01/96	Not filed	161
	10-QSB	03/31/96	05/15/96	Not filed	160
	10-QSB	06/30/96	08/14/96	Not filed	157
	10-QSB	09/29/96	11/13/96	Not filed	154
	10-KSB	12/29/96	03/31/97	Not filed	150
	10-QSB	03/30/97	05/14/97	Not filed	148
	10-QSB	06/29/97	08/13/97	Not filed	145
	10-QSB	09/28/97	11/12/97	Not filed	142
	10-KSB	12/28/97	03/30/98	Not filed	138
	10-QSB	03/29/98	05/13/98	Not filed	136
	10-QSB	06/28/98	08/12/98	Not filed	133
	10-QSB	09/27/98	11/11/98	Not filed	130
	10-KSB	12/27/98	03/29/99	Not filed	126
	10-QSB	03/28/99	05/12/99	Not filed	124
	10-QSB	06/27/99	08/11/99	Not filed	121
	10-QSB	09/26/99	11/10/99	Not filed	118
	10-KSB	12/26/99	03/27/00	Not filed	114
	10-QSB	04/02/00	05/17/00	Not filed	112
	10-QSB	07/02/00	08/16/00	Not filed	109
	10-QSB	10/01/00	11/15/00	Not filed	106
	10-KSB	12/31/00	04/02/01	Not filed	101
	10-QSB	03/25/01	05/09/01	Not filed	100
	10-QSB	06/24/01	08/08/01	Not filed	97
	10-QSB	09/30/01	11/14/01	Not filed	94
	10-KSB	12/30/01	04/01/02	Not filed	89
	10-QSB	03/31/02	05/15/02	Not filed	88
	10-QSB	06/30/02	08/14/02	Not filed	85

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Nationsmart Corp.					
	10-QSB	09/29/02	11/13/02	Not filed	82
	10-KSB	12/29/02	03/31/03	Not filed	78
	10-QSB	03/30/03	05/14/03	Not filed	76
	10-QSB	06/29/03	08/13/03	Not filed	73
	10-QSB	09/28/03	11/12/03	Not filed	70
	10-KSB	12/28/03	03/29/04	Not filed	66
	10-QSB	03/28/04	05/12/04	Not filed	64
	10-QSB	06/27/04	08/11/04	Not filed	61
	10-QSB	09/26/04	11/10/04	Not filed	58
	10-KSB	12/26/04	03/28/05	Not filed	54
	10-QSB	03/27/05	05/11/05	Not filed	52
	10-QSB	06/26/05	08/10/05	Not filed	49
	10-QSB	09/25/05	11/09/05	Not filed	46
	10-KSB	12/25/05	03/27/06	Not filed	42
	10-QSB	03/26/06	05/10/06	Not filed	40
	10-QSB	06/25/06	08/09/06	Not filed	37
	10-QSB	09/24/06	11/08/06	Not filed	34
	10-KSB	12/31/06	04/02/07	Not filed	29
	10-QSB	03/25/07	05/09/07	Not filed	28
	10-QSB	06/24/07	08/08/07	Not filed	25
	10-QSB	09/30/07	11/14/07	Not filed	22
	10-KSB	12/30/07	03/31/08	Not filed	18
	*10-Q**	03/30/08	05/14/08	Not filed	16
	*10-Q**	06/29/08	08/13/08	Not filed	13
	*10-Q**	09/28/08	11/12/08	Not filed	10
	*10-K**	12/28/08	03/30/09	Not filed	6
	*10-Q**	03/29/09	05/13/09	Not filed	4
	*10-Q**	06/28/09	08/12/09	Not filed	1
Delinquent	**56**				
Nationwide Capital Corp.					
	10-QSB	09/30/02	11/14/02	Not filed	82
	10-KSB	12/31/02	03/31/03	Not filed	78
	10-QSB	03/31/03	05/15/03	Not filed	76

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Nationwide Capital Corp.					
	10-QSB	06/30/03	08/14/03	Not filed	73
	10-QSB	09/30/03	11/14/03	Not filed	70
	10-KSB	12/31/03	03/30/04	Not filed	66
	10-QSB	03/31/04	05/17/04	Not filed	64
	10-QSB	06/30/04	08/16/04	Not filed	61
	10-QSB	09/30/04	11/15/04	Not filed	58
	10-KSB	12/31/04	03/31/05	Not filed	54
	10-QSB	03/31/05	05/16/05	Not filed	52
	10-QSB	06/30/05	08/15/05	Not filed	49
	10-QSB	09/30/05	11/14/05	Not filed	46
	10-KSB	12/31/05	03/31/06	Not filed	42
	10-QSB	03/31/06	05/15/06	Not filed	40
	10-QSB	06/30/06	08/14/06	Not filed	37
	10-QSB	09/30/06	11/14/06	Not filed	34
	10-KSB	12/31/06	04/02/07	Not filed	29
	10-QSB	03/31/07	05/15/07	Not filed	28
	10-QSB	06/30/07	08/14/07	Not filed	25
	10-QSB	09/30/07	11/14/07	Not filed	22
	10-KSB	12/31/07	03/31/08	Not filed	18
	*10-Q**	03/31/08	05/15/08	Not filed	16
	*10-Q**	06/30/08	08/14/08	Not filed	13
	*10-Q**	09/30/08	11/14/08	Not filed	10
	*10-K**	12/31/08	03/31/09	Not filed	6
	*10-Q**	03/31/09	05/15/09	Not filed	4
	*10-Q**	06/30/09	08/14/09	Not filed	1
Delinquent	**28**				
NeoStar Retail Group, Inc.					
	10-Q	11/02/96	12/17/96	Not filed	153
	10-K	02/01/97	5/2/97	Not filed	148
	10-Q	05/03/97	6/17/97	Not filed	147
	10-Q	08/02/97	9/16/97	Not filed	144
	10-Q	11/01/97	12/16/97	Not filed	141
	10-K	01/31/98	5/1/98	Not filed	136

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
NeoStar Retail Group, Inc.					
	10-Q	05/02/98	6/16/98	Not filed	135
	10-Q	08/01/98	9/15/98	Not filed	132
	10-Q	10/31/98	12/15/98	Not filed	129
	10-K	01/30/99	4/30/99	Not filed	125
	10-Q	05/01/99	6/15/99	Not filed	123
	10-Q	07/31/99	9/14/99	Not filed	120
	10-Q	10/30/99	12/14/99	Not filed	117
	10-K	01/29/00	4/28/00	Not filed	113
	10-Q	04/29/00	6/13/00	Not filed	111
	10-Q	07/29/00	9/12/00	Not filed	108
	10-Q	10/28/00	12/12/00	Not filed	105
	10-K	02/03/01	5/4/01	Not filed	100
	10-Q	04/28/01	6/12/01	Not filed	99
	10-Q	07/28/01	9/11/01	Not filed	96
	10-Q	11/03/01	12/18/01	Not filed	93
	10-K	02/02/02	5/3/02	Not filed	88
	10-Q	04/27/02	6/11/02	Not filed	87
	10-Q	08/03/02	9/17/02	Not filed	84
	10-Q	11/02/02	12/17/02	Not filed	81
	10-K	02/01/03	5/2/03	Not filed	76
	10-Q	05/03/03	6/17/03	Not filed	75
	10-Q	08/02/03	9/16/03	Not filed	72
	10-Q	11/01/03	12/16/03	Not filed	69
	10-K	01/31/04	4/30/04	Not filed	65
	10-Q	05/01/04	6/15/04	Not filed	63
	10-Q	07/31/04	9/14/04	Not filed	60
	10-Q	10/30/04	12/14/04	Not filed	57
	10-K	01/29/05	4/29/05	Not filed	53
	10-Q	04/30/05	6/14/05	Not filed	51
	10-Q	07/30/05	9/13/05	Not filed	48
	10-Q	10/29/05	12/13/05	Not filed	45
	10-K	01/28/06	4/28/06	Not filed	41
	10-Q	04/29/06	6/13/06	Not filed	39
	10-Q	07/29/06	9/12/06	Not filed	36
	10-Q	10/28/06	12/12/06	Not filed	33
	10-K	02/03/07	5/4/07	Not filed	28

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
NeoStar Retail Group, Inc.					
	10-Q	04/28/07	6/12/07	Not filed	27
	10-Q	07/28/07	9/11/07	Not filed	24
	10-Q	11/03/07	12/18/07	Not filed	21
	10-K	02/02/08	5/2/08	Not filed	16
	10-Q	05/03/08	6/17/08	Not filed	15
	10-Q	08/02/08	9/16/08	Not filed	12
	10-Q	11/29/08	1/13/09	Not filed	8
	10-K	01/31/09	5/1/09	Not filed	4
	10-Q	05/02/09	6/16/09	Not filed	3
	10-Q	08/01/09	9/15/09	Not filed	0
Delinquent	**52**				
Nesco, Inc.					
	10-K	12/31/01	04/01/02	Not filed	89
	10-Q	03/31/02	05/15/02	Not filed	88
	10-Q	06/30/02	08/14/02	Not filed	85
	10-Q	09/30/02	11/14/02	Not filed	82
	10-K	12/31/02	03/31/03	Not filed	78
	10-Q	03/31/03	05/15/03	Not filed	76
	10-Q	06/30/03	08/14/03	Not filed	73
	10-Q	09/30/03	11/14/03	Not filed	70
	10-K	12/31/03	03/30/04	Not filed	66
	10-Q	03/31/04	05/17/04	Not filed	64
	10-Q	06/30/04	08/16/04	Not filed	61
	10-Q	09/30/04	11/15/04	Not filed	58
	10-K	12/31/04	03/31/05	Not filed	54
	10-Q	03/31/05	05/16/05	Not filed	52
	10-Q	06/30/05	08/15/05	Not filed	49
	10-Q	09/30/05	11/14/05	Not filed	46
	10-K	12/31/05	03/31/06	Not filed	42
	10-Q	03/31/06	05/15/06	Not filed	40
	10-Q	06/30/06	08/14/06	Not filed	37
	10-Q	09/30/06	11/14/06	Not filed	34
	10-K	12/31/06	04/02/07	Not filed	29
	10-Q	03/31/07	05/15/07	Not filed	28

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Nesco, Inc.					
	10-Q	06/30/07	08/14/07	Not filed	25
	10-Q	09/30/07	11/14/07	Not filed	22
	10-K	12/31/07	03/31/08	Not filed	18
	10-Q	03/31/08	05/15/08	Not filed	16
	10-Q	06/30/08	08/14/08	Not filed	13
	10-Q	09/30/08	11/14/08	Not filed	10
	10-K	12/31/08	03/31/09	Not filed	6
	10-Q	03/31/09	05/15/09	Not filed	4
	10-Q	06/30/09	08/14/09	Not filed	1
Delinquent	**31**				
Netship Fulfillment, Inc.					
	10-KSB	12/31/00	04/02/01	Not filed	101
	10-QSB	03/31/01	05/15/01	Not filed	100
	10-QSB	06/30/01	08/14/01	Not filed	97
	10-QSB	09/30/01	11/14/01	Not filed	94
	10-KSB	12/31/01	04/01/02	Not filed	89
	10-QSB	03/31/02	05/15/02	Not filed	88
	10-QSB	06/30/02	08/14/02	Not filed	85
	10-QSB	09/30/02	11/14/02	Not filed	82
	10-KSB	12/31/02	03/31/03	Not filed	78
	10-QSB	03/31/03	05/15/03	Not filed	76
	10-QSB	06/30/03	08/14/03	Not filed	73
	10-QSB	09/30/03	11/14/03	Not filed	70
	10-KSB	12/31/03	03/30/04	Not filed	66
	10-QSB	03/31/04	05/17/04	Not filed	64
	10-QSB	06/30/04	08/16/04	Not filed	61
	10-QSB	09/30/04	11/15/04	Not filed	58
	10-KSB	12/31/04	03/31/05	Not filed	54
	10-QSB	03/31/05	05/16/05	Not filed	52
	10-QSB	06/30/05	08/15/05	Not filed	49
	10-QSB	09/30/05	11/14/05	Not filed	46
	10-KSB	12/31/05	03/31/06	Not filed	42
	10-QSB	03/31/06	05/15/06	Not filed	40
	10-QSB	06/30/06	08/14/06	Not filed	37

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Netship Fulfillment, Inc.					
	10-QSB	09/30/06	11/14/06	Not filed	34
	10-KSB	12/31/06	04/02/07	Not filed	29
	10-QSB	03/31/07	05/15/07	Not filed	28
	10-QSB	06/30/07	08/14/07	Not filed	25
	10-QSB	09/30/07	11/14/07	Not filed	22
	10-KSB	12/31/07	03/31/08	Not filed	18
	*10-Q**	03/31/08	05/15/08	Not filed	16
	*10-Q**	06/30/08	08/14/08	Not filed	13
	*10-Q**	09/30/08	11/14/08	Not filed	10
	*10-K**	12/31/08	03/31/09	Not filed	6
	*10-Q**	03/31/09	05/15/09	Not filed	4
	*10-Q**	06/30/09	08/14/09	Not filed	1
Delinquent	**35**				
New Zealand Petroleum Co., Ltd. (n/k/a Abano Healthcare Group Ltd.)					
	20-F	05/31/95	11/30/95	Not filed	166
	20-F	05/31/96	12/02/96	Not filed	153
	20-F	05/31/97	12/01/97	Not filed	141
	20-F	05/31/98	11/30/98	Not filed	130
	20-F	05/31/99	11/30/99	Not filed	118
	20-F	05/31/00	11/30/00	Not filed	106
	20-F	05/31/01	11/30/01	Not filed	94
	20-F	05/31/02	12/02/02	Not filed	81
	20-F	05/31/03	12/01/03	Not filed	69
	20-F	05/31/04	11/30/04	Not filed	58
	20-F	05/31/05	11/30/05	Not filed	46
	20-F	05/31/06	11/30/06	Not filed	34
	20-F	05/31/07	11/30/07	Not filed	22
	20-F	05/31/08	12/01/08	Not filed	9
Delinquent	**14**				

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Nexiq Technologies, Inc. (f/k/a WPI Termiflex, Inc.)					
	10-K	09/29/02	12/30/02	Not filed	81
	10-Q	12/29/02	02/12/03	Not filed	79
	10-Q	03/30/03	05/14/03	Not filed	76
	10-Q	06/29/03	08/13/03	Not filed	73
	10-K	09/28/03	12/29/03	Not filed	69
	10-Q	12/28/03	02/11/04	Not filed	67
	10-Q	03/28/04	05/12/04	Not filed	64
	10-Q	06/27/04	08/11/04	Not filed	61
	10-K	09/26/04	12/27/04	Not filed	57
	10-Q	12/26/04	02/09/05	Not filed	55
	10-Q	03/27/05	05/11/05	Not filed	52
	10-Q	06/26/05	08/10/05	Not filed	49
	10-K	09/25/05	12/26/05	Not filed	45
	10-Q	01/01/06	02/15/06	Not filed	43
	10-Q	04/02/06	05/17/06	Not filed	40
	10-Q	07/02/06	08/16/06	Not filed	37
	10-K	10/01/06	01/02/07	Not filed	32
	10-Q	12/31/06	02/14/07	Not filed	31
	10-Q	04/01/07	05/16/07	Not filed	28
	10-Q	07/01/07	08/15/07	Not filed	25
	10-K	09/30/07	12/31/07	Not filed	21
	10-Q	12/30/07	02/13/08	Not filed	19
	10-Q	03/30/08	05/14/08	Not filed	16
	10-Q	06/29/08	08/13/08	Not filed	13
	10-K	09/28/08	12/29/08	Not filed	9
	10-Q	12/30/08	02/17/09	Not filed	7
	10-QS	03/29/09	05/13/09	Not filed	4
	10-QS	06/28/09	08/12/09	Not filed	1
Delinquent	**28**				

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)

* 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 ACT OF 1933
Release No. 9066 / September 29, 2009

SECURITIES EXCHANGE ACT OF 1934
Release No. 60732 / September 29, 2009

INVESTMENT ADVISERS ACT OF 1940
Release No. 2928 / September 29, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13630

In the Matter of

UNITED GLOBAL SECURITIES, INC. AND RICHARD D. BLAIR

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, AND 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 Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against United Global Securities, Inc. and Richard D. Blair ("Respondents").

II.

In anticipation of the institution of these proceedings, 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 him 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 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, and 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' Offer, the Commission finds[1] that:

Summary

Respondents convinced 18 customers to surrender variable annuities and repurchase new variable annuities twice within an 18 month period beginning in late 2004. In general, the Respondents represented that the cost of the transactions would be minimal. The two rounds of transactions cost the 17 customers about 11% of the total principal under investment, however, while United Global received $208,347 in commissions. Additionally, Blair caused United Global to maintain inaccurate books and records and operate with a net capital deficiency in January and February 2007.

Respondents

1. United Global Securities, Inc. ("United Global"), incorporated in Texas in 1993, has its office in Sugar Land, Texas. It is a broker-dealer registered with the Commission, and an investment adviser registered with the State Securities Board of Texas. United Global does not carry customer accounts or hold customer or client assets. United Global has approximately 3,000 brokerage customers and 400 advisory clients (referred to collectively as "customers"). Most are public school educators and retired educators in the Houston, Texas area.

2. Richard D. Blair ("Blair"), 39, of Sugar Land, Texas, is the president, sole shareholder and sole registered representative of United Global.

Variable Annuity Sales, Charges and Commissions

3. From at least January 2004 through December 2006, Respondents primarily sold securities in the form of variable annuities to its customers. Variable annuities are generally long-term investments that have components of both insurance products and securities. An insurance component provides a death benefit for the owner's beneficiaries. In addition, the owner can allocate his contributions among various investment options (or subaccounts) offered through the contract. Many variable annuities impose an asset-based surrender charge that declines over a period of years. These surrender charges may in part cover the cost of the commission paid by the insurance company issuer to the broker-dealer selling the annuity.

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[1] The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

4. From January 2004 through December 2006, pursuant to Respondents' recommendations, 17 brokerage customers (three of whom were also advisory clients) engaged in two rounds of "switches," by which the customers surrendered annuities before the end of the surrender period and used the proceeds of the surrendered annuities to invest in new variable annuities supposedly offering better investment terms.

5. In recommending the first round of transactions, Respondents represented that the 17 customers would incur only minimal surrender charges, and that they would recoup the charges through a bonus payment from the issuer of the new annuity. Respondents omitted to disclose that the customers, not the issuer, paid for the bonuses through higher mortality and expense risk charges, and that the bonus had a vesting period. In the first round of surrenders, the surrender charges totaled $134,374, approximately 6% of the total $2,098,107 under investment at that time. While the customers received bonuses of $124,700, about 93% of the surrender charges of $134,374, the bonus vesting period had not expired at the time of the second round of surrenders. In recommending the second round of surrenders, Respondents again represented that the surrender charges would be minimal. Instead, the second round surrender and recapture charges totaled $282,224, approximately 14% of the $2,087,057 under investment at that time. Also, while the Respondents again represented that the customers would recoup their surrender charges through bonuses, the bonuses equaled only about 46% of the associated surrender charges.

6. Together, the two rounds of transactions cost the 17 customers about 11% of the total principal under investment, with individual costs ranging from about 8% to nearly 15%. After the two rounds of transactions, the customers gained only $4,750, or 0.22%, over the original $2,098,107 under investment, even though the customers were invested during a time of market gains and even though they contributed a net $123,325 to the annuities.

7. United Global received $208,347 in commissions from the sales to the 17 customers.

Unearned Advances and Net Capital Deficiencies

8. United Global had received commission advances from an issuer of the variable annuities, including upon annuity sales that either failed to close or that closed at lesser amounts than anticipated. On January 22, 2007, the issuer advancing the commissions made demand for repayment of $1.9 million in unearned commission advances.

9. Blair failed to cause the books and records of United Global to reflect any liability, and United Global incorrectly computed its net capital. As of January 31, 2007, United Global was required to maintain net capital of $134,000.[2] If the books and records of United Global had included the commission liability of $1.9 million, a correct net capital computation would have shown a deficiency of about $1.56 million.

[2] Under Rule 15c3-1(a)(2)(vi) of the Exchange Act, United Global was required to maintain minimum net capital of the greater of $5,000 or 6.66% of its aggregate indebtedness, which was $134,000 as of January 31, 2007.

10. On February 2, 2007, Blair used the proceeds of a $750,000 loan and other firm assets to pay $892,000 upon the undisputed portion of the excess commission advances. The loan, however, was secured by an encumbrance upon United Global's assets. Blair did not consider the effect of this encumbrance in computing net capital after February 2, 2007. Had the books and records of United Global reflected the effect of the encumbrance, its net capital deficiency would have been about $467,000.

11. United Global did not cease business operations until February 15, 2007, even while Blair was seeking a loan to rectify the net capital deficiency.[3] United Global did not, however, give notice to the Commission of the net capital deficiency with the Commission as required by Exchange Act Rule 17a-11(b)(1). In addition, it did not give notice that its books and records were not accurate and did not provide a report regarding how it intended to cure the books and records deficiency, as required by Exchange Act Rule 17a-11(d).

Violations

12. As a result of the conduct described above, United Global and Blair willfully violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit making material misstatements and omissions in the offer and sale of securities.[4]

13. As a result of the conduct described above, United Global and Blair willfully violated Section 206(2) of the Advisers Act, which prohibits engaging in transactions, practices, or courses of business which operate as a fraud or deceit upon any client or prospective client.

14. As a result of the conduct described above, United Global willfully violated, and Blair willfully aided and abetted and caused the violations of, Section 15(c)(3)(A) of the Exchange Act and Rule 15c3-1 thereunder, which establish safeguards with respect to the financial responsibility of brokers and dealers.

15. As a result of the conduct described above, United Global willfully violated, and Blair willfully aided and abetted and caused the violations of, Section 17(a)(1) of the Exchange Act and Rules 17a-3(a) and 17a-11 thereunder, which require registered brokers and dealers to make and keep current books and records relating to their business, and to file certain reports with the Commission.

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3 United Global returned to net capital compliance and resumed business operations on February 28, 2007, after the encumbrance upon firm assets was released.

4 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)).

Respondents' Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondents and cooperation afforded the Commission staff.

Undertakings

Respondents have undertaken to:

16. Retain within 30 days of the date of entry of this Order, an Independent Consultant, acceptable to the staff of the Commission, to review the supervisory, compliance and other policies and procedures of Respondents regarding (a) customer and client suitability, sophistication and investment objectives, (b) disclosures in any transactions involving variable annuities, and (c) internal accounting practices and procedures.

17. No more than 120 days after the date of the entry of this Order, submit to the staff of the Commission a written report that Respondents will obtain from the Independent Consultant regarding Respondents' policies and procedures. The report will include a description of the review performed, the conclusions reached, the Independent Consultant's recommendations for changes in or improvements to the policies and procedures, and a procedure for implementing any recommended changes.

18. Adopt all recommendations made by the Independent Consultant, provided, however, that within 150 days after the date of the entry of this Order, Respondents will in writing advise the Independent Consultant and the staff of the Commission of any recommendations it considers unnecessary or inappropriate. With respect to any recommendation that Respondents consider unnecessary or inappropriate, Respondents need not adopt that recommendation at that time, but instead propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose. As to any recommendation with respect to Respondents' policies and procedures on which Respondents and the Independent Consultant do not agree, they will attempt in good faith to reach an agreement within 180 days of the date of entry of the Order. In the event Respondents and the Independent Consultant are unable to agree on an alternative proposal, Respondents will abide by the determinations of the Independent Consultant.

19. No later than one year after the date of the entry of this Order, submit to the staff of the Commission a written Final Report that Respondents will obtain from the Independent Consultant that will contain the Independent Consultant's conclusions regarding Respondents' compliance with this Order, Respondents' implementation of the policies and procedures adopted under this Order, and make any further recommendations the Independent Consultant deems necessary. Respondents will adopt the recommendations contained in the Final Report within 30 days.

20. 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 Respondents, 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 staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondents, 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.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, and Sections 203(e), 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent United Global cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and (3) of the Securities Act, Sections 15(c)(3)(A) and 17(a)(1) of the Exchange Act and Rules 15c3-1, 17a-3(a), and 17a-11 thereunder, and Section 206(2) of the Advisers Act.

B. Respondent Blair cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and (3) of the Securities Act and Section 206(2) of the Advisers Act.

C. Respondent Blair cease and desist from causing any violations and any future violations by United Global of Sections 15(c)(3)(A) and 17(a)(1) of the Exchange Act and Rules 15c3-1, 17a-3(a), and 17a-11 thereunder.

D. Respondent United Global is censured.

E. Respondent Blair is censured.

F. Respondents, jointly and severally, shall, within 10 days of the entry of the Order, pay a civil money penalty in the amount of $25,000, 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) 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 United Global Securities, Inc. and Richard D. Blair as

Respondents in these proceedings and the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Stephen Korotash, Division of Enforcement, Securities and Exchange Commission, 801 Cherry Street, Suite 1900, Fort Worth, Texas 76102.

G. Respondents shall comply with the undertakings enumerated in Section III paragraphs 16 through 20 above.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar and Commissioner Paredes not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9067 / September 29, 2009

SECURITIES EXCHANGE ACT OF 1934
Release No. 60735 / September 29, 2009

INVESTMENT ADVISERS ACT OF 1940
Release No. 2930 / September 29, 2009

INVESTMENT COMPANY ACT OF 1940
Release No. 28934 / September 29, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13633

In the Matter of **STRATUM WEALTH MANAGEMENT, LLC AND CHARLES B. GANZ** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(e), 203(f), AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY 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 8A of the Securities Act of 1933 ("Securities Act"), Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(e), 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 Stratum Wealth Management, LLC ("Stratum") and Charles B. Ganz ("Ganz") (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, 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, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings[1], and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

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

Summary

1. Stratum, a former registered investment adviser based in Boca Raton, Florida, through its sole owner and chairman, Charles Ganz, violated its fiduciary duties to its clients by, among other things, misappropriating client funds and misrepresenting and failing to disclose material information. First, beginning in November 2004, Ganz misappropriated over $400,000 from a client account during the course of nearly a year to pay for his personal expenses. Stratum also transferred a bond investment in a bankrupt company from the account of one client (who threatened Stratum and Ganz with legal action) by effecting the purchase of the bonds for the accounts of two other Stratum clients at a price Ganz knew was significantly higher than their value. Moreover, from at least January 2006 through October 2006, Stratum sent its clients statements that overvalued their investments by improperly valuing restricted securities at current market prices of free-trading stock. Stratum and Ganz also failed to disclose material conflicts of interest and that Stratum's financial condition was severely impaired. During this time period, Stratum also failed to maintain books and records required to be kept by an investment adviser and failed to maintain an accurate Form ADV.

Respondents

2. Stratum is a limited liability company based in Baca Raton, Florida. Stratum was registered with the Commission as an investment adviser from June 19, 2003 through January 20, 2009. On January 20, 2009, Stratum voluntarily filed a Form ADV-W to withdraw its registration as an investment adviser. Stratum provided discretionary investment advisory services to over 70 clients, with assets under management worth approximately $54 million.

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[1] The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

3. Ganz is 51 and a resident of Boca Raton, Florida. During the relevant period, Ganz was the chairman, sole officer, and sole owner of Stratum.

Background

4. Stratum was a registered investment adviser based in Boca Raton, Florida, operated by Ganz, its sole owner and Chairman. Stratum had discretionary authority over approximately 70 client accounts, subject to its clients' individual goals and risk tolerance. As discussed below, commencing in November 2004 through October 2006, Stratum and Ganz abused this authority by engaging in improper conduct, including, among other things, misappropriating client funds, misrepresenting to clients the value of their investments, and failing to disclose conflicts of interest and Stratum's financial condition.

Misappropriation of Client Funds

5. Ganz misappropriated approximately $400,600 from a Stratum client over the course of a year. Beginning in November 2004 through October 2005, Ganz liquidated certain securities positions in the client's account. On eleven occasions during that time period, Ganz then forged the client's signature on wire transfer authorizations and wired funds (from the proceeds of those sales) from the client's custodial account, located at a third-party broker-dealer, to Ganz's personal account and Stratum's operating account.

6. Ganz repaid the funds to the client in October 2006, only after the client threatened Ganz with litigation after learning that Ganz had liquidated securities positions and transferred the proceeds out of his account.

Improper Transfer of Bad Investment to Other Clients' Accounts

7. In or around June 2005, Ganz moved a bond investment from one client's account, in order to avoid losses for that client, into the accounts of two other clients at the original purchase price even though Ganz knew the investment was worth significantly less than the original purchase price. Specifically, in March 2005, Stratum purchased bonds issued by Dan River, Inc. ("Dan River"), bearing a face value of $1,050,000, for a client for the amount of $311,535. Shortly thereafter, Ganz discovered that the investment was only worth approximately $47,955. After the client learned the true value of the Dan River bond investment, he threatened Stratum and Ganz with litigation. As a result, Ganz transferred the bad investment from the client's account into the accounts of two different clients at the original purchase price.

8. In order to effectuate the Dan River transfers, on or around June 8, 2005, Stratum provided false documents to the custodian requesting a "cancel and correct" transaction. Specifically, Stratum requested that the Dan River bond investment be moved from the first client's account into the accounts of two other Stratum clients, placing 60% of the investment in one account, and 40% in the other. The custodian informed Stratum that it could not carry out those orders until it received letters of authorization from the two clients. Ganz, therefore, forged

the letters of authorization and sent them to the custodian, who carried out the reallocation order between June 13, 2005 and June 15, 2005.

9. Because the Dan River bond investment was transferred to the two clients at the original purchase price of the Dan River bonds, the transfers created an immediate loss of over $163,000 in one client's account and over $100,000 in the other client's account. Moreover, Stratum and Ganz failed to inform the clients into whose accounts the Dan River bonds were transferred the true value of the bonds at the time the transfer was made.

Failure to Disclose Material Information

10. From at least mid-2005 to 2007, a promoter of microcap companies recommended to Ganz that he invest Stratum's clients' funds into various stocks he was promoting. Most of these transactions involved the sale of restricted stock. As a result, Ganz purchased approximately $6.4 million of the stock touted by the promoter for the vast majority of his clients. Indeed, about 13% of the value of Stratum's clients' portfolios were made up of restricted shares of stock recommended by Ganz' promoter friend. However, Stratum failed to disclose to its clients that Ganz received $150,000, purportedly a loan, from the stock promoter who made these stock recommendations.

11. Stratum also failed to disclose to its clients that its financial condition was seriously impaired in 2006. Stratum had to borrow over $147,000 from Ganz's mother to meet its business expenses in 2006. Stratum's financial statements revealed that its only assets consisted of two bank accounts that together held approximately $19,000 as of August 2006. Therefore, Stratum likely would not have been able to continue as a going concern through 2006 without borrowing or misappropriating funds.

Failure to Properly Value Restricted Securities in Monthly Account Statements to Clients

12. From at least January 2006 through October 2006, Stratum distributed misleading monthly account statements to its clients. Stratum's account statements purportedly disclosed the current value of securities each client owned, including any restricted securities held by the client. Stratum represented the value of restricted stock held in its clients' accounts as the market price of freely-trading stock. This was misleading because Stratum implied in its account statements that the restricted stock price reflected the "current prices as of" the reported date. Moreover, Stratum's discretionary management agreements explicitly stated that Stratum valued alternative investments in a manner determined to reflect fair market value. These representations were misleading because the current market value or fair value was less than the value identified by Stratum.

13. For example, in July 2006, Ganz created and sent a client an account statement of her securities holdings as of June 30, 2006. The statement listed 64,000 shares of Daybreak Oil & Gas, Inc. ("Day Break") stock issued on May 18, 2006 with a "current price" of $2.50 per share (the price of Day Break's free-trading shares at that time) and reflecting a total "current value" of $160,000. However, the client's shares were restricted and, at that time, could not be sold for the price shown on Stratum's statement. As of June 30, 2006, nine Stratum clients held a total of

480,000 shares of Day Break stock valued at a market value of $1.2 million without any discount to reflect the restricted nature of the securities.

14. Similarly, as of June 30, 2006, nearly all of Stratum's clients also held restricted stock in Neuro Hitech Pharmaceuticals, Inc. ("Neuro Hitech") and Handheld Entertainment, Inc. ("Handheld"). Yet Stratum sent monthly statements to clients holding Neuro Hitech and Handheld restricted stock that valued their holdings at the market price of their respective free-trading shares, specifically, valuing Stratum's clients' total holdings of Neuro Hitech and Handheld shares at $3,341,775 and $1,882,863, respectively. These valuations were materially misleading because, despite the illiquidity of these shares, Stratum did not apply a discount in its valuations, which would have resulted in a materially lower price.

15. Ganz ultimately changed his valuation policies so that each restricted security of an issuer that also had free-trading securities would be valued at 20% less than the market value of the publicly traded security. After the OCIE examination in September 2006, Ganz also refunded the advisory fees that Stratum charged to the clients who held restricted securities on their portfolio at market value.

Failure to Maintain Required Books and Records

16. From at least January 1, 2006 to August 31, 2006, Stratum failed to maintain required journals of receipts and disbursement records, ledgers reflecting assets, liabilities, capital, income, and expenses, trial balances, financial statements, and internal audit working papers. Indeed, Ganz and his staff did not begin to prepare balance sheets, income statements, and a general ledger until the OCIE examination, in September 2006. The balance sheets, income statements, and the general ledger were inaccurate because they could not be reconciled with bank statements and cash disbursements. Moreover, Stratum's financial statements for the years ended December 2005 and December 2006 did not include any of the settlements that Stratum paid to former clients in 2005 and 2006, which totaled $930,000.

Inaccurate Form ADV

17. Stratum, as an investment adviser that managed assets in excess of $25 million, filed reports with the Commission on Form ADV (Item 9 of Part 1A). The Forms ADV signed and filed by Ganz on behalf of Stratum, dated September 15, 2005 and March 31, 2006, were inaccurate because Ganz represented that Stratum did not have custody of clients' assets when, in fact, Stratum did have custody of its clients' funds.

Violations

18. As a result of the conduct described above, Respondents willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

19. As a result of the conduct described above, Respondents willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

20. As a result of the conduct described above, Stratum willfully violated, and Ganz willfully aided and abetted and caused Stratum's violations of, Section 206(4) of the Advisers Act and Rule 206(4)-4(a)(1), promulgated thereunder, which requires that an investment adviser which has custody over clients' funds disclose all material facts with respect to the financial condition of the adviser that are reasonably likely to impair the ability of the adviser to meet contractual commitments to clients.

21. As a result of the conduct described above, Stratum willfully violated, and Ganz willfully aided and abetted and caused Stratum's violations of, Section 204 of the Advisers Act, and Rules 204-2(a)(1), 204-2(a)(2) and 204-2(a)(6), promulgated thereunder, which require that investment advisers registered with the Commission maintain and preserve certain books and records. Rule 204-2(a)(1) requires that registered investment advisers "make and keep true, accurate and current . . . a journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger." Rule 204-2(a)(2) requires that registered investment advisers "make and keep true, accurate and current . . . general and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts." Rule 204-2(a)(6) requires that registered investment advisers "make and keep true, accurate and current . . . all trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser."

22. As a result of the conduct described above, Respondents willfully violated Section 207 of the Advisers Act, which prohibits any person from willfully making "any untrue statement of a material fact in any registration application or report filed with the Commission under section 203 or 204, or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

IV.

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

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

A. Respondents Stratum and Ganz 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 204, 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rules 204-2 and 206(4)-4 promulgated thereunder;

B. Respondent Ganz be, and hereby is, barred from association with any 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; and

Any reapplication for association by the Respondent Ganz 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.

C. Stratum is hereby censured.

D. Respondent Ganz shall pay a civil money penalty in the amount of $90,000 to the United States Treasury, in five installments, commencing with the first $25,000 within ten days after the entry of this Order, and continuing with four subsequent monthly payments of $16,250 within 90, 180, 270, and 360 days after the date of this Order. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Respondent agrees that if the full amount of any payment described above is not made within ten (10) days following the date the payment is required by this Order, the entire amount of the civil penalty, $90,000, plus post judgment interest minus payments made, if any, is due and payable immediately without further application. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Charles Ganz 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 Teresa J. Verges, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, Florida 33131.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60733 / September 29, 2009

INVESTMENT ADVISERS ACT OF 1940
Release No. 2929 / September 29, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13631

In the Matter of **Commonwealth Equity Services, LLP d/b/a Commonwealth Financial Network,** **Respondent.**	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, AND SECTIONS 203(e) 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 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Commonwealth Equity Services, LLP d/b/a Commonwealth Financial Network ("Commonwealth" 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) and 21C of the Securities Exchange Act of 1934, and Sections 203(e) 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 Respondent's Offer, the Commission finds[1] that

Summary

1. These proceedings arise out of the violations by Commonwealth, a registered broker-dealer and investment adviser, of Rule 30(a) of Regulation S-P (17 C.F.R. § 248.30(a)) (the "Safeguards Rule"), which requires broker-dealers and Commission-registered investment advisers to adopt written policies and procedures reasonably designed to protect customer information. At all relevant times, Commonwealth recommended – but did not require – that its registered representatives maintain antivirus software on their computers, which the registered representatives used to access customer account information on the firm's intranet and trading platform. As a result, Commonwealth's customer information was left vulnerable to unauthorized access. In addition, Commonwealth did not have procedures in place to adequately review its registered representatives' computer security measures. In particular, Commonwealth's internal auditors did not audit branch office computers to determine whether antivirus software was installed, nor did Commonwealth have procedures in place to follow up on potential computer security issues uncovered during branch audits or when registered representatives contacted Commonwealth's information technology help desk for computer-related assistance.

2. In November 2008, an unauthorized party ("intruder") obtained the login credentials of a Commonwealth registered representative through the use of a computer virus and was thereby able to access Commonwealth's intranet. The intruder accessed a list of 368 of the representative's Commonwealth customer accounts (which included certain customer account information) and entered unauthorized purchase orders in eight of those accounts before the activity was detected by Commonwealth's clearing broker-dealer and the intruders were blocked from further trading.[2] Although Commonwealth absorbed the monetary losses, its failures allowed the intruder to have access to certain customer information relating to 368 of the representative's customer accounts.

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

[2] The 368 accounts that were improperly accessed included both broker-dealer customer accounts and investment advisory client accounts. For convenience, unless otherwise specified, this Order refers to all of Commonwealth's accounts, including the 368 accounts as customer accounts.

Respondent

3. Commonwealth, headquartered in Waltham, Massachusetts, is registered with the Commission as a broker-dealer (File No. 8-24040) and investment adviser (File No. 801-41541). Commonwealth is privately owned, employs approximately 400 people at its main office in Waltham and has an additional operational office in San Diego, California that employs approximately 55 people and also serves as an Office of Supervisory Jurisdiction ("OSJ"). Commonwealth has approximately 1,600 independent contractor registered representatives ("registered representatives") operating from approximately 1,069 branch offices, 110 of which are designated as OSJs. Commonwealth also has approximately 19 unregistered, non-branch locations. Commonwealth offers a variety of products and services, including general securities, mutual funds, and variable insurance products to its retail customer base. Commonwealth has over 165,000 customer brokerage accounts and approximately 95,000 investment advisory client accounts. It conducts approximately 200,000 trades per month in these accounts.

Background

4. At all relevant times, Commonwealth did not directly provide its customers with an online trading platform. Rather, Commonwealth provided its registered representatives with access to its clearing broker's proprietary trading platform through Commonwealth's intranet trading site. Using login credentials, Commonwealth's registered representatives could access the trading platform online from any computer with an Internet connection. Pursuant to its independent contractor model, Commonwealth required its branch office registered representatives to supply their own computer hardware and software.

5. In or around November 2008, an unauthorized party obtained the login credentials of one of Commonwealth's registered representatives through the use of a malware/keystroke logger virus. The virus was placed on the registered representative's computer, which at the time did not have antivirus software properly employed. In early November 2008, the intruder, using the registered representative's login credentials, entered Commonwealth's intranet site and viewed information on how to execute trades. Approximately a week later, the intruder used the same registered representative's login credentials to enter the trading platform. The intruder ran a search query for the Commonwealth registered representative's customer accounts with cash balances in excess of a certain amount, generating a list of 368 accounts. By doing so, the intruder had access to the account name, account number, account registration type, account net worth, cash balance, and the last four digits of the account owner's Social Security number for all 368 accounts.

6. On that same day, the intruder placed or attempted to place eighteen unauthorized purchase orders for the common stock of one publicly-traded company in eight of the 368 customer accounts identified, totaling over $523,000 of unauthorized purchases. Within ten minutes of placing the trades, Commonwealth's clearing broker-dealer detected the activity and the intruder was blocked from further trading. Commonwealth immediately canceled the unauthorized purchases and transferred them into its error account, ultimately absorbing a net loss of approximately $8,000, and reported the incident to the Commission staff. Commonwealth also notified the owners of the 368 accounts.

Commonwealth's Failure to Safeguard Customer Information and Inadequate Response to Known Deficiencies and Anticipated Security Threats

7. Regulation S-P became effective on November 13, 2000, and compliance has been mandatory since July 1, 2001. The Safeguards Rule requires that every broker, dealer and investment company, and every investment adviser registered with the Commission ("Covered Institutions"), adopt polices and procedures reasonably designed to: (1) insure the security and confidentiality of customer records and information; (2) protect against any anticipated threats or hazards to the security or integrity of customer records and information; and (3) protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer. In 2004, Regulation S-P was amended to require, among other things, that the policies and procedures Covered Institutions must adopt under the Safeguards Rule be in writing. This written safeguards policies and procedures requirement became effective on January 11, 2005, and compliance became mandatory on July 1, 2005.

8. Commonwealth had policies and procedures in place that were apparently designed to safeguard customer records and information at the time of the November 2008 intrusions. Commonwealth's written policies, which were disseminated to registered representatives via publication on Commonwealth's intranet, required each registered representative to maintain the security of the information entrusted to that person. Commonwealth was aware of the threat to the security of customer records and information and potential for unauthorized access that could result from a computer virus, based on its presentations to registered representatives concerning identity theft and several information security newsletters distributed to registered representatives. Nonetheless, while Commonwealth's policies recommended as best practices the use of antivirus software on branch office computers used by Commonwealth's registered representatives, they did not mandate antivirus software.

9. Additionally, Commonwealth did not have adequate procedures in place to follow up on potential antivirus computer security issues uncovered when registered representatives contacted Commonwealth's information technology ("IT") help desk for computer-related assistance. During the two months prior to the November 2008 intrusions, Commonwealth's IT help desk received several calls from the Commonwealth registered representative whose computer was hacked into in November 2008, indicating that the registered representative's computer system had been compromised by a software virus. On September 17, 2008, the registered representative called Commonwealth's IT help desk referencing a potential software virus problem. The order ticket maintained by Commonwealth's IT help desk for September 17, 2008 notes that Commonwealth's help desk was unable to detect antivirus software on the registered representative's computer and therefore recommended the registered representative obtain antivirus software, unless the registered representative could confirm the anti-spyware software on the computer included an antivirus component. The IT help desk did not follow up with the registered representative, and the status of the incident was changed from "open" to "waiting for reply." One day prior to the first known intrusion in early November 2008, the same registered representative again called Commonwealth's IT help desk to report additional computer problems

and the help desk employee noted that the registered representative's computer "has a major virus" and told him to take the computer to his local computer technology person to have it repaired. The registered representative brought his computer to his local technology person that afternoon, although by this time the intruder was already in possession of the login credentials necessary to access the representative's Commonwealth customer accounts.

10. Although Commonwealth's policies for customer records and information prior to the November 2008 intrusions in certain respects addressed administrative, technical, and physical safeguards for the protection of its customer records and information, by failing to require basic safeguards such as antivirus software on all Commonwealth registered representative's computers conducting business over the Internet and by failing to follow up, or have written procedures addressing the follow up, on security issues either uncovered in branch audits or reported to the IT help desk, Commonwealth failed to adhere to the standards of reasonable design imposed by the Safeguards Rule.

Violations of the Federal Securities Laws

11. As a result of the conduct described above, Commonwealth willfully[3] violated Rule 30(a) of Regulation S-P (17 C.F.R. § 248.30(a)), which requires broker-dealers and registered investment advisers to have written policies and procedures that are reasonably designed to safeguard customer records and information.

Remedial Efforts

12. In determining to accept Commonwealth's Offer, the Commission considered the remedial acts promptly undertaken by Commonwealth and the cooperation Commonwealth afforded the Commission staff.

IV.

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

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

A. Respondent Commonwealth cease and desist from committing or causing any violations and any future violations of Rule 30(a) of Regulation S-P (17 C.F.R. § 248.30(a));

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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)).

B. Respondent Commonwealth is censured; and

C. Respondent Commonwealth shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $100,000 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 Commonwealth 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, 33 Arch Street, 23rd Floor, Boston, Massachusetts 02110.

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. 60742 / September 29, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13634

In the Matter of **Regeena Resources, Inc. (n/k/a Ameridian Ventures, Inc.),** **Regency Capital West, Inc.,** **Repeater Technologies, Inc.,** **Reserve Exploration Co.,** **The Resort at Summerlin, LP,** **RimPac Resources Ltd.,** **Rio Ventures, Inc., and** **Roast "N" Roll Restaurants of the Past, 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 Regeena Resources, Inc. (n/k/a Ameridian Ventures, Inc.), Regency Capital West, Inc., Repeater Technologies, Inc., Reserve Exploration Co., The Resort at Summerlin, LP, RimPac Resources Ltd., Rio Ventures, Inc., and Roast "N" Roll Restaurants of the Past, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Regeena Resources, Inc. (n/k/a Ameridian Ventures, Inc.) (CIK No. 1073910) is a British Columbia corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Regeena is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-FR registration statement on November 16, 1998, which reported a net loss of $433,680 for the nine months ended June 30, 1998.

2. Regency Capital West, Inc. (CIK No. 1116774) is an expired Utah corporation located in Irvine, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Regency is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended December 31, 2001.

3. Repeater Technologies, Inc. (CIK No. 1052246) is a void Delaware corporation located in Sunnyvale, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Repeater 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 28, 2002, which reported a net loss of over $2.2 million for the prior three months. On October 4, 2002, the company filed a Chapter 7 petition in the U.S. Bankruptcy Court for the Northern District of California, which is still pending. As of September 21, 2009, the company's stock (symbol "RPTR") was traded on the over-the-counter markets.

4. Reserve Exploration Co. (CIK No. 353576) is a dissolved Colorado corporation located in Deming, New Mexico with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Reserve 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, 1994, which reported a net loss of $218,986 for the prior six months.

5. The Resort at Summerlin, LP (CIK No. 1058870) is a canceled Nevada limited partnership located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). The Resort at Summerlin 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, 1999, which reported a net loss of over $21 million for the prior three months. On November 21, 2000, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Nevada, and the case was terminated on January 4, 2006.

6. RimPac Resources Ltd. (CIK No. 1060080) is a permanently revoked Nevada corporation located in San Diego, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). RimPac 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, 2004, which reported a net loss of over $3.29 million since the company's September 19, 2001 inception. As of September 21, 2009, the company's stock (symbol "RIMP") was traded on the over-the-counter markets.

7. Rio Ventures, Inc. (CIK No. 1140005) is a permanently revoked Nevada corporation located in Newport Beach, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Rio Ventures 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 $15,474 since its March 10, 2000 inception.

8. Roast "N" Roll Restaurants of the Past, Inc. (CIK No. 814981) is a permanently 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). Roast "N" Roll 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 $67,044 for the prior three months.

B. DELINQUENT PERIODIC FILINGS

9. 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.

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, and any successors under Exchange Act Rules 12b-2 and/or 12g-3, 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 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 them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, 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

Attachment

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendix 1

Chart of Delinquent Filings
Regeena Resources, Inc. (n/k/a Ameridian Ventures, Inc.), et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Regeena Resources, Inc. (n/k/a Ameridian Ventures, Inc.)					
	20-F	09/30/98	03/31/99	Not filed	126
	20-F	09/30/99	03/31/00	Not filed	114
	20-F	09/30/00	04/02/01	Not filed	101
	20-F	09/30/01	04/01/02	Not filed	89
	20-F	09/30/02	03/31/03	Not filed	78
	20-F	09/30/03	03/31/04	Not filed	66
	20-F	09/30/04	03/31/05	Not filed	54
	20-F	09/30/05	03/31/06	Not filed	42
	20-F	09/30/06	04/02/07	Not filed	29
	20-F	09/30/07	03/31/08	Not filed	18
	20-F	09/30/08	03/31/09	Not filed	6
Total Filings Delinquent	11				
Regency Capital West, Inc.					
	10-KSB	06/30/02	09/30/02	Not filed	84
	10-QSB	09/30/02	11/14/02	Not filed	82
	10-QSB	12/31/02	02/14/03	Not filed	79
	10-QSB	03/31/03	05/15/03	Not filed	76
	10-KSB	06/30/03	09/29/03	Not filed	72
	10-QSB	09/30/03	11/14/03	Not filed	70
	10-QSB	12/31/03	02/17/04	Not filed	67
	10-QSB	03/31/04	05/17/04	Not filed	64
	10-KSB	06/30/04	09/28/04	Not filed	60
	10-QSB	09/30/04	11/15/04	Not filed	58
	10-QSB	12/31/04	02/14/05	Not filed	55

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-QSB	03/31/05	05/16/05	Not filed	52
	10-KSB	06/30/05	09/28/05	Not filed	48
	10-QSB	09/30/05	11/14/05	Not filed	46
	10-QSB	12/31/05	02/14/06	Not filed	43
	10-QSB	03/31/06	05/15/06	Not filed	40
	10-KSB	06/30/06	09/28/06	Not filed	36
	10-QSB	09/30/06	11/14/06	Not filed	34
	10-QSB	12/31/06	02/14/07	Not filed	31
	10-QSB	03/31/07	05/15/07	Not filed	28
	10-KSB	06/30/07	09/28/07	Not filed	24
	10-QSB	09/30/07	11/14/07	Not filed	22
	10-QSB	12/31/07	02/14/08	Not filed	19
	10-QSB	03/31/08	05/15/08	Not filed	16
	10-KSB	06/30/08	09/29/08	Not filed	12
	*10-Q**	09/30/08	11/14/08	Not filed	10
	*10-Q**	12/31/08	02/17/09	Not filed	7
	*10-Q**	03/31/09	05/15/09	Not filed	4
Total Filings Delinquent	29				
Repeater Technologies, Inc.					
	10-Q	09/27/02	11/12/02	Not filed	82
	10-Q	12/27/02	02/10/03	Not filed	79
	10-K	03/28/03	06/26/03	Not filed	75
	10-Q	06/27/03	08/11/03	Not filed	73
	10-Q	09/26/03	11/10/03	Not filed	70
	10-Q	12/26/03	02/09/04	Not filed	67
	10-K	03/26/04	06/24/04	Not filed	63
	10-Q	06/25/04	08/09/04	Not filed	61
	10-Q	09/24/04	11/08/04	Not filed	58
	10-Q	12/24/04	02/07/05	Not filed	55

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-K	03/25/05	06/23/05	Not filed	51
	10-Q	06/24/05	08/08/05	Not filed	49
	10-Q	09/30/05	11/14/05	Not filed	46
	10-Q	12/30/05	02/13/06	Not filed	43
	10-K	03/31/06	06/29/06	Not filed	39
	10-Q	06/30/06	08/14/06	Not filed	37
	10-Q	09/29/06	11/13/06	Not filed	34
	10-Q	12/29/06	02/12/07	Not filed	31
	10-K	03/30/07	06/28/07	Not filed	27
	10-Q	06/29/07	08/13/07	Not filed	25
	10-Q	09/28/07	11/13/07	Not filed	22
	10-Q	12/28/07	02/11/08	Not filed	19
	10-K	03/28/08	06/26/08	Not filed	15
	10-Q	06/27/08	08/11/08	Not filed	13
	10-Q	09/26/08	11/10/08	Not filed	10
	10-Q	12/26/08	02/09/09	Not filed	7
	10-K	03/27/09	06/25/09	Not filed	3
	10-Q	06/26/09	08/10/09	Not filed	1
Total Filings Delinquent	28				
Reserve Exploration Co.					
	10-Q	12/31/94	02/14/95	Not filed	175
	10-K	03/31/95	06/29/95	Not filed	171
	10-Q	06/30/95	08/14/95	Not filed	169
	10-Q	09/30/95	11/14/95	Not filed	166
	10-Q	12/31/95	02/14/96	Not filed	163
	10-K	03/31/96	07/01/96	Not filed	158
	10-Q	06/30/96	08/14/96	Not filed	157
	10-Q	09/30/96	11/14/96	Not filed	154
	10-Q	12/31/96	02/14/97	Not filed	151
	10-K	03/31/97	06/30/97	Not filed	147
	10-Q	06/30/97	08/14/97	Not filed	145

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-Q	09/30/97	11/14/97	Not filed	142
	10-Q	12/31/97	02/17/98	Not filed	139
	10-K	03/31/98	06/29/98	Not filed	135
	10-Q	06/30/98	08/14/98	Not filed	133
	10-Q	09/30/98	11/16/98	Not filed	130
	10-Q	12/31/98	02/16/99	Not filed	127
	10-K	03/31/99	06/29/99	Not filed	123
	10-Q	06/30/99	08/16/99	Not filed	121
	10-Q	09/30/99	11/15/99	Not filed	118
	10-Q	12/31/99	02/14/00	Not filed	115
	10-K	03/31/00	06/29/00	Not filed	111
	10-Q	06/30/00	08/14/00	Not filed	109
	10-Q	09/30/00	11/14/00	Not filed	106
	10-Q	12/31/00	02/14/01	Not filed	103
	10-K	03/31/01	06/29/01	Not filed	99
	10-Q	06/30/01	08/14/01	Not filed	97
	10-Q	09/30/01	11/14/01	Not filed	94
	10-Q	12/31/01	02/14/02	Not filed	91
	10-K	03/31/02	07/01/02	Not filed	86
	10-Q	06/30/02	08/14/02	Not filed	85
	10-Q	09/30/02	11/14/02	Not filed	82
	10-Q	12/31/02	02/14/03	Not filed	79
	10-K	03/31/03	06/30/03	Not filed	75
	10-Q	06/30/03	08/14/03	Not filed	73
	10-Q	09/30/03	11/14/03	Not filed	70
	10-Q	12/31/03	02/17/04	Not filed	67
	10-K	03/31/04	06/29/04	Not filed	63
	10-Q	06/30/04	08/16/04	Not filed	61
	10-Q	09/30/04	11/15/04	Not filed	58
	10-Q	12/31/04	02/14/05	Not filed	55
	10-K	03/31/05	06/29/05	Not filed	51
	10-Q	06/30/05	08/15/05	Not filed	49
	10-Q	09/30/05	11/14/05	Not filed	46

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-Q	12/31/05	02/14/06	Not filed	43
	10-K	03/31/06	06/29/06	Not filed	39
	10-Q	06/30/06	08/14/06	Not filed	37
	10-Q	09/30/06	11/14/06	Not filed	34
	10-Q	12/31/06	02/14/07	Not filed	31
	10-K	03/31/07	06/29/07	Not filed	27
	10-Q	06/30/07	08/14/07	Not filed	25
	10-Q	09/30/07	11/14/07	Not filed	22
	10-Q	12/31/07	02/14/08	Not filed	19
	10-K	03/31/08	06/30/08	Not filed	15
	10-Q	06/30/08	08/14/08	Not filed	13
	10-Q	09/30/08	11/14/08	Not filed	10
	10-Q	12/31/08	02/17/09	Not filed	7
	*10-K**	03/31/09	06/29/09	Not filed	3
	*10-Q**	06/30/09	08/14/09	Not filed	1
Total Filings Delinquent	59				
The Resort at Summerlin, LP					
	10-K	12/31/99	03/30/00	Not filed	114
	10-Q	03/31/00	05/15/00	Not filed	112
	10-Q	06/30/00	08/14/00	Not filed	109
	10-Q	09/30/00	11/14/00	Not filed	106
	10-K	12/31/00	04/02/01	Not filed	101
	10-Q	03/31/01	05/15/01	Not filed	100
	10-Q	06/30/01	08/14/01	Not filed	97
	10-Q	09/30/01	11/14/01	Not filed	94
	10-K	12/31/01	04/01/02	Not filed	89
	10-Q	03/31/02	05/15/02	Not filed	88
	10-Q	06/30/02	08/14/02	Not filed	85
	10-Q	09/30/02	11/14/02	Not filed	82

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-K	12/31/02	03/31/03	Not filed	78
	10-Q	03/31/03	05/15/03	Not filed	76
	10-Q	06/30/03	08/14/03	Not filed	73
	10-Q	09/30/03	11/14/03	Not filed	70
	10-K	12/31/03	03/30/04	Not filed	66
	10-Q	03/31/04	05/17/04	Not filed	64
	10-Q	06/30/04	08/16/04	Not filed	61
	10-Q	09/30/04	11/15/04	Not filed	58
	10-K	12/31/04	03/31/05	Not filed	54
	10-Q	03/31/05	05/16/05	Not filed	52
	10-Q	06/30/05	08/15/05	Not filed	49
	10-Q	09/30/05	11/14/05	Not filed	46
	10-K	12/31/05	03/31/06	Not filed	42
	10-Q	03/31/06	05/15/06	Not filed	40
	10-Q	06/30/06	08/14/06	Not filed	37
	10-Q	09/30/06	11/14/06	Not filed	34
	10-K	12/31/06	04/02/07	Not filed	29
	10-Q	03/31/07	05/15/07	Not filed	28
	10-Q	06/30/07	08/14/07	Not filed	25
	10-Q	09/30/07	11/14/07	Not filed	22
	10-K	12/31/07	03/31/08	Not filed	18
	10-Q	03/31/08	05/15/08	Not filed	16
	10-Q	06/30/08	08/14/08	Not filed	13
	10-Q	09/30/08	11/14/08	Not filed	10
	10-K	12/31/08	04/01/09	Not filed	5
	10-Q	03/31/09	05/15/09	Not filed	4
	10-Q	06/30/09	08/14/09	Not filed	1

Total Filings Delinquent 39

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
RimPac Resources Ltd.					
	10-QSB	09/30/03	11/14/03	Not filed	70
	10-KSB	12/31/03	03/30/04	Not filed	66
	10-QSB	03/31/04	05/17/04	Not filed	64
	10-QSB	06/30/04	08/16/04	Not filed	61
	10-QSB	09/30/04	11/15/04	Not filed	58
	10-KSB	12/31/04	03/31/05	Not filed	54
	10-QSB	03/31/05	05/16/05	Not filed	52
	10-QSB	06/30/05	08/15/05	Not filed	49
	10-QSB	09/30/05	11/14/05	Not filed	46
	10-KSB	12/31/05	03/31/06	Not filed	42
	10-QSB	03/31/06	05/15/06	Not filed	40
	10-QSB	06/30/06	08/14/06	Not filed	37
	10-QSB	09/30/06	11/14/06	Not filed	34
	10-KSB	12/31/06	04/02/07	Not filed	29
	10-QSB	03/31/07	05/15/07	Not filed	28
	10-QSB	06/30/07	08/14/07	Not filed	25
	10-QSB	09/30/07	11/14/07	Not filed	22
	10-KSB	12/31/07	03/31/08	Not filed	18
	*10-Q**	03/31/08	05/15/08	Not filed	16
	*10-Q**	06/30/08	08/14/08	Not filed	13
	*10-Q**	09/30/08	11/14/08	Not filed	10
	*10-K**	12/31/08	04/01/09	Not filed	5
	*10-Q**	03/31/09	05/15/09	Not filed	4
	*10-Q**	06/30/09	08/14/09	Not filed	1
Total Filings Delinquent	24				
Rio Ventures, Inc.					
	10-KSB	12/31/02	03/31/03	Not filed	78
	10-QSB	03/31/03	05/15/03	Not filed	76
	10-QSB	06/30/03	08/14/03	Not filed	73
	10-QSB	09/30/03	11/14/03	Not filed	70

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-KSB	12/31/03	03/30/04	Not filed	66
	10-QSB	03/31/04	05/17/04	Not filed	64
	10-QSB	06/30/04	08/16/04	Not filed	61
	10-QSB	09/30/04	11/15/04	Not filed	58
	10-KSB	12/31/04	03/31/05	Not filed	54
	10-QSB	03/31/05	05/16/05	Not filed	52
	10-QSB	06/30/05	08/15/05	Not filed	49
	10-QSB	09/30/05	11/14/05	Not filed	46
	10-KSB	12/31/05	03/31/06	Not filed	42
	10-QSB	03/31/06	05/15/06	Not filed	40
	10-QSB	06/30/06	08/14/06	Not filed	37
	10-QSB	09/30/06	11/14/06	Not filed	34
	10-KSB	12/31/06	04/02/07	Not filed	29
	10-QSB	03/31/07	05/15/07	Not filed	28
	10-QSB	06/30/07	08/14/07	Not filed	25
	10-QSB	09/30/07	11/14/07	Not filed	22
	10-KSB	12/31/07	03/31/08	Not filed	18
	*10-Q**	03/31/08	05/15/08	Not filed	16
	*10-Q**	06/30/08	08/14/08	Not filed	13
	*10-Q**	09/30/08	11/14/08	Not filed	10
	*10-K**	12/31/08	04/01/09	Not filed	5
	*10-Q**	03/31/09	05/15/09	Not filed	4
	*10-Q**	06/30/09	08/14/09	Not filed	1
Total Filings Delinquent	27				
Roast "N" Roll Restaurants of the Past, Inc.					
	10-QSB	06/30/03	08/14/03	Not filed	73
	10-QSB	09/30/03	11/14/03	Not filed	70
	10-KSB	12/31/03	03/30/04	Not filed	66
	10-QSB	03/31/04	05/17/04	Not filed	64

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-QSB	06/30/04	08/16/04	Not filed	61
	10-QSB	09/30/04	11/15/04	Not filed	58
	10-KSB	12/31/04	03/31/05	Not filed	54
	10-QSB	03/31/05	05/16/05	Not filed	52
	10-QSB	06/30/05	08/15/05	Not filed	49
	10-QSB	09/30/05	11/14/05	Not filed	46
	10-KSB	12/31/05	03/31/06	Not filed	42
	10-QSB	03/31/06	05/15/06	Not filed	40
	10-QSB	06/30/06	08/14/06	Not filed	37
	10-QSB	09/30/06	11/14/06	Not filed	34
	10-KSB	12/31/06	04/02/07	Not filed	29
	10-QSB	03/31/07	05/15/07	Not filed	28
	10-QSB	06/30/07	08/14/07	Not filed	25
	10-QSB	09/30/07	11/14/07	Not filed	22
	10-KSB	12/31/07	03/31/08	Not filed	18
	*10-Q**	03/31/08	05/15/08	Not filed	16
	*10-Q**	06/30/08	08/14/08	Not filed	13
	*10-Q**	09/30/08	11/14/08	Not filed	10
	*10-K**	12/31/08	04/01/09	Not filed	5
	*10-Q**	03/31/09	05/15/09	Not filed	4
	*10-Q**	06/30/09	08/14/09	Not filed	1

Total Filings Delinquent 25

* 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.

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES ACT OF 1933
Rel. No. 9068 / September 29, 2009

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 60736 / September 29, 2009

Admin. Proc. File No. 3-12626

In the Matter of

THOMAS C. BRIDGE
JAMES D. EDGE
and
JEFFREY K. ROBLES

c/o Ruberto, Israel & Weiner, P.C.
100 North Washington St.
Boston, Massachusetts 02114

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

CEASE-AND-DESIST PROCEEDING

Grounds for Remedial Action

Fraud

Failure to Supervise

Salesperson associated with registered broker-dealer employed a scheme to defraud, engaged in a practice that operated as a fraud, and misrepresented and omitted to state material facts in order to evade trading restrictions imposed by registered investment companies. Salesperson willfully violated antifraud provisions of federal securities laws. Held, it is in the public interest to bar salesperson from association with any broker or dealer with a right to reapply after five years, impose a cease-and-desist order, order disgorgement, plus prejudgment interest, and assess a civil money penalty.

Branch managers failed to exercise reasonable supervision over salespersons with a view towards preventing salespersons' violations of antifraud provisions of the securities laws. Held, it is in the public interest to bar branch managers from association with any broker or dealer in a supervisory capacity, with rights to reapply after five and three years, respectively, and to assess civil money penalties.

APPEARANCES:

Christopher P. Litterio, Barry Y. Weiner, and Michael J. Duffy, of Ruberto, Israel & Weiner, P.C., for Thomas C. Bridge, James D. Edge, and Jeffrey K. Robles.

John E. Birkenheier, Anne C. McKinley, and Richard G. Stoltz, for the Division of Enforcement.

Appeal filed: March 31, 2008
Last brief received: July 25, 2008
Oral argument: May 13, 2009

I.

Thomas C. Bridge, James D. Edge, and Jeffrey K. Robles, each a former associated person of A.G. Edwards & Sons, Inc. ("A.G. Edwards" or the "Firm"), 1/ a registered broker-dealer, appeal an administrative law judge's decision. 2/ The law judge found that Bridge, a financial consultant, or "FC," 3/ with A.G. Edwards, and Charles Sacco, 4/ also an A.G. Edwards

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1/ A.G. Edwards was acquired in January 2008 by Wachovia Corporation, which was itself acquired by Wells Fargo and Company in October 2008. In connection with the conduct at issue in this proceeding, A.G. Edwards consented, without admitting or denying any findings, to the entry of our order finding that it failed reasonably to supervise certain of the Firm's salespersons with a view to preventing their willful violation of the antifraud provisions. See A.G. Edwards & Sons, Inc., Securities Exchange Act Rel. No. 55692 (May 2, 2007), 90 SEC Docket 1618.

2/ A.G. Edwards terminated the employment of each of the respondents following the issuance of the initial decision in this case.

3/ A.G. Edwards used the term "financial consultant" or "FC" to refer to its salespersons.

4/ Sacco consented, without admitting or denying any findings, to the entry of our order finding that he violated the antifraud provisions and barring him from association with any broker or dealer, prohibiting him from serving or acting in any capacity for a registered investment company, with the right to reapply for association after two years, (continued...)

financial consultant, willfully violated Section 17(a) of the Securities Act of 1933, 5/ Section 10(b) of the Securities Exchange Act of 1934, 6/ and Exchange Act Rule 10b-5 7/ by employing deceptive tactics to evade market-timing restrictions imposed by registered investment companies. 8/

The law judge further found that Edge, a branch manager of A.G. Edwards and Bridge's direct supervisor, failed reasonably to supervise Bridge with a view to preventing his antifraud violations because he was "complicit with Bridge in the violations." In addition, the law judge found that Robles, a branch manager of A.G. Edwards and Sacco's direct supervisor, failed reasonably to supervise Sacco because he "knew, or was reckless in not knowing, of Sacco's activities of avoiding the [market timing] restrictions in block letters." We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal.

4/ (...continued)
ordering him to cease and desist from violations of the antifraud provisions, and ordering him to disgorge $272,871.22, plus prejudgment interest, with all but $15,000 of that amount waived based on his inability to pay. See Charles A. Sacco, Exchange Act Rel. No. 55693 (May 2, 2007), 90 SEC Docket 1572, 1576-78. As a result of the conduct at issue in this proceeding, A.G. Edwards terminated Sacco's employment in October 2003.

5/ 15 U.S.C. § 77q.

6/ 15 U.S.C. § 78j(b).

7/ 17 C.F.R. § 240.10b-5.

8/ We have stated that "market timing" involves the "frequent buying and selling of mutual fund shares in order to take advantage of the fact that there may be a lag between a change in the value of a mutual fund's portfolio securities and the reflection of that change in the fund's share price." Disclosure Regarding Market Timing and Selective Disclosure of Portfolio Holdings (Final Rule), Investment Company Act Rel. No. 26418 (Apr. 16, 2004), 82 SEC Docket 2685, 2686 n.11. We have noted that market timing itself is not illegal but may nevertheless harm shareholders because it "may dilute the value of long-term shareholders' interests," "may cause mutual funds to manage their portfolios in a disadvantageous manner," and "may incur increased brokerage and administrative costs related to the frequent purchases and redemptions associated with market timing." Disclosure Regarding Market Timing and Selective Disclosure of Portfolio Holdings (Proposed Rule), Investment Co. Act Rel. No. 26287 (Dec. 11, 2003), 81 SEC Docket 2971, 2979-80.

II.

A. Introduction

The record demonstrates that Bridge and Sacco took various actions – such as establishing multiple accounts with different customer names and numbers, transferring assets between accounts, transferring accounts between branch offices, and linking activity in the accounts to other FCs through the use of "split" FC numbers 9/ – in an effort to mislead mutual fund companies as to the identity of their market-timing clients. 10/ The evidence also shows that Edge was aware of, and helped facilitate, Bridge's use of these deceptive tactics. Although the evidence does not show that Robles knowingly facilitated Sacco's actions or was aware of the tactics that Sacco was repeatedly using to evade funds' trading restrictions, it indicates that Robles knew that Sacco's trading was aberrant and that Sacco was receiving correspondence from mutual fund companies placing restrictions on his trading. However, Robles did not attempt to confirm Sacco's compliance with those restrictions.

B. Bridge

Bridge worked in the Firm's Boca Raton, Florida branch office. The Division's allegations relate to Bridge's execution of 1,352 trades representing $1.126 billion between September 2001 and September 2003, on behalf of certain companies owned and controlled by Martin Oliner.

Initially, Oliner had one account held in the name of RMO, Inc. In January 2002, Bridge began receiving notices from certain mutual fund companies stating that they were concerned about the effects of market timing in their funds, that they were authorized to address this concern consistent with the applicable prospectus language, and that the RMO account had either neared, reached, or exceeded trade frequency limitations set forth in the applicable

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9/ The Firm typically assigned one FC number to a financial consultant. In situations where two financial consultants both serviced a client, the Firm assigned "split" FC numbers, i.e., an additional number shared by the two financial consultants.

10/ The record indicates that mutual funds varied as to how they identified a client account. Some fund companies used the Firm's three-digit "broker identification number," or "BIN," which was unique to each branch office, as a prefix to several other numbers that followed (e.g., BIN # 285281245 refers to a Bridge account originating from the Boca Raton, Florida branch office, whose BIN was 285). Some fund companies used numbers that do not appear to be linked with BINs. Other fund companies used both kinds of numbers. All of these identifiers, regardless of which approach a mutual fund company took, could be altered as a result of the tactics employed by Bridge and Sacco.

prospectus ("Restriction Notices"). 11/ Some of these Restriction Notices informed Bridge that the RMO account was prohibited from further purchases or exchanges. For example, on January 3, 2002, Nuveen Investments sent a fax to A.G. Edwards' mutual fund operations room in St. Louis stating, among other things, that the RMO account was "frozen due to market timing violations" by Bridge, and that if he continued to place trades, they would be rejected and Bridge would be charged for any losses incurred. On January 16, 2002, Nuveen Investments sent another fax to the mutual fund operations room noting that it was freezing that account and that "any initial purchases coming from this client will be rejected as there is now a pattern of jumping to different funds once frozen to continue market timing." The fax also noted that "any losses incurred by any fund due to continued trading/trade cancellation will be charged back." 12/ Between January 2002 and September 2003, at least twenty-three different mutual fund companies sent Bridge approximately 135 Restriction Notices.

Bridge knew that he risked losing Oliner as a client if he could not continue to accommodate Oliner's market timing trades. Bridge and Edge both testified that they discussed ways to accommodate Oliner's trading objectives because, according to Edge, there was a "very high likelihood" that Oliner would "leave" if they could not continue to place his market-timing trades. Bridge testified that he was aware that other financial consultants at the Firm were able to continue market timing on behalf of a client by using multiple account numbers and split FC numbers, and that switching accounts between branch offices was a means of generating new account and split FC numbers.

On March 25, 2002 Bridge sent an e-mail message to David Taylor, the secretary of RMO, explaining that Oliner's problem resulted from "hit[ting] the same fund families . . . over

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11/ For example, Fidelity Advisor Funds sent a letter to Bridge dated May 6, 2002, stating that the relevant Oliner-controlled account "has reached a level that is deemed disruptive" to the funds, that the funds may reject any trades pursuant to their "policy regarding short-term, excessive or otherwise disruptive trading," as noted in the prospectus, that accounts "under common ownership or control will be counted together" for purposes of the exchange limit, that the trading at issue "may harm performance by disrupting portfolio management strategies and by increasing expenses," and that the funds "prohibit disruptive trading and limit exchanges to protect the interests of all fund shareholders."

12/ Bridge testified that he received communications directly from the mutual fund companies or indirectly through the Firm's headquarters in St. Louis. Mark Roth, then the supervisor of the Firm's mutual fund order room, testified that his department's procedure was to fax and wire any communications received from mutual funds to the relevant financial consultant and to the branch manager who supervised that financial consultant.

and over again until they shut the account down," and that Bridge could help Oliner to continue market timing. Bridge's e-mail further stated:

> We have been kicked out of State Street for market timing. . . . If there are several corporations that you handle the investments for, I could facilitate trades for 3 or 4 of them, in addition to the corporate account(s) you already trade. I could set up a rotation based on each fund families [sic] policies, and have things prepared for you ahead of time. This method will keep us from hitting the same fund families too often, or purchasing too much into a small fund. This would make your job easier, and keep you from getting bounced out by fund families.

On May 9, 2002, Bridge, with Oliner's authorization, opened three new accounts in the names of three different companies that Oliner controlled – two accounts were in the Lake Worth branch office, and one account was in the Boca Raton branch. 13/ Bridge acknowledged that it was his idea to have "two different branch office numbers on four different accounts" because, in part, he did not want mutual fund companies to assume that one client was trading the account. Bridge did not identify any other reason for spreading the accounts over two branch offices. Thereafter and through September 2003, as Bridge received Restriction Notices in connection with a particular account number, he moved the account's assets back and forth between the Boca Raton and Lake Worth branch offices, generating a total of at least sixteen different account numbers for accounts controlled by Oliner. 14/ Bridge obtained and used at least fifteen different split FC numbers for these Oliner-controlled accounts, which further modified identifying information associated with these accounts and enabled him to continue to place trades as he received Restriction Notices. 15/

13/ Bridge knew that, in order to open an account in the Lake Worth, Florida branch office, he was required to work with a financial consultant assigned to that branch office, and thus acquire a split FC number with that financial consultant. He therefore knew that opening an account in the Lake Worth office would generate a new account number and a new split FC number.

14/ The record contains evidence of numerous instances of Bridge switching the Oliner accounts back and forth between branch offices shortly after receiving Restriction Notices. Bridge testified that he did not switch accounts back and forth between branch offices for other clients.

15/ Bridge testified that the other financial consultants assigned to a split FC number with him "probably" serviced the account but that he could not recall with certainty whether they did.

At oral argument, Respondents' counsel characterized Bridge's actions as "masking activity" which included entering into a "partnership with another broker so that they

(continued...)

The record contains limited information about the data that A.G. Edwards transmitted to the funds regarding the trades at issue. There is no evidence of any written policy or procedures specifying particular identifying information that the Firm required an FC to transmit with each trade. Firm officials, including Edge, testified that the Firm typically provided to the National Securities Clearing Corporation Fund/SERV ("NSCC") the account name, account number, social security number or tax identification number, and the name and FC number of the FC or FCs involved. 16/ Respondents did not, however, introduce any documentary evidence to demonstrate that they did, in fact, provide such information with respect to any transactions effected by Bridge and Sacco. The Division's expert witness, Kenneth E. Newman, testified and stated in his report that, generally speaking, Fund/SERV forwards to mutual funds the information that firms provide. However, Newman's testimony did not describe the actual information that the Firm submitted to the funds regarding the transactions at issue here.

While Respondents claim to have provided accurate and complete information about each trade, the record demonstrates that the funds had difficulty screening for market timing. Evidence shows that because, in part, of the way NSCC and the funds processed and disseminated trade data, the mutual fund personnel charged with monitoring market-timing trades often did not have access to information that would have enabled them to detect such trading, or they did not get the information until after the trade had been processed. Apparently, after NSCC received trade information, it was broken down by varying criteria and provided to different departments of the mutual fund companies' service providers, including market-timing trade monitors. 17/ These trade monitors reviewed transactions based on identifiers, such as account, branch, or FC numbers, names, or dollar volumes, or any combination of these categories to varying degrees depending on the information available at the time.

Trade monitors from three different mutual fund companies testified that they typically decided whether to reject a trade the morning after it was received (instead of in one to three days, as permitted by applicable settlement rules), due to accounting concerns regarding the valuation of their funds. Thus, the monitors were under pressure to make quick determinations about whether to cancel or reject a trade, because of market-timing concerns – a circumstance

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15/ (...continued)
would receive a separate broker ID number, or to open up a different account for any of these four clients, either within the Boca Raton office, or within the Lake Worth branch . . . ."

16/ NSCC is a "trading facilitator" that provides automated trade submission services to the mutual fund industry. A.G. Edwards transmitted all order ticket information to mutual fund companies through this system.

17/ It is unclear from the record whether NSCC or the various funds determined how to disseminate the data provided to NSCC.

that was exploited by market-timing clients. 18/ As one trade monitor testified, trying to freeze accounts associated with FC numbers was unsuccessful because

> [t]he same reps would end up back conducting market timing activity in our funds under a different number. It turned into quite the cat-and-mouse game . . . [because] we would freeze the account, and they would come back with a different rep ID, sometimes leave off the rep name, so we wouldn't know who, what rep was attached to it. 19/

The remaining trade monitor witnesses further testified that the information available during the monitoring process varied and evolved as they attempted to improve the efficacy of their detection systems. They agreed that their monitoring methods were essentially reactive and had limited capabilities, and that, combined with the volume of trades to review in a short window of time, it was not surprising that many trades violated restrictions.

Thus, as the Firm's associate compliance counsel, Alan Herzog, acknowledged in a December 2002 e-mail to Sacco, Robles, and other Firm officials ("Herzog E-mail"), the true account owner could be and was readily hidden from the funds:

> In order to bring transparency to the relationship and the parties associated, I think its [sic] important that the account registration be altered to reflect both Credit Lyonnais [the name listed on the A.G. Edwards account form for a Sacco market-timing client] as the client and Headstart [the entity actually controlling the account] as the money manager. This would ensure that the mutual funds and [variable annuities] are apprised with whom they are conducting business and would prevent the mutual funds or their underlying investors from arguing that [the Firm] has assisted one of the parties from hiding its true identity to continue its market timing strategy. 20/

18/ The record is unclear regarding what criteria other mutual fund companies used and what information they had when monitoring trades.

19/ Another trade monitor testified that when he enforced market-timing restrictions in 1999, he thought that he "could just call the reps up and say, 'Stop it.'" By late 2000, when it was apparent that the approach "didn't work," he testified that they "went right back to a war situation" that involved "sending out letters and blocking."

20/ Herzog testified that, in this e-mail, he was solely providing guidance in connection with his concerns about complying with anti-money laundering requirements. See text accompanying note 36, infra.

There is no evidence that Herzog's recommendation to increase transparency by identifying the account owner was implemented.

Bridge testified that he asked Michael Brown, the assistant supervisor of the Firm's mutual funds operations trading desk, why he was receiving so many market timing "trade cancellations" from mutual fund companies, to which Brown responded, "'[t]hey don't like that kind of activity [i.e., market timing].'" Bridge also testified that Greg Ellston, who oversaw the mutual funds sales and marketing division located in the Firm's headquarters, told him that Franklin Templeton Funds called Ellston and said, "Hey, this guy Bridge in Boca Raton is buying and selling our funds. We don't like it. We want you to tell him to stop."

The three trade monitor witnesses testified that they discouraged market timing in their respective prospectuses, internal policies, and Restriction Notices. At least four mutual fund companies eventually blocked all trading from Bridge's or Sacco's branch offices in response to their market-timing activities.

The Division's expert, Lawrence Harris, explained that market-timing strategies cause harm to funds' shareholders by diluting the value of their holdings. 21/ He explained that when market timers

> buy shares for less than they are worth, [the market timers] profit because the shares that they would receive would be more valuable than the cash that they would pay for them. The retaining shareholders would lose because the proportionate increase in the number of shares in the mutual fund would be greater than the proportionate increase in the total value of the fund's assets. The retaining shareholders suffer dilution because the [market timers] contribute less to the fund than their proportionate share of ownership.

Harris estimated that Bridge's market-timing trades caused losses of approximately $0.9 million to other shareholders of the affected funds.

C. Edge

Edge was the branch manager of A.G. Edwards' Boca Raton office, oversaw the Lake Worth office, and was Bridge's direct supervisor. Edge was responsible for reviewing two daily reports, which included a morning production run that listed all trades by FCs from the previous day and a branch supervision report that permitted a supervisor to review large trades and cancelled trades. Edge recalled seeing a handful of Restriction Notices from mutual funds

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21/ Although Respondents' expert characterizes market timing as "an ill-defined practice," he conceded that "the potential for harm" caused by market timing has been "publicly known" for a number of years.

regarding Bridge's activities, and he testified that he was aware of the restrictions mutual funds were placing on the Oliner-controlled accounts.

Edge also testified that he knew of Bridge's efforts to continue the Oliner accounts' market timing after their being restricted by mutual funds. Edge testified that he knew that transferring accounts to the Lake Worth branch would generate a new account number and that securing new account numbers would permit Oliner to continue market timing after certain mutual funds blocked the original account numbers. Edge also testified that he was aware that Bridge used split FC numbers to facilitate the transfer of Oliner's accounts to Lake Worth, and that Bridge, "[i]n most cases," informed Edge before requesting the numbers. Edge understood that by securing different identifying numbers to associate with the market-timing trades, Bridge could "continue to trade and get around [the] particular restriction" imposed by a mutual fund.

Edge "underst[ood] that the mutual funds did not favor this [market-timing] business" but did not consider Bridge's evasion of mutual fund restrictions to be fraudulent. Edge testified that he ensured that Bridge complied with the precise restrictions imposed upon his trading: "[I]f the mutual fund said they did not want Bridge under any number to trade, he wouldn't trade. If the mutual fund asked that a certain BIN number or a certain FC number no longer trade, that would be the case. We followed the letter to the letter." Evidence in the record, however, indicates that Bridge sometimes did continue to trade in funds using the same account after being restricted from doing so, and on other occasions transferred assets from the restricted account to a newly-created account in order to continue market timing. 22/

Edge testified that, although he had several conversations with his branch administrator, Michael Chitwood, about the Oliner accounts, he did not recall telling Chitwood that Bridge was using multiple account and FC numbers to evade mutual fund trading restrictions. 23/ Edge further admitted that he did not inform Greg Ellston (the Firm's director of managed products) or Mark Roth (the supervisor of the mutual fund order room) that Bridge sought to obtain new FC numbers in order to continue trading for Oliner after being restricted from trading with other numbers. Edge stated that he assumed Ellston and Roth were aware of Bridge's activity, however, because Restriction Notices were often forwarded to the branch by A.G. Edwards' home office in St. Louis, where Roth and Ellston worked.

22/ See infra note 64 and accompanying text.

23/ The record also contains evidence that Edge received two wire communications from Chitwood on July 24 and 25, 2002 inquiring about two large mutual fund trades by Bridge in one of Oliner's accounts that had been cancelled by the mutual fund. Edge responded to Chitwood in a brief message, noting that "the mutual fund identified him as a market timer & kicked it out," and mentioning that there "was no loss [to the Firm]." The message made no mention of Bridge's use of multiple account and FC numbers.

Edge's direct supervisor, Alex Bigelow, testified that neither Bridge nor Edge informed him they were using multiple account and FC numbers to evade funds' trading restrictions, and that he did not become aware of it until after September 2003; Bigelow never approved the use of these methods to evade the restrictions. Edge testified further that he did not contact anyone in the compliance department to discuss Bridge's use of multiple account and FC numbers to continue trading, testifying that he felt he "had no reason to." 24/

D. Sacco

Sacco worked in the Firm's Boston, Massachusetts ("Back Bay") branch office. Between May 2002 and September 2003, Sacco entered 25,533 market-timing trades representing $4.036 billion on behalf of two hedge-fund clients, Headstart Fund Limited ("Headstart") and Atlantique Capital Offshore Fund Limited ("Atlantique"). 25/

Like Bridge, Sacco received Restriction Notices warning that certain of his accounts had either neared, reached, or exceeded trade frequency limitations set forth in the applicable prospectus, and that, in some cases, an account was prohibited from making further purchases or exchanges. 26/ Between June 2002 and October 2003, approximately thirty-three mutual fund companies sent at least 211 Restriction Notices to Sacco. The Division's expert, Harris, estimated that the market-timing trades that Sacco placed on behalf of his clients during the

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24/ Edge testified that "all of this was normal, routine business. I don't go to my regional [manager] every day with everyday, routine, mundane type of business. There was no reason for me to contact these people unless I felt I needed some clarification or a question or something to that effect."

25/ See supra note 4.

26/ For example, with respect to a Headstart account, Credit Suisse Asset Management stated in a letter dated August 22, 2002 that the account had "repeatedly engaged in excessive trading of shares of one or more of the [Credit Suisse] Funds," that if "this type of disruptive activity continue[d] the representative on the account [would] be permanently banned from trading the Funds," that such activity had a negative impact on the Funds and shareholders, and that, "[i]n accordance with the Funds' prospectuses, the Funds [would] refuse any request on behalf of the . . . account to purchase additional shares of the Funds (by exchange or otherwise) effective immediately."

Sacco testified that he received the Restriction Notices directly through the mail at the Back Bay branch office or through a telephone conversation with a representative from a mutual fund company, or indirectly through mail that was initially delivered to the Firm's headquarters in St. Louis and then faxed or e-mailed to Sacco and/or his supervisor, Robles.

period at issue caused approximately $3.6 million in dilution losses to other shareholders of the affected funds. 27/

Between May 2002 and June 2003, Sacco opened 142 nondiscretionary accounts in the Back Bay branch office on behalf of Headstart using various names that effectively obfuscated Headstart's identity, and in variations of names that represented, at most, four Headstart subsidiaries and an entity identified as "Credit Lyonnais." 28/ Between May 2003 and July 2003, Sacco opened thirty-four nondiscretionary accounts in the Back Bay office on behalf of Atlantique. Between June 2002 and October 2003, Sacco transferred assets between Headstart or Atlantique accounts, respectively, on a regular basis. 29/ Many transfers of assets between similarly-named accounts controlled by a single client occurred within days of the issuance of a Restriction Notice. 30/

Sacco testified that, at the time, he "did not understand why the client was [transferring assets]," but that he believed the transfers "were just to get around the [Restriction Notices]." Sacco testified that he believed that his clients had multiple accounts because they "just knew

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27/ See text accompanying note 21, supra.

28/ For example, the record contains thirty-nine different accounts using variations of a Headstart subsidiary named Diagon Limited, five as to Windsor Limited, eight as to Mandrake Limited, eight as to Sempera Limited, and eighty-two as to Credit Lyonnais. The record contains limited information about these subsidiaries or Headstart's relationship to them or to Credit Lyonnais. Sacco did not indicate at the hearing whether he or Headstart determined the listed identity of the account owner.

29/ For example, Sacco transferred assets monthly among various Headstart accounts that were held in variations on the name "Diagon" a total of approximately 166 times between August 2002 and October 2003. Sacco also transferred assets monthly among various Atlantique accounts that were held in variations on the name Atlantique a total of approximately fifty-eight times between May 2003 and October 2003.

30/ For example, with respect to Diagon-related accounts, AIM Funds informed Sacco in a letter dated July 25, 2002 that account number 828033840 had two exchanges left before reaching the ten-exchange limit, at which time a "stop code" would be placed on the account. On August 8 and August 15, 2002, Sacco transferred some assets from that Diagon account to another Diagon account numbered 828035207. AIM Funds informed Sacco in a letter dated August 16, 2002 that the new account number, 828035207, reached its limit of ten exchanges that resulted in the placement of a "stop code" on that account number. On August 19 and August 26, 2002, Sacco transferred some assets from account number 828035207 to another Diagon account numbered 828034383.

that they were going to get kicked out of the funds." 31/ On cross-examination by Respondents' counsel, Sacco testified that he was "not attempting to hide anyone's identity" with the tactics that he employed and that he was instead "just putting [sic] what the client wanted." Also on cross-examination, he testified that unidentified "employees of mutual fund companies" told him that he could continue to place trades by obtaining a new FC number if the FC number he was using was blocked. However, Respondents did not introduce any evidence that corroborates Sacco's assertion that employees of mutual fund companies approved his use of split FC numbers. 32/

E. Robles

Robles was the branch manager of the Back Bay office and was Sacco's direct supervisor. Robles was responsible for reviewing incoming correspondence to the branch and testified that he received copies of many (though he believes not all) of the Restriction Notices that mutual funds sent to the Firm related to Sacco's trading. Robles or his designee reviewed and signed all order tickets for trades of $100,000 or more. Robles was responsible for reviewing daily a morning production report and a branch supervision report, which included a report of trades of $100,000 or more placed by FCs in his branch as well as trades that were cancelled by mutual funds. According to uncontested information in the Division's expert's report, "well over half" of Sacco's trades were valued in excess of $100,000 and, as discussed below, over 2,000 of his trades were cancelled by mutual funds.

Robles was new to the Firm in 2002 and admitted that he was unfamiliar with the type of trading in which Sacco was engaged, and he "didn't understand [it] initially." Robles testified that he noticed that Sacco's trading on behalf of Headstart was "crazy," because Sacco had to place a very large number of written orders late in the trading day – an "administrative nightmare" for Sacco as well as the people in "the cage" who had to enter the orders. Robles was concerned because the transfer of assets between Headstart accounts "after a large transfer of [funds from] an offshore entity" was "a red flag for money laundering."

31/ Sacco also testified that the clients had multiple accounts because "they had different type[s] of trading strategies." However, to the extent that he meant to suggest that such a purpose demonstrated a separate, legitimate intent, he did not elaborate on this point. Sacco added that, "[a]s time went on, we received more and more of these block letters. It was getting harder to place any trades of any mutual funds with any accounts because of the number of block letters."

32/ Sacco also testified, without explaining why, that only one other individual authorized to use a split FC number with him actually serviced the client on the account. Sacco further testified that, in one case, he and another financial consultant received two successive split FC numbers because the first split FC number (identified by initials only) was "shut down or we were not able to place trades," which required obtaining a second split FC number (identified with the other FC's full last name) "in order to continue trading."

Robles testified that his unfamiliarity with Sacco's trading prompted him to speak to some people at A.G. Edwards about the legality of market timing and the possibility that the accounts were being used for money laundering. Robles discussed Sacco's trading with Bill Branson, Robles' regional manager and direct supervisor, but could not recall any specific conversations or whether Robles mentioned that Sacco had been restricted from trading in certain mutual funds under certain FC numbers. Branson testified that he spoke to Robles occasionally from June 2002 through September 2003 but was not told that Sacco was receiving Restriction Notices from mutual funds or that he was using multiple account numbers and FC numbers to continue trading in those funds.

Robles also called his branch administrator, David Saunders, who directed Robles to talk to compliance. 33/ Robles called compliance and asked whether market timing was legal, but could not remember to whom he spoke. Robles testified that, during a management training session sometime in 2002, he discussed the Restriction Notices Sacco was receiving with Brian Underwood, A.G. Edwards' head of compliance, but recalled only that Underwood believed market timing to be "a business issue . . . not a compliance issue." 34/ There is no suggestion in the record that Robles mentioned to Underwood the multiple account and FC numbers Sacco used to market time for the Atlantique and Headstart accounts. The law judge found that "the evidence does not support [Robles'] representation" that he was "an honest supervisor, sincerely seeking assistance from his supervisors to cope with an unusual business situation." She concluded that she "doubt[ed] his credibility" in this regard.

A.G. Edwards' compliance department was aware, to some degree, of the activity in the Headstart accounts. On June 25, 2002, associate compliance counsel Herzog faxed a memorandum to Sacco, copying Robles, requesting information about certain of the additional accounts Sacco had established on behalf of Headstart to "know and verify the identity of [the Firm's] client" for purposes of satisfying anti-money laundering requirements established by the USA PATRIOT Act of 2001. In December 2002, Sacco and Robles received the Herzog E-mail requesting that Sacco have Headstart sign a letter indemnifying A.G. Edwards from liability associated with conducting market-timing trades. 35/ In the e-mail, Herzog noted that the Firm

> is presently reviewing its policies relating to market timing. While [A.G. Edwards] has not yet chosen to shut down market timing accounts entirely, these

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33/ Saunders testified that he spoke with Robles "a lot" but that he could not recall any specific conversation with him. Saunders testified that he did not learn that Sacco was acting to evade restrictions on trading in mutual funds until after Sacco was terminated by the Firm.

34/ Underwood did not testify.

35/ See text accompanying note 20, supra, discussing the Herzog E-mail in the context of the identifying information about client trades that was transmitted to funds through NSCC.

> accounts are closely monitored and require a signed indemnification letter by parties to the account to minimize any legal risks [A.G. Edwards] may face by conducting this business. . . . Another issue that should be addressed is how these accounts should be properly registered. . . . [Altering the registration to identify the client and the money manager] would ensure that the mutual funds and [variable annuities] are apprised with whom they are conducting business and would prevent the mutual funds or their underlying investors from arguing that [A.G. Edwards] has assisted one of the parties [in] hiding its true identity to continue its market timing strategy.

Robles testified that these communications indicated to him that the compliance department was "overseeing" Sacco's trading activity in his market timing accounts. Herzog testified, however, that the communications were limited to soliciting information related to anti-money laundering requirements and securing the documentation necessary to ensure that A.G. Edwards was indemnified from risks associated with market timing accounts. 36/ Herzog also testified that he did not perform any daily monitoring of accounts and did not oversee the branch managers' supervision of FCs. Although Herzog sought greater transparency regarding account ownership for purposes of anti-money laundering requirements, 37/ he testified that he was not aware when he sent these e-mails to Sacco that Sacco was receiving Restriction Notices from mutual funds or that Sacco was using multiple account and FC numbers to evade those restrictions. Robles similarly testified that, although he had one or more telephone conversations with Herzog regarding the need to have market-timing clients sign indemnification letters, Robles did not discuss with Herzog Sacco's use of multiple account and FC numbers to continue trading in restricted funds.

Robles knew that Sacco had opened over a hundred accounts for Headstart and had himself approved eleven requests from Sacco to use split FC numbers. Four of these FC numbers were split with two FCs who eventually left the Firm; yet Sacco continued to place market-timing trades using these split FC numbers for several months. Robles testified that, when he received Restriction Notices related to Sacco's trading and called A.G. Edwards' home office for guidance, he was instructed to tell Sacco to "sell out of the fund." Robles believed at the time that Sacco was "selling out of the funds" whenever Sacco received a Restriction Notice. He testified consistently that he was unaware that Sacco was using the multiple account and FC numbers that Robles approved to circumvent mutual funds' trading restrictions, and that he

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36/ Copies of client agreements and indemnification letters in the record, executed by Oliner, are consistent with Herzog's testimony. The letters memorialize Oliner's acknowledgment that the Firm typically did not "allow clients to engage in [a market timing] strategy," but focus on the client's agreement to hold the Firm harmless for trades not executed by mutual fund companies despite the Firm's use of "best efforts" to execute orders.

37/ See text accompanying note 20, supra.

therefore did not ask anyone at A.G. Edwards whether the Firm considered these practices appropriate. 38/ Robles testified that, when you "manage a group of people, . . . you trust your people" and that "you can't manage someone by going in with the assumption that they're lying to you."

Robles was informed, however, on at least one occasion, that The Hartford Funds complained to A.G. Edwards that Sacco had continued to trade in its funds using a split FC number after he had been banned from trading in any of the company's funds. A memorandum to the file written by the A.G. Edwards employee who took the call from the fund on October 22, 2002 indicates that she informed Robles of the complaint and that Robles "stated that he would speak to [Sacco] immediately and prevent this from happening again." Robles did not recall the conversation but conceded that the memo probably accurately recounted the discussion. The record indicates that Sacco nevertheless continued to market time in The Hartford Funds, as evidenced by a Restriction Notice dated February 21, 2003 that cancels numerous trades placed by Sacco.

As noted, from June 2002 to September 2003, mutual funds cancelled over 2,000 trades in Sacco's accounts. Robles testified that he did not know how many of Sacco's trades were cancelled but that he "wouldn't have been surprised" if the number topped 1,000 or more and that it would not have looked to him like "an issue" because "there was a lot of transactions going on, there was money there going into various different funds." Robles testified that he considered it a "source[] of comfort" when a mutual fund would cancel a trade placed by Sacco because it demonstrated that the mutual funds had "a system in place . . . to catch [market timing]," and that "[i]f [Sacco did] something wrong, the mutual funds cancel[led] the trade." Robles testified that Sacco told him that the cancelled trades were "a mistake" that were entered "by error."

F. A.G. Edwards' Review of Market Timing Practices: The Winter Report

As noted above, the Firm understood that some of its clients were engaged in a market timing strategy and that market timing was not, by itself, necessarily illegal. A.G. Edwards had no formal, written policy regarding market timing until October 2003 – after the period at issue in this proceeding. Before then, the Firm's supervisory manual contained no instructions relating to overseeing brokers whose clients engaged in market timing.

38/ Robles testified that conversations with Sacco about his tactics simply "never came up," but Sacco testified that he did discuss these tactics with Robles. Although the law judge determined Robles was not credible with regard to his claimed efforts to discuss Sacco's trading with Firm officials, see text following note 34, supra, she did not make a credibility finding with respect to Robles' and Sacco's divergent testimony on this matter and left unresolved the conflict between the two.

Nevertheless, concerns about business risk prompted the Firm in late autumn 2002 to organize a working group to "review accounts with excessive mutual fund trade activity." The group, led by Bill Winter (head of mutual fund operations) and including Herzog, Ellston, and Roth, "very quickly" produced a written report (the "Winter Report") distributed on April 7, 2003 that recommended the Firm "no longer accept [market-timing] accounts and require existing ones to transfer to another firm." 39/ The Winter Report consists of a two-page summary memo accompanied by five appendices that are not discussed in any detail in the summary memo. One of the appendices, titled "Background of Market Timers at Edwards," discusses the tactics often employed by market timers and observes that, "in order to stay ahead of this 'cat and mouse game' [in which funds shut down timers when they are identified] and continue their market timing strategies, the market timers simply set up new accounts in different corporate names to mask their true identity and continue their market timing strategy." The Winter Report does not give a complete description of Bridge's or Sacco's evasive tactics, but does include in an appendix copies of Restriction Notices from mutual funds mentioning Bridge and Sacco by name that suggest that Bridge and Sacco were using multiple branch and FC numbers to continue market timing for their clients.

Testimony from members of the Winter working group suggests that, despite the Report's inclusion of some Restriction Notices complaining of Bridge's and Sacco's evasion of fund restrictions, it appears that several members of the working group had limited awareness that A.G. Edwards FCs were using multiple identifying numbers to continue market timing. Roth became aware in early 2002 that FCs were using multiple account numbers and split FC numbers to continue trading. Roth spoke to his supervisor about the activity but did not receive instructions to stop it. Herzog testified that he discovered through his participation in the Winter group in late 2002 that certain FCs at the Firm were opening new accounts to continue market timing. Herzog raised the issue with Underwood, the head of compliance, who told Herzog to ensure there was transparency for the mutual funds regarding identifying information about client trades. It is not clear from the record whether Ellston knew that Bridge and Sacco were using multiple account and split FC numbers. However, there is no evidence that any of the members of the working group, regardless of their level of knowledge about Respondents' activities, ever told Respondents that it was permissible to seek to evade market-timing restrictions.

39/ The Report explained that there were four main risks associated with market timing accounts: running afoul of anti-money laundering regulations with respect to accounts "that are trying to hide their actual ownership"; market loss exposure due to logistics in processing trades; reputational damage with the mutual fund companies; and "[h]arm to [the Firm's] other customers that have holdings in the funds involved in their activity."

III.

A. Antifraud Violations

Securities Act Section 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b-5 proscribe fraudulent conduct. 40/ These provisions "prohibit the employing of fraudulent schemes or the making of material misrepresentations and omissions in offers, purchases, or sales of securities." 41/ The United States Supreme Court has held that the antifraud provisions are "designed as a catch-all clause to prevent fraudulent practices," no matter how novel. 42/ The Supreme Court also has emphasized repeatedly that Congress crafted the antifraud provisions, not only to protect investors, but also "to achieve a high standard of business ethics . . . in every facet of the securities industry." 43/ Although market timing is not, by itself, illegal, courts have found the use of tactics similar to those employed by Bridge and Sacco to facilitate clients' market-timing activities to violate the antifraud provisions. 44/

1. Bridge's and Sacco's Conduct

Bridge and Sacco knew that mutual fund companies had policies restricting market timing but that enforcement of those policies could be circumvented through the use of various

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40/ 15 U.S.C. § 77q; 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.

41/ SEC v. Brooks, 1999 WL 493052, at *2 (N.D. Tex. July 2, 1999) (not reported in F. Supp. 2d); see also SEC v. Dain Rauscher, Inc., 254 F.3d 852, 855-56 (9th Cir. 2001) (noting that the antifraud provisions "prohibit fraudulent conduct or practices" and "forbid making a material misstatement or omission" in connection with the offer or sale of securities). The United States Supreme Court has embraced an expansive interpretation of Exchange Act Section 10(b)'s "in connection with" language. See, e.g., Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit, 547 U.S. 71, 85 (2006); SEC v. Zandford, 535 U.S. 813, 819 (2002); United States v. Naftalin, 441 U.S. 768, 773 & n.4 (1979). Respondents do not dispute that those requirements have been met.

42/ Chiarella v. United States, 445 U.S. 222, 226 (1980); see also Ernst & Ernst v. Hochfelder, 425 U.S. 185, 202-03 (1976).

43/ Naftalin, 441 U.S. at 775 (citing SEC v. Capital Gains Bureau, 375 U.S. 180, 186-187 (1963)); see also SEC v. Tambone, 550 F.3d 106, 120 (1st Cir. 2008) (noting that the text of the antifraud statutes "confirms their common purpose to prohibit a wide swath of fraudulent behavior that Congress believed impeded the smooth and honest functioning of the securities markets"), reh'g denied (Feb. 23, 2009).

44/ SEC v. Druffner, 517 F. Supp. 2d 502, 508-09 (D. Mass. 2007), aff'd sub nom. SEC v. Ficken, 546 F.3d 45 (1st Cir. 2008); SEC v. Gann, 2008 WL 857633, at *10 (N.D. Tex. Mar. 31, 2008) (not reported in F. Supp. 2d), aff'd, 565 F.3d 932 (5th Cir. 2009).

tactics (i.e., opening multiple accounts with various account names and numbers, using multiple split FC numbers, transferring accounts back and forth between branch offices, and transferring assets and mutual fund positions between accounts). Using these tactics, Bridge and Sacco repeatedly altered the identifying information associated with market-timing trades by generating new identifying information or omitting old identifying information, even though the actual client and financial consultant remained essentially the same. Their tactics concealed the fact that the actual client and FC had been subject to Restriction Notices from the mutual fund companies and therefore deceived the funds into permitting trades that conflicted with fund restrictions. Because of their altered appearance, these trades avoided altogether, or at the very least delayed, the issuance of further Restriction Notices in connection with the limitations set forth in the relevant prospectuses. As a result, Bridge's and Sacco's clients were able to pursue their market-timing strategies notwithstanding the restrictions that had been established by the funds. Accordingly, we conclude that Bridge and Sacco employed a scheme to defraud and engaged in a practice that operated as a fraud upon the mutual fund companies. 45/

The deceptive tactics used by Bridge and Sacco also constitute material misrepresentations and omissions because of the significance the mutual funds attached to

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45/ Cf. Naftalin, 441 U.S. at 770-778 (upholding district court's finding that respondent employed a scheme and artifice to defraud by deceiving certain broker-dealers into believing that he owned securities that were sold short); SEC v. Simpson Capital Mgmt., Inc., 586 F. Supp. 2d 196, 204-05 (S.D.N.Y. 2008) (denying defendants' motion to dismiss complaint alleging that defendants engaged in a scheme to defraud, and engaged in any act, practice, or course of business which operated as a fraud upon, certain mutual funds and their shareholders by deceiving them into believing that trades were submitted before a required cutoff time when they actually were submitted after the required cutoff time); Irfan Mohammed Amanat, Exchange Act Rel. No. 54708 (Nov. 3, 2006), 89 SEC Docket 714, 726-33 (finding that respondent engaged in fraudulent scheme to obtain market data rebates from Nasdaq by deceptively executing thousands of wash trades and matched orders through automated trading program that he designed); Terrance Yoshikawa, Exchange Act Rel. No. 53731 (Apr. 26, 2006), 87 SEC Docket 2924, 2930-36 (finding that respondent engaged in a manipulative trading scheme by fraudulently entering orders designed to improve the price of certain securities and then rapidly placing larger orders on the opposite side of the market from that of his initial order to take advantage of the price change he had caused); Robert W. Armstrong, III, Exchange Act Rel. No. 51920 (June 24, 2005), 85 SEC Docket 3011, 3022-28 (finding that respondent engaged in deceptive acts as part of a scheme to defraud by computing and supplying figures necessary to achieve predetermined growth rates and convey false appearance of a smooth growth trend); Orlando Joseph Jett, 57 S.E.C. 350, 352 (2004) (finding that respondent engaged in a scheme to defraud by deceiving his firm about enormous illusory profits recorded through anomaly in firm's trading and accounting systems).

knowing their customers' identities as a means of restricting market-timing practices. 46/ In SEC v. Gann, a case involving deceptive market timing similar to this appeal, the district court held:

> Given the policies of the mutual funds prohibiting market timing, their active policing of market timers, and the block notices that were sent when their rules were violated, the court determines that the mutual funds would have attached importance to Gann's use of multiple accounts and representative numbers, as well as the change in the branch office identifier, in light of the fact that Gann continued to trade in their funds after receiving block notices. Gann tried to make it appear as if different brokers and clients were making trades when he . . . continued to try to make market timing trades on behalf of [his client] after block notices were received. Accordingly, Gann's actions were material misrepresentations made in the course of buying securities. 47/

Similarly, in SEC v. Druffner, the court held a registered representative liable for securities fraud based on his use of deceptive trading techniques to facilitate market timing by clients. The court found that the defendant made material misrepresentations because he, among others, "used a total of thirteen different [FC] numbers and over 170 brokerage accounts to carry out . . . market timing transactions even though [he and the other members of his group] had only five clients." 48/ The court also found that the defendant "clearly misrepresented the nature of his and the [group's] transactions to the mutual funds," and that, given the mutual fund companies' requests that the group discontinue its market timing activities, the "multitude of [registered representative] numbers and accounts was a method of concealing the true identities

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46/ A fact is material if there is a substantial likelihood that a reasonable investor would have considered the omitted fact important to his or her investment decision, and disclosure of the omitted fact would have significantly altered the total mix of information available to the investor. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988); TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976).

47/ Gann, 2008 WL 857633, at *10. Consistent with the district court decision, the Fifth Circuit Court of Appeals found that Gann used "different and varying client account numbers to disguise the frequency and magnitude of [his client's] trading in the various funds," and that the district court's finding that such use constituted a material misrepresentation was a "reasonable interpretation of the facts." Gann, 565 F.3d at 936, 938. The court further found the Commission staff's "characterization of the use of multiple registration and account numbers as ample evidence of an intent to mislead." Id. at 938.

48/ Druffner, 517 F. Supp. 2d at 508.

of the defendant and the . . . group." 49/ The court concluded that, "had it not been for such misrepresentations, the mutual funds would not have allowed the transactions undertaken by the defendant." 50/

As in Gann and Druffner, Bridge and Sacco created the false appearance that different financial consultants and clients were making trades. The obfuscation of the account information was material because the mutual funds wanted to identify the actual clients and FCs so that they could make informed, timely decisions about rejecting or canceling a trade in connection with their efforts to limit market timing.

Respondents do not deny that Bridge and Sacco engaged in the tactics described above. Respondents contend, however, that, notwithstanding their deceptive tactics, they provided sufficient information for the funds to determine the customer identities in each case. 51/ According to Respondents, it is undisputed that "Bridge's and Sacco's trades, like all mutual fund trades [the Firm] transmits through the NSCC Fund/Serv system, identified the customer by name and tax identification number, and identified the broker or brokers by name and FC number," and that, "accordingly, all of the information necessary to identify Bridge or Sacco and their clients was fully disclosed to the mutual fund companies." 52/ Respondents assert that, based on this disclosure, the funds could, and frequently did, reject trades that conflicted with market-timing restrictions.

49/ Id. at 508.

50/ Id. at 508-09; see also Michael Joseph Boylan, 47 S.E.C. 680, 683 (1981) (finding identity of customer, who had been barred, to be material and the withholding of this information in order to process trades, where customer's business entity was instead named on the account, to be fraudulent), aff'd, SEC v. Boylan, 703 F.2d 573 (9th Cir. 1983) (Table).

51/ Respondents claimed in their reply brief and at oral argument that the basis for the Commission's agreement to voluntarily dismiss a civil fraud action against certain financial advisors in SEC v. Darryl Goldstein, No. 07 CV 11275 (S.D.N.Y. filed May 30, 2008), is "strikingly similar" to the full disclosure argument made here and that, therefore, "this case should be dismissed because it is devoid of legal or factual merit." However, the case to which Respondents cite did not involve a hearing at which findings of fact and law were made and instead resulted in a "stipulation of voluntary dismissal" without prejudice, stating that the Commission intended "to conduct additional investigation into the allegations" made in the original complaint. Id. at 1. The stipulation has no discussion of facts or law.

52/ Emphasis in original.

Respondents argue that their conduct is readily distinguishable from the conduct in Gann and Druffner because, according to Respondents, "the use of different accounts, FC or branch numbers could not have 'significantly altered the total mix' of information available to the mutual fund companies in regard to Bridge's, Sacco's, or their clients' identities, because their actual identities were disclosed." Respondents suggest that "account numbers and FC numbers were not important to the mutual fund companies' screening for market timing" because, Respondents claim, the mutual fund companies "reviewed trades primarily based on dollar volume," i.e., the funds monitored trades that exceeded a threshold dollar value, such as $50,000 or $100,000, not based on a particular account number or FC number.

We are unpersuaded by Respondents' contentions. Whether the trade monitors reviewed transactions based on numbers, names, or dollar volumes, or any combination of these categories, it is clear that the tactics used by Bridge and Sacco exploited the vulnerabilities in the monitoring systems – which were responsible for reviewing multitudinous trades under extremely tight time constraints – by obfuscating the links between related accounts. Even if the funds' trade monitors received what Respondents claim to have provided, Respondents do not dispute that, like the clients in Gann and Druffner, Oliner and Headstart, for example, were not named on the accounts, although they were the actual clients. 53/ Thus, the mutual funds could not effectively determine the real party behind the trades at issue. 54/ We have held that a salesperson can violate the antifraud provisions by masking the identity of a customer. 55/

53/ As noted, the record does not contain evidence of what Bridge and Sacco submitted to NSCC or what information trade monitors reviewed regarding any of the mutual fund transactions at issue. However, with respect to the witnesses who testified on behalf of three different mutual fund companies involved in this case, in general, trade monitors did not necessarily receive the information that Respondents claim to have submitted to NSCC. For example, the witnesses testified that a "screen shot" of a trade presented to them at the hearing, although appearing to include all categories of identifying information, did not represent the information that they typically received. These witnesses testified that representatives who submitted trades often omitted identifiers, such as representative names, representative numbers, account names, and account numbers to varying degrees. The witnesses further testified, without explaining why, that the market timing screening reports that were provided to them often lacked identifying information to varying degrees.

54/ Cf. Gann, 2008 WL 857633, at *5, *8, *10 (finding that the true client was one hedge fund and that twenty-one accounts were opened in the names of the hedge fund's affiliates, entities that were without dispute legitimate companies); Druffner, 517 F. Supp. 2d at 506 (finding that over 170 customer accounts were opened under fictitious names).

55/ See Boylan, 47 S.E.C. at 683.

Moreover, as in Gann and Druffner, Bridge and Sacco moved assets among various accounts that were controlled by one client. 56/ Bridge and Sacco did not disclose this movement of client funds, and the mutual fund trade monitors were unable to track these assets independently to determine that assets from restricted accounts were used to market time in unrestricted accounts controlled by the same client. In light of the extensive period of time that Bridge and Sacco, like the salespersons in Gann and Druffner, continued to employ their market timing strategy on behalf of their clients – and even if Bridge and Sacco did not understand the detailed mechanics of how each mutual fund company monitored its trades – it is clear that they must have been aware that their tactics were effective at circumventing the funds' restrictions. 57/ We therefore reject Respondents' contentions that Bridge's and Sacco's actions did not violate the antifraud provisions. 58/

56/ Gann, 2008 WL 857633, at *5 (finding that money was routinely transferred between accounts); Druffner, 517 F. Supp. 2d at 509 (finding that assets were split into separate accounts in order to remain under trade monitoring threshold).

57/ At oral argument, Respondents' counsel attempted to distinguish Gann by arguing that "the broker-dealer with whom [Gann] worked . . . was engaged in a much broader scheme to defraud [that involved] late trading, . . . piggybacking, [and] a lot of the types of classic masking activities, not what you see here." Respondents' counsel conceded, however, that "Gann is a little bit close to the conduct in this case." Moreover, although Respondents' counsel claimed that piggybacking and late-trading distinguished Gann from the facts here, neither the Gann district court nor the Court of Appeals referred to such conduct.

58/ The Division filed a motion for leave to file a sur-reply to Respondents' reply brief, arguing that certain information in Respondents' reply brief regarding NSCC information that Respondents claim was available to mutual fund companies "should be stricken and disregarded" because it "was not offered into evidence, admitted into evidence, or officially noticed during the administrative hearing in this matter." Specifically, the brief refers to an NSCC website hyperlink, "User Manuals," and a "Technical Manual." Respondents admit that this information was "not made part of the record in the hearing." Rule 452 of our Rules of Practice permits a party to adduce new evidence on appeal only if the moving party shows "with particularity" both (a) that the evidence is "material" and (b) that there were "reasonable grounds for failure to adduce such evidence previously." 17 C.F.R. § 201.452. Although Respondents acknowledge the application of this rule, they failed to file a corresponding motion or explain how they satisfy the standard set forth in the rule. Based on the record evidence as a whole, the information, as presented, does not alter our conclusion that Bridge's and Sacco's conduct violated the antifraud provisions.

The Division also argues in its proffered sur-reply that we should reject late-filed evidence of Bridge's inability to pay the sanctions imposed by the law judge. Because we

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2. Bridge and Sacco Acted with Scienter

Violations of Securities Act Section 17(a)(1), Exchange Act Section 10(b), and Exchange Act Rule 10b-5 require scienter, "a mental state embracing intent to deceive, manipulate or defraud." 59/ We find that Bridge and Sacco acted with scienter in that they intended to deceive the funds as to their and their customers' identities.

Communications from mutual fund companies put Bridge and Sacco on notice that their activity was at risk of being limited or stopped. Bridge's client communications indicate that he knew why Oliner's trades were being rejected or canceled and how the tactics would permit his client to evade the funds' screening efforts. Although Bridge and Sacco claim without elaboration that they had legitimate reasons for using their tactics, these unsubstantiated claims do not outweigh their testimony and conduct, both of which indicate that they understood that their tactics would mislead the funds as to the identity of their clients and, thereby, circumvent Restriction Notices. 60/ We conclude that Bridge's and Sacco's actions, which occurred over an extended period, were "intentionally geared toward evading detection" by the mutual fund companies. 61/

58/ (...continued)
reject Bridge's claim, see infra Section IV., the Division's request to file a sur-reply is moot on both points, and we accordingly deny the motion. See infra note 119.

59/ Ernst & Ernst, 425 U.S. at 193 n.12. There is no scienter requirement for violations of Securities Act Sections 17(a)(2) or (3); negligence is sufficient. Aaron v. SEC, 446 U.S. 680, 685, 701-02 (1980). Proof of scienter may be demonstrated by circumstantial evidence. Herman & MacLean v. Huddleston, 459 U.S. 375, 390-91 n.30 (1983); Valicenti Advisory Servs., Inc. v. SEC, 198 F.3d 62, 65 (2d Cir. 1999).

60/ Moreover, the Commission has held that isolated instances of seemingly innocent conduct can, when viewed as a whole, constitute circumstantial evidence of fraudulent activity. Cf. Yoshikawa, 87 SEC Docket at 2933-34.

61/ Druffner, 517 F. Supp. 2d at 509 (finding that scienter was established through evidence in the form of e-mails from mutual fund companies attempting to stop Ficken and e-mails from Ficken to his clients "indicating that the defendant's actions were intentionally geared toward evading detection by the mutual fund managers"); see also Ficken, 546 F.3d at 51-52 (finding that Ficken manipulated identifying account numbers and registered representative numbers "to misrepresent his identity and that of his clients in order to deceive mutual fund companies into allowing trades that they otherwise would have blocked . . . meet[ing] the scienter requirement of Section 17(a)(1), Section 10(b) and Rule 10b-5, and more than meet[ing] the negligence requirement of Section 17(a)(2) and Section 17(a)(3)"); Gann, 565 F.3d at 938 (viewing the Commission's "characterization of the use of multiple registration and account numbers as ample
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Respondents contend that Bridge and Sacco did not possess the requisite scienter because, "[a]t most, Bridge's and Sacco's intentions were to facilitate trading strategies for their clients, which everyone agreed was perfectly legal." Respondents claim that Bridge and Sacco "believed that they were not engaged in unlawful or prohibited conduct." However, Bridge's and Sacco's admittedly repeated use of their tactics on behalf of their market timing clients in the same funds with different accounts after having received Restriction Notices belies their claim. 62/

Respondents assert that they "complied with [A.G. Edwards'] policy, which did not prohibit the use of multiple account numbers or FC numbers for facilitating active trading." The policies, however, were silent about market timing in general and certainly did not address the propriety of Bridge's and Sacco's tactics. Respondents claim that Bridge and Sacco did not attempt to "conceal anything from their superiors, whom they believed were fully aware of their activities, a fact borne out by the Winter Group." Yet all of the Firm's management personnel witnesses, except for Edge, testified that, although they were aware that Bridge and Sacco were engaged in market timing on behalf of clients, they did not understand the full extent of Bridge's and Sacco's use of the tactics at issue. 63/

61/ (...continued)
evidence of an intent to mislead"); Gann, 2008 WL 857633, at *11 (finding that Gann acted with scienter because he "responded to block notices by changing the representative number or account number and by continuing to execute trades to circumvent the mutual funds' attempt to prohibit trades." As in Druffner, the court determined that Gann's actions were "'intentionally geared toward evading detection by the mutual fund managers.'").

62/ See Gann, 565 F.3d at 937, 939 (noting that the "district court found Gann not credible and sided with the [version of the facts presented by the] SEC," and that the facts, including Gann's "use of numerous account and registration numbers" on behalf of his client, demonstrated that Gann "did not want the fund companies catching on to his trading practices"); Gann, 2008 WL 857633, at *10, 11 (rejecting a similar argument and finding that the "overwhelming testimony and evidence . . . undercut Gann's credibility. His repeated conduct does not square with his testimony that he had no intent to deceive or defraud . . . . Gann's continuing behavior in trying to make trades [with different accounts] in funds after receiving block notices indicates his intent to deceive the mutual funds. . . . Gann knew that [his client] was a market timer and that the mutual funds were acting to prevent market timing in their funds.").

63/ In any event, management's knowledge of and acquiescence to the tactics would not necessarily refute a finding of scienter. See Jett, 57 S.E.C. at 390 (finding that, even if management knew of respondent's fraudulent conduct, "indeed even if they ordered him
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Respondents claim that Bridge and Sacco "respected the specific terms of the Restriction Notices they received." For example, they assert that the Restriction Notices did not always prohibit future trading, but sometimes merely cancelled a trade or alerted the Firm that an account was reaching a stated limit. According to Respondents, the Division's own expert, Harris, indicated in his report that Bridge and Sacco generally did not trade in accounts after they received Restriction Notices. Respondents contend that continuing to market time after receiving Restriction Notices is not a matter of fraud, but rather a matter of contract law because the notices are "merely correspondence between parties in an arms-length contractual relationship." It follows, Respondents argue, that the Restriction Notices did not "create a duty on brokers" to cease or police market-timing activities and that the law judge and the Division improperly extended the reach of the antifraud provisions to that conduct.

Respondents' literal interpretations fail to appreciate the significance of the deception that Bridge and Sacco practiced in order to continue market timing on behalf of their clients. Technical compliance through, for example, the transfer of assets from a restricted account to a newly-created unrestricted account, does not alter our conclusion that Bridge's and Sacco's intent and effect was to deceive the funds as to the identities of the client and FC. Moreover, evidence demonstrates that Bridge and Sacco did, in fact, ignore Restriction Notices and continue trading in accounts subject to such notices. 64/

Pointing to certain internal documents and settlement orders, Respondents claim that "the mutual funds conveyed mixed messages regarding their tolerance of active trading." Respondents claim that undisputed testimony shows that Bridge disclosed his market-timing plans to personnel at certain funds, who expressed no opposition to such plans and also told him that market timing of bond funds – the kind that his clients preferred to market time – was not a problem. Respondents further claim that funds were reluctant to take effective steps against market timers, such as by blocking all trades from a branch where the account was based or by terminating a dealer agreement with the broker-dealer involved, because doing so would place them at a competitive disadvantage.

63/ (...continued)
to commit it – that would not relieve Jett of responsibility for what he knew or was reckless in not knowing and for what he did").

64/ For example, in a letter to the Firm, American Century Funds stated that it froze one of Bridge's accounts after determining that the restricted account ignored earlier requests to stop engaging in "abusive trading practices." The Hartford Funds sent Sacco a letter stating that it was freezing his accounts because he ignored their earlier warning against further market-timing activity in those accounts. Evidence also contradicts Respondents' assertion that Bridge and Sacco were frequently unaware of Restriction Notices sent to the Firm's headquarters. To the contrary, testimony established that it was the Firm's practice to forward all Restriction Notices to the affected FC.

At the hearing, Bridge suggested that, in his view, the funds with which he dealt were not serious about enforcing the restrictions. 65/ Respondents introduced four documents generated by the distributor of one of the mutual fund companies at issue to support their claim that market timing was, in fact, permitted by the fund. These four exhibits, which were created between 1999 and 2001, included lists or e-mail discussions of individuals who were permitted to market time. Respondents also introduced two Commission settlement orders, which contain allegations that the advisers for two of the fund companies at issue permitted certain customers to engage in market-timing trading despite the restrictions on such activity imposed by the funds, in violation of antifraud provisions. 66/ Bridge testified that he believed that mutual funds viewed market timing as "not anything serious . . . until after [then New York Attorney General Eliot] Spitzer" began investigating the practice, i.e., late 2003. He further testified, without any corroboration, that the "sales side" of fund companies told him that they had "no problem" with his market timing. Bridge did not elaborate on what or who he meant by "sales side."

While Respondents claim that mutual funds sent mixed messages regarding their tolerance of market timing, they provide no supporting evidence other than Bridge's and Sacco's own testimony. In fact, the funds repeatedly issued Restriction Notices, which evidence shows Respondents received, and took other measures available to them in an effort to curtail these practices. Although Respondents suggest that the funds could have done more if they had been serious about stopping market timing, in fact, some of the funds did respond to Bridge's and Sacco's actions by variously freezing accounts and/or FC numbers associated with them. Moreover, while funds were reluctant to do so because of adverse effects on uninvolved customers, evidence indicates that four mutual funds blocked Bridge's or Sacco's branch offices from conducting any further business.

In this connection, we do not consider it significant that, in the two settled Commission orders introduced by Respondents, two fund advisers allowed certain customers to violate fund restrictions on market timing. As those settlement orders made clear, the advisers deceived not only the fund investors but also the funds themselves, who were not found to have any role in the scheme. We also are unpersuaded by Respondents' reference to the four distributor-generated

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65/ Likening the situation to the 1980's arcade game "Frogger," Bridge testified that "[t]hey knew these accounts were going to pop up somewhere else. If I didn't have it, it was going to be in the Fort Lauderdale office or it was going to be in a different office. It was going to be somewhere else. So the game of Frogger was just, whoop, rep number, block that BIN, block that. Never addressing the real problem, which is there's people inside of A.G. Edwards, me being one of the smallest, that were market timing. I mean, I only made $40,000, which sounds like a lot of money, but in the grand scheme of things, it was very small at A.G. Edwards. So they would just play this game of Frogger with me."

66/ See Deutsche Inv. Mgmt. Americas, Inc., Investment Advisers Act Rel. No. 2575 (Dec. 21, 2006), 89 SEC Docket 2060; Franklin Advisers, Inc., Advisers Act Rel. No. 2271 (Aug. 2, 2004), 83 SEC Docket 1770.

documents involving individuals who were permitted to market time. These documents, which predate the period at issue, do not suggest that Bridge and Sacco themselves received permission to market time. Respondents' claim that they received mixed messages was further challenged by contrary testimony from mutual fund personnel, as well as by Bridge's own admission that two members of the Firm's senior management told him that certain mutual funds had objected to Bridge's market timing activity. Bridge's and Sacco's own actions, through the use of their deceptive tactics over an extended period of time in response to Restriction Notices, further demonstrate that the messages they received from mutual fund companies were not mixed and put Respondents on notice that their market timing was not welcomed.

Accordingly, we find that Bridge and Sacco willfully violated Securities Act Section 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b-5.

B. Failure to Supervise Reasonably

Exchange Act Sections 15(b)(4)(E) and (b)(6) authorize the Commission to sanction an individual associated with a broker-dealer if the individual "has failed reasonably to supervise, with a view to preventing violations of the provisions of [the securities] statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision." 67/ In assessing the actions of Edge and Robles under these provisions, we must consider whether they exercised "reasonable [supervision] under the attendant circumstances." 68/ We have explained that "the test is whether [the] supervision was reasonably designed to prevent the violations at issue." 69/

It is undisputed that Edge and Robles had direct supervisory responsibility for Bridge and Sacco, respectively. It is also undisputed that Edge and Robles were responsible for reviewing daily trading reports that listed, among other things, trades that had been cancelled by mutual funds for violating market timing restrictions, and both admit they were aware that their supervisees were receiving Restriction Notices from mutual funds regarding their market-timing trades. Both also approved the opening of many of the new account and split FC numbers used to perpetuate the trading at issue. Yet neither supervisor took steps to curb his supervisee's use of various tactics to evade funds' trade restrictions.

Edge, in fact, was fully aware of, and complicit in, the tactics Bridge used to continue trading in mutual funds that had placed restrictions on Bridge's trading. Edge testified that he knew these mutual funds did not "favor" market timing but believed it was the funds' own

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67/ 15 U.S.C. §§ 78o(b)(4)(E), (b)(6).

68/ Clarence Z. Wurts, 54 S.E.C. 1121, 1130 (2001) (quoting Arthur James Huff, 50 S.E.C. 524, 528-29 (1991)).

69/ Albert Vincent O'Neal, 51 S.E.C. 1128, 1135 (1994).

responsibility to detect and prevent or cancel unwelcome trades. Edge's knowing assistance of Bridge's efforts to evade funds' trading restrictions and failure to prevent them was at least unreasonable.

Although the evidence does not establish that Robles was complicit in Sacco's fraud, it establishes that he should have been aware of it. Sacco placed over 25,000 market-timing trades during the period at issue, most of which were in amounts over $100,000 and which therefore would have appeared on the daily trade reports Robles reviewed. In addition, mutual funds cancelled over 2,000 of Sacco's trades – cancellations that also would have appeared on daily reports to which Robles had access and of which Robles admitted having some awareness. Sacco received over 200 Restriction Notices from mutual funds, and Robles admitted he was aware of at least some of them. Sacco traded using some FC numbers – originally approved by Robles – that were split with FCs who subsequently left the Firm and therefore had no legitimate relationship to the accounts Sacco serviced. These facts should have prompted Robles to investigate Sacco's trading. Indeed, Robles testified that Sacco's frenetic trading activity struck him as "crazy." Yet, apparently, he never learned, or attempted to learn, that Sacco was evading mutual funds' restrictions by using the account and FC numbers that Robles himself approved, even though he had access to daily trading reports that should have informed him of Sacco's activity, and even though he was told that at least one mutual fund company had complained that Sacco was reentering funds from which he had been banned.

Instead, Robles assertedly assumed that Sacco was observing the restrictions mutual funds placed on his trading. We have held that, when a supervisor is aware of "any indication of irregularity," the issue "must be treated with the utmost vigilance." 70/ Robles' failure to respond adequately to indications that Sacco was engaging in questionable activity was at least unreasonable under the circumstances. 71/

Exchange Act Section 15(b)(4)(E) contains a "safe harbor" provision that protects supervisors from liability if the broker-dealer has "established procedures, and a system for

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70/ Consol. Invs. Servs., 52 S.E.C. 582, 588 (1996).

71/ See James J. Pasztor, 54 S.E.C. 398, 412-13 (1999) (finding failure to supervise where, in light of "many red flags" that employee was effecting wash trades and matched orders, supervisor "[a]t a minimum" "should have conducted an independent investigation"); Michael E. Tennenbaum, 47 S.E.C. 703, 711 (1982) (finding failure to supervise where, despite specific warnings that employee might be engaging in excessive trading, supervisor "failed to take or recommend any action to investigate [his] activities"); Blinder, Robinson & Co., 47 S.E.C. 812, 814 (1982) (finding respondents' "cursory examination" "clearly inadequate" because a failure of supervision "connotes 'a failure to learn of improprieties when diligent application of supervisory procedures would have uncovered them.'") (quoting Jerome F. Tegeler, 45 S.E.C. 512, 515 n.8 (1974) and Anthony J. Amato, 45 S.E.C. 282, 286 (1973)).

applying such procedures, which would reasonably be expected to prevent and detect . . . violations . . . and such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system . . . ." 72/

Edge and Robles argue that they should not be liable for failing to supervise Bridge and Sacco because they followed applicable Firm procedures which, they claim, were reasonably designed to prevent the misconduct at issue. Respondents assert that the Firm "had compliance and supervisory procedures in place that were reasonably expected to detect and prevent fraud, and Edge and Robles reasonably complied with those procedures." Contrary to Respondents' assertions, however, there is no evidence of a Firm policy requiring compliance review of market-timing accounts. Instead, the record demonstrates that A.G. Edwards had no policy or procedures that addressed market timing in general, and certainly had no policy designed to detect and prevent the specific tactics Bridge and Sacco employed. 73/ Rather, compliance was dependent on the active involvement of the direct supervisors who, as discussed, abdicated their responsibilities.

Further, although Respondents claim the existence of a general Firm policy of providing "transparency" to mutual funds regarding the identities of brokers and clients, this policy is evidenced only by the Herzog E-mail, which Respondents characterized at oral argument as "the most significant piece of evidence, which should exonerate Mr. Robles." However, there is no evidence in the record that Herzog's recommendation to disclose the ultimate account owner was followed. 74/

If A.G. Edwards could be said to have an informal practice of providing identifying information to mutual funds about each trade, the information supplied to NSCC, as noted, did not provide transparency to mutual funds. As evidenced by the success of Bridge's and Sacco's

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72/ See IFG Network Sec., Inc., Exchange Act Rel. No. 54127 (July 11, 2006), 88 SEC Docket 1374, 1392 (finding no failure to supervise where company "implemented procedures that were addressed specifically to disclosure" of material fact at issue that included "written compliance materials" such as a manual, pamphlet, and compliance alerts, as well as "a system for reviewing and approving purchases of [securities] that would have reasonably been expected to ensure that its associated persons disclosed all material facts to their customers").

73/ As noted, A.G. Edwards settled allegations that, from 2001 through late 2003, it failed reasonably to supervise certain salespersons in connection with market-timing activities. See supra note 1.

74/ For this reason, the Herzog E-mail supports our finding that Sacco acted with scienter in evading trading restrictions because Sacco continued to place trades on behalf of Headstart without following Herzog's advice to ensure the accounts' registration accurately reflected Headstart's identity as the account owner.

evasive tactics and testimony of personnel who policed trading in mutual funds, A.G. Edwards' disclosure did not necessarily identify the person who controlled the accounts and was insufficient to permit funds timely to detect and prevent most of Bridge's and Sacco's market-timing trades. Further, although Respondents claim that the compliance department monitored market-timing accounts, the record indicates that, to the extent compliance monitored market-timing accounts, its focus was on anti-money laundering requirements and business risk, not evasion of market-timing policies. The "safe harbor" provision of Exchange Act Section 15(b)(4)(E) therefore is unavailable to Respondents.

Edge and Robles further argue that their supervision was reasonable because they made appropriate inquiry of their superiors to determine if market timing was permissible and complied with instructions, and because the Firm was aware of, and did nothing to stop, the deceptive tactics that Bridge and Sacco used. However, Edge and Robles did not fully disclose to, or receive guidance from, more senior Firm officials about the specific tactics that Bridge and Sacco were using to circumvent mutual funds' trading restrictions. Robles admitted that he did not become aware of Sacco's use of these tactics until late 2003, after Sacco was terminated by the Firm. Accordingly, as Robles admits, he did not seek (and could not have sought) approval from his superiors regarding Sacco's specific conduct. To the extent that Robles testified that he was "an honest supervisor, sincerely seeking assistance from his supervisors to cope with an unusual business situation," the law judge did not credit this testimony, and the record does not offer reason to reject that determination. 75/ Edge's testimony similarly demonstrates that he did not inform his superiors of the specific tactics Bridge was using to evade mutual funds' trading restrictions. Further, senior employees of the Firm, including Chitwood, Herzog, Winter, Ellston, Saunders, Bigelow, and Branson, consistently testified that they were unaware of the full details regarding Bridge's and Sacco's evasion of funds' restrictions. Even if senior Firm employees were aware of the specifics of Bridge's and Sacco's conduct – a finding we need not and do not make – they may be liable for their own role in permitting Bridge's and Sacco's fraud, but their liability would not exonerate Edge and Robles. 76/

75/ The credibility determination of an initial fact finder is entitled to considerable weight and deference because it is based on hearing the witnesses' testimony and observing their demeanor. See Rita J. McConville, Exchange Act Rel. No. 51950 (June 30, 2005), 85 SEC Docket 3127, 3136 n.21, petition denied, 465 F.3d 780 (7th Cir. 2006), reh'g denied, 2007 U.S. App. LEXIS 926 (7th Cir. 2007).

76/ See, e.g., Stephen E. Muth, Exchange Act Rel. No. 52551 (Oct. 3, 2005), 86 SEC Docket 1217, 1242 ("As we have held, even where supervisory responsibility is shared, each individual can be held liable for supervisory failure.") (citing Steven P. Sanders, 53 S.E.C. 889, 904 (1998)); Robert J. Check, 49 S.E.C. 1004, 1008 (1988) ("The fact that other officials . . . shared responsibility for supervising the firm's salesmen did not relieve [respondent] of his supervisory obligations.") (citing Michael E. Tennenbaum, 47 S.E.C. 703)). See also Rita H. Malm, 52 S.E.C. 64, 76 (1994) (finding supervisory deficiency

(continued...)

The record also indicates that, notwithstanding a general inquiry into the business risks attendant to market-timing accounts by the Winter group, the Winter Report does not demonstrate that Respondents sought or were given permission to engage in the evasive tactics they used to continue market timing for their clients. Respondents characterized the Winter Group as having "thoroughly investigated the market timing practices occurring at [A.G. Edwards], documented the various practices they observed as early as the fall of 2002, and made recommendations to implement policies prohibiting market timing . . . ." However, Winter testified that the report was put together "very quickly," that in researching the matter "nobody really went to much depth," and that the intent of the document was to give a "general feel of what was going on." Although the report contains attached examples of Restriction Notices related to Bridge's and Sacco's market-timing trades, testimony suggests that the extent and details of Bridge's and Sacco's conduct were not generally known to the Winter Group. Significantly, no one in the Winter Group communicated approval of the evasive tactics to any of the Respondents and, indeed, the ultimate recommendation of the Report was to cease doing business with market timers. Further, the Winter Report was finalized and distributed to a limited group of A.G. Edwards officials (not including Respondents) in April 2003, well after most of the conduct at issue in this case took place. The Winter Report is not, therefore, persuasive evidence of the Firm's knowledge or approval of Bridge's and Sacco's efforts to evade trading restrictions and provides no defense to the allegations that Edge and Robles failed to provide reasonable supervision. 77/

76/ (...continued)
and noting that violations of law by others "does not absolve [respondent] of responsibility" for reasonable supervision).

77/ Respondents claim that the law judge's findings of violation against Edge and Robles were based on "extreme bias," which they allege was demonstrated by an analogy – made by the law judge during opening statements – between market timing and "beating your wife." Respondents argue that the analogy "evidences . . . her total misunderstanding of the charges she was presiding over – circumvention of restriction letters, not market timing." [Emphasis in original.] However, Respondents point to no prejudice suffered other than their general disagreement with the law judge's factual and legal conclusions. Moreover, in her decision, the law judge made clear her understanding that "[m]arket timing is not illegal per se," and concluded that Bridge's and Sacco's actions were deceptive. We believe the record demonstrates that the law judge permitted Respondents to defend themselves fully and that she accorded them a fair hearing. See Robert D. Potts, 53 S.E.C. 187, 209 (1997) (rejecting argument that law judge was prejudiced against respondent and observing that respondent was able to defend himself fully and received fair hearing), aff'd, 151 F.3d 810 (8th Cir. 1998), cert. denied, 526 U.S. 1097 (1999). Moreover, our review of this matter "dissipat[es] the possibility of bias" and, having reviewed Respondents' claims against the "fairness and reasonableness of the law judge's evidentiary rulings and factual and legal conclusions," we conclude that "this
(continued...)

C. Procedural Claim

Respondents challenge the law judge's decision to deny their pre-hearing request for the production of the "Division's complete file regarding Charles Sacco," along with "[n]otes and memoranda of witness statements," and "[a]ll materials obtained by any Division of the Commission regarding all of the mutual fund companies at issue in this case." Respondents contend that the law judge's denial of their request resulted in prejudice to them by

> depriving the Respondents of: (1) documents directly relevant to Mr. Sacco's credibility and impeachment as a witness for the Division, including sworn statements Mr. Sacco provided to the Commission in connection with settling administrative proceedings based on the very same activity the Division alleged against the Respondents in this action; and (2) potentially exculpatory material in the Commission's investigative files regarding the mutual fund companies the Division alleged sent letters to A.G. Edwards purportedly communicating their clear request that active trading in their funds immediately stop.

Respondents claim that the order was "in contravention of the Commission's Rules of Practice, the Jencks Act, Brady v. Maryland, and other relevant law." Respondents' contention is without merit because Respondents do not demonstrate that they were entitled to the information sought under any of these criteria.

1. Rule 231

Commission Rule of Practice 231(a) provides:

> Any respondent in an enforcement or disciplinary proceeding may move that the Division of Enforcement produce for inspection and copying any statement of any person called or to be called as a witness by the Division of Enforcement that pertains, or is expected to pertain, to his or her direct testimony and that would be required to be produced pursuant to the Jencks Act. 78/

The Division represents that it produced copies of prior statements of its proposed witnesses to Respondents eighteen days before the start of the hearing and that Respondents did not indicate

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77/ (...continued)
remedial action may be properly based on the record as developed before the law judge." Id. at 209-10.

78/ 17 C.F.R. § 201.231(a). The Jencks Act requires production, on demand, of a statement that relates to the subject matter of the testimony of witness. 15 U.S.C. § 3500.

that they were dissatisfied with the production of materials at that time. The Division further represents that it voluntarily produced draft versions of Sacco's offer of settlement and settled order in a related administrative proceeding, copies of Sacco's tax returns and W-2 forms (with only tax identification information and personal addresses redacted), and copies of related correspondence with other regulators. The Division states that it declined to produce "highly-sensitive financial disclosures [i.e., sworn financial statements] that Sacco made to the Division in June 2006 related to his financial condition at that time because they were outside the scope of . . . Rule 231 since Sacco's financial condition in June 2006 was not relevant to the proceeding [which involved 2002-2003 conduct], and the documents were not 'expected to pertain' to Sacco's direct testimony or otherwise required by the Jencks Act." We agree that these withheld financial statements fall outside the scope of Rule 231(a) and were not otherwise required to be disclosed because (1) they were not expected to, and did not, pertain to Sacco's direct testimony, and (2) in relation to the Jencks Act requirements, they are not statements that relate to the subject matter of his direct testimony.

2. Rule 230

Commission Rule of Practice 230(a)(1) provides that "the Division of Enforcement shall make available for inspection and copying by any party documents obtained by the Division prior to the institution of proceedings, in connection with the investigation leading to the Division's recommendation to institute proceedings." 79/ The Division represents that it made available its entire non-privileged investigative file to Respondents well in advance of the hearing. 80/ The Division also represents that, pursuant to a request by the law judge during a pre-hearing conference on May 29, 2007, the Division ascertained "whether any other Division offices had investigative materials related to Respondents." Based on its efforts, the Division identified two compact discs possessed by staff in the New York Regional office regarding Sacco's market timing customer, Headstart, determined that no other Division offices possessed materials related to Respondents, promptly informed Respondents of its search, and included the compact discs for copying along with the rest of the entire non-privileged investigative file.

79/ 17 C.F.R. § 201.230(a)(1).

80/ Respondents state that, rather than traveling to review the Division's investigative file, they requested an index from the Division so that they could determine what they wanted to copy. The Division provided an index – although not required to do so under the Rule – and Respondents requested that all materials listed in the index be produced. The Division complied with Respondents' request and produced the entire investigative file, except for documents it excluded under Rule 230(b), as discussed below.

To the extent the Division withheld certain documents, it did so pursuant to Rule 230(b)(1). 81/ Rule 230(c) vests the law judge with discretion to determine whether the Division's withholding of documents was appropriate. 82/ The law judge reviewed the Division's list of withheld material and determined that the Division has acted properly. Respondents do not specify what they believe was improperly withheld. We have reviewed that list and see no reason to disagree with the law judge's determination.

Rule 230(b)(2) provides that "[n]othing in this paragraph (b) authorizes the Division of Enforcement in connection with an enforcement or disciplinary proceeding to withhold, contrary to the doctrine of Brady v. Maryland, 83/ documents that contain material exculpatory evidence." 84/ The Commission has held that, "[t]o trigger the obligation to disclose under Brady, the evidence must be 'material either to [the defendant's] guilt or punishment' . . . ." 85/ As the Commission has held, Brady does not "authorize a wholesale 'fishing expedition' into investigative material." 86/ Moreover, "the purpose of the Brady rule is not to provide a defendant with a complete disclosure of all evidence . . . which might conceivably assist him in preparation of his defense." 87/ "'Brady is not a discovery rule, instead, it is intended to insure

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81/ 17 C.F.R. § 201.230(b)(1). Pursuant to this rule, the Division may withhold documents if the document is privileged; the document is an internal memorandum, note, or writing prepared by a Commission employee, other than an examination or inspection report, or is otherwise attorney work product; the document would disclose the identity of a confidential source; or the hearing officer grants leave to withhold a document or category of document as not relevant to the subject matter of the proceeding or otherwise, for good cause shown.

82/ 17 C.F.R. § 201.230(c).

83/ 373 U.S. 83, 87 (1963).

84/ 17 C.F.R. § 201.230(b)(2).

85/ Elizabeth Bamberg, 50 S.E.C. 201, 205 (1990) (citation omitted).

86/ See Jett, 52 S.E.C. at 830 ("[I]t is well established that the Supreme Court's Brady decision does not authorize respondents to engage in "fishing expeditions" through confidential Government materials in hopes of discovering something helpful to their defense.") (citation omitted); Haight & Co., 44 S.E.C. 481, 510-511 (1971) (rejecting respondents' argument that the Division of Enforcement improperly suppressed evidence favorable to their defense) (citation omitted).

87/ Rooney, Pace Inc., 48 S.E.C. 602, 606 n.7 (1986) (citing United States v. Ruggiero, 472 F.2d 599, 604 (2d Cir. 1973)).

that exculpatory material known to the Division is not kept from the respondent.'" 88/ The Division represents that it is not aware of any Brady material in any of the investigative files at issue. Respondents point to no evidence to contradict this representation. 89/ We conclude that the Division complied with the requirements of Rule 230.

3. Rules 231(b) and 230(h)

Commission Rules of Practice 231(b) and 230(h) provide that, even if Respondents were entitled to the information sought, which we do not find that they were, no rehearing or redecision of a proceeding already heard or decided is required, unless Respondents establish that the Division's failure to make a document available or to turn over a statement was not harmless error. 90/ Respondents do not satisfy this standard.

With respect to the information Respondents seek regarding Sacco, Respondents' claim that they were prevented from undermining Sacco's credibility in connection with his testimony as a witness for the Division is inconsistent with their reliance on Sacco's testimony in support of their defense. It is also unclear how Sacco's 2006 financial status would affect his credibility. Moreover, Respondents had the opportunity to examine, and did cross-examine, Sacco.

With respect to the information Respondents seek from certain mutual fund companies about market-timing practices, Respondents assert that it was "potentially exculpatory." Respondents testified and introduced documents related to certain practices and had the

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88/ Warren Lammert, Exchange Act Rel. No. 56233 (Aug. 9, 2007), 91 SEC Docket 856, 866 & n.29 (citing David M. Haber, Exchange Act Rel. No. APR-418 (Feb. 2, 1994), 55 SEC Docket 3333, 3334).

89/ Respondents rely on a decision by a Commodity Futures Trading Commission ("CFTC") law judge in Global Minerals & Metals Corp., C.F.T.C. No. 99-11, 2003 WL 23112470, at *1 (Jan. 6, 2004), to support their broader reading of the Division's Brady obligations. We have stated that "rulings by a CFTC law judge are not binding precedent on us." Lammert, 91 SEC Docket at 866. Further, Global Minerals does not stand for the proposition for which Respondents cite it. Respondents in Global Minerals identified specific exculpatory (not potentially exculpatory) evidence that the CFTC's Division of Enforcement was alleged to have knowledge of and withheld. The law judge concluded that the record provided sufficient reason to believe that the specific evidence may have been located in other CFTC offices because a certain individual associated with the evidence had changed positions within the CFTC. Thus, the law judge ordered the Division to search for the specific evidence in the locations that were "reasonably calculated to discover" such material. Here, Respondents have offered no evidence to indicate that a situation similar to the Global Minerals matter exists in this proceeding.

90/ 17 C.F.R. §§ 201.231(b), 201.230(h).

opportunity to subpoena documents and witnesses in this regard but appear not to have done so. Respondents also had the opportunity to examine, and did cross-examine, the Division's witnesses regarding mutual fund companies' market-timing practices.

Accordingly, we reject Respondents' procedural claim that they were improperly denied access to certain documents.

IV.

A. Cease-and-Desist Order

Securities Act Section 8A and Exchange Act Section 21C authorize the Commission to enter a cease-and-desist order against any person who "is violating, has violated, or is about to violate" any provision of the Securities Act or Exchange Act, respectively, or rule or regulation thereunder. 91/ In considering whether a cease-and-desist order against Bridge is appropriate, we look to whether there is some risk of future violations. 92/ We also consider whether other factors demonstrate a need for a cease-and-desist order, including the seriousness of the violation, its isolated or recurrent nature, whether the violations is recent, the respondent's state of mind, the sincerity of assurances against future violations, the opportunity to commit future violations, and the remedial function to be served by a cease-and-desist order in the context of any other sanctions sought in the proceeding. 93/

Bridge employed a variety of deceptive tactics for more than eighteen months to facilitate market timing by his clients and, thereby, generate significant income for himself. These fraudulent activities were serious and occurred repeatedly over an extended period of time. Bridge refuses to recognize that his actions were deceptive. The issuance of a cease-and-desist order would serve the remedial purpose of obliging Bridge to take his responsibilities more seriously in the event he works in the industry in the future. Moreover, the antifraud provisions

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91/ 15 U.S.C. §§ 77h-1, 78u-3. These sections do not authorize imposition of a cease-and-desist order upon persons, like Edge and Robles, who have failed reasonably to supervise, and we therefore consider only whether this remedy is appropriate as to Bridge.

92/ KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1185 (2001), reh'g denied, 55 S.E.C. 1 (2001), petition denied, 289 F.2d 109 (D.C. Cir. 2002). The risk of future violations required to support a cease-and-desist order is significantly less than that required for an injunction. Id. at 1191. "A single violation can be sufficient to indicate some risk of future violation." Amanat, 89 SEC Docket at 735 n.64 (citing Geiger v. SEC, 363 F.3d 481, 489 (D.C. Cir. 2004)).

93/ KPMG, 54 S.E.C. at 1192.

"apply to securities transactions by 'any person.'" 94/ A cease-and-desist order is therefore necessary to protect the public against future violations that Bridge could commit without being an associated person of a broker-dealer. Accordingly, we find it is in the public interest to order that Bridge cease and desist from committing or causing any violations or future violations of Securities Act Section 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b-5.

B. Associational and Supervisory Bars

Exchange Act Section 15(b)(6) authorizes us to censure, place limitations on, suspend, or bar a person associated with a broker or dealer if we determine that the person has, among other things, willfully violated the federal securities laws and it is in the public interest to do so. 95/ We have indicated that, in determining what sanction is in the public interest, we consider the factors in Steadman v. SEC. 96/ Those factors include the egregiousness of a respondent's actions, the degree of scienter involved, the isolated or recurrent nature of the infraction, the recognition of the wrongful nature of the conduct, the sincerity of any assurances against future violations, and the likelihood that the respondent's occupation will present opportunities for future violations. 97/

1. Bridge

Bridge participated in a deceptive market-timing scheme over eighteen months that defrauded many mutual funds and investors in those funds. 98/ The Division's expert calculated that, over the period, market-timing trades that Bridge placed diluted the value of affected mutual fund shares by $0.9 million. 99/ Bridge acted with a high degree of scienter, given his admitted

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94/ Cady, Roberts & Co., 40 S.E.C. 907, 911 (1961).

95/ 15 U.S.C. § 78o(b)(6).

96/ 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981).

97/ Id.

98/ We have observed previously that conduct that violates the antifraud provisions "is especially serious and subject to the severest sanctions." Justin F. Ficken, Advisers Act Rel. No. 2803 (Oct. 17, 2008), 94 SEC Docket 10887, 10891 & n.20 (citing cases).

99/ See text accompanying note 21, supra. Bridge does not dispute Harris' method of calculating the harm to shareholders, but he argues that Harris' figure is too high because it "failed to distinguish dilution resulting from market timing – which everyone agrees is not illegal – and dilution resulting from fraud." We accept Harris' calculation as a fair representation of the harm done shareholders. As explained infra with respect to Bridge's (continued...)

desire to enable his client to continue market timing using tactics that he believed would effectively circumvent the Restriction Notices he received. As described above, Bridge fails to recognize the wrongfulness of his conduct and offers no assurances against future violations. Although Bridge does not appear to be currently employed in the securities industry, his relative youth would permit him to reenter the industry at any time, and for some time to come. These factors lead us to conclude that a bar from association with any broker or dealer, with a right to reapply after five years, is necessary to protect the public interest and will serve a remedial purpose.

2. Edge

Edge acted with the same high degree of scienter exhibited by Bridge, facilitating Bridge's evasion of trading restrictions to help effect Oliner's market-timing strategy despite the objections of mutual funds. Edge was aware of, and assisted, Bridge's scheme throughout the period. Edge fails to appreciate the impropriety of Bridge's fraudulent scheme and especially his own role in furthering it. He continues to shift the responsibility for recognizing and preventing fraud to others in his firm while accepting none for himself. Although Edge appears not to be currently employed in the securities industry, nothing prevents his reentry. 100/ We have determined that a supervisory bar, with a right to reapply after five years, will encourage Edge and others similarly situated to take more seriously their supervisory responsibilities and will thereby help protect the public from dealing with securities professionals who are not adequately supervised.

3. Robles

Although we recognize that Robles' level of scienter appears to have been less than Edge's, his abdication of his supervisory duties, under the circumstances, is nevertheless troubling. Robles supervised Sacco during the seventeen months that Sacco committed fraud. During that time, the hundreds of Restriction Notices and thousands of trade cancellations triggered by Sacco's activity should have inspired Robles to take some action to investigate, understand, and perhaps stop Sacco's scheme. Moreover, like Edge, Robles has continuously insisted that any supervisory failing that may have occurred was the fault of A.G. Edwards and not his own. Also like Edge, Robles may reenter the securities industry at any time, even though

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99/ (...continued)
arguments about disgorgement, we consider all of the market-timing trades Bridge placed for the Oliner-controlled accounts to be part of the scheme to evade trading restrictions regardless of whether they triggered a Restriction Notice from the affected fund.

100/ Enforcement did not originally seek, and we decline to impose, a suspension or bar against Edge or Robles in all capacities.

he is not currently employed in it. 101/ We find that Robles' inaction and asserted blind trust of Sacco in the face of numerous red flags evidences a "fundamental misunderstanding of his supervisory duties that presents a significant likelihood that he will commit similar violations in the future." 102/ We therefore conclude that a supervisory bar, with a right to reapply in three years, is necessary to protect the public interest and will serve a remedial purpose.

C. Disgorgement

Securities Act Section 8A and Exchange Act Section 21C authorize the Commission to require disgorgement, including reasonable interest, in a cease-and-desist proceeding. 103/ "Disgorgement is an equitable remedy designed to deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws." 104/ "[T]he amount of disgorgement should include 'all gains flowing from the illegal activities.'" 105/ "The disgorged amount must be 'causally connected to the violation,' but it need not be figured with exactitude." 106/

The law judge ordered Bridge to disgorge $39,808.53, plus prejudgement interest, based on her finding that this amount, which Bridge admittedly earned in fees based on Oliner's assets held in the accounts, reasonably approximated the amount of unjust enrichment. This disgorgement order was consistent with the Gann court's finding that it was "'remedial and not punitive'" to order Gann to disgorge the $56,640.67, plus prejudgment interest, that he admittedly earned in fees, based on the customer's assets held in the account, "for the work that he performed on behalf of [his market timing client]." 107/

Bridge claims that the "alleged 'unjust enrichment' [he] obtained only pertains to those commissions earned by placing market timing trades through the alleged circumventing activity –

101/ See supra note 100.

102/ Stephen J. Horning, Exchange Act Rel. No. 56886 (Dec. 3, 2007), 92 SEC Docket 207, 226 , aff'd, No. 08-1038 (D.C. Cir. June 26, 2009).

103/ 15 U.S.C. §§ 77h-1; 78u-3.

104/ SEC v. First City Fin. Corp., 890 F.2d 1215, 1230 (D.C. Cir. 1989).

105/ SEC v. JT Wallenbrock & Assocs., 440 F.3d 1109, 1114 (9th Cir. 2006).

106/ Druffner, 517 F. Supp. 2d at 512 (citing SEC v. Happ, 392 F.3d 12, 31 (2004)).

107/ Gann, at *5, *11. Similarly, the Druffner court found that it was appropriate to order Ficken to disgorge $732,281, plus prejudgement interest, that he admittedly earned in "commissions from his market timing activities." Druffner, 517 F. Supp. 2d at 511. It is unclear whether Ficken earned income based on commissions per trade or assets in the account.

not all market timing activity." Bridge does not explain how "the alleged circumventing activity" is different from, i.e., a subset of, "all market timing activity." The evidence demonstrates that they are one and the same. Bridge's entire relationship with Oliner seems to have been based on his willingness to use deceptive tactics to facilitate the client's market timing, and he does not dispute that all trades considered in the calculation are related to Oliner's accounts. To the extent that Bridge is arguing that "the alleged circumventing activity" includes only trades that were associated with Restriction Notices, rejections, or cancellations, we disagree. The evidence demonstrates that the purpose of Bridge's scheme was to evade the trading restrictions and that he did so successfully. Thus, to exclude the seemingly innocuous trades that were not associated with Restriction Notices, rejections, or cancellations, but which nevertheless contained misleading identifying information, would ignore much of the deception that he practiced on the mutual funds. Bridge does not present any evidence of trades that were disconnected from the violative conduct. We therefore reject his distinction. 108/

Moreover, Bridge earned income from the fees that Oliner paid on a quarterly basis, determined, as in Gann, with respect to the assets held in the accounts, not from individual trades. Once the Division demonstrated that its disgorgement amount was a reasonable approximation of Bridge's unjust enrichment through his willingness to engage in fraud on his client's behalf, the burden shifted to Bridge to show that such amount was not reasonable. 109/ Bridge did not suggest an alternative calculation. We therefore conclude that it is in the public interest for Bridge to disgorge $39,808.53, plus prejudgment interest.

D. Civil Money Penalties

Exchange Act Section 21B(a) authorizes the Commission to assess a civil money penalty where a respondent has willfully violated the Exchange Act or rules and regulations thereunder, and where such a penalty is in the public interest. 110/ It specifies a three-tier system identifying the types of conduct that warrant increasingly higher penalty amounts. For each act or omission

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108/ See also SEC v. Lorin, 76 F.3d 458, 462 (2d Cir. 1996) (rejecting appellants' request to distinguish transactions where it was within the discretion of the district court to reason that all trades made involving securities at issue were in connection with violative conduct).

109/ Id. at 462. ("Where disgorgement calculations cannot be exact, 'any risk of uncertainty . . . should fall on the wrongdoer whose illegal conduct created that uncertainty.'"); see also SEC v. First City Fin. Corp., 890 F.2d at 1232 (finding that the burden shifts to the wrongdoer to show what transactions were unaffected by his offenses).

110/ 15 U.S.C. § 78u-2(a). In deciding whether a penalty is in the public interest, the Commission may consider the following six statutory factors: (1) fraud; (2) harm to others; (3) unjust enrichment; (4) prior violations; (5) need for deterrence; and (6) such other matters as justice requires. 15 U.S.C. § 78u-2(b).

by a person that violates the Exchange Act or related rules, the maximum amount of a penalty is \$6,500 in the first tier. 111/ For each act or omission by a person that involved "fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement," the maximum amount is \$60,000 in the second tier. 112/ For each act or omission that involved fraud and also "directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission," the maximum penalty amount is \$120,000 in the third tier. 113/ The Exchange Act also requires that, in determining whether civil penalties are in the public interest, we examine the above factors and also the respondent's prior disciplinary history, the need to deter others, and other matters as justice may require. 114/

1. Bridge

We find third-tier penalties appropriate to address Bridge's misconduct. Bridge engaged in deceptive acts designed to circumvent trading restrictions. His fraudulent activities directly or indirectly caused almost \$1 million in dilution losses to mutual fund shareholders and resulted in commissions of almost \$40,000 for himself. Imposition of a civil penalty is necessary to deter Bridge and others from similar misconduct. Although the Exchange Act permits us to impose a maximum of \$120,000 per violative act or omission, we have determined, in light of the circumstances here and the other sanctions imposed, to levy a penalty of \$60,000 for each of the four Oliner-controlled subsidiaries' accounts that Bridge fraudulently traded on Oliner's behalf, for a total penalty amount of \$240,000.

2. Edge

Edge was complicit in Bridge's fraud. His failure to supervise Bridge evidenced at least a reckless disregard for regulatory requirements, including the antifraud statutes and regulations as well as his supervisory duties. We find, therefore, that his conduct warrants a second-tier civil penalty, which is necessary to deter Edge and others from similar misconduct. Although in these circumstances the Exchange Act authorizes a maximum penalty of \$60,000 per violative act or omission, we have determined, in light of the other sanctions we impose against Edge, to impose a penalty of \$30,000 for each of the four Oliner-controlled subsidiaries' accounts in which Edge permitted Bridge to fraudulently trade. We therefore conclude that a total civil penalty of

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111/ See 15 U.S.C. § 78u-2(b)(1). Pursuant to the Debt Collection Improvement Act of 1996, the Commission has increased the maximum penalty amounts from those that appear in the text of the Exchange Act. See 17 C.F.R. § 201.1002, Subpt. E, Table II.

112/ 15 U.S.C. § 78u-2(b)(2).

113/ 15 U.S.C. § 78u-2(b)(3).

114/ 15 U.S.C. § 78u-2(c).

$120,000 is appropriate in light of our need to protect the investing public against future supervisory failures of this kind.

3. Robles

The record does not permit us to conclude that Robles was reckless, but his supervisory failures, in light of the red flags that should have marked Sacco's trading as deserving of higher scrutiny, were highly negligent. Robles' failure to appreciate his own important role in the detection and prevention of wrongdoing by brokers leads us to conclude that a civil penalty is necessary to encourage him and others to discharge their supervisory duties with more diligence than exhibited here. We therefore impose a first-tier civil penalty of $6,500 for each of the six entities' accounts (including the four Headstart subsidiaries, Credit Lyonnais, and Atlantique) in which he permitted Sacco to trade fraudulently, for a total penalty amount of $39,000.

4. Inability to Pay

All three Respondents argue that they are unable to pay the monetary sanctions levied against them by the law judge. 115/ Under Rule of Practice 630(a), we may, in our discretion, consider evidence of ability to pay in determining whether a respondent should be required to pay disgorgement, interest, or civil penalties. 116/ Ability to pay, however, is only one factor that informs our determination and is not dispositive. 117/

115/ The Division urges that the Commission should deem their argument waived because Respondents failed to raise it before the law judge. See David Henry Disraeli, Exchange Act Rel. No. 57027 (Dec. 21, 2007), 92 SEC Docket 852, 882 (finding that respondent "waived his right to assert the defense of an inability to pay because he did not raise the issue before the law judge below" and stating that evidence regarding a newly-claimed inability to pay will be admitted only if it comports with the requirements of Rule 452, i.e., "that such evidence is material and that there were reasonable grounds for failure to adduce such evidence previously."). However, it is uncontested that Bridge, Edge, and Sacco were terminated by A.G. Edwards upon the issuance of the law judge's decision. We find that these changed circumstances are sufficient to explain their failure to raise the issue below.

116/ 17 C.F.R. § 201.630(a).

117/ See, e.g., Brian A. Schmidt, 55 S.E.C. 576, 597-98 (2002) (noting that, under Exchange Act Section 21B, ability to pay a penalty is but one factor to consider in determining whether a penalty is in the public interest); SEC v. Warren, 534 F.3d 1368, 1370 (11th Cir. 2008) (per curiam) (stating that "at most" a defendant's ability to pay is one factor to be considered in imposing a civil money penalty or disgorgement for violations of the federal securities laws).

Bridge claims a negative net worth of over $485,000; however, the documentation he submitted demonstrates his income before he was terminated by A.G. Edwards but does not substantiate his claimed expenses 118/ and fails to explain why certain sizeable loans are not at least partially offset by the value of the assets collateralizing those loans. 119/ Robles' submission is also problematic because, although he claims a net worth of $107,944 (a figure that arguably demonstrates that he has the means to pay a civil penalty), he has submitted no supporting documentation to substantiate his asserted net worth. 120/ Edge claims a net worth of only $17,900 and notes that he has no current income and is the caretaker of two dependent children.

Although we consider claims of inability to pay in assessing sanctions, we weigh those claims against the public interest that would be served by a strict sanction. We have held that when conduct is "sufficiently egregious," the Commission may impose a sanction despite a demonstrated inability to pay. 121/ We find that the egregiousness of Bridge's and Edge's conduct outweighs any reason presented here for us to grant a discretionary waiver of disgorgement, prejudgment interest, and/or penalties. Bridge engaged in a scheme to defraud

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118/ We note that some of these claimed expenses include non-essential items like country club dues.

119/ On July 18, 2008, the Division requested leave to file a sur-reply, in which the Division, among other arguments, urges us to ignore the tax returns that Bridge submitted late as evidence of his inability to pay. Given our determination to deny Bridge's claimed inability to pay, we reject the Division's motion as moot. See supra note 58.

120/ See, e.g., Philip A. Lehman, Exchange Act Rel. No. 54660 (Oct. 27, 2006), 89 SEC Docket 536, 549 (finding respondent's evidence of inability to pay "neither adequate nor credible because his assertions variously are vague, unsubstantiated, inconsistent, or contradicted by reliable evidence").

121/ Lehman, 89 SEC Docket at 543 ("Even when a respondent demonstrates an inability to pay, we have discretion not to waive the penalty, particularly when the misconduct is sufficiently egregious."); see also Schmidt, 55 S.E.C. at 600 (finding that, although respondent's "financial statements, on their face, indicate that he is impecunious, the egregiousness of his conduct outweighs any consideration of his ability to pay"); Charles Trento, Securities Act Rel. No. 8391 (Feb. 23, 2004), 82 SEC Docket 785, 793 ("Even accepting [respondent's] financial report at face value, we find that the egregiousness of his conduct far outweighs any consideration of his present ability to pay a penalty.").

mutual funds and their shareholders, and Edge knowingly facilitated that scheme. We conclude that, in light of all the circumstances present in this case, the disgorgement and penalties imposed against Respondents are necessary to deter others from defrauding, or failing to detect and prevent others from defrauding, mutual funds and their shareholders through illegal and deceptive trading practices.

An appropriate order will issue. 122/

By the Commission (Chairman SCHAPIRO and Commissioners CASEY, WALTER, AGUILAR, and PAREDES).

Elizabeth M. Murphy
Secretary

Florence E. Harmon

By: Florence E. Harmon
Deputy Secretary

122/ We have considered all of the arguments advanced by the parties. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Rel. No. 9068 / September 29, 2009

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 60736 / September 29, 2009

Admin. Proc. File No. 3-12626

In the Matter of

THOMAS C. BRIDGE
JAMES D. EDGE
and
JEFFREY K. ROBLES

c/o Ruberto, Israel & Weiner, P.C.
100 North Washington St.
Boston, Massachusetts 02114

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Thomas C. Bridge be, and he hereby is, barred from association with any broker or dealer with a right to reapply after five years; and it is further

ORDERED that Thomas C. Bridge cease and desist from committing or causing any violations or future violations of Section 17(a) of the Securities Act of 1933, Sections 10(b) of the Exchange Act of 1934, and Exchange Act Rule 10b-5; and it is further

ORDERED that Thomas C. Bridge disgorge $39,808.53, plus prejudgment interest of $16, 665.57, such prejudgment interest calculated beginning from November 1, 2003, in accordance with Commission Rule of Practice 600; and it is further

ORDERED that Thomas C. Bridge pay a civil money penalty in the amount of $240,000; and it is further

ORDERED that James D. Edge be, and he hereby is, barred from association with any broker or dealer in a supervisory capacity with a right to reapply after five years; and it is further

ORDERED that James D. Edge pay a civil money penalty in the amount of $120,000; and it is further

ORDERED that Jeffrey K. Robles be, and he hereby is, barred from association with any broker or dealer in a supervisory capacity, with a right to reapply after three years; and it is further

ORDERED that Jeffrey K. Robles pay a civil money penalty in the amount of $39,000.

Payment of the amount to be disgorged and the civil money penalties shall be: (i) made by United States postal money order, certified check, bank cashier's check, or bank money order; (ii) made payable to the Securities and Exchange Commission; (iii) mailed or delivered by hand to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, VA 22312; and (iv) submitted under cover letter that identifies the respondent and the file number of this proceeding. A copy of the cover letter and check shall be sent to Paul G. Gizzi, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 3 World Financial Center, 4th Floor, New York, NY 10281.

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

SECURITIES EXCHANGE ACT OF 1934
Release No. 60747 / September 30, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13635

In the Matter of Redheads, Inc., Regal Communications Corp., Repligen Clinical Partners, LP, Retail Entertainment Group, Inc., R.F. Management Corp., Road Apples, Inc. (n/k/a Teledynamics, Inc.), Robec, Inc., and Rompus Interactive 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 Redheads, Inc., Regal Communications Corp., Repligen Clinical Partners, LP, Retail Entertainment Group, Inc., R.F. Management Corp., Road Apples, Inc. (n/k/a Teledynamics, Inc.), Robec, Inc., and Rompus Interactive Corp.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Redheads, Inc. (CIK No. 837596) is a void Delaware corporation located in Irvington, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Redheads 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 24, 2000, which reported a net loss of $920,172 for the prior thirteen weeks. On April 6, 1995, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Delaware, which was terminated on December 19, 2000.

2. Regal Communications Corp. (CIK No. 763414) is a New Jersey corporation located in Fort Washington, Pennsylvania with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Regal 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, 1993, which reported a net loss of $713,670 for the prior three months. On September 23, 1994, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Eastern District of Pennsylvania, which was terminated on May 6, 1997. As of September 29, 2009, the company's stock (symbol "RGCM") was traded on the over-the-counter markets.

3. Repligen Clinical Partners, L.P. (CIK No. 885434) is a canceled Delaware limited partnership located in Needham, Massachusetts with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Repligen 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 $644,669 for the prior twelve months.

4. Retail Entertainment Group, Inc. (CIK No. 907435) is a New Jersey corporation located in Eatontown, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Retail Entertainment 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 29, 2000. On November 13, 1995, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Middle District of Florida, which was terminated on August 3, 1999. As of September 29, 2009, the company's stock (symbol "RETN") was traded on the over-the-counter markets.

5. R.F. Management Corp. (CIK No. 934011) is an inactive New York corporation located in Morristown, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). R.F. Management 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 September 30, 1998, which reported a net loss of over $1.13 million for the prior twelve months. As of September 29, 2009, the company's stock (symbol "RFMC") was traded on the over-the-counter markets.

6. Road Apples, Inc. (n/k/a Teledynamics, Inc.) (CIK No. 1121987) is an inactive New York corporation located in Huntington Village, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Road Apples is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB/A registration statement on September 13, 2000.

7. Robec, Inc. (CIK No. 854462) is a withdrawn Pennsylvania corporation located in Horsham, Pennsylvania with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Robec 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 June 30, 1995, which reported a net loss of over $4.2 million for the prior six months.

8. Rompus Interactive Corp. (CIK No. 1083973) is a dissolved Florida corporation located in Toronto, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Rompus 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 February 28, 2001, which reported a net loss of $269,931 for the prior three months.

B. DELINQUENT PERIODIC FILINGS

9. 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.

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 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 them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, 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

Attachment

Appendix 1

Chart of Delinquent Filings
Redheads, Inc., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Redheads, Inc.					
	10-KSB	12/31/00	04/02/01	Not filed	101
	10-QSB	04/01/01	05/16/01	Not filed	100
	10-QSB	07/01/01	08/15/01	Not filed	97
	10-QSB	09/30/01	11/14/01	Not filed	94
	10-KSB	12/30/01	04/01/02	Not filed	89
	10-QSB	03/31/02	05/15/02	Not filed	88
	10-QSB	06/30/02	08/14/02	Not filed	85
	10-QSB	09/29/02	11/13/02	Not filed	82
	10-KSB	12/29/02	03/31/03	Not filed	78
	10-QSB	03/30/03	05/14/03	Not filed	76
	10-QSB	06/29/03	08/13/03	Not filed	73
	10-QSB	09/28/03	11/12/03	Not filed	70
	10-KSB	12/28/03	03/29/04	Not filed	66
	10-QSB	03/28/04	05/12/04	Not filed	64
	10-QSB	06/27/04	08/11/04	Not filed	61
	10-QSB	09/26/04	11/10/04	Not filed	58
	10-KSB	12/26/04	03/28/05	Not filed	54
	10-QSB	03/27/05	05/11/05	Not filed	52
	10-QSB	06/26/05	08/10/05	Not filed	49
	10-QSB	09/25/05	11/09/05	Not filed	46
	10-KSB	12/25/05	03/27/06	Not filed	42
	10-QSB	03/26/06	05/10/06	Not filed	40
	10-QSB	06/25/06	08/09/06	Not filed	37
	10-QSB	09/24/06	11/08/06	Not filed	34
	10-KSB	12/31/06	04/02/07	Not filed	29
	10-QSB	03/25/07	05/09/07	Not filed	28
	10-QSB	06/24/07	08/08/07	Not filed	25
	10-QSB	09/30/07	11/14/07	Not filed	22

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-KSB	12/30/07	03/31/08	Not filed	18
	*10-Q**	03/30/08	05/14/08	Not filed	16
	*10-Q**	06/29/08	08/13/08	Not filed	13
	*10-Q**	09/28/08	11/12/08	Not filed	10
	*10-K**	12/28/08	03/30/09	Not filed	6
	*10-Q**	03/29/09	05/13/09	Not filed	4
	*10-Q**	06/28/09	08/12/09	Not filed	1
Total Filings Delinquent	35				
Regal Communications Corp.					
	10-Q	09/30/93	11/15/93	Not filed	190
	10-Q	12/31/93	02/14/94	Not filed	187
	10-Q	03/31/94	05/16/94	Not filed	184
	10-K	06/30/94	09/28/94	Not filed	180
	10-Q	09/30/94	11/14/94	Not filed	178
	10-Q	12/31/94	02/14/95	Not filed	175
	10-Q	03/31/95	05/15/95	Not filed	172
	10-K	06/30/95	09/28/95	Not filed	168
	10-Q	09/30/95	11/14/95	Not filed	166
	10-Q	12/31/95	02/14/96	Not filed	163
	10-Q	03/31/96	05/15/96	Not filed	160
	10-K	06/30/96	09/30/96	Not filed	156
	10-Q	09/30/96	11/14/96	Not filed	154
	10-Q	12/31/96	02/14/97	Not filed	151
	10-Q	03/31/97	05/15/97	Not filed	148
	10-K	06/30/97	09/29/97	Not filed	144
	10-Q	09/30/97	11/14/97	Not filed	142
	10-Q	12/31/97	02/17/98	Not filed	139
	10-Q	03/31/98	05/15/98	Not filed	136
	10-K	06/30/98	09/28/98	Not filed	132
	10-Q	09/30/98	11/16/98	Not filed	130

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-Q	12/31/98	02/16/99	Not filed	127
	10-Q	03/31/99	05/17/99	Not filed	124
	10-K	06/30/99	09/28/99	Not filed	120
	10-Q	09/30/99	11/15/99	Not filed	118
	10-Q	12/31/99	02/14/00	Not filed	115
	10-Q	03/31/00	05/15/00	Not filed	112
	10-K	06/30/00	09/28/00	Not filed	108
	10-Q	09/30/00	11/14/00	Not filed	106
	10-Q	12/31/00	02/14/01	Not filed	103
	10-Q	03/31/01	05/15/01	Not filed	100
	10-K	06/30/01	09/28/01	Not filed	96
	10-Q	09/30/01	11/14/01	Not filed	94
	10-Q	12/31/01	02/14/02	Not filed	91
	10-Q	03/31/02	05/15/02	Not filed	88
	10-K	06/30/02	09/30/02	Not filed	84
	10-Q	09/30/02	11/14/02	Not filed	82
	10-Q	12/31/02	02/14/03	Not filed	79
	10-Q	03/31/03	05/15/03	Not filed	76
	10-K	06/30/03	09/29/03	Not filed	72
	10-Q	09/30/03	11/14/03	Not filed	70
	10-Q	12/31/03	02/17/04	Not filed	67
	10-Q	03/31/04	05/17/04	Not filed	64
	10-K	06/30/04	09/28/04	Not filed	60
	10-Q	09/30/04	11/15/04	Not filed	58
	10-Q	12/31/04	02/14/05	Not filed	55
	10-Q	03/31/05	05/16/05	Not filed	52
	10-K	06/30/05	09/28/05	Not filed	48
	10-Q	09/30/05	11/14/05	Not filed	46
	10-Q	12/31/05	02/14/06	Not filed	43
	10-Q	03/31/06	05/15/06	Not filed	40
	10-K	06/30/06	09/28/06	Not filed	36
	10-Q	09/30/06	11/14/06	Not filed	34

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-Q	12/31/06	02/14/07	Not filed	31
	10-Q	03/31/07	05/15/07	Not filed	28
	10-K	06/30/07	09/28/07	Not filed	24
	10-Q	09/30/07	11/14/07	Not filed	22
	10-Q	12/31/07	02/14/08	Not filed	19
	10-Q	03/31/08	05/15/08	Not filed	16
	10-K	06/30/08	09/29/08	Not filed	12
	10-Q	09/30/08	11/14/08	Not filed	10
	10-Q	12/31/08	02/17/09	Not filed	7
	10-Q	03/31/09	05/15/09	Not filed	4
	10-K	06/30/09	09/28/09	Not filed	0
Total Filings Delinquent	64				
Repligen Clinical Partners, LP					
	10-Q	03/31/97	05/15/97	Not filed	148
	10-Q	06/30/97	08/14/97	Not filed	145
	10-Q	09/30/97	11/14/97	Not filed	142
	10-K	12/31/97	03/31/98	Not filed	138
	10-Q	03/31/98	05/15/98	Not filed	136
	10-Q	06/30/98	08/14/98	Not filed	133
	10-Q	09/30/98	11/16/98	Not filed	130
	10-K	12/31/98	03/31/99	Not filed	126
	10-Q	03/31/99	05/17/99	Not filed	124
	10-Q	06/30/99	08/16/99	Not filed	121
	10-Q	09/30/99	11/15/99	Not filed	118
	10-K	12/31/99	03/30/00	Not filed	114
	10-Q	03/31/00	05/15/00	Not filed	112
	10-Q	06/30/00	08/14/00	Not filed	109
	10-Q	09/30/00	11/14/00	Not filed	106
	10-K	12/31/00	04/02/01	Not filed	101
	10-Q	03/31/01	05/15/01	Not filed	100

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-Q	06/30/01	08/14/01	Not filed	97
	10-Q	09/30/01	11/14/01	Not filed	94
	10-K	12/31/01	04/01/02	Not filed	89
	10-Q	03/31/02	05/15/02	Not filed	88
	10-Q	06/30/02	08/14/02	Not filed	85
	10-Q	09/30/02	11/14/02	Not filed	82
	10-K	12/31/02	03/31/03	Not filed	78
	10-Q	03/31/03	05/15/03	Not filed	76
	10-Q	06/30/03	08/14/03	Not filed	73
	10-Q	09/30/03	11/14/03	Not filed	70
	10-K	12/31/03	03/30/04	Not filed	66
	10-Q	03/31/04	05/17/04	Not filed	64
	10-Q	06/30/04	08/16/04	Not filed	61
	10-Q	09/30/04	11/15/04	Not filed	58
	10-K	12/31/04	03/31/05	Not filed	54
	10-Q	03/31/05	05/16/05	Not filed	52
	10-Q	06/30/05	08/15/05	Not filed	49
	10-Q	09/30/05	11/14/05	Not filed	46
	10-K	12/31/05	03/31/06	Not filed	42
	10-Q	03/31/06	05/15/06	Not filed	40
	10-Q	06/30/06	08/14/06	Not filed	37
	10-Q	09/30/06	11/14/06	Not filed	34
	10-K	12/31/06	04/02/07	Not filed	29
	10-Q	03/31/07	05/15/07	Not filed	28
	10-Q	06/30/07	08/14/07	Not filed	25
	10-Q	09/30/07	11/14/07	Not filed	22
	10-K	12/31/07	03/31/08	Not filed	18
	10-Q	03/31/08	05/15/08	Not filed	16
	10-Q	06/30/08	08/14/08	Not filed	13
	10-Q	09/30/08	11/14/08	Not filed	10
	10-K	12/31/08	04/01/09	Not filed	5
	10-Q	03/31/09	05/15/09	Not filed	4

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-Q	06/30/09	08/14/09	Not filed	1
Total Filings Delinquent	50				
Retail Entertainment Group, Inc.					
	10-KSB	01/28/01	04/30/01	Not filed	101
	10-QSB	04/29/01	06/13/01	Not filed	99
	10-QSB	07/29/01	09/12/01	Not filed	96
	10-QSB	10/28/01	12/12/01	Not filed	93
	10-KSB	01/27/02	04/29/02	Not filed	89
	10-QSB	04/28/02	06/12/02	Not filed	87
	10-QSB	07/28/02	09/11/02	Not filed	84
	10-QSB	10/27/02	12/11/02	Not filed	81
	10-KSB	01/26/03	04/28/03	Not filed	77
	10-QSB	04/27/03	06/11/03	Not filed	75
	10-QSB	07/27/03	09/10/03	Not filed	72
	10-QSB	10/26/03	12/10/03	Not filed	69
	10-KSB	01/25/04	04/26/04	Not filed	65
	10-QSB	04/25/04	06/09/04	Not filed	63
	10-QSB	07/25/04	09/08/04	Not filed	60
	10-QSB	10/31/04	12/15/04	Not filed	57
	10-KSB	01/30/05	05/02/05	Not filed	52
	10-QSB	05/01/05	06/15/05	Not filed	51
	10-QSB	07/31/05	09/14/05	Not filed	48
	10-QSB	10/30/05	12/14/05	Not filed	45
	10-KSB	01/29/06	05/01/06	Not filed	40
	10-QSB	04/30/06	06/14/06	Not filed	39
	10-QSB	07/30/06	09/13/06	Not filed	36
	10-QSB	10/29/06	12/13/06	Not filed	33
	10-KSB	01/28/07	04/30/07	Not filed	29
	10-QSB	04/29/07	06/13/07	Not filed	27
	10-QSB	07/29/07	09/12/07	Not filed	24

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-QSB	10/28/07	12/12/07	Not filed	21
	10-KSB	01/27/08	04/28/08	Not filed	17
	*10-Q**	04/27/08	06/11/08	Not filed	15
	*10-Q**	07/27/08	09/10/08	Not filed	12
	*10-Q**	10/26/08	12/10/08	Not filed	9
	*10-K**	01/25/09	04/27/09	Not filed	5
	*10-Q**	04/26/09	06/10/09	Not filed	3
	*10-Q**	07/26/09	09/09/09	Not filed	0
Total Filings Delinquent	35				
R.F. Management Corp.					
	10-Q	12/31/98	02/16/99	Not filed	127
	10-Q	03/31/99	05/17/99	Not filed	124
	10-Q	06/30/99	08/16/99	Not filed	121
	10-K	09/30/99	12/29/99	Not filed	117
	10-Q	12/31/99	02/14/00	Not filed	115
	10-Q	03/31/00	05/15/00	Not filed	112
	10-Q	06/30/00	08/14/00	Not filed	109
	10-K	09/30/00	12/29/00	Not filed	105
	10-Q	12/31/00	02/14/01	Not filed	103
	10-Q	03/31/01	05/15/01	Not filed	100
	10-Q	06/30/01	08/14/01	Not filed	97
	10-K	09/30/01	12/31/01	Not filed	93
	10-Q	12/31/01	02/14/02	Not filed	91
	10-Q	03/31/02	05/15/02	Not filed	88
	10-Q	06/30/02	08/14/02	Not filed	85
	10-K	09/30/02	12/30/02	Not filed	81
	10-Q	12/31/02	02/14/03	Not filed	79
	10-Q	03/31/03	05/15/03	Not filed	76
	10-Q	06/30/03	08/14/03	Not filed	73
	10-K	09/30/03	12/29/03	Not filed	69
	10-Q	12/31/03	02/17/04	Not filed	67

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-Q	03/31/04	05/17/04	Not filed	64
	10-Q	06/30/04	08/16/04	Not filed	61
	10-K	09/30/04	12/29/04	Not filed	57
	10-Q	12/31/04	02/14/05	Not filed	55
	10-Q	03/31/05	05/16/05	Not filed	52
	10-Q	06/30/05	08/15/05	Not filed	49
	10-K	09/30/05	12/29/05	Not filed	45
	10-Q	12/31/05	02/14/06	Not filed	43
	10-Q	03/31/06	05/15/06	Not filed	40
	10-Q	06/30/06	08/14/06	Not filed	37
	10-K	09/30/06	12/29/06	Not filed	33
	10-Q	12/31/06	02/14/07	Not filed	31
	10-Q	03/31/07	05/15/07	Not filed	28
	10-Q	06/30/07	08/14/07	Not filed	25
	10-K	09/30/07	12/31/07	Not filed	21
	10-Q	12/31/07	02/14/08	Not filed	19
	10-Q	03/31/08	05/15/08	Not filed	16
	10-Q	06/30/08	08/14/08	Not filed	13
	10-K	09/30/08	12/29/08	Not filed	9
	10-Q	12/31/08	02/17/09	Not filed	7
	10-Q	03/31/09	05/15/09	Not filed	4
	10-Q	06/30/09	08/14/09	Not filed	1
Total Filings Delinquent	43				
Road Apples, Inc. (n/k/a Teledynamics, Inc.					
	10-QSB	09/30/00	12/04/00	Not filed	105
	10-KSB	12/31/00	04/02/01	Not filed	101
	10-QSB	03/31/01	05/15/01	Not filed	100
	10-QSB	06/30/01	08/14/01	Not filed	97
	10-QSB	09/30/01	11/14/01	Not filed	94
	10-KSB	12/31/01	04/01/02	Not filed	89

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-QSB	03/31/02	05/15/02	Not filed	88
	10-QSB	06/30/02	08/14/02	Not filed	85
	10-QSB	09/30/02	11/14/02	Not filed	82
	10-KSB	12/31/02	03/31/03	Not filed	78
	10-QSB	03/31/03	05/15/03	Not filed	76
	10-QSB	06/30/03	08/14/03	Not filed	73
	10-QSB	09/30/03	11/14/03	Not filed	70
	10-KSB	12/31/03	03/30/04	Not filed	66
	10-QSB	03/31/04	05/17/04	Not filed	64
	10-QSB	06/30/04	08/16/04	Not filed	61
	10-QSB	09/30/04	11/15/04	Not filed	58
	10-KSB	12/31/04	03/31/05	Not filed	54
	10-QSB	03/31/05	05/16/05	Not filed	52
	10-QSB	06/30/05	08/15/05	Not filed	49
	10-QSB	09/30/05	11/14/05	Not filed	46
	10-KSB	12/31/05	03/31/06	Not filed	42
	10-QSB	03/31/06	05/15/06	Not filed	40
	10-QSB	06/30/06	08/14/06	Not filed	37
	10-QSB	09/30/06	11/14/06	Not filed	34
	10-KSB	12/31/06	04/02/07	Not filed	29
	10-QSB	03/31/07	05/15/07	Not filed	28
	10-QSB	06/30/07	08/14/07	Not filed	25
	10-QSB	09/30/07	11/14/07	Not filed	22
	10-KSB	12/31/07	03/31/08	Not filed	18
	*10-Q**	03/31/08	05/15/08	Not filed	16
	*10-Q**	06/30/08	08/14/08	Not filed	13
	*10-Q**	09/30/08	11/14/08	Not filed	10
	*10-K**	12/31/08	04/01/09	Not filed	5
	*10-Q**	03/31/09	05/15/09	Not filed	4
	*10-Q**	06/30/09	08/14/09	Not filed	1

Total Filings Delinquent 36

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Robec, Inc.					
	10-Q	09/30/95	11/14/95	Not filed	166
	10-K	12/31/95	04/01/96	Not filed	161
	10-Q	03/31/96	05/15/96	Not filed	160
	10-Q	06/30/96	08/14/96	Not filed	157
	10-Q	09/30/96	11/14/96	Not filed	154
	10-K	12/31/96	03/31/97	Not filed	150
	10-Q	03/31/97	05/15/97	Not filed	148
	10-Q	06/30/97	08/14/97	Not filed	145
	10-Q	09/30/97	11/14/97	Not filed	142
	10-K	12/31/97	03/31/98	Not filed	138
	10-Q	03/31/98	05/15/98	Not filed	136
	10-Q	06/30/98	08/14/98	Not filed	133
	10-Q	09/30/98	11/16/98	Not filed	130
	10-K	12/31/98	03/31/99	Not filed	126
	10-Q	03/31/99	05/17/99	Not filed	124
	10-Q	06/30/99	08/16/99	Not filed	121
	10-Q	09/30/99	11/15/99	Not filed	118
	10-K	12/31/99	03/30/00	Not filed	114
	10-Q	03/31/00	05/15/00	Not filed	112
	10-Q	06/30/00	08/14/00	Not filed	109
	10-Q	09/30/00	11/14/00	Not filed	106
	10-K	12/31/00	04/02/01	Not filed	101
	10-Q	03/31/01	05/15/01	Not filed	100
	10-Q	06/30/01	08/14/01	Not filed	97
	10-Q	09/30/01	11/14/01	Not filed	94
	10-K	12/31/01	04/01/02	Not filed	89
	10-Q	03/31/02	05/15/02	Not filed	88
	10-Q	06/30/02	08/14/02	Not filed	85
	10-Q	09/30/02	11/14/02	Not filed	82
	10-K	12/31/02	03/31/03	Not filed	78
	10-Q	03/31/03	05/15/03	Not filed	76
	10-Q	06/30/03	08/14/03	Not filed	73

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-Q	09/30/03	11/14/03	Not filed	70
	10-K	12/31/03	03/30/04	Not filed	66
	10-Q	03/31/04	05/17/04	Not filed	64
	10-Q	06/30/04	08/16/04	Not filed	61
	10-Q	09/30/04	11/15/04	Not filed	58
	10-K	12/31/04	03/31/05	Not filed	54
	10-Q	03/31/05	05/16/05	Not filed	52
	10-Q	06/30/05	08/15/05	Not filed	49
	10-Q	09/30/05	11/14/05	Not filed	46
	10-K	12/31/05	03/31/06	Not filed	42
	10-Q	03/31/06	05/15/06	Not filed	40
	10-Q	06/30/06	08/14/06	Not filed	37
	10-Q	09/30/06	11/14/06	Not filed	34
	10-K	12/31/06	04/02/07	Not filed	29
	10-Q	03/31/07	05/15/07	Not filed	28
	10-Q	06/30/07	08/14/07	Not filed	25
	10-Q	09/30/07	11/14/07	Not filed	22
	10-K	12/31/07	03/31/08	Not filed	18
	10-Q	03/31/08	05/15/08	Not filed	16
	10-Q	06/30/08	08/14/08	Not filed	13
	10-Q	09/30/08	11/14/08	Not filed	10
	10-K	12/31/08	04/01/09	Not filed	5
	10-Q	03/31/09	05/15/09	Not filed	4
	10-Q	06/30/09	08/14/09	Not filed	1
Total Filings Delinquent	56				
Rompus Interactive Corp.					
	10-Q	05/31/01	07/16/01	Not filed	98
	10-K	08/31/01	11/29/01	Not filed	94
	10-Q	11/30/01	01/14/02	Not filed	92
	10-Q	02/28/02	04/15/02	Not filed	89

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-Q	05/31/02	07/15/02	Not filed	86
	10-K	08/31/02	11/29/02	Not filed	82
	10-Q	11/30/02	01/14/03	Not filed	80
	10-Q	02/28/03	04/14/03	Not filed	77
	10-Q	05/31/03	07/15/03	Not filed	74
	10-K	08/31/03	12/01/03	Not filed	69
	10-Q	11/30/03	01/14/04	Not filed	68
	10-Q	02/29/04	04/14/04	Not filed	65
	10-Q	05/31/04	07/15/04	Not filed	62
	10-K	08/31/04	11/29/04	Not filed	58
	10-Q	11/30/04	01/14/05	Not filed	56
	10-Q	02/28/05	04/14/05	Not filed	53
	10-Q	05/31/05	07/15/05	Not filed	50
	10-K	08/31/05	11/29/05	Not filed	46
	10-Q	11/30/05	01/17/06	Not filed	44
	10-Q	02/28/06	04/14/06	Not filed	41
	10-Q	05/31/06	07/17/06	Not filed	38
	10-K	08/31/06	11/29/06	Not filed	34
	10-Q	11/30/06	01/16/07	Not filed	32
	10-Q	02/28/07	04/16/07	Not filed	29
	10-Q	05/31/07	07/16/07	Not filed	26
	10-K	08/31/07	11/29/07	Not filed	22
	10-Q	11/30/07	01/14/08	Not filed	20
	10-Q	02/29/08	04/14/08	Not filed	17
	10-Q	05/31/08	07/15/08	Not filed	14
	10-K	08/31/08	12/01/08	Not filed	9
	10-Q	11/30/08	01/14/09	Not filed	8
	10-Q	02/28/09	04/14/09	Not filed	5
	10-Q	05/31/09	07/15/09	Not filed	2

Total Filings Delinquent 33

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)

* 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. 60748 / September 30, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13636

In the Matter of **Pathnet Telecommunications, Inc.,** **Peaches Entertainment Corp.,** **Pet Quarters, Inc.,** **Piccadilly Cafeterias, Inc.** **(n/k/a Capital City Cornichon Corp.),** **Pick Communications Corp., and** **Pipeline Technologies, 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 Pathnet Telecommunications, Inc., Peaches Entertainment Corp., Pet Quarters, Inc., Piccadilly Cafeterias, Inc. (n/k/a Capital City Cornichon Corp.), Pick Communications Corp., and Pipeline Technologies, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Pathnet Telecommunications, Inc. (CIK No. 1099231) is a forfeited Delaware corporation located in Reston, Virginia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Pathnet is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K/A for the period ended December 31, 2000, which reported a net loss of over $369 million for the prior twelve months.

2. Peaches Entertainment Corp. (CIK No. 709197) is an inactive Florida corporation located in Hallandale, Florida with a class of securities registered with the

Commission pursuant to Exchange Act Section 12(g). Peaches Entertainment 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 April 1, 2000, which reported a net loss of $269,251 for the prior twelve months. As of September 29, 2009, the company's stock (symbol "PEAE") was traded on the over-the-counter markets.

3. Pet Quarters, Inc. (CIK No. 1043774) is an Arkansas corporation located in Sherwood, Arkansas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Pet Quarters 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, 2002, which reported a net loss of over $2.8 million for the prior nine months. As of September 29, 2009, the company's stock (symbol "PDEN") was traded on the over-the-counter markets.

4. Piccadilly Cafeterias, Inc. (n/k/a Capital City Cornichon Corp.) (CIK No. 277923) is a non-active Louisiana corporation located in Baton Rouge, Louisiana with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Piccadilly Cafeterias 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, 2003, which reported a net loss of over $8.6 million for the prior three months.

5. Pick Communications Corp. (CIK No. 1006282) is a permanently revoked Nevada corporation located in Miami, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Pick 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 over $19 million for the prior twelve months. As of September 29, 2009, the company's stock (symbol "PICK") was traded on the over-the-counter markets.

6. Pipeline Technologies, Inc. (CIK No. 1040751) is a delinquent Colorado corporation located in Jacksonville, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Pipeline 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 March 31, 2002, which reported a net loss of over $6.19 million for the prior nine months. As of September 29, 2009, the company's stock (symbol "PLTN") was traded on the over-the-counter markets.

B. DELINQUENT PERIODIC FILINGS

7. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

8. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports 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 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

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

Appendix 1

Chart of Delinquent Filings
Pathnet Telecommunications, Inc., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Pathnet Telecommunications, Inc.					
	10-Q	03/31/01	05/15/01	Not filed	100
	10-Q	06/30/01	08/14/01	Not filed	97
	10-Q	09/30/01	11/14/01	Not filed	94
	10-K	12/31/01	04/01/02	Not filed	89
	10-Q	03/31/02	05/15/02	Not filed	88
	10-Q	06/30/02	08/14/02	Not filed	85
	10-Q	09/30/02	11/14/02	Not filed	82
	10-K	12/31/02	03/31/03	Not filed	78
	10-Q	03/31/03	05/15/03	Not filed	76
	10-Q	06/30/03	08/14/03	Not filed	73
	10-Q	09/30/03	11/14/03	Not filed	70
	10-K	12/31/03	03/30/04	Not filed	66
	10-Q	03/31/04	05/17/04	Not filed	64
	10-Q	06/30/04	08/16/04	Not filed	61
	10-Q	09/30/04	11/15/04	Not filed	58
	10-K	12/31/04	03/31/05	Not filed	54
	10-Q	03/31/05	05/16/05	Not filed	52
	10-Q	06/30/05	08/15/05	Not filed	49
	10-Q	09/30/05	11/14/05	Not filed	46
	10-K	12/31/05	03/31/06	Not filed	42
	10-Q	03/31/06	05/15/06	Not filed	40
	10-Q	06/30/06	08/14/06	Not filed	37
	10-Q	09/30/06	11/14/06	Not filed	34
	10-K	12/31/06	04/02/07	Not filed	29
	10-Q	03/31/07	05/15/07	Not filed	28
	10-Q	06/30/07	08/14/07	Not filed	25
	10-Q	09/30/07	11/14/07	Not filed	22
	10-K	12/31/07	03/31/08	Not filed	18
	10-Q	03/31/08	05/15/08	Not filed	16
	10-Q	06/30/08	08/14/08	Not filed	13

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Pathnet Telecommunications, Inc.					
	10-Q	09/30/08	11/14/08	Not filed	10
	10-K	12/31/08	03/31/09	Not filed	6
	10-Q	03/31/09	05/15/09	Not filed	4
	10-Q	06/30/09	08/14/09	Not filed	1
Total Filings Delinquent	**34**				
Peaches Entertainment Corp.					
	10-Q	07/01/00	08/15/00	Not filed	109
	10-Q	09/30/00	11/14/00	Not filed	106
	10-Q	12/30/00	02/13/01	Not filed	103
	10-K	03/31/01	06/29/01	Not filed	99
	10-Q	06/30/01	08/14/01	Not filed	97
	10-Q	09/29/01	11/13/01	Not filed	94
	10-Q	12/29/01	02/12/02	Not filed	91
	10-K	03/30/02	06/28/02	Not filed	87
	10-Q	06/29/02	08/13/02	Not filed	85
	10-Q	09/28/02	11/12/02	Not filed	82
	10-Q	12/28/02	02/11/03	Not filed	79
	10-K	03/29/03	06/27/03	Not filed	75
	10-Q	06/28/03	08/12/03	Not filed	73
	10-Q	09/27/03	11/12/03	Not filed	70
	10-Q	12/27/03	02/10/04	Not filed	67
	10-K	03/27/04	06/25/04	Not filed	63
	10-Q	06/26/04	08/10/04	Not filed	61
	10-Q	09/25/04	11/09/04	Not filed	58
	10-Q	12/25/04	02/08/05	Not filed	55
	10-K	04/02/05	07/01/05	Not filed	50
	10-Q	06/25/05	08/09/05	Not filed	49
	10-Q	09/24/05	11/08/05	Not filed	46
	10-Q	12/31/05	02/14/06	Not filed	43
	10-K	04/01/06	06/30/06	Not filed	39
	10-Q	07/01/06	08/15/06	Not filed	37
	10-Q	09/30/06	11/14/06	Not filed	34
	10-Q	12/30/06	02/13/07	Not filed	31

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Peaches Entertainment Corp.					
	10-K	03/31/07	06/29/07	Not filed	27
	10-Q	06/30/07	08/14/07	Not filed	25
	10-Q	09/29/07	11/13/07	Not filed	22
	10-Q	12/29/07	02/12/08	Not filed	19
	10-K	03/29/08	06/27/08	Not filed	15
	10-Q	06/28/08	08/12/08	Not filed	13
	10-Q	09/27/08	11/12/08	Not filed	10
	10-Q	12/27/08	02/10/09	Not filed	7
	10-K	03/28/09	06/26/09	Not filed	3
	10-Q	06/27/09	08/11/09	Not filed	1
Total Filings Delinquent	**37**				
Pet Quarters, Inc.					
	10-KSB	06/30/02	09/30/02	Not filed	84
	10-QSB	09/30/02	11/14/02	Not filed	82
	10-QSB	12/31/02	02/14/03	Not filed	79
	10-QSB	03/31/03	05/15/03	Not filed	76
	10-KSB	06/30/03	09/29/03	Not filed	72
	10-QSB	09/30/03	11/14/03	Not filed	70
	10-QSB	12/31/03	02/17/04	Not filed	67
	10-QSB	03/31/04	05/17/04	Not filed	64
	10-KSB	06/30/04	09/28/04	Not filed	60
	10-QSB	09/30/04	11/15/04	Not filed	58
	10-QSB	12/31/04	02/14/05	Not filed	55
	10-QSB	03/31/05	05/16/05	Not filed	52
	10-KSB	06/30/05	09/28/05	Not filed	48
	10-QSB	09/30/05	11/14/05	Not filed	46
	10-QSB	12/31/05	02/14/06	Not filed	43
	10-QSB	03/31/06	05/15/06	Not filed	40
	10-KSB	06/30/06	09/28/06	Not filed	36
	10-QSB	09/30/06	11/14/06	Not filed	34
	10-QSB	12/31/06	02/14/07	Not filed	31
	10-QSB	03/31/07	05/15/07	Not filed	28
	10-KSB	06/30/07	09/28/07	Not filed	24
	10-QSB	09/30/07	11/14/07	Not filed	22
	10-QSB	12/31/07	02/14/08	Not filed	19
	10-QSB	03/31/08	05/15/08	Not filed	16

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Pet Quarters, Inc.					
	10-KSB	06/30/08	09/29/08	Not filed	12
	*10-Q**	09/30/08	11/14/08	Not filed	10
	*10-Q**	12/31/08	02/17/09	Not filed	7
	*10-Q**	03/31/09	05/15/09	Not filed	4
	*10-K**	06/30/09	09/28/09	Not filed	0
Total Filings Delinquent	**29**				
Piccadilly Cafeterias, Inc. (n/k/a Capital City Cornichon Corp.)					
	10-KSB	07/02/02	09/30/02	Not filed	84
	10-QSB	10/01/02	11/15/02	Not filed	82
	10-QSB	12/31/02	02/14/03	Not filed	79
	10-QSB	04/01/03	05/16/03	Not filed	76
	10-KSB	07/01/03	09/29/03	Not filed	72
	10-QSB	09/30/03	11/14/03	Not filed	70
	10-QSB	12/30/03	02/13/04	Not filed	67
	10-QSB	03/30/04	05/14/04	Not filed	64
	10-KSB	06/29/04	09/27/04	Not filed	60
	10-QSB	09/28/04	11/12/04	Not filed	58
	10-QSB	12/28/04	02/11/05	Not filed	55
	10-QSB	03/29/05	05/13/05	Not filed	52
	10-KSB	06/28/05	09/26/05	Not filed	48
	10-QSB	09/27/05	11/14/05	Not filed	46
	10-QSB	12/27/05	02/10/06	Not filed	43
	10-QSB	03/28/06	05/12/06	Not filed	40
	10-KSB	06/27/06	09/25/06	Not filed	36
	10-QSB	09/26/06	11/10/06	Not filed	34
	10-QSB	12/26/06	02/09/07	Not filed	31
	10-QSB	03/27/07	05/11/07	Not filed	28
	10-KSB	07/03/07	10/01/07	Not filed	23
	10-QSB	10/02/07	11/16/07	Not filed	22
	10-QSB	01/01/08	02/15/08	Not filed	19
	10-QSB	03/25/08	05/09/08	Not filed	16
	10-KSB	07/01/08	09/29/08	Not filed	12

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Piccadilly Cafeterias, Inc. (n/k/a Capital City Cornichon Corp.)					
	*10-Q**	09/30/08	11/14/08	Not filed	10
	*10-Q**	12/30/08	02/13/09	Not filed	7
	*10-Q**	03/31/09	05/15/09	Not filed	4
	*10-K**	06/30/09	09/28/09	Not filed	0
Total Filings Delinquent	**29**				
Pick Communications Corp.					
	10-Q	03/31/01	05/15/01	Not filed	100
	10-Q	06/30/01	08/14/01	Not filed	97
	10-Q	09/30/01	11/14/01	Not filed	94
	10-K	12/31/01	04/01/02	Not filed	89
	10-Q	03/31/02	05/15/02	Not filed	88
	10-Q	06/30/02	08/14/02	Not filed	85
	10-Q	09/30/02	11/14/02	Not filed	82
	10-K	12/31/02	03/31/03	Not filed	78
	10-Q	03/31/03	05/15/03	Not filed	76
	10-Q	06/30/03	08/14/03	Not filed	73
	10-Q	09/30/03	11/14/03	Not filed	70
	10-K	12/31/03	03/30/04	Not filed	66
	10-Q	03/31/04	05/17/04	Not filed	64
	10-Q	06/30/04	08/16/04	Not filed	61
	10-Q	09/30/04	11/15/04	Not filed	58
	10-K	12/31/04	03/31/05	Not filed	54
	10-Q	03/31/05	05/16/05	Not filed	52
	10-Q	06/30/05	08/15/05	Not filed	49
	10-Q	09/30/05	11/14/05	Not filed	46
	10-K	12/31/05	03/31/06	Not filed	42
	10-Q	03/31/06	05/15/06	Not filed	40
	10-Q	06/30/06	08/14/06	Not filed	37
	10-Q	09/30/06	11/14/06	Not filed	34
	10-K	12/31/06	04/02/07	Not filed	29
	10-Q	03/31/07	05/15/07	Not filed	28
	10-Q	06/30/07	08/14/07	Not filed	25
	10-Q	09/30/07	11/14/07	Not filed	22

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Pick Communications Corp.					
	10-K	12/31/07	03/31/08	Not filed	18
	10-Q	03/31/08	05/15/08	Not filed	16
	10-Q	06/30/08	08/14/08	Not filed	13
	10-Q	09/30/08	11/14/08	Not filed	10
	10-K	12/31/08	03/31/09	Not filed	6
	10-Q	03/31/09	05/15/09	Not filed	4
	10-Q	06/30/09	08/14/09	Not filed	1
Total Filings Delinquent	34				
Pipeline Technologies, Inc.					
	10-KSB	06/30/02	09/30/02	Not filed	84
	10-QSB	09/30/02	11/14/02	Not filed	82
	10-QSB	12/31/02	02/14/03	Not filed	79
	10-QSB	03/31/03	05/15/03	Not filed	76
	10-KSB	06/30/03	09/29/03	Not filed	72
	10-QSB	09/30/03	11/14/03	Not filed	70
	10-QSB	12/31/03	02/17/04	Not filed	67
	10-QSB	03/31/04	05/17/04	Not filed	64
	10-KSB	06/30/04	09/28/04	Not filed	60
	10-QSB	09/30/04	11/15/04	Not filed	58
	10-QSB	12/31/04	02/14/05	Not filed	55
	10-QSB	03/31/05	05/16/05	Not filed	52
	10-KSB	06/30/05	09/28/05	Not filed	48
	10-QSB	09/30/05	11/14/05	Not filed	46
	10-QSB	12/31/05	02/14/06	Not filed	43
	10-QSB	03/31/06	05/15/06	Not filed	40
	10-KSB	06/30/06	09/28/06	Not filed	36
	10-QSB	09/30/06	11/14/06	Not filed	34
	10-QSB	12/31/06	02/14/07	Not filed	31
	10-QSB	03/31/07	05/15/07	Not filed	28
	10-KSB	06/30/07	09/28/07	Not filed	24
	10-QSB	09/30/07	11/14/07	Not filed	22
	10-QSB	12/31/07	02/14/08	Not filed	19
	10-QSB	03/31/08	05/15/08	Not filed	16

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Pipeline Technologies, Inc.					
	10-KSB	06/30/08	09/29/08	Not filed	12
	*10-Q**	09/30/08	11/14/08	Not filed	10
	*10-Q**	12/31/08	02/17/09	Not filed	7
	*10-Q**	03/31/09	05/15/09	Not filed	4
	*10-K**	06/30/09	09/28/09	Not filed	0

Total Filings Delinquent **29**

*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.