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 October 2007, 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. Commissioner Glassman was Acting Chairman from July 1, 2005 through August 2, 2005 and resumed as Commissioner until July 14, 2006. Commissioner Campos was Commissioner from August 22, 2003 to September 18, 2007.

Unless otherwise noted, each of the following individual Members of the Commission voted affirmatively upon each action of the Commission shown in the file:

CHRISTOPHER COX, CHAIRMAN

CYNTHIA A. GLASSMAN, COMMISSIONER

PAUL S. ATKINS, COMMISSIONER

ROEL C. CAMPOS, COMMISSIONER

ANNETTE L. NAZARETH, COMMISSIONER

1 Document

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 56668 / October 17, 2007

INVESTMENT ADVISERS ACT OF 1940
Release No. 2671 / October 17, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12867

In the Matter of STEPHEN J. MCLAUGHLIN, 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 Stephen J. McLaughlin ("McLaughlin" or "Respondent").

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 of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

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

1. McLaughlin was a senior vice president of New England Financial, a Boston-based distributor of insurance and other financial services products that serves as the service mark and trade name for New England Life Insurance Company (together, "NEF"). NEF is a subsidiary of Metropolitan Life Insurance Company, which, in turn, is a subsidiary of MetLife, Inc. ("MetLife"). MetLife is a publicly traded company whose stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act. From at least 1998 through August 2003, McLaughlin was an associated person of New England Securities Corporation, a subsidiary of NEF that is registered with the Commission both as a broker-dealer and investment adviser. McLaughlin, age 54, is a resident of Plainville, Massachusetts.

2. MetLife has been a publicly traded company since April 2000, and as such it files periodic reports with the Commission that contain consolidated financial statements of, among other subsidiaries, NEF. NEF also separately files financial statements with the Commission because it is the depositor of the New England Variable Life Separate Account, a variable life insurance separate account registered with the Commission as a unit investment trust under the Investment Company Act of 1940 ("Investment Company Act").

3. On October 5, 2007, a final judgment was entered by consent against McLaughlin, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5 and 13b2-1 thereunder, and Section 34(b) of the Investment Company Act 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 13a-1, 13a-11, 13a-13, and 12b-20 thereunder, in the civil action entitled Securities and Exchange Commission v. Thom A. Faria, et al., Civil Action Number 06-10657-RCL, in the United States District Court for the District of Massachusetts.

4. The Commission's complaint alleged that, from at least 1998 through August 2003, McLaughlin engaged in a fraudulent scheme at NEF to hide expenses and improperly authorized the reclassification of certain NEF expenses as commissions, which led directly to the publication of materially false financial statements by MetLife and NEF, and otherwise engaged in conduct which operated as a fraud and deceit on investors. The Commission's complaint also alleged that on August 11, 2003, MetLife accounted for the improper reclassifications by taking a $31 million after-tax charge against earnings for the quarter ended June 30, 2003, and that on September 5, 2003, as a direct result of the improper reclassifications, NEF restated its income statements filed with the Commission for 2000 through 2002, indicating that net income had been overstated by amounts ranging from 7 percent to 220 percent.

IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act, that Respondent McLaughlin be, and hereby is suspended from association with any broker, dealer, or investment adviser for a period of twelve (12) months, effective on the second Monday following the entry of this Order.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

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 October 2007, 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. Commissioner Campos was Commissioner from August 22, 2003 to September 18, 2007.

Unless otherwise noted, each of the following individual Members of the Commission voted affirmatively upon each action of the Commission shown in the file:

CHRISTOPHER COX, CHAIRMAN

PAUL S. ATKINS, COMMISSIONER

ROEL C. CAMPOS, COMMISSIONER

ANNETTE L. NAZARETH, COMMISSIONER

KATHLEEN L. CASEY, COMMISSIONER

7 Documents

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 56630 / October 9, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-10373

In the Matter of

BEARCAT, INC.,
D&D SECURITIES, INC.,
SALVATORE DIAMBROSIO,
PETER FINEBERG,
SETH DIAMOND,
NICHOLAS DICICCO and
DOMINIC DICICCO,

Respondents.

ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTIONS 15(b), 19(h) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AS TO RESPONDENTS BEARCAT, INC., D&D SECURITIES, INC., PETER FINEBERG, SETH DIAMOND, NICHOLAS DICICCO and DOMINIC DICICCO

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest to make the following findings and to impose the following sanctions in these public administrative and cease-and-desist proceedings previously instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Sections 15(b), 19(h) and 21C of the Securities Exchange Act of 1934 ("Exchange Act").[1]

II.

In anticipation of the issuance of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b), 19(h) and 21C of the Securities Exchange Act of 1934 ("Order"), Respondents Bearcat, Inc., Peter Fineberg, Seth Diamond, D&D Securities, Inc., Nicholas DiCicco, and Dominic DiCicco (collectively, "Settling Respondents") have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over each of

[1] An Order Instituting Proceedings in this matter was issued by the Commission on December 5, 2000.

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them and the subject matter of these proceedings, which are admitted, the Settling Respondents have consented to the entry of this Order, as set forth below.

III.

On the basis of this Order and the Settling Respondents' Offers, the Commission finds as follows:

1. Bearcat, Inc. ("Bearcat") is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act since 1995. At all times relevant hereto, Bearcat was a member of the Philadelphia Stock Exchange ("PHLX") operating as a registered options and stock trading firm. Bearcat is owned by Seth Diamond ("Diamond") and Peter Fineberg ("Fineberg").

2. D&D Securities, Inc. ("D&D") is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act since 1992. D&D is a member of the PHLX and a floor broker. D&D is owned by Dominic DiCicco and Nicholas DiCicco (collectively, the "DiCiccos"). At all times relevant hereto, D&D had a clearing agreement with another registered broker-dealer that provided flip execution services for D&D's stock execution business ("D&D's clearing broker"). At all times relevant hereto, D&D's stock execution business was conducted by Salvatore DiAmbrosio ("DiAmbrosio"), who was hired by D&D in 1995. The stock execution business conducted by DiAmbrosio was operated independently of D&D's other options floor brokerage business, which was conducted at other locations on the PHLX Options Floor.

3. Salvatore DiAmbrosio was employed as a stock execution clerk at D&D from 1995 to approximately September 1999. As an execution clerk, DiAmbrosio entered trades as directed by his customers, but did not have the discretionary authority to initiate trades on their behalf. Contemporaneous with his employment at D&D, DiAmbrosio was also secretly associated with Bearcat as an unregistered trader. Neither Nicholas DiCicco nor Dominic DiCicco knew that DiAmbrosio was working for Bearcat until September 1999.

4. Seth Diamond is a partner and principal of Bearcat. At all times relevant hereto, he was a trader at the PHLX and one of DiAmbrosio's supervisors at Bearcat.

5. Peter Fineberg is a partner and principal of Bearcat. At all times relevant hereto, he was a trader at the PHLX and DiAmbrosio's other supervisor at Bearcat.

6. Nicholas DiCicco is a partner of D&D and was one of DiAmbrosio's supervisors at D&D. Nicholas DiCicco has worked as a registered representative and/or a trader at the PHLX since at least 1984. He is the brother of Dominic DiCicco.

7. Dominic DiCicco is a partner of D&D and was DiAmbrosio's other supervisor at D&D. He is the brother of Nicholas DiCicco.

Related Entity

8. Binary Traders, Inc. ("Binary"), the victim in the case, was, at all times relevant to these proceedings, a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, and a member of the PHLX, operating as a floor specialist in equities and index options. DiAmbrosio introduced Binary as a customer to D&D and executed almost all of Binary's stock transactions since at least 1995 to September 1999.

DiAmbrosio's Scheme

9. As more fully described below, from at least April 1999 to September 1999, DiAmbrosio executed an unauthorized trading scheme causing almost $2.2 million in losses to Binary. He directed proceeds from this fraud to two accounts over which he exercised either full or partial control: an error account opened by D&D's clearing broker for D&D (the "D&D error account") and a trading account at Bearcat. D&D's clearing broker opened the D&D error account for DiAmbrosio to use in correcting errors, which occurred in the course of his executing orders for his customers.

10. DiAmbrosio conducted his trading scheme by executing unauthorized cross-trades between Binary's trading accounts and either the D&D error account or his trading account at Bearcat. Cross-trades are executed by a broker-dealer on behalf of two customers where one customer places an order to buy a block of shares and another customer, at the same time, places an order to sell the exact same number of shares. Rather than have each customer go out on the open market to buy or sell the stock, the broker-dealer transfers or "crosses" the stock from one customer account into the other customer account.

11. In essence, DiAmbrosio entered a pair of unauthorized cross-trades where: (1) in the first cross-trade, Binary bought a large block of stock at an artificially high price either from the D&D error account or from the Bearcat account; and (2) shortly thereafter, many times less than a minute later, in a second cross-trade, Binary sold back the exact same large block of stock at an artificially lower price to the same account from which Binary had just bought the stock (i.e., either the D&D error account or the Bearcat account). The result was an immediate gain to either the D&D error account or the Bearcat account and an immediate loss to Binary.

12. Similarly, DiAmbrosio also caused Binary to initiate the paired cross-trade by first selling a block of stock at a low price and then buying it back at a higher price moments later. The result of this type of paired cross-trade (which began with Binary selling as opposed to buying) was the same--Binary took an immediate cash loss on the transaction.

13. By way of example, DiAmbrosio entered a pair of cross-trades on April 29, 1999 between Binary and the D&D error account:

a. At 14:40:23, DiAmbrosio entered a buy order for Binary for 4,000 shares of a company ("XYZ Company") at $111.00 per share;

b. At 14:40:45, he entered a sell order for the D&D error account for 4,000 shares of XYZ Company at $111.00 and executed the cross-trade with Binary;

c. At 14:41:11, he entered a sell order from Binary for 4,000 shares of XYZ Company at $107.00; and

d. At 14:41:29, he entered a buy order for the D&D error account for 4,000 shares of XYZ Company at $107.00 and executed another cross-trade with Binary.

e. Therefore, in the span of 66 seconds, Binary lost $16,000 on this transaction and the D&D error account gained $16,000.

14. Likewise, DiAmbrosio followed the same pattern for cross-trades between Binary and the Bearcat account.

15. By executing 79 of these paired cross-trades from April 1999 to September 1999, Binary suffered losses of almost $2.2 million while the D&D error account and the Bearcat account realized $1,071,500 and $1,112,562, respectively, for a combined gain of almost $2.2 million. DiAmbrosio shared the profits in the D&D error account with the DiCiccos, the principals of D&D, and the profits in the Bearcat account with Diamond and Fineberg, the principals of Bearcat. DiAmbrosio's compensation from D&D was based solely upon the net amount of money received each month from D&D's clearing broker, who determined the amount of the gains or losses in the D&D error account that was included in the monthly payment to D&D.

16. No order tickets were created for any of these paired cross-trades related to DiAmbrosio's trading. In addition, order tickets that were created to record other transactions he made in his capacity as a trader for Bearcat were not maintained by Bearcat.

17. The use of cross-trades was critical to DiAmbrosio's scheme. First, by coding these trades as cross-trades, DiAmbrosio was able to execute the trades at prices he set, which were different than the current market price. To maximize the profits on each pair of cross-trades, he generally executed them at prices between the high and the low prices for the stock up until the time he entered the trades. Further, DiAmbrosio's use of cross-trades was critical because it enabled him to direct which account was on the winning side of these transactions. Therefore, by directing the trades to the D&D error account or the Bearcat account, he was able to share in the profits generated in those accounts as a result of these unauthorized transactions.

18. On March 10, 2005, DiAmbrosio was convicted of 10 counts of wire fraud, following a trial held in the United States District Court for the Eastern District of Pennsylvania. The indictment in that case was based, essentially, on the same facts underlying this administrative proceeding. See United States v. DiAmbrosio, 04-CR-66-1 (E.D. Pa.).

19. On February 15, 2006, Administrative Law Judge Robert G. Mahony granted the Division of Enforcement's motion for partial summary disposition against DiAmbrosio and issued an order: (a) finding that DiAmbrosio willfully violated Section 17(a) of the Securities Act,

Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder; (b) requiring DiAmbrosio to cease and desist from committing or causing any violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Exchange Act Rule 10b-5 thereunder; (c) barring DiAmbrosio from associating with any broker or dealer; and (d) requiring DiAmbrosio to disgorge $869,946, plus prejudgment interest. See In the Matter of Bearcat, Inc., et al., Initial Decision Rel. No. 306 (Feb. 15, 2006), 2006 SEC LEXIS 359.

Bearcat's Role in the Scheme

20. Bearcat played a critical role in the success of DiAmbrosio's scheme. Fineberg and Diamond hired DiAmbrosio as a trader even though they knew that he was affiliated with D&D at the time. PHLX Rule 793 requires that when an individual works for two different firms, both firms must consent to the arrangement in writing and such dual affiliation be filed with the PHLX. However, Bearcat never sought D&D's approval or even told D&D of this arrangement. Further, Bearcat never registered DiAmbrosio with the firm as a trader in accordance with PHLX Rule 604.

21. Fineberg and Diamond knew or were reckless in not knowing of Bearcat's violations of these rules. First, Fineberg had served on the PHLX rules committee and either knew or was reckless in not knowing of these rules. Further, Fineberg and Diamond made a concerted effort to conceal DiAmbrosio's employment at Bearcat, which indicates that they knew the relationship was improper. These efforts included: (i) conspiring with DiAmbrosio not to disclose to D&D that DiAmbrosio worked for Bearcat; (ii) instructing other Bearcat employees that DiAmbrosio's relationship with Bearcat was not to be disclosed to anyone outside of the firm; (iii) paying DiAmbrosio's salary in cash and classifying him as an independent contractor, even though every other trader at Bearcat was paid by check and classified as an employee; (iv) not filing a Form U-4 showing DiAmbrosio's association with the firm; (v) directing that DiAmbrosio conduct all of his trading through Bearcat's house account rather than giving him his own account like every other trader at Bearcat; and (vi) discarding order tickets for DiAmbrosio's trades.

Bearcat's, Fineberg's and Diamond's Failure to Supervise DiAmbrosio

22. While at Bearcat, DiAmbrosio operated in an environment devoid of reasonable supervision. First, Bearcat did not have any written supervisory or compliance procedures and did not conduct any initial or periodic supervisory or compliance training programs in order to prevent and detect DiAmbrosio's fraud.

23. Second, Fineberg and Diamond did not undertake any meaningful compliance review of DiAmbrosio's trades. In this regard, despite their knowledge that DiAmbrosio had access to confidential trading information of other PHLX members through his employment at D&D, they failed to establish any procedures or conduct any review of his trading in order to prevent and detect DiAmbrosio's fraud.

24. Third, Fineberg and Diamond failed to react to visible red flags of misconduct, including the fact that DiAmbrosio was trading unusually large blocks of stock at unusually large

and favorable price swings. These trades exposed Bearcat to significant risks of loss, but Diamond or Fineberg failed to exercise increased supervisory oversight.

D&D's and the DiCiccos' Failure to Supervise DiAmbrosio

25. D&D and the DiCiccos failed reasonably to supervise DiAmbrosio under the circumstances. D&D and the DiCiccos did not have reasonable written supervisory procedures, nor a system for applying such procedures to supervise the types of businesses in which they engaged; nor did they discharge their duties in connection with such supervision to prevent and detect, insofar as practicable, DiAmbrosio's violations of applicable securities laws and regulations. D&D's written supervisory procedures were unreasonable and no separate system of follow-up or review was conducted to prevent or detect DiAmbrosio's fraud.

26. Each month Dominic DiCicco received a package from D&D's clearing broker which included a one page summary sheet with a check representing D&D's net share of the commissions generated the prior month. At first, the package included a monthly commission analysis report, but this report was discontinued after the first four or five months of DiAmbrosio's employment with D&D. Dominic DiCicco asked DiAmbrosio about the report but, based upon DiAmbrosio's representation that it was unnecessary, Dominic DiCicco did not review or maintain a copy of the report. D&D also asked its clearing broker to stop sending the commission analysis report, which it did.

27. D&D did not have reasonable supervisory procedures to detect that DiAmbrosio was using the D&D error account as a trading account, and the DiCiccos failed reasonably to investigate red flags suggestive of DiAmbrosio's misconduct. D&D's oversight of DiAmbrosio consisted of periodic visits by Nicholas DiCicco and Dominic DiCicco to DiAmbrosio's post throughout the day to check generally if there were any problems. On several occasions, representatives from D&D's clearing broker contacted D&D by telephone and expressed concerns about the nature and extent of the activity in the error account opened for D&D. Nicholas DiCicco and/or Dominic DiCicco questioned DiAmbrosio after D&D's clearing broker expressed its concerns. DiAmbrosio provided explanations to the DiCiccos that were accepted by D&D's clearing broker. However, despite the contacts from its clearing broker, D&D and the DiCiccos did not change or enhance the firm's supervision of DiAmbrosio or independently monitor his trades, and the DiCiccos failed to undertake a meaningful investigation of this suspicious activity.

Violations

28. Based on the above-described conduct:

a. Bearcat, a registered broker-dealer, willfully violated Section 15(b) of the Exchange Act and Rule 15b7-1 thereunder by allowing DiAmbrosio, who was associated with it, to effect or be involved in effecting securities transactions without being registered or approved in accordance with the standards of training, experience, competence, and other qualification standards established by the rules

of any national securities exchange or national securities association of which such broker-dealer is a member;

b. Fineberg and Diamond willfully aided and abetted and caused violations of Section 15(b) of the Exchange Act and Rule 15b7-1 thereunder, as cited above;

c. Bearcat willfully violated Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4, thereunder, by failing to make and keep certain records required of broker-dealers;

d. Fineberg and Diamond willfully aided and abetted and caused violations of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4, thereunder, as cited above;

e. Bearcat, Fineberg and Diamond failed reasonably to supervise DiAmbrosio, within the meaning of Section 15(b)(4)(E) of the Exchange Act, with a view to preventing DiAmbrosio's violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5, thereunder; and

f. D&D and the DiCiccos failed reasonably to supervise DiAmbrosio, within the meaning of Section 15(b)(4)(E) of the Exchange Act, with a view to preventing DiAmbrosio's violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5, thereunder.

Related Proceedings

29. On August 14, 2000, the PHLX instituted a disciplinary action against the respondents named herein based, essentially, on the same facts underlying this administrative proceeding. On June 19, 2002, the PHLX's Business Conduct Committee ("Business Conduct Committee") issued a decision finding: (1) violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and various PHLX rules, by respondents Bearcat, Diamond and Fineberg (collectively, "Bearcat respondents"), and DiAmbrosio; and (2) violations of Sections 15 and 17 of the Exchange Act and Rules 15c3-1, 17a-5 and 17a-11 thereunder, and various PHLX rules, by D&D, Dominic DiCicco and Nicholas DiCicco (collectively, "D&D respondents"). In its order, the Business Conduct Committee also imposed the following sanctions on the respondents:

a. DiAmbrosio was (1) censured, (2) fined $1,000,000, and (3) permanently barred from membership or participation on the PHLX or association with a PHLX member organization or participant organization;

b. Bearcat, Fineberg and Diamond were jointly and severally fined $500,000; Fineberg and Diamond were each suspended from membership or participation on the PHLX or association with a PHLX member organization or participant

organization for a period of six months; and Bearcat was suspended from membership or participation with the PHLX for a period of six months;

c. Prior to readmission to membership on the PHLX, the Bearcat respondents must certify to the PHLX that they have complied with all the terms and conditions of the PHLX order, including the payment of all fines and serving the relevant suspension;

d. The D&D respondents were (1) censured, (2) jointly and severally fined $500,000, and (3) prohibited from conducting a stock execution business for a period of one year, and required to receive the prior approval of the PHLX in order to conduct a stock execution business at any time thereafter.

30. On July 29, 2002, both the Bearcat respondents and the D&D respondents appealed the decision of the Business Conduct Committee to the PHLX's Board of Governors ("Board of Governors"). The PHLX also filed an appeal of the decision with its Board of Governors. On December 13, 2002, the Board of Governors affirmed the decision of the Business Conduct Committee and the sanctions it imposed, except that the Board of Governors found that the Business Conduct Committee had erred in not ordering the respondents to disgorge the illicit gains generated through their conduct. See Decision of the Board of Governors of the Philadelphia Stock Exchange, Enf. No. 00-11 (Dec. 13, 2002). In January 2003, the D&D respondents, Bearcat and Diamond each appealed the Board of Governors' decision to the Commission.

31. On April 11, 2003, the National Association of Securities Dealers ("NASD") rendered a decision in an arbitration case brought by Binary against the respondents herein, as well as two other entities that provided clearing services for Bearcat, based, essentially, on the same facts underlying this administrative proceeding. NASD Dispute Resolution Arbitration Number 00-01738. In that decision, the NASD held, among other things, that:

a. DiAmbrosio and D&D are jointly and severally liable to Binary for compensatory damages of $792,957;

b. DiAmbrosio and Bearcat are jointly and severally liable to Binary for compensatory damages of $592,126; and

c. DiAmbrosio is solely liable to Binary for compensatory damages of $1,385,083.

On May 14, 2003, 2003, D&D Securities appealed the NASD's decision to the United States District Court for the Eastern District of Pennsylvania.

32. In December 2003, the D&D respondents offered to resolve the PHLX and NASD matters and subsequently withdrew both their appeal to the Commission of the Board of Governors' decision, as well as D&D's appeal of the NASD arbitration decision. On February 9, 2004, an advisory committee of the Board of Governors issued a Supplemental Decision on behalf of the Board of Governors finding that the disgorgement ordered against the respondents in the NASD arbitration was adequate and ordering no further disgorgement. See Supplemental Decision

of Advisory Committee on Appeal Under Authority Granted by the Board of Governors of the Philadelphia Stock Exchange, Enf. No. 00-11 (Feb. 9, 2004).

33. On March 8, 2004, the Commission issued an Order sustaining the disciplinary action taken by the PHLX against Bearcat, Diamond and Fineberg. See Order Sustaining Disciplinary Action Taken By National Securities Exchange, Exchange Act Release No. 49375 (March 8, 2004).

34. The D&D respondents have timely paid in full the $500,000 fine imposed on them by the PHLX, and D&D has paid in full the $792,957 in damages ordered by the NASD.

Undertakings

35. The D&D respondents undertake:

a. to retain, within 45 days of the date of entry of the Order, at their own expense, the services of an Independent Consultant not unacceptable to the staff of the Commission, to (i) review D&D's supervisory policies and procedures as they relate to preventing violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5, thereunder; (ii) review D&D's policies and procedures as they relate to D&D's compliance with Section 15(b) of the Exchange Act; and (iii) review D&D's system for applying its supervisory and other policies and procedures as they relate to preventing and detecting violations of Section 17(a) of the Securities Act, Sections 10(b) and 15(b) of the Exchange Act and Rule 10b-5 thereunder.

b. to require the Independent Consultant, at the conclusion of the review, which in no event shall be more than 120 days after the entry of the Order, to submit a Report to the D&D respondents and the Commission's staff. The report shall address the issues described in paragraph 35(a) of these undertakings and shall include a description of the review performed, the conclusions reached, the Independent Consultant's recommendations for changes or improvements to the policies, procedures, and practices of D&D, and a procedure for implementing the recommended changes or improvements to such policies, procedures, and practices.

c. to adopt, implement, and maintain all policies, procedures, and practices recommended in the Report of the Independent Consultant. As to any of the Independent Consultant's recommendations about which the D&D respondents and the Independent Consultant do not agree, such parties shall attempt in good faith to reach agreement within 180 days of the date of the entry of the Order. In the event that the D&D respondents and the Independent Consultant are unable to agree on an alternative proposal acceptable to the Commission's staff, the D&D respondents will abide by the determinations of the Independent Consultant with regard thereto and adopt those recommendations deemed appropriate by the Independent Consultant. Within ninety (90) days of the Commission staff's receipt of the

Independent Consultant's Report, the D&D respondents shall submit an affidavit to the Commission staff stating that it has implemented any and all actions recommended by the Independent Consultant or required by the Commission staff, or explaining the circumstances under which it has not implemented such actions.

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

e. that, in order to ensure the independence of the Independent Consultant, the D&D respondents (i) shall not have the authority to terminate the Independent Consultant without the prior written approval of the Commission's staff; (ii) shall compensate the Independent Consultant, and persons engaged to assist the Independent Consultant, for services rendered pursuant to the Order at their reasonable and customary rates; (iii) shall not be in and shall not have an attorney-client privilege relationship with the Independent Consultant and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Independent Consultant from transmitting information, reports, or documents to the Commission or the Commission's staff.

f. to require the Independent Consultant to enter into an agreement that provides that, for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing, or other professional relationship, directly or indirectly, with any of the D&D respondents, or any of their present or former affiliates, directors, officers or employees. 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 Commission's staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship, directly or indirectly, with the D&D respondents, or any of their present or former affiliates, directors, officers or employees 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, in the public interest, and for the protection of investors to impose the sanctions agreed to in the Settling Respondents' Offers.

In determining whether to accept the Offers submitted by the Bearcat respondents, the Commission has considered the findings of the Business Conduct Committee referred to in

paragraph 29, the sanctions imposed on the Bearcat respondents by the Business Conduct Committee as set forth in paragraph 29, and the damages ordered against the Bearcat respondents by the NASD as set forth in paragraph 31.

In determining whether to accept the Offers submitted by the D&D respondents, the Commission has considered the findings of the Business Conduct Committee referred to in paragraph 29, the sanctions imposed on the D&D respondents by the Business Conduct Committee as set forth in paragraph 29, the damages ordered against the D&D respondents by the NASD as set forth in paragraph 31, the payment of the PHLX fine by the D&D respondents as set forth in paragraph 34, D&D's payment of damages as set forth in paragraph 34, and the undertakings set forth in paragraph 35.

Accordingly, pursuant to Sections 15(b), 19(h) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Pursuant to Section 15(b) of the Exchange Act, the registration of Bearcat, Inc. is revoked.

B. Respondent Peter Fineberg is barred from association with any broker or dealer.

C. Respondent Peter Fineberg shall cease and desist from causing any violations and any future violations of Sections 15(b) and 17(a) of the Exchange Act and Rules 15b7-1, 17a-3 and 17a-4 thereunder.

D. Respondent Seth Diamond is barred from association with any broker or dealer.

E. Respondent Seth Diamond shall cease and desist from causing any violations and any future violations of Sections 15(b) and 17(a) of the Exchange Act and Rules 15b7-1, 17a-3 and 17a-4 thereunder.

F. Respondent D&D Securities, Inc. is censured.

G. Respondent D&D Securities, Inc. shall comply with the undertakings enumerated in paragraph 35 above.

H. Respondent Nicholas DiCicco is censured.

I. Respondent Nicholas DiCicco shall comply with the undertakings enumerated in paragraph 35 above.

J. Respondent Dominic DiCicco is censured.

K. Respondent Dominic DiCicco shall comply with the undertakings enumerated in paragraph 35 above.

L. For good cause shown, the Commission's staff may extend any of the procedural deadlines set forth in paragraph 35 above.

M. Any reapplication for association by Respondents Fineberg or Diamond 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.

Nancy M. Morris
Secretary

By: J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8858 / October 18, 2007

SECURITIES EXCHANGE ACT OF 1934
Release No. 56672 / October 18, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12868

In the Matter of **PACKETPORT.COM, INC.,** **RONALD DURANDO,** **MICROPHASE CORP.,** **ROBERT H. JAFFE,** **GUSTAVE DOTOLI,** **M. CHRISTOPHER AGARWAL,** **and THEODORE KUNZOG,** **Respondents.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934**

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 PacketPort.com, Inc. ("PacketPort.com"), Ronald Durando ("Durando"), Microphase Corp. ("Microphase"), Robert H. Jaffe ("Jaffe"), Gustave Dotoli ("Dotoli"), M. Christopher Agarwal ("Agarwal") and Theodore Kunzog ("Kunzog") (collectively, the "Respondents").

II.

In anticipation of the institution of these proceedings, each of the Respondents has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purposes of these proceedings and any other proceeding 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 entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order and

Remedial Sanctions Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

A. Respondents

1. **PacketPort.com, Inc.** is a Nevada corporation with its principal place of business in Norwalk, Connecticut. The company previously traded under the name Linkon Corp. ("Linkon"). PacketPort.com is a developer and distributor of internet telephony products. PacketPort.com common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and traded in the over-the-counter bulletin board market.

2. **Ronald Durando,** age 50, became PacketPort.com's chairman, president, and chief executive officer ("CEO") on November 26, 1999. He is the chief operating officer of Microphase and was the president and sole owner of PacketPort, Inc. In mid-December 1999, PacketPort, Inc. and its assignees acquired control of PacketPort.com.

3. **Microphase Corp.** is a private Connecticut corporation with its principal place of business in Norwalk, Connecticut. Founded in 1955, Microphase designs and manufactures electronic components for commercial and defense applications.

4. **Robert H. Jaffe**, age 71, is an attorney and principal of the Springfield, New Jersey law firm of Robert H. Jaffe & Associates, P.A. Mr. Jaffe was an interim director of PacketPort.com from November 1999 through late 2000. Mr. Jaffe represented PacketPort, Inc. and others in various transactions and issues related to PacketPort.com, including the acquisition of PacketPort.com shares, and served as PacketPort.com's special securities counsel.

5. **Gustave Dotoli**, age 72, became a director of PacketPort.com in November 1999. Mr. Dotoli was a director and secretary of PacketPort, Inc.

6. **M. Christopher Agarwal,** a 30-year-old resident of La Jolla, California, was chairman and principal shareholder of IP Equity, Inc., a private California corporation that owned and operated Internet Stock News, an Internet-based stock newsletter.

7. **Theodore Kunzog,** a 49-year-old resident of San Diego, California, was IP Equity's CFO and securities analyst. He was also a shareholder of the firm.

B. Other Relevant Entities

IP Equity, Inc. is a now-defunct private California corporation which maintained its

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[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

principal offices in San Diego, California. During the relevant period, the firm owned and operated Internet Stock News. Respondents Agarwal and Kunzog were shareholders and officers of the firm.

C. Summary

1. Linkon was an internet telephony company. In early 1999, it ran into financial difficulty. Respondents Durando and Dotoli, with PacketPort, Inc., sought to acquire control of Linkon, settle its debt, and infuse it with cash in exchange for an equity position in Linkon. During the acquisition, Linkon changed its name to PacketPort.com.

2. In the course of this acquisition, Respondents PacketPort.com, Durando, Dotoli, Jaffe, Agarwal, Kunzog and Microphase violated Section 5 of the Securities Act, as described below. Moreover, Respondents Durando, Dotoli, and Jaffe, who were officers, directors, or beneficial owners of more than ten percent of the shares of PacketPort.com, did not file in a timely manner, as required by Section 16(a) of the Exchange Act and Rule 16a-3 thereunder, a Form 3 reflecting their being officers, directors, or beneficial owners of more than ten percent of the shares of PacketPort.com and thereby violated Section 16(a) of the Exchange Act and Rule 16a-3. Further, Respondent Durando did not file in a timely manner a Schedule 13D upon PacketPort, Inc.'s acquisition of more than five percent of the stock of PacketPort.com, and thereby violated Section 13(d) of the Exchange Act and Rule 13d-1 thereunder. In December 1999, Respondents Agarwal and Kunzog, through Internet Stock News, published an article concerning PacketPort.com and sent it to more than 350,000 e-mailboxes and posted it on the Internet Stock News website. The article failed to disclose that IP Equity had obtained the right from the issuer to purchase one million restricted shares of PacketPort.com stock at a discount from the market price of unrestricted shares. Respondents Agarwal and Kunzog thereby violated Section 17(b) of the Securities Act.

D. Facts

1. In the mid- to late-1990s, Linkon developed and sold products and services to the telecommunications sector. By May 1999, Linkon was in default on $1.9 million in debt notes, was subject to an $802,500 civil judgment and had ceased operations.

2. In the fall of 1999, Microphase, Durando and Dotoli concluded that, if the debt of Linkon could be paid off and the company infused with cash, Linkon could be revitalized. Durando and Dotoli formed PacketPort, Inc. to acquire control of Linkon. Pursuant to the acquisition proposal, PacketPort, Inc. and its assignees (collectively, "PacketPort, Inc.") would acquire sufficient shares of common stock of Linkon so that PacketPort, Inc. would obtain control over Linkon. In December 1999, PacketPort, Inc. took over Linkon according to these terms and changed Linkon's name to PacketPort.com, Inc.

3. One Linkon shareholder and his controlled entities (hereinafer collectively referred to as the "Prior Shareholder") held the debt notes referenced above, held 10.8% of Linkon shares, and held Linkon-issued warrants entitling the holder to purchase one million Linkon common stock shares.

4. As set forth in the November 1999 acquisition proposal, PacketPort, Inc. acquired 1.48 million restricted Linkon shares from the Prior Shareholder. Durando, in return, paid the Prior Shareholder to retire Linkon's $1.9 million in debt notes. Durando also advanced sums of money to retire an $802,500 judgment Linkon owed to an Australian corporation, Syrinx Speech Systems Pty. Ltd. Also in late November 1999, Dotoli, on behalf of Packetport, Inc., executed an assignment of its Packetport.com interest to Jaffe's attorney trust account. On or about December 3, 1999, the Prior Shareholder delivered the share certificates endorsed in blank to Respondent Jaffe.

5. On or about December 10, 1999, Jaffe gave PacketPort.com's transfer agent legended stock certificates representing the Linkon shares PacketPort, Inc. acquired from the Prior Shareholder. Jaffe instructed the transfer agent to reissue the Linkon shares as PacketPort.com shares in unlegended certificates to PacketPort, Inc's assignees. Jaffe advised the transfer agent, in sum and substance, that the Prior Shareholder was the owner and transferor of the shares and had held the shares for more than two years. Thus, according to Jaffe, the shares qualified for an exemption from registration under the Securities Act and could be reissued to PacketPort, Inc. and its assignees without legends identifying the shares as restricted. In fact, however, the shares did not qualify for an exemption from the registration requirements of Section 5 because the shares were no longer owned by the Prior Shareholder, but rather by affiliates of the issuer—PacketPort, Inc. and its assignees.

6. On or about December 13, 1999, the transfer agent reissued the restricted shares PacketPort, Inc. acquired from the Prior Shareholder to the PacketPort, Inc.'s assignees. None of the reissued certificates bore restrictive legends.

7. The assignees, including, among others, Microphase, IP Equity (owned and controlled by Agarwal and Kunzog) and entities controlled by Jaffe and others, received restricted shares because they acquired the shares from PacketPort, Inc., an affiliate of the issuer. The assignees became statutory underwriters when they offered and resold the shares to the public without holding the shares for one year.

8. PacketPort, Inc. obtained warrants for the 1,000,000 Linkon shares (333,334 post reverse split PacketPort.com shares) from the Prior Shareholder (the "Prior Shareholder Warrants"), as referenced in paragraph 3, above.

9. Jaffe instructed the transfer agent to issue in unlegended stock certificates the shares acquired by exercise of the warrants. Jaffe represented to the transfer agent that the shares underlying the warrants were the subject of a Form S-8 registration, effective on or about August 24, 1998, and, thus the shares were unrestricted.

10. The referenced Form S-8 registration did not pertain to the common stock underlying the Prior Shareholder Warrants. Instead, the resale of the common stock underlying the Prior Shareholder Warrants had been the subject of a Form S-2/A Registration Statement, effective on August 13, 1998. However, the Form S-2/A Registration Statement did not cover

any public resale of those underlying shares except by the seller it identified—the Prior Shareholder.

11. In or about January 2000, PacketPort, Inc.'s assignees exercised the warrants, including Microphase, which paid approximately $1.23 million to exercise 275,000 of the Prior Shareholder Warrants, and later sold the underlying shares.

12. The shares issued pursuant to the exercise of the Prior Shareholder Warrants were acquired from the issuer in an unregistered transaction and, thus, were restricted.

13. PacketPort, Inc. and its assignees should have known that there was no registration statement covering the sale of shares acquired from the Prior Shareholder or obtained through the exercise of the Prior Shareholder Warrants.

14. After the market closed on December 13, 1999, IP Equity's news outlet, Internet Stock News, published an article concerning PacketPort.com and sent it to more than 350,000 e-mailboxes, posted it on its website www.internetstocknews.com, and published it on a Business Wire press release. Kunzog wrote the article, which strongly recommended PacketPort.com stock and announced that it had been added to the Internet Stock News' "Ones to Watch in 1999" group of leading Internet companies.

15. The article's disclaimer stated that the publisher "may" own not more than 400,000 shares of the stocks it was touting, whereas IP Equity actually owned 400,000 shares of PacketPort.com and owned an option on one million restricted shares. The article failed to disclose that IP Equity had obtained from the issuer an option to purchase one million restricted shares at a discount from the market price as consideration for disseminating information relating to PacketPort.com through e-mails, press releases and the Internet.

E. Violations

1. As a result of the conduct described above, Respondents PacketPort.com, Microphase, Durando, Dotoli, Jaffe, Agarwal and Kunzog violated Section 5(a) and 5(c) of the registration requirements of the Securities Act.

2. Respondent Durando, on behalf of PacketPort, Inc., was required by Section 13(d) of the Exchange Act and Rule 13d-1 thereunder to file a Schedule 13D within ten days of its acquisition of beneficial ownership of more than five percent of PacketPort.com. PacketPort, Inc. did not file such schedule until 2002, more than ten days after becoming a beneficial owner of more than five percent of PacketPort.com's stock. Based on the foregoing, Respondent Durando violated Section 13(d) of the Exchange Act and Rule 13d-1 thereunder.

3. Respondents Durando, Dotoli and Jaffe each were required by Section 16(a) of the Exchange Act and Rule 16a-3 thereunder to file a Form 3 within ten days of becoming officers, directors, or beneficial owners of more than ten percent of the shares of PacketPort.com. No such Forms 3 were filed until 2002, more than ten days after becoming officers, directors, or the beneficial owners of more than ten percent of the shares of PacketPort.com. Based on the

foregoing, Respondents Durando, Dotoli and Jaffe violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

4. As a result of the conduct described above, Respondents Agarwal and Kunzog violated Section 17(b) of the Securities Act, which makes it unlawful to publish a communication describing a security for consideration from an issuer, underwriter or dealer, without fully disclosing the consideration or the amount thereof.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Respondents PacketPort.com, Microphase, Ronald Durando, Gustave Dotoli, Robert Jaffe, Christopher Agarwal and Theodore Kunzog cease and desist from committing or causing any violations and any future violations of Section 5(a) and 5(c) of the Securities Act.

B. Respondents Ronald Durando, Gustave Dotoli, and Robert Jaffe cease and desist from committing or causing any violations and any future violations of Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

C. Respondent Ronald Durando cease and desist from committing or causing any violations and any future violations of Section 13(d) of the Exchange Act and Rule 13d-1 thereunder.

D. Respondents Christopher Agarwal and Theodore Kunzog cease and desist from committing or causing any violations and any future violations of Section 17(b) of the Securities Act.

E. Respondents shall pay disgorgement as follows:

1. Respondent Microphase shall pay disgorgement of $700,000, $100,000 of which shall be paid within 10 days from the entry of this Order, and the balance shall be paid within 160 days from the entry of this Order.

2. Respondent Durando shall pay disgorgement of $150,000, $50,000 of which shall be paid within 10 days from the entry of this Order, and the balance shall be paid within 160 days from the entry of this Order.

3. Respondent Dotoli shall pay disgorgement of $100,000, $25,000 of which shall be paid within 10 days from the entry of this Order, and the balance shall be paid within 160 days from the entry of this Order.

4. Respondent Jaffe shall pay disgorgement of $125,000, $50,000 of which shall be paid within 10 days from the entry of this Order, and the balance shall be paid within 160 days from the entry of this Order.

Such payments shall be made: (A) 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) delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312; and (D) submitted under a cover letter that identifies Respondent 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 Richard E. Simpson, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.

Nancy M. Morris
Secretary

Commissioner Campos Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
October 19, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12872

In the Matter of

RAMP CORP.,

Respondent.

ORDER INSTITUTING 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 Ramp Corp. ("Ramp" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

A. Ramp, previously known as Medix Resources, Inc., is a Delaware corporation with its principal place of business in New York, New York. From 2000 through May 2005, Ramp developed and marketed e-communication software for the healthcare industry. Ramp's common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and was registered pursuant to Section 12(b) of the Exchange Act until July 1, 2005. From April 2000 through May 15, 2005, Ramp's common stock traded on the American Stock Exchange. Ramp's stock (symbol 'RCOCQ') is quoted in the inter-dealer market, also known as the grey market.

B. Ramp 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 April 4, 2005 (for its 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.

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 proceedings be instituted pursuant to Section 12(j) of the Exchange Act 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 it is necessary and appropriate for the protection of investors to suspend for a period not exceeding 12 months or revoke the registration of each class of securities of Ramp 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 FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served upon Respondent in accordance with Rule 141 of the Commission's Rules of Practice [17 C.F.R. § 201.141].

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 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 on 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.

Nancy M. Morris
Secretary

Florence E Harmon

By: Florence E. Harmon
Deputy Secretary

Commissioner Campos
Not Participating

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 28017 /October 22, 2007

In the Matter of

CITI INVESTOR SERVICES, INC. F/N/A
THE BISYS GROUP, INC.
105 Eisenhower Parkway
Roseland, NJ 07068

HEARTLAND INVESTOR SERVICES, LLC
100 Summer Street, 15th Floor
Boston, MA 02110

MERCANTILE INVESTMENT SERVICES, INC.
100 Summer Street, 15th Floor
Boston, MA 02110

PROFUNDS DISTRIBUTORS, INC.
100 Summer Street, 15th Floor
Boston, MA 02110

VICTORY CAPITAL ADVISERS, INC.
100 Summer Street, 15th Floor
Boston, MA 02110

CITIGROUP GLOBAL MARKETS INC.
787 Seventh Ave., 32nd Floor
New York, NY 10019

CEFOF GP I CORP.
388 Greenwich Street
New York, NY 10013

CELFOF GP CORP.
388 Greenwich Street
New York, NY 10013

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CITIBANK, N.A.
153 East 53rd Street, 5th Floor
New York, NY 10043

CITIGROUP ALTERNATIVE INVESTMENTS LLC
731 Lexington Avenue, 28th Floor
New York, NY 10022

CITIGROUP INVESTMENT ADVISORY SERVICES, INC.
787 7th Avenue, 15th Floor
New York, NY 10019

SSBCP GP I CORP.
338 Greenwich Street
New York, NY 10013

SSBPIF GP CORP.
338 Greenwich Street
New York, NY 10013

(812-13394)

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

Citi Investor Services, Inc. f/n/a The BISYS Group, Inc. ("BISYS"), Heartland Investor Services, LLC, Mercantile Investment Services, Inc., ProFunds Distributors, Inc., Victory Capital Advisers, Inc., Citigroup Global Markets Inc., CEFOF GP I Corp., CELFOF GP Corp., Citibank, N.A., Citigroup Alternative Investments LLC, Citigroup Investment Advisory Services Inc., SSBCP GP I Corp., and SSBPIF GP Corp. (collectively, "Applicants") filed an application on June 6, 2007, which was amended on September 13, 2007 and September 20, 2007, 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 BISYS is or hereafter becomes an affiliated person (together with BISYS, "Covered Persons") from section 9(a) of the Act with respect to an injunction entered by the United States District Court for the Southern District of New York on July 27, 2007.

On July 27, 2007, the Commission issued a temporary conditional order exempting Applicants from section 9(a) of the Act with respect to the above-referenced injunction until the Commission took final action on an application for a permanent order or, if earlier, September 24, 2007 (Investment Company Act Release No. 27915). On September 24, 2007, 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 (Investment Company Act Release No. 27978) until the Commission takes final action on the application for a permanent order. 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 conduct of BISYS 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 BISYS et al. (File No. 812-13394), 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 Southern District of New York on July 27, 2007.

By the Commission.

Florence E. Harmon

Florence E. Harmon
Deputy Secretary

Commissioner Campos Not Participating

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 56685 / October 22, 2007

Admin. Proc. File No. 3-12658

In the Matter of Laminaire Corp. (n/k/a Cavico Corp.), TAM Restaurants, Inc. (n/k/a Aerofoam Metals, Inc.), and Upside Development, Inc. (n/k/a Amorocorp)	ORDER DENYING MOTION TO AMEND ORDER INSTITUTING PROCEEDINGS

On June 13, 2007, the Commission instituted administrative proceedings against three Delaware corporations, including "TAM Restaurants, Inc. (n/k/a Aerofoam Metals, Inc.)" ("AMI"), pursuant to Section 12(j) of the Securities Exchange Act of 1934 1/ to determine whether to revoke or suspend the registration of these corporations. The order instituting proceedings ("OIP") alleged that that the three issuers were delinquent in their required Exchange Act periodic filings with the Commission. By motion dated August 3, 2007, the Division of Enforcement moves pursuant to Rule of Practice 200(d) 2/ to amend the OIP to strike AMI as a party and to substitute "TAM Restaurants, Inc." ("TAMRI") in its place. 3/

1/ 15 U.S.C. § 78*l*(j).

2/ 17 C.F.R. § 201.200(d).

3/ On August 30, 2007, the law judge issued an order purporting to grant the Division's motion pursuant to Rule of Practice 200(d)(2). That Rule provides the law judge with authority to amend an order instituting proceedings only to "include new matters of fact or law that are within the scope of the original order instituting proceedings." The effect of granting the Division's motion would be to dismiss AMI as a party, and dismissal of a party from a case is not inclusion of a new matter within the scope of the original order instituting proceedings. See Hunter Adams, Securities Exchange Act Rel. No. 51117 (Feb. 1, 2005), 84 SEC Docket 2928, 2929 (holding that a motion to dismiss charges as to a respondent should not have been directed to the law judge as it was not within the scope of the original order instituting proceedings and thus could only be granted by the

(continued...)

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The Division states that, after the OIP was instituted, AMI advised the Division that "it was the victim of mistaken identity and that it had acquired a different and unrelated TAM Restaurants, Inc.," a Delaware corporation incorporated in March 2006 ("Second TAM"). 4/ The Division now wishes to amend the OIP to delete references to AMI. AMI has stated that it does not oppose the Division's motion and that it has no objection to being dismissed as a party to the proceeding.

TAMRI opposes the Division's motion arguing that the Division's motion is "premature and may result in prejudice" to it, as the Division's motion "is based on incomplete facts." TAMRI requests that we stay this proceeding "pending a resolution of the actual corporate issue." According to TAMRI:

> The Division is acting imprudently by moving ahead in the case at hand, which may result in prejudice to Respondent. The precise relationship between the Respondent and Aerofoam Metals is not yet known. Notwithstanding the fact that Second TAM may have a valid corporate existence separate from the Respondent, Aerofoam Metals may have assumed part of the corporate entity of Respondent by changing Respondent's securities registered name, taking over Respondent's CIK [Central Index Key] number 5/ and changing the number, linking its ticker symbol to the Respondent's symbol "TAMR" and using the Respondent's Chief Executive Officer's identity as an officer of Aerofoam Metals. By taking over parts of Respondent's identity and registration rights, Aerofoam may be successor, at least in part, to Respondent. Therefore, until a further investigation is made and the facts at hand become public, the Respondent request [sic] that the Court [sic] deny the Division's request[]. 6/

3/ (...continued)
Commission). Therefore, the law judge did not have the authority pursuant to Rule 200(d)(2) to grant the Division's motion. We hereby vacate that order.

4/ According to TAMRI's incorporation documents and Exchange Act reports filed on EDGAR, TAMRI was incorporated under the laws of the State of Delaware in July 1996.

5/ The CIK number is a unique identifier assigned to an issuer for use in the Commission's computer systems.

6/ TAMRI urges that we "consider and address the circumstances surrounding the cessation of the operations when addressing [TAMRI's] purported filing failure" and has included a (continued...)

In response, the Division notes that TAMRI does not dispute the statement in a sworn declaration filed with the Division's brief that, on July 10, 2007, Commission staff had "telephoned Anthony Golio, who signed the last filing made by [TAMRI] with the Commission . . . on October 26, 2001, as President of [TAMRI]" and that "Mr. Golio stated that he was still associated with TAMRI, that he had never heard of John Sparrow [the president of Second TAM according to that corporation's Delaware incorporation documents], that [TAMRI] had made no effort to keep its corporate registration with the State of Delaware current, and that [TAMRI] had never authorized a name change or merger with [AMI]." Further, the Division points out that TAMRI had confirmed at the prehearing conference held on July 17, 2007 that it never effected a name change or merger with AMI and that it never authorized AMI to take over its corporate identity. Finally, the Division notes that John Sparrow was never identified as an officer of TAMRI in any of its filings with the Commission.

Rule of Practice 200(d)(1) authorizes the Commission, at any time upon motion of a party, to amend an order instituting proceedings to include new matters of fact or law. We have stated that amendments to orders instituting proceedings "should be freely granted, subject only to the consideration that other parties should not be surprised nor their rights prejudiced." 7/ The assertion that AMI is not the successor to TAMRI would be a new fact if proven.

However, it is unclear to us after reviewing the pleadings and exhibits furnished by the parties what AMI's relationship is to TAMRI. We note that TAMRI's CIK number, as disclosed in its Exchange Act reports filed in 1998 and 2001, is the same as AMI's CIK, as reported in the Pink Sheets website on July 17, 2007 and confirmed by the Division's declaration.

A NASDAQ Transfer Agent Verification Form, dated June 5, 2006, states that, effective at the open of business on June 15, 2006, "TAM Restaurants, Inc." with a "[c]urrent CUSIP # 874835-10-1" would be changing its name to "Aerofoam Metals, Inc." with a "[n]ew CUSIP # 007772-10-6." The Corporate Action Calendar section of the Bloomberg market information service, attached as an exhibit to the declaration, confirms this transaction. The Corporate Action Calendar further shows that the ticker symbol for "Tam Restaurants Inc." was changed on that date from "TAMR" to AMI's symbol of "AFML." This ticker symbol, "TAMR," is the same

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6/ (...continued)
transcript of a November 2003 statement made by Anthony Golio, TAMRI's Chief Executive Officer, Chief Financial Officer, Chairman of the Board and the president of its subsidiary, to the New York City Franchise and Concession Review Committee concerning a temporary cessation of business that it endured as a result of the September 11, 2001 terrorist attack in New York. TAMRI's explanations for its filing failures is not relevant to our consideration of the Division's motion. Accordingly, we do not address it here.

7/ IFG Network Sec., Inc., Exchange Act Rel. No. 50008 (July 13, 2004), 83 SEC Docket 1103, 1104 (internal citations omitted).

one TAMRI had disclosed in its 2001 Exchange Act reports. In light of these facts showing a connection or a corporate identity between TAMRI and the second TAM Restaurants, Inc. acquired by AMI, we believe that the record with respect to AMI's relationship to TAMRI requires further development.

Accordingly, IT IS ORDERED that the motion of the Division of Enforcement to amend the Order Instituting Proceedings, issued June 13, 2007, in the Matter of Laminaire Corp. (n/k/a Cavico Corp.), TAM Restaurants, Inc. (n/k/a Aerofoam Metals, Inc.), and Upside Development, Inc. (n/k/a Amorocorp (Administrative Proceeding File No. 3-12658) be, and it hereby is, DENIED.

By the Commission.

Nancy M. Morris
Secretary

Florence E Harmon

By: Florence E Harmon
Deputy Secretary

FC 1N

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
October 22, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12873

In the Matter of	:	
Ameriserve Food Distribution, Inc., Appalachian Oil & Gas Company, Inc., Harvey's Great Things, Inc., and Northport Industries, Inc.,	:	**ORDER INSTITUTING PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**
Respondents.	:	

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Ameriserve Food Distribution, Inc. ("Ameriserve") (CIK No. 875612) is a dissolved Delaware corporation located in Addison, Texas with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Ameriserve 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 25, 1999. The company filed a Chapter 11 petition on January 31, 2000 in the U.S. Bankruptcy Court for the District of Delaware, and the proceeding terminated on December 1, 2005. On December 1, 2000, the company announced the sale of all of its U.S. operating assets.

2. Appalachian Oil & Gas Company, Inc. ("Appalachian") (CIK No. 732814) is a delinquent Utah corporation located in Salt Lake City, Utah with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Appalachian is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB for the period ended June 30, 1999, which reported no assets or revenues, and net losses of $129,282.

Document 6 of 7

3. Harvey's Great Things, Inc. ("Harvey's") (CIK No. 1083967) is a suspended Oklahoma corporation located in Oklahoma City, Oklahoma with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Harvey's 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, 1999, which reported a net loss of $117,314 for that quarter.

4. Northport Industries, Inc. ("Northport") (CIK No. 1081112) is a revoked Nevada corporation located in Del Rio, Texas with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Northport 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, 1999. As of May 11, 2007, the company's common stock (symbol "PESO") was traded on the over-the-counter markets.

B. DELINQUENT PERIODIC FILINGS

5. 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.

6. 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 (Forms 10-K or 10-KSB), and Rule 13a-13 requires issuers to file quarterly reports (Forms 10-Q or 10-QSB).

7. 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.

Nancy M. Morris
Secretary

Attachment

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

Appendix 1

Chart of Delinquent Filings
Ameriserve Food Distribution, Inc., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Ameriserve Food Distribution, Inc.					
	10-K	12/25/99	03/24/00	Not filed	91
	10-Q	03/25/00	05/09/00	Not filed	89
	10-Q	06/24/00	08/08/00	Not filed	86
	10-Q	09/30/00	11/14/00	Not filed	83
	10-K	12/30/00	04/01/01	Not filed	78
	10-Q	03/31/01	05/15/01	Not filed	77
	10-Q	06/30/01	08/14/01	Not filed	74
	10-Q	09/29/01	11/13/01	Not filed	71
	10-K	12/29/01	03/30/02	Not filed	67
	10-Q	03/30/02	05/14/02	Not filed	65
	10-Q	06/29/02	08/13/02	Not filed	62
	10-Q	09/28/02	11/12/02	Not filed	59
	10-K	12/28/02	03/28/03	Not filed	55
	10-Q	03/29/03	05/13/03	Not filed	53
	10-Q	06/28/03	08/12/03	Not filed	50
	10-Q	09/27/03	11/11/03	Not filed	47
	10-K	12/27/03	03/26/04	Not filed	43
	10-Q	03/27/04	05/13/04	Not filed	41
	10-Q	06/26/04	08/12/04	Not filed	38
	10-Q	09/25/04	11/10/04	Not filed	35
	10-K	12/25/04	03/25/05	Not filed	31
	10-Q	03/26/05	05/11/05	Not filed	29
	10-Q	06/25/05	08/10/05	Not filed	26
	10-Q	09/24/05	11/08/05	Not filed	23
	10-K	12/31/05	03/31/06	Not filed	19
	10-Q	03/25/06	05/09/06	Not filed	17
	10-Q	06/24/06	08/08/06	Not filed	14
	10-Q	09/30/06	11/14/06	Not filed	11
	10-K	12/31/06	04/02/07	Not filed	6
	10-Q	03/25/07	05/09/07	Not filed	5
	10-Q	06/24/07	08/08/07	Not filed	2

Total Filings Delinquent 31

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Appalachian Oil & Gas Company, Inc.					
	10-QSB	09/30/99	11/15/99	Not filed	95
	10-QSB	12/31/99	03/30/00	Not filed	91
	10-QSB	03/31/00	05/15/00	Not filed	89
	10-KSB	06/30/00	09/28/00	Not filed	85
	10-QSB	09/30/00	11/14/00	Not filed	83
	10-QSB	12/31/00	02/14/01	Not filed	80
	10-QSB	03/31/01	05/15/01	Not filed	77
	10-KSB	06/30/01	09/28/01	Not filed	73
	10-QSB	09/30/01	11/14/01	Not filed	71
	10-QSB	12/31/01	02/14/02	Not filed	68
	10-QSB	03/31/02	05/15/02	Not filed	65
	10-KSB	06/30/02	09/30/02	Not filed	61
	10-QSB	09/30/02	11/14/02	Not filed	59
	10-QSB	12/31/02	02/14/03	Not filed	56
	10-QSB	03/31/03	05/15/03	Not filed	53
	10-KSB	06/30/03	09/29/03	Not filed	49
	10-QSB	09/30/03	11/14/03	Not filed	47
	10-QSB	12/31/03	02/16/04	Not filed	44
	10-QSB	03/31/04	05/17/04	Not filed	41
	10-KSB	06/30/04	09/28/04	Not filed	37
	10-QSB	09/30/04	11/15/04	Not filed	35
	10-QSB	12/31/04	02/14/05	Not filed	32
	10-QSB	03/31/05	05/16/05	Not filed	29
	10-KSB	06/30/05	09/28/05	Not filed	25
	10-QSB	09/30/05	11/14/05	Not filed	23
	10-QSB	12/31/05	02/14/06	Not filed	20
	10-QSB	03/31/06	05/15/06	Not filed	17
	10-KSB	06/30/06	09/28/06	Not filed	13
	10-QSB	09/30/06	11/14/06	Not filed	11
	10-QSB	12/31/06	02/14/07	Not filed	8
	10-QSB	03/31/07	05/15/07	Not filed	5
	10-KSB	06/30/07	09/28/07	Not filed	1

Total Filings Delinquent 32

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Harvey's Great Things, Inc.					
	10-KSB	12/31/99	03/30/00	Not filed	91
	10-QSB	03/31/00	05/15/00	Not filed	89
	10-QSB	06/30/00	08/14/00	Not filed	86
	10-QSB	09/30/00	11/14/00	Not filed	83
	10-KSB	12/31/00	04/02/01	Not filed	78
	10-QSB	03/31/01	05/15/01	Not filed	77
	10-QSB	06/30/01	08/14/01	Not filed	74
	10-QSB	09/30/01	11/14/01	Not filed	71
	10-KSB	12/31/01	04/01/02	Not filed	66
	10-QSB	03/31/02	05/15/02	Not filed	65
	10-QSB	06/30/02	08/14/02	Not filed	62
	10-QSB	09/30/02	11/14/02	Not filed	59
	10-KSB	12/31/02	03/31/03	Not filed	55
	10-QSB	03/31/03	05/15/03	Not filed	53
	10-QSB	06/30/03	08/14/03	Not filed	50
	10-QSB	09/30/03	11/14/03	Not filed	47
	10-KSB	12/31/03	03/30/04	Not filed	43
	10-QSB	03/31/04	05/17/04	Not filed	41
	10-QSB	06/30/04	08/16/04	Not filed	38
	10-QSB	09/30/04	11/15/04	Not filed	35
	10-KSB	12/31/04	03/31/05	Not filed	31
	10-QSB	03/31/05	05/16/05	Not filed	29
	10-QSB	06/30/05	08/15/05	Not filed	26
	10-QSB	09/30/05	11/14/05	Not filed	23
	10-KSB	12/31/05	03/31/06	Not filed	19
	10-QSB	03/31/06	05/15/06	Not filed	17
	10-QSB	06/30/06	08/14/06	Not filed	14
	10-QSB	09/30/06	11/14/06	Not filed	11
	10-KSB	12/31/06	03/31/07	Not filed	7
	10-QSB	03/31/07	05/15/07	Not filed	5
	10-QSB	06/30/07	08/14/07	Not filed	2
Total Filings Delinquent	29				
Northport Industries, Inc.					
	10-KSB	12/31/99	03/30/00	Not filed	91
	10-QSB	03/31/00	05/15/00	Not filed	89
	10-QSB	06/30/00	08/14/00	Not filed	86

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Northport Industries, Inc.					
	10-QSB	09/30/00	11/14/00	Not filed	83
	10-KSB	12/31/00	04/02/01	Not filed	78
	10-QSB	03/31/01	05/15/01	Not filed	77
	10-QSB	06/30/01	08/14/01	Not filed	74
	10-QSB	09/30/01	11/14/01	Not filed	71
	10-KSB	12/31/01	04/01/02	Not filed	66
	10-QSB	03/31/02	05/15/02	Not filed	65
	10-QSB	06/30/02	08/14/02	Not filed	62
	10-QSB	09/30/02	11/14/02	Not filed	59
	10-KSB	12/31/02	03/31/03	Not filed	55
	10-QSB	03/31/03	05/15/03	Not filed	53
	10-QSB	06/30/03	08/14/03	Not filed	50
	10-QSB	09/30/03	11/14/03	Not filed	47
	10-KSB	12/31/03	03/30/04	Not filed	43
	10-QSB	03/31/04	05/17/04	Not filed	41
	10-QSB	06/30/04	08/16/04	Not filed	38
	10-QSB	09/30/04	11/15/04	Not filed	35
	10-KSB	12/31/04	03/31/05	Not filed	31
	10-QSB	03/31/05	05/16/05	Not filed	29
	10-QSB	06/30/05	08/15/05	Not filed	26
	10-QSB	09/30/05	11/14/05	Not filed	23
	10-KSB	12/31/05	03/31/06	Not filed	19
	10-QSB	03/31/06	05/15/06	Not filed	17
	10-QSB	06/30/06	08/14/06	Not filed	14
	10-QSB	09/30/06	11/14/06	Not filed	11
	10-KSB	12/31/06	03/31/07	Not filed	7
	10-QSB	03/31/07	05/15/07	Not filed	5
	10-QSB	06/30/07	08/14/07	Not filed	2

Total Filings Delinquent 31

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
October 29, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12882

In the Matter of	
American Venture Group, Inc., Avocet Ventures, Inc., Bull Run, Inc., Calcomp Technology, Inc., and Essco USA, Inc.,	**ORDER INSTITUTING PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**
Respondents.	

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. American Venture Group, Inc. (CIK No. 1081925) is a void Delaware corporation located in Los Angeles, California with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). American Venture 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 May 27, 1999, which reported total assets of $500.

2. Avocet Ventures, Inc. (CIK No. 1097461) is a revoked Nevada corporation located in Los Angeles, California with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Avocet 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 October 28, 1999, which reported no operations, no revenue, and net losses of $2,704.

3. Bull Run, Inc. (CIK No. 1043074) is a revoked Nevada corporation located in Irvine, California with classes of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Bull Run 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 February 2, 1999.

4. Calcomp Technology, Inc. (CIK No. 818470) is an inactive Delaware corporation located in La Palma, California with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Calcomp 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 26, 1999.

5. Essco USA, Inc. (CIK No. 1053883) is a forfeited Delaware corporation located in Irvine, California with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Essco 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 February 2, 1998.

B. DELINQUENT PERIODIC FILINGS

6. 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.

7. 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 (Forms 10-K or 10-KSB), and Rule 13a-13 requires issuers to file quarterly reports (Forms 10-Q or 10-QSB).

8. 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.

Nancy M. Morris
Secretary

Attachment

By: Jill M. Peterson
Assistant Secretary

Appendix 1

Chart of Delinquent Filings
American Venture Group, Inc.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
American Venture Group, Inc.					
	10-QSB	06/30/99	08/16/99	Not filed	98
	10-QSB	09/30/99	11/15/99	Not filed	95
	10-KSB	12/31/99	03/30/00	Not filed	91
	10-QSB	03/31/00	05/15/00	Not filed	89
	10-QSB	06/30/00	08/14/00	Not filed	86
	10-QSB	09/30/00	11/14/00	Not filed	83
	10-KSB	12/31/00	04/02/01	Not filed	78
	10-QSB	03/31/01	05/15/01	Not filed	77
	10-QSB	06/30/01	08/14/01	Not filed	74
	10-QSB	09/30/01	11/14/01	Not filed	71
	10-KSB	12/31/01	04/01/02	Not filed	66
	10-QSB	03/31/02	05/15/02	Not filed	65
	10-QSB	06/30/02	08/14/02	Not filed	62
	10-QSB	09/30/02	11/14/02	Not filed	59
	10-KSB	12/31/02	03/31/03	Not filed	55
	10-QSB	03/31/03	05/15/03	Not filed	53
	10-QSB	06/30/03	08/14/03	Not filed	50
	10-QSB	09/30/03	11/14/03	Not filed	47
	10-KSB	12/31/03	03/30/04	Not filed	43
	10-QSB	03/31/04	05/17/04	Not filed	41
	10-QSB	06/30/04	08/16/04	Not filed	38
	10-QSB	09/30/04	11/15/04	Not filed	35
	10-KSB	12/31/04	03/31/05	Not filed	31
	10-QSB	03/31/05	05/16/05	Not filed	29
	10-QSB	06/30/05	08/15/05	Not filed	26
	10-QSB	09/30/05	11/14/05	Not filed	23
	10-KSB	12/31/05	03/31/06	Not filed	19
	10-QSB	03/31/06	05/15/06	Not filed	17
	10-QSB	06/30/06	08/14/06	Not filed	14
	10-QSB	09/30/06	11/14/06	Not filed	11
	10-KSB	12/31/06	04/02/07	Not filed	6
	10-QSB	03/31/07	05/15/07	Not filed	5
	10-QSB	06/30/07	08/14/07	Not filed	2

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
American Venture Group, Inc.					
Total Filings Delinquent	33				
Avocet Ventures, Inc.					
	10-QSB	12/31/99	02/14/00	Not filed	92
	10-QSB	03/31/00	05/15/00	Not filed	89
	10-QSB	06/30/00	08/14/00	Not filed	86
	10-KSB	09/30/00	12/29/00	Not filed	82
	10-QSB	12/31/00	02/14/01	Not filed	80
	10-QSB	03/31/01	05/15/01	Not filed	77
	10-QSB	06/30/01	08/14/01	Not filed	74
	10-KSB	09/30/01	12/31/01	Not filed	70
	10-QSB	12/31/01	02/14/02	Not filed	68
	10-QSB	03/31/02	05/15/02	Not filed	65
	10-QSB	06/30/02	08/14/02	Not filed	62
	10-KSB	09/30/02	12/30/02	Not filed	58
	10-QSB	12/31/02	02/14/03	Not filed	56
	10-QSB	03/31/03	05/15/03	Not filed	53
	10-QSB	06/30/03	08/14/03	Not filed	50
	10-KSB	09/30/03	12/29/03	Not filed	46
	10-QSB	12/31/03	02/17/04	Not filed	44
	10-QSB	03/31/04	05/17/04	Not filed	41
	10-QSB	06/30/04	08/16/04	Not filed	38
	10-KSB	09/30/04	12/29/04	Not filed	34
	10-QSB	12/31/04	02/14/05	Not filed	32
	10-QSB	03/31/05	05/16/05	Not filed	29
	10-QSB	06/30/05	08/15/05	Not filed	26
	10-KSB	09/30/05	12/29/05	Not filed	22
	10-QSB	12/31/05	02/14/06	Not filed	20
	10-QSB	03/31/06	05/15/06	Not filed	17
	10-QSB	06/30/06	08/14/06	Not filed	14
	10-KSB	09/30/06	12/29/06	Not filed	10
	10-QSB	12/31/06	02/14/07	Not filed	8
	10-QSB	03/31/07	05/15/07	Not filed	5
	10-QSB	06/30/07	08/14/07	Not filed	2

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Avocet Ventures, Inc.					
Total Filings Delinquent	31				
Bull Run, Inc.					
	10-QSB	09/30/02	11/14/02	Not filed	59
	10-QSB	12/31/02	02/14/03	Not filed	56
	10-KSB	03/31/03	06/30/03	Not filed	52
	10-QSB	06/30/03	08/14/03	Not filed	50
	10-QSB	09/30/03	11/14/03	Not filed	47
	10-QSB	12/31/03	02/17/04	Not filed	44
	10-KSB	03/31/04	06/29/04	Not filed	40
	10-QSB	06/30/04	08/16/04	Not filed	38
	10-QSB	09/30/04	11/15/04	Not filed	35
	10-QSB	12/31/04	02/14/05	Not filed	32
	10-KSB	03/31/05	06/29/05	Not filed	28
	10-QSB	06/30/05	08/15/05	Not filed	26
	10-QSB	09/30/05	11/14/05	Not filed	23
	10-QSB	12/31/05	02/14/06	Not filed	20
	10-KSB	03/31/06	06/29/06	Not filed	16
	10-QSB	06/30/06	08/14/06	Not filed	14
	10-QSB	09/30/06	11/14/06	Not filed	11
	10-QSB	12/31/06	02/14/07	Not filed	8
	10-KSB	03/31/07	06/29/07	Not filed	4
	10-QSB	06/30/07	08/14/07	Not filed	2
Total Filings Delinquent	20				
Calcomp Technology, Inc.					
	10-K	12/26/99	03/27/00	Not filed	91
	10-Q	03/26/00	05/10/00	Not filed	89
	10-Q	06/25/00	08/09/00	Not filed	86
	10-Q	09/24/00	11/08/00	Not filed	83
	10-K	12/31/00	04/02/01	Not filed	78
	10-Q	03/25/01	05/09/01	Not filed	77
	10-Q	06/24/01	08/08/01	Not filed	74
	10-Q	09/30/01	11/14/01	Not filed	71

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Calcomp Technology, Inc.					
	10-K	12/23/01	03/25/02	Not filed	67
	10-Q	03/31/02	05/15/02	Not filed	65
	10-Q	06/30/02	08/14/02	Not filed	62
	10-Q	09/29/02	11/13/02	Not filed	59
	10-K	12/29/02	03/31/03	Not filed	55
	10-Q	03/30/03	05/14/03	Not filed	53
	10-Q	06/29/03	08/13/03	Not filed	50
	10-Q	09/28/03	11/12/03	Not filed	47
	10-K	12/28/03	03/29/04	Not filed	43
	10-Q	03/28/04	05/12/04	Not filed	41
	10-Q	06/27/04	08/11/04	Not filed	38
	10-Q	09/26/04	11/10/04	Not filed	35
	10-K	12/26/04	03/28/05	Not filed	31
	10-Q	03/27/05	05/11/05	Not filed	29
	10-Q	06/26/05	08/10/05	Not filed	26
	10-Q	09/25/05	11/09/05	Not filed	23
	10-K	12/25/05	03/27/06	Not filed	19
	10-Q	03/26/06	05/10/06	Not filed	17
	10-Q	06/25/06	08/09/06	Not filed	14
	10-Q	09/24/06	11/08/06	Not filed	11
	10-K	12/31/06	04/02/07	Not filed	0
	10-Q	03/26/07	05/10/07	Not filed	5
	10-Q	06/25/07	08/09/07	Not filed	2
Total Filings Delinquent	31				
Essco USA, Inc.					
	10-Q	09/30/98	11/16/98	Not filed	107
	10-K	12/31/98	03/31/99	Not filed	103
	10-Q	03/31/99	05/17/99	Not filed	101
	10-Q	06/30/99	08/16/99	Not filed	98
	10-Q	09/30/99	11/15/99	Not filed	95
	10-K	12/31/99	03/30/00	Not filed	91
	10-Q	03/31/00	05/15/00	Not filed	89
	10-Q	06/30/00	08/14/00	Not filed	86
	10-Q	09/30/00	11/14/00	Not filed	83
	10-K	12/31/00	04/02/01	Not filed	78

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Essco USA, Inc.					
	10-Q	03/31/01	05/15/01	Not filed	77
	10-Q	06/30/01	08/14/01	Not filed	74
	10-Q	09/30/01	11/14/01	Not filed	71
	10-Q	03/31/02	05/15/02	Not filed	65
	10-Q	06/30/02	08/14/02	Not filed	62
	10-Q	09/30/02	11/14/02	Not filed	59
	10-K	12/31/02	03/31/03	Not filed	55
	10-Q	03/31/03	05/15/03	Not filed	53
	10-Q	06/30/03	08/14/03	Not filed	50
	10-Q	09/30/03	11/14/03	Not filed	47
	10-K	12/31/03	03/30/04	Not filed	43
	10-Q	03/31/04	05/17/04	Not filed	41
	10-Q	06/30/04	08/16/04	Not filed	38
	10-Q	09/30/04	11/15/04	Not filed	35
	10-K	12/31/04	03/31/05	Not filed	31
	10-Q	03/31/05	05/16/05	Not filed	29
	10-Q	06/30/05	08/15/05	Not filed	26
	10-Q	09/30/05	11/14/05	Not filed	23
	10-K	12/31/05	03/31/06	Not filed	19
	10-Q	03/31/06	05/15/06	Not filed	17
	10-Q	06/30/06	08/14/06	Not filed	14
	10-Q	09/30/06	11/14/06	Not filed	11
	10-K	12/31/06	04/02/07	Not filed	6
	10-Q	03/31/07	05/15/07	Not filed	5
	10-Q	06/30/07	08/14/07	Not filed	2
Total Filings Delinquent	33				

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 October 2007, 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:

CHRISTOPHER COX, CHAIRMAN

PAUL S. ATKINS, COMMISSIONER

ANNETTE L. NAZARETH, COMMISSIONER

KATHLEEN L. CASEY, COMMISSIONER

18 Documents

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

October 1, 2007

IN THE MATTER OF CONNECTAJET.COM, INC.	:	ORDER OF SUSPENSION OF TRADING
File No. 500-1	:	

It appears to the Securities and Exchange Commission that the market for the securities of ConnectAJet.com, Inc. ("ConnectAJet") may be reacting to manipulative forces or deceptive practices and that there is a lack of current and accurate information about ConnectAJet upon which an informed investment decision can be made. It also appears that there may be inaccurate assertions by ConnectAJet in publicly-disseminated press releases and on ConnectAJet's website about, among other things, the existence of the company's partnerships and affiliations with aviation companies.

ConnectAJet was quoted on the Pink Sheet under the ticker symbol CAJT. Recently, there have been advertisements in newspapers and on television, information mailers, spam emails and a blast fax touting the company's shares.

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 above-listed company is suspended for the period from 9:30 a.m. EDT, October 1, 2007 through 11:59 p.m. EDT, on October 12, 2007.

By the Commission.

Nancy M. Morris
Secretary

By: J. Lynn Taylor
Assistant Secretary

Document 1 of 18

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

October 1, 2007

IN THE MATTER OF CHINA EXPERT TECHNOLOGY, INC.	:	**ORDER OF SUSPENSION OF TRADING**
File No. 500-1	:	

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Expert Technology, Inc. ("China Expert") because of questions regarding the adequacy and accuracy of publicly-disseminated information concerning, among other things, China Expert's: (1) financial performance and business prospects and (2) current financial condition.

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 above-listed company is suspended for the period from 9:30 a.m. EDT, October 1, 2007 through 11:59 p.m. EDT, on October 12, 2007.

By the Commission.

Nancy M. Morris
Secretary

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10K

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

October 4, 2007

In the Matter of Certain Companies Quoted on the Pink Sheets	:	**ORDER OF SUSPENSION OF TRADING**
Alliance Transcription Services, Inc.	:	
Prime Petroleum Group, Inc.	:	
T.W. Christian, 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 the issuers listed below. As set forth below for each issuer, questions have arisen regarding the adequacy and accuracy of publicly-disseminated information concerning, among other things: (1) the companies' assets, (2) the companies' business operations and/or management, (3) the companies' current financial condition, and/or (4) financing arrangements involving the issuance of the companies' shares.

1. **Alliance Transcription Services, Inc.** is a Nevada company with offices in Maine and California. Questions have arisen regarding the adequacy and accuracy of press releases concerning the company's assets and its current operations and financial condition and transactions involving the issuance of the company's shares.

2. **Prime Petroleum Group, Inc.** is a Nevada company with offices in Washington. Questions have arisen regarding the adequacy and accuracy of press releases and other publicly-disseminated information concerning the company's assets and its current operations, management and financial condition.

3. **T.W. Christian, Inc.** is a Minnesota company with offices in Vancouver, British Columbia, Canada. Questions have arisen regarding the adequacy and accuracy of press releases concerning the company's assets and its current operations, management and financial condition.

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 companies listed above.

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Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the companies listed above is suspended for the period from 9:30 a.m. EDT, October 4, 2007, through 11:59 p.m. EDT, on October 17, 2007.

By the Commission.

Nancy M. Morris
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 56612 / October 4, 2007

INVESTMENT ADVISERS ACT OF 1940
Release No. 2669 / October 4, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12863

In the Matter of **CONSULTING SERVICES GROUP, LLC, AND JOE D. MEALS,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTIONS 203(e), 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Consulting Services Group, LLC ("CSG") and pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(f) and 203(k) of the Advisers Act against Joe D. Meals ("Meals") (collectively, "Respondents").

II.

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

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III.

On the basis of this Order and Respondents' Offers, the Commission finds that:

Summary

1. These proceedings arise out of: (a) CSG's violation of Advisers Act Section 204 and Rule 204-2 thereunder and Rule 204A-1 (adopted under Advisers Act Sections 204A and 206(4)), in failing to adopt timely and to maintain accurate written acknowledgements by its supervised persons of their receipt of a code of ethics compliant with Rule 204A-1; (b) CSG's violation of Advisers Act Section 206(4) and Rule 206(4)-7 thereunder, in failing to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and the rules thereunder by CSG and its supervised persons; and (c) Meals' aiding and abetting and causing of CSG's violations

Respondents

2. CSG is a Tennessee limited liability company headquartered in Memphis, Tennessee. CSG has been registered with the Commission as an investment adviser since its formation in 1990. CSG provides investment related consulting services to approximately 125 clients, many of which are institutional clients. The majority of CSG's institutional clients are public and private pension funds. The total assets of CSG's clients are approximately $38 billion. CSG does not regularly provide discretionary money management services for its pension and other institutional clients. Instead CSG typically assists its institutional clients in discretionary money manager search and selection, asset allocation, performance measurement and review, and investment policy review and design.

3. Meals, age 52, is a resident of Memphis, Tennessee. Meals is a founding partner and shareholder of CSG. From May 1990 through November 2006, Meals served as the chief compliance officer for both CSG and its wholly owned broker-dealer affiliate, Trading Services Group, Inc. ("TSG").

Failure to Timely Adopt and Accurately Document Ethics Code

4. On January 20, 2004, the Commission issued a proposing release for Rule 204A-1 under the Advisers Act, which was to require all investment advisers to adopt a code of ethics designed to "reflect the adviser's fiduciary obligations and those of its supervised persons...." Investment Adviser Code of Ethics, Advisers Act Release No. 2209, 69 F.R. 4040, 4041 (Jan. 20, 2004). Rule 204A-1 was adopted by the Commission on July 2, 2004, becoming effective on August 31, 2004, with a revised compliance date of February 1, 2005. Investment Advisers Code of Ethics, Advisers Act Release No. 2256, 69 F.R. 41696 (Jul. 2, 2004). Registration under the Advisers Act of Certain Hedge Fund Advisers," Advisers Act Release No. 2333 (Dec. 2, 2004) at n. 274 (extending compliance date for Rule 204A-1).

5. In adopting Rule 204A-1, the Commission did not require investment advisers "to adopt a particular standard," and instead provided only a baseline level of compliance such that all investment adviser codes of ethics must, at a minimum, require that supervised persons: (1) adhere to applicable fiduciary obligations; (2) comply with applicable federal securities laws; (3) periodically report personal securities transactions; (4) report any violations of a firm's ethics code to designated firm personnel; and (5) execute a written acknowledgment of receipt of the firm's code of ethics. Investment Advisers Code of Ethics, Advisers Act Release No. 2256, 69 F.R. at 41697.

6. The Commission further amended the recordkeeping requirements of Rule 204-2 under the Advisers Act at subsection (a)(12) to require that investment advisers maintain, among other things, the code of ethics required under Advisers Act Rule 204A-1, records of violations of the code of ethics, and records of written acknowledgments by all supervised persons of the investment adviser. Id. at 41701.

7. Prior to the adoption of Rule 204A-1, CSG had maintained a code of ethics. CSG's existing code of ethics did not require supervised persons to execute a written acknowledgment of receipt of CSG's code of ethics, as required under Advisers Act Rule 204A-1. CSG did not amend its code of ethics to comply with Rule 204A-1 with respect to supervised persons executing written acknowledgments of receipt of CSG's code of ethics as of the required compliance date of February 1, 2005.

8. On March 11, 2005, following an examination of CSG that was completed during calendar year 2004, the Commission staff issued a deficiency letter to CSG, addressed to Meals as chief compliance officer. As the Commission staff's examination of CSG was completed prior to the required compliance date of Rule 204A-1, the March 11, 2005 deficiency letter did not cite CSG for violating Rule 204A-1, but did remind CSG of Rule 204A-1's recent adoption and required compliance date of February 1, 2005.

9. In response to receiving the Commission staff's deficiency letter in March 2005, Meals revised CSG's existing code of ethics in an effort to comply with Rule 204A-1. Meals also prepared written acknowledgments for receipt of CSG's ethics code to be executed by CSG's supervised persons.

10. In delivering the written acknowledgments to CSG's supervised persons, Meals, in March, April and May 2005, instructed CSG's supervised persons to date the written acknowledgment forms as of either January 19 or 20, 2005, so as to indicate falsely that CSG had timely complied with the provisions of Advisers Act Rule 204A-1. At Meals' direction, all supervised persons employed by CSG as of February 1, 2005 – the required compliance date for Advisers Act Rule 204A-1 – dated their execution of written acknowledgments of receipt and review of CSG's revised code of ethics as of either January 19 or 20, 2005, when they had not in fact received and reviewed CSG's revised code of ethics until March 2005 at the earliest.

11. On June 9, 2005, the Commission staff requested that CSG provide it with all documents evidencing CSG's compliance with Advisers Act Rule 204A-1. Upon receiving the Commission

staff's request, Meals obtained the remaining written acknowledgments from those supervised persons who had not responded to his earlier request, again instructing those supervised persons who were employed by CSG as of February 1, 2005 to date the written acknowledgment forms as of either January 19 or 20, 2005. When Meals had finished obtaining the executed written acknowledgments from all of CSG's supervised persons, CSG then produced all such written acknowledgments to the Commission staff.

12. As a result of the conduct described above, CSG willfully violated[1] Advisers Act Section 204 and Rule 204-2 thereunder and Rule 204A-1 (adopted under Advisers Act Sections 204A and 206(4)), and Meals willfully aided and abetted and caused such violations, by failing to adopt timely a code of ethics compliant with Rule 204A-1 and by failing to maintain accurate written acknowledgments by all supervised persons of their receipt of a code of ethics compliant with Rule 204A-1.

Failure to Adopt and Implement Written Policies and Procedures Reasonably Designed to Prevent Violations of the Advisers Act and the Rules thereunder

13. When CSG was initially formed in 1990, Meals purchased a pre-packaged written "Investment Adviser Policies and Procedures Manual" from a compliance outsourcing firm. This 1990 version pre-packaged policies and procedures manual was later supplemented with a copy of the 1989 version of the Advisers Act, Commission Release No. IA-1092 from 1987 regarding the scope of the Advisers Act, and an e-mail retention policy prepared in 2000.

14. On February 11, 2003, the Commission issued a proposing release for Rule 206(4)-7 under the Advisers Act, which was to require all investment advisers to adopt and implement written policies and procedures "reasonably designed to prevent violation" of the Advisers Act and the rules thereunder. Compliance Programs of Investment Companies and Investment Advisers, Advisers Act Release No. 2107, 68 F.R. 7038 (Feb. 11, 2003). Rule 206(4)-7 was adopted by the Commission on December 24, 2003, becoming effective on February 5, 2004, with a compliance date of October 5, 2004. Compliance Programs of Investment Companies and Investment Advisers, Advisers Act Release No. 2204, 68 F.R. 74714, 74715 (Dec. 24, 2003).

15. In adopting Advisers Act Rule 206(4)-7, the Commission described a flexible approach that could be taken by investment advisers, stressing that there was no "single set of universally applicable required elements" for an investment adviser's policies and procedures, and that instead "[e]ach adviser should adopt policies and procedures that take into consideration the nature of that firm's operations." Id. at 74716. In describing how advisers should actually design their policies and procedures, the Commission suggested that firms "should first identify conflicts and other compliance factors creating risk exposure for the firm and its clients in light of the firm's particular operations, and then design policies and procedures that address those risks." Id.

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[1] "Willfully" as used in this Order, in the context of "willfully violated," means intentionally committing the act which constitutes the violation. Cf. Wonsover v. S.E.C., 205 F.3d 408, 414 (D.C. Cir. 2000); Tager v. S.E.C., 344 F.2d 5, 8(2d Cir. 1965). There is no requirement that the actor also be aware that he is violating one of the Rules or Acts.

16. In September 2003, several months after the Commission's February issuance of the proposing release for Rule 206(4)-7, but prior to the adoption of the Rule in December 2003, Meals purchased an updated pre-packaged Investment Advisers Policies and Procedures Manual electronic template from a compliance outsourcing firm. Meals printed a hard-copy of the 2003 policies and procedures electronic template, made certain hand-written notes and lined through certain sections of the hard-copy, and finally appended the hand-notated copy to CSG's existing 1990 pre-packaged policies and procedures, the 1989 version of the Advisers Act, Commission Release No. IA-1092 from 1987, and the 2000 e-mail retention policy. As of October 5, 2004, the required compliance date with Advisers Act Rule 206(4)-7, these documents comprised the whole of CSG's written policies and procedures.

17. The pre-packaged policies and procedures manual and template that Meals purchased for CSG in 1990 and 2003 were designed for use by investment advisers offering discretionary money management services to clients – and were not designed for use by institutional or pension consultants. The pre-packaged policies and procedures manual and template failed to address adequately the conflicts of interest unique to CSG's operations as a pension consultant, and many of the sections within these generic forms were completely inapplicable and irrelevant to CSG's provision of advisory services to clients.

18. In adopting and implementing the pre-packaged manual and template for use as its written policies and procedures, CSG failed to undertake adequate efforts to identify the risk factors or specific conflicts that may have been applicable to its operations as a pension consultant; indeed such risk factors and conflicts were not addressed within the pre-packaged forms as purchased. For example, in adopting and implementing its pre-packaged policies and procedures, CSG gave no specific consideration to any of the potential conflicts of interest concerning the relationship between CSG and its wholly-owned broker-dealer subsidiary, TSG. CSG created TSG for the purpose of providing a commission recapture plan to clients. Under the commission recapture plan, CSG clients can have their trading executed through TSG, with a portion of the trading commissions generated by their investment activity used to directly offset the consulting fees charged by CSG. The commission recapture program creates multiple potential conflicts of interest in that it provides a financial incentive for CSG to refer clients to those discretionary money managers that utilize TSG as compared to other broker-dealers, or, that have a history of generating more commissionable activity than other discretionary money managers. No portion of the pre-packaged policies and procedures adopted and implemented by CSG adequately addressed the potential conflicts of interest concerning the use of TSG by the discretionary money managers CSG was recommending to advisory clients.

19. As a result of the conduct described above, CSG willfully violated Advisers Act Section 206(4) and Rule 206(4)-7 thereunder, and Meals willfully aided and abetted and caused such violations, by failing to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and the rules thereunder by its supervised persons.

20. During the Commission staff's investigation, CSG voluntarily retained an independent compliance consultant for the purposes of: (a) reviewing the effectiveness of existing written supervisory and compliance policies and procedures; (b) preparing additional written policies and procedures reasonably designed to prevent violation of the Advisers Act and the rules thereunder for adoption and implementation by CSG; (c) reviewing the adequacy of CSG's existing written disclosure statements with respect to potential conflicts of interest for use with actual and prospective clients; and (d) preparing additional written disclosure statements for CSG for use with actual and prospective clients. When CSG became aware of the extent of Meals' conduct in the context of Advisers Act Section 204 and Rules 204-2 and 204A-1 thereunder, CSG placed Meals on administrative leave and removed him from all compliance and supervisory roles. Following an independent investigation into Meals' conduct, CSG allowed Meals to return to the firm in the limited capacity of providing advisory services to his existing clients, while operating under heightened supervisory standards.

CSG's Remedial Efforts

21. In determining to accept the Offer, the Commission considered the remedial acts promptly undertaken by CSG and cooperation 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 Respondents' Offers.

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

A. CSG be, and hereby is, censured;

B. CSG cease and desist from committing or causing any violations and any future violations of Sections 204 and 206(4) of the Advisers Act and Rules 204-2, 204A-1 and 206(4)-7 promulgated thereunder;

C. CSG shall, within ten days of the entry of this Order, pay a civil money penalty in the amount of $20,000 to the United States Treasury. 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 CSG 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 M. Graham Loomis, Assistant District Administrator, Atlanta District Office, 3475 Lenox Road, Suite 500, Atlanta, Georgia 30326;

D. Meals be, and hereby is, censured;

E. Meals cease and desist from committing or causing any violations and any future violations of Sections 204 and 206(4) of the Advisers Act and Rules 204-2, 204A-1 and 206(4)-7 promulgated thereunder;

F. Meals shall, within ten days of the entry of this Order, pay a civil money penalty in the amount of $10,000 to the United States Treasury. 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 CSG 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 M. Graham Loomis, Assistant District Administrator, Atlanta District Office, 3475 Lenox Road, Suite 500, Atlanta, Georgia 30326;

G. Meals be, and hereby is, barred from association in a compliance capacity with any broker, dealer or investment adviser; and

H. Any reapplication for association by Meals 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 Meals, 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.

Nancy M. Morris
Secretary

By: J. Lynn Taylor
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 56613 / October 4, 2007

Admin. Proc. File No. 3-12416

In the Matter of the Application of

PERPETUAL SECURITIES, INC.,
YOUWEI P. XU,
and
CATHY Y. HUANG
1603 - 7300 Yonge Street
Thornhill, Ontario L4J7Y5
Canada

For Review of Disciplinary Action Taken by

NASD

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DISCIPLINARY PROCEEDINGS

Violation of Conduct Rules

Failure to Observe Just and Equitable Principles of Trade

Failure to Provide Requested Information

Former member of registered securities association and principals operated a securities business while firm's membership was suspended, and executive vice president responded to association's request for information untimely and incompletely. Held, association's findings of violations are sustained and sanctions it imposed are modified.

APPEARANCES:

Youwei P. Xu, for Perpetual Securities, Inc.

Youwei P. Xu, pro se.

Cathy Y. Huang, pro se.

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Marc Menchel, Alan B. Lawhead, James S. Wrona, and Vickie R. Olafson, for NASD.

Appeal filed: September 13, 2006
Last brief received: February 5, 2007

I.

Perpetual Securities, Inc. ("Perpetual" or "the Firm"), a former NASD member, 1/ Youwei P. Xu, the Firm's President, Chief Executive Officer, principal, and part owner, and Cathy Huang, its Executive Vice President, Chief Financial Officer, Limited Principal -- Financial and Operations ("FINOP"), principal, and part owner 2/ (collectively "Applicants") appeal from NASD disciplinary action. 3/ NASD expelled the Firm from NASD membership for operating a securities business while suspended, in violation of NASD Conduct Rule 2110; 4/ barred Xu and Huang for violating NASD Rule 2110 by allowing the Firm to operate while suspended; and barred Huang for violating NASD Rules 8210 5/ and 2110 by failing to respond timely and fully to NASD requests for information. We base our findings on an independent review of the record. 6/

1/ The Firm filed a Form BDW withdrawing its membership on December 16, 2003.

2/ Xu and Huang are married to each other.

3/ On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Rel. No. 56146 (July 26, 2007), 72 Fed. Reg. 42,190 (Aug. 1, 2007) (SR-NASD-2007-053). Because the disciplinary action here was taken before that date, we continue to use the designation NASD.

4/ NASD Conduct Rule 2110 obliges members and associated persons to "observe high standards of commercial honor and just and equitable principles of trade."

5/ NASD Investigations Rule 8210 requires NASD members and associated persons to provide information and documents to NASD in the course of an investigation, among other events.

6/ Applicants have attached many pages of documents to each of their briefs. A substantial number of these are already in the record. With respect to the remainder, as a discretionary matter, we have decided to admit the documents.

(continued...)

II.

A. The Suspension Order

On November 14, 2000, a Perpetual customer won an arbitration award against the Firm. However, as of June 18, 2002, the Firm had not paid the award. On that date, NASD notified Perpetual that its membership would be suspended for failure to pay the arbitration award. 7/ Perpetual appealed the suspension (the "Suspension Proceeding"). On November 25, 2002, NASD's Office of Hearing Officers ("OHO") issued a decision (the "Suspension Order") finding that Perpetual had violated NASD Arbitration Rule 10330(h) by failing to pay the award and suspending the Firm's NASD membership until the award was paid.

OHO served the Suspension Order on the attorney who represented Perpetual in the Suspension Proceeding, Kevin Tung. Tung promptly applied to the Commission on November 29, 2002 for review of the decision and for a stay of the Suspension Order. 8/ OHO also sent copies of the Suspension Order to the Firm, although it sent them to an address in Forest Hills, New York that Applicants had previously notified the Central Registration Depository ("CRD") was no longer current and a post office box in Holmdel, New Jersey. When it became aware of its error, OHO sent an additional copy of the Suspension Order to the Firm at an updated street address in Holmdel, New Jersey by overnight courier and first-class mail. The record includes a Federal Express confirmation that the material was delivered to the Firm's Holmdel street address on December 3, 2002.

Applicants assert that, beginning in November 2002, the Firm had closed its New York office, and was in the process of shutting down. According to the Firm's records, however, between December 1, 2002, and January 14, 2003, Perpetual continued to transact both retail and proprietary securities business, even though its membership had been suspended. The record reflects that Applicants earned at least $1,895 from securities business during the relevant period.

6/ (...continued)
Applicants have also filed three motions requesting that the Commission hear oral argument in this proceeding. The Office of General Counsel, acting by delegated authority, denied the first two of these motions by order of December 19, 2006. Pursuant to Rule of Practice 451, 17 C.F.R. § 201.451, we have determined that the decisional process will not be significantly aided by oral argument.

7/ The Suspension Proceeding was commenced pursuant to Article VI, Section 3 of the NASD By-Laws and Procedural Rule 9510 et seq. On June 28, 2004, the rules relating to non-summary proceedings for failure to comply with an arbitration award were reenacted as Rule 9554.

8/ The Commission denied the stay and ultimately dismissed the appeal. See Perpetual Sec., Inc., 56 S.E.C. 1008 (2003).

According to Perpetual's clearing firm, during this time, Perpetual's customers used Perpetual's facilities to access the clearing firm's trading programs and could neither call nor access the clearing firm's internet trading programs directly. 9/ In a letter to NASD staff dated March 3, 2004, Huang stated that she had specific responsibility for "[a]rranging clients' orders through internet clearing firm's platform."

On January 14, 2003, during an NASD on-site audit, NASD staff informed Xu and Huang that NASD had suspended Perpetual's membership, whereupon Xu and Huang ceased operations and notified the Firm's clearing broker of the suspension. NASD reinstated Perpetual's membership in May 2003, after Perpetual satisfied the arbitration award. The NASD staff's audit exit letter in May noted that it appeared that the Firm had operated while suspended and stated that the staff had referred the matter to NASD's Department of Enforcement ("Enforcement") for possible disciplinary action.

B. The Information Requests

On February 19, 2004, in connection with the investigation of Perpetual's possible operation while suspended, NASD sent an information request pursuant to NASD Rule 8210 to Huang at the Firm's Holmdel, New Jersey post office box address listed in the CRD, as well as her home address listed in the CRD. NASD sought, by February 27, 2004, information about the Firm's employees, their duties, and their roles in appealing the Suspension Order to the Commission, as well as copies of the Firm's written supervisory procedures. On March 8, 2004, NASD received Huang's incomplete response, in which she answered some, but not all, of NASD's questions and failed to attach any documents. 10/ In her response, Huang listed the Holmdel, New Jersey post office box address as the return address on her response. Huang also listed the Holmdel, New Jersey post office box as her return address when she submitted an April 3, 2004, Wells statement on behalf of the Firm, Xu, and herself.

On March 18, 2004, NASD sent a second information request pursuant to Rule 8210 to the Holmdel, New Jersey post office box address seeking account and telephone records as well as additional information with a deadline of March 31, 2004. Huang did not respond. NASD sent Huang a third request on April 7, 2004, seeking most of the same information with a deadline of April 14, 2004. In a separate letter, NASD informed Huang that it had not received a response to the March 18, 2004 request.

9/ Once the clearing firm was notified of the Firm's suspension, it allowed Perpetual's customers to call the clearing firm directly or to access its trading programs via the internet.

10/ For example, Huang did not provide responsive answers to NASD's questions regarding the circumstances under which the Firm decided to appeal the Suspension Order to the Commission or regarding the date of that decision.

Huang did not respond to either the March 18 or April 7 request until August 6, 2004, after NASD initiated this proceeding. Huang claimed that her response was delayed because the mail sent to the Holmdel, New Jersey post office box was forwarded to another address in Buffalo, New York that aggregated Applicants' mail and periodically forwarded it to them at their current address in Canada. As of February 16, 2005, the only address reflected in the CRD was the New Jersey post office box, not the Buffalo or Canadian addresses.

C. The Hearing Process

On June 29, 2004, Enforcement initiated these proceedings against Applicants by mailing a complaint to them at their CRD addresses. 11/ On September, 7, 2004 Applicants filed a timely answer and counter-complaint charging NASD staff with fraud and misconduct with respect to an alleged Firm net capital deficiency in December 2003, the service of the Suspension Order, and the initiation of this proceeding. 12/

Deputy Chief Hearing Officer David Fitzgerald scheduled a telephonic pre-hearing conference for September 23, 2004. The notice of hearing warned the parties that failure to appear could result in a default. By consent of the parties, the conference was rescheduled to October 21, 2004. On October 12, 2004, the Hearing Officer denied Applicants' motions to dismiss and to assert a counter-claim, as well as their request for discovery directed at their allegations of impropriety by NASD staff. The Hearing Officer concluded that OHO did not have authority to review allegations of misconduct by NASD staff and referred Applicants to NASD's Ombudsman. 13/

11/ Applicants argue that NASD's District Director for Region 9 initiated this proceeding and assert that he had "no standing to file a complaint[,] but he filed the complaint in this proceeding" for the purpose of "escap[ing] his misconduct." In accordance with NASD Rule 9212(a)(1), an Enforcement attorney signed the complaint at issue here, on behalf of Enforcement. The addition of the District Director's signature to the complaint does not affect the complaint's validity.

12/ Applicants asserted below and to us that NASD ordered the Firm to suspend its operations on December 15, 2003 because of a net capital deficiency. Applicants had thirty days from the filing of a notice of the action with the Commission under Section 19(d)(2) of the Securities Exchange Act of 1934, 15 U.S.C. § 78s(d)(2), to raise objections to NASD's actions, which Applicants did not do. The record does not contain sufficient information to enable us to evaluate the alleged net capital deficiency.

13/ NASD created the Office of the Ombudsman, a position within NASD's Department of Internal Review, in 1996. NASD Notice to Members 96-45, NASD Appoints Ombudsman (July 1996). The Office of the Ombudsman provides a forum for members to voice their concerns of unfair practices or disparate treatment by the staff. NASD has

(continued...)

On October 14, 2004, the Hearing Officer denied Applicants' requests for discovery concerning OHO's attempt to transmit the Suspension Order to the Firm on or about November 25, 2002. The Hearing Officer found that, since there was no dispute that OHO served the Suspension Order on Applicants' attorney in the Suspension Proceeding, the November 2002 mailing of the complaint to the Firm was not relevant. The Hearing Officer also granted Applicants' request to reschedule the conference in early December to permit Xu to receive treatment for glaucoma, rescheduling the conference to December 10, 2004.

On October 25, 2004, Applicants moved to disqualify Hearing Officer Fitzgerald alleging "bias," "unfair prejudice," and "conflict of interest." 14/ Applicants claimed that Fitzgerald was involved in OHO's defective service of documents on them and favored Enforcement. On November 5, 2004, Hearing Officer Fitzgerald, without commenting on Applicants' allegations, informed the parties that the matter had been reassigned to Hearing Officer Sharon Witherspoon.

On both December 7 and 8, 2004, Applicants moved to adjourn the conference indefinitely because of Xu's "advanced glaucoma" and Huang's arthritis, which impaired her mobility. The Hearing Officer denied both motions by order dated December 8, 2004. The order advised Applicants that, if Xu had a physician's opinion stating that Xu was "physically incapable of participating in a telephone conference call without causing harm to himself," he could appoint someone, such as Huang, to appear for him. The order warned, in bold type, that failure to appear could be deemed a default. The next day, Applicants again moved for an adjournment. The Hearing Officer promptly denied this third request but advised Xu that, if he provided medical confirmation of his condition by December 10, he would not be held in default. The order also notified Huang that she was expected to appear on the conference call, either in person or through counsel.

On December 10, 2004, the Hearing Officer received a faxed letter signed by "SP Xu", stating that he was a friend of Xu's and that Xu was in the hospital with "dizziness, vomiting and coma." The letter advised that "[a]ny mental irritation and annoying [sic] is strictly prohibited for [Xu's] advanced glaucoma." The letter attached a November 18, 2004 note on the letterhead of a physician, stating that Xu was "visually disabled secondary to his glaucoma," and that Xu would "require[] an eye exam every 4-6 months for the rest of his life."

13/ (...continued)
stated that complaints regarding decisions made or actions taken by the staff that are "inconsistent, biased, or result in disparate treatment" may be directed to the Office of the Ombudsman. NASD Notice to Members 98-30, NASD Office of the Ombudsman Clarifies its Role (Mar. 1998).

14/ The motion complained again about the alleged net capital deficiency, asserted that staff had fabricated evidence, and alleged that the New Jersey District Director had initiated this proceeding, not Enforcement.

On December 10, 2004, the prehearing conference nonetheless began with Xu's participation. Xu stated that he represented Huang, who never entered an appearance. During the conference, Xu moved to stop the conference and postpone it indefinitely because his health conditions made his continued participation "unsuitable." 15/ The Hearing Officer denied the motion, advising the parties that the physician's note she had received earlier that day failed to establish that Xu could not participate in a telephone call. Then Xu moved to disqualify the Hearing Officer on the grounds that she was "immoral," among other allegations, and asserted that the disqualification motion was grounds for discontinuing the conference. The Hearing Officer denied Xu's motion to discontinue and advised Xu that he could file a formal motion to disqualify her. Xu announced that he would no longer participate in the hearing and disconnected from the conference call. The Hearing Officer and Enforcement staff continued the conference, discussing Applicants' discovery motion and scheduling. The Hearing Officer deferred Enforcement's oral motion to hold Huang in default.

On December 14, 2004, the Hearing Officer issued an order directing the parties to provide OHO with dates on which the parties would be available for a January 2005 prehearing conference. The order also advised Xu that if he failed to participate in the January conference without adequate medical documentation that he was too ill to participate in a conference call, he would be held in default. 16/ On December 17, 2004, Applicants notified the Hearing Officer by a faxed "Note -- Participation in January 2005 Pre-Hearing Conference" that Huang had suffered a stroke "on the way" to the December 10, 2005, conference call and had been hospitalized for two days as a result. The "Note" was not accompanied by medical documentation. However, Applicants agreed to the January 27 or 28, 2005 dates. On December 21, 2004, the Hearing Officer issued an order scheduling the next conference for January 27, 2005 and warning that failure to appear or remain at the conference without the prior filing of an explicit medical opinion could result in a default. 17/

15/ Xu complained that the "eye doctor" told him that he, Xu, was "almost blind"; that the stress of participating in the hearing was dangerous to his health; that he was "really, really weak"; that he was "about to throw up"; that he had difficulty breathing; and that he was in a "very, very, bad mood . . . [and his] head was exploding."

16/ In response to Enforcement's November 22, 2004 request, the order also required Applicants to use the proper caption of the proceeding on all their filings. Because Applicants contended that the proceeding had been commenced by the District Director and members of NASD staff in their personal capacities and was, therefore, invalid, they had been captioning their filings as though the District Director and members of the staff, rather than Enforcement, had instituted the proceeding.

17/ On January 24, 2005, Applicants again moved to disqualify the Hearing Officer. On January 26, 2005, the Chief Hearing Officer denied Applicants' motion; the order was sent by fax at approximately 5:30 p.m. and by first-class mail.

At 7:19 p.m. on January 26, 2005, Xu faxed an emergency request to reschedule the January 27, 2005 conference stating that Huang had gone to the hospital at 7:00 p.m. because she was "suddenly spitting blood." The Hearing Officer went forward with the conference on January 27 without Applicants. The Hearing Officer noted that the January 26, 2005 emergency motion was not supported with medical documentation of Applicants' medical claims. By written order dated January 28, 2005, and faxed to the parties at approximately 4:00 p.m., the Hearing Officer found Applicants in default, directed Enforcement to move for issuance of a default decision, and reminded the parties that they had been warned of the consequences of failing to appear at the conference.

At 6:40 p.m., Applicants faxed a response to the order restating their medical problems. This transmission included handwritten notes from a physician stating that Huang had bronchitis and a chest infection and would be unable to work until early February. 18/ The same physician further stated that Xu suffered from acute pharyngitis and would be able to return to work in early February as well.

On February 1, 2005, the Hearing Officer issued an order scheduling a conference for February 8, 2005 to determine whether the January 28, 2005 default order should be vacated. On February 3, 2005, Applicants faxed a letter to the Chief Hearing Officer and the Hearing Officer objecting to the February 8, 2005 date because of a conflict with the Chinese New Year holiday, reiterated that medical problems prevented their appearance at the January 27, 2005 conference, and included a "Consultation Request Form" dated some time in December 2004 that has illegible handwritten notations. On February 4, 2005, the Hearing Officer issued an order rescheduling the conference for February 14, 2005 at 10:00 a.m. She stated that the document included with the February 3 transmission did not excuse the January 27 failure to appear. 19/

On February 10, 2005, Applicants faxed a letter to the Chief Hearing Officer and Hearing Officer Witherspoon stating that they could not appear at the February 14, 2005 conference because it conflicted with previously scheduled medical appointments on that day at 10:30 a.m. OHO treated this letter as a motion to reschedule the conference, and on February 11, 2005, the Deputy Chief Hearing Officer denied the motion on the grounds that its claims with respect to medical appointments were unsupported by any evidence and showed no good cause for postponement.

On February 14, 2005, at 9:05 a.m., Applicants faxed a letter to the Chief Hearing Officer, Deputy Chief Hearing Officer Fitzgerald, and Hearing Officer Witherspoon stating that Applicants would not appear at that day's conference because of their medical appointments,

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18/ The copy of the handwritten notes in the record is only partially legible.

19/ The order further stated that, if Applicants found that having the proceeding decided on the papers without a hearing was more convenient for them, they could notify the Hearing Officer.

requesting that the entire proceeding be dismissed, and asserting that the whole case had been "framed up" and based on unspecified NASD "frauds." Hearing Officer Witherspoon conducted the conference as scheduled, noting that applicants had failed to appear or to provide any medical documentation to excuse their absence.

In a February 15, 2005 letter faxed to the Chief Hearing Officer and Hearing Officers Fitzgerald and Witherspoon, Applicants accused Hearing Officer Witherspoon of discrimination and bias with respect to the scheduling of the February 14 conference. The letter included a note from a physician stating that he examined Xu and Huang on February 14. The physician's note did not identify the time of the appointments, explain the need for the medical examinations, or state whether rescheduling of the appointments would have been possible.

On February 21, 2005, Applicants filed another motion with the Chief Hearing Officer to disqualify Hearing Officer Witherspoon because of bias and urging the Chief Hearing Officer to investigate Hearing Officer Witherspoon's "frauds in the proceeding" and report back to them. The Chief Hearing Officer denied this motion on February 28, 2005, noting that Hearing Officer Witherspoon had exhibited "utmost patience" in dealing with Applicants and that "[Applicants] have demonstrated over and over again their clear refusal to abide by the procedures set forth in the NASD Rules and in [Hearing Officer Witherspoon's] orders." 20/

On July 1, 2005, Hearing Officer Witherspoon issued a default decision based on Applicants' failure to appear at either the January 27 or February 14, 2005 conferences. Applicants appealed the Hearing Officer's decision to the National Adjudication Committee ("NAC"). The NAC found that Hearing Officer Witherspoon had properly entered a default finding against Applicants. The NAC further found that Perpetual had operated while suspended and that Xu and Huang were responsible for Perpetual's operations while suspended. The NAC also found that Huang's responses to the February 19 request were incomplete and her responses to the March 18 and April 7, 2004 requests were incomplete and untimely. 21/

20/ On March 8, 2005, Applicants filed with the Chief Hearing Officer yet another motion to disqualify Hearing Officer Witherspoon. The Chief Hearing Officer denied Applicants' motion on April 4, 2005 and on April 5, 2005, Applicants filed another motion to disqualify Hearing Officer Witherspoon.

21/ Applicants object that NASD's Secretary, who signed the NAC decision, "can not replace NAC to make decision and she had no standing to issue the NAC August 16, 2006 Decision." However, NASD's Secretary signs the NAC decision "on behalf of the [NAC]," not in her personal capacity. Her role is purely administrative. The decision was issued by the NAC.

III.

A. Applicants' Default

NASD Rule 9269(a) authorizes a Hearing Officer to "issue a default decision against a Respondent that . . . fails to appear at a pre-hearing conference . . . of which the party has due notice." 22/ There is no dispute that Applicants had "due notice" or that they failed to appear for the January 27, 2005 and February 14, 2005 conferences.

The burden was on Applicants to demonstrate that they had "good cause" for not appearing at the conferences because of their health problems. 23/ We agree with NASD that Applicants failed to present adequate documentation of their asserted medical conditions to excuse their failure to appear on January 27, 2005. Instead of a medical certificate stating that Applicants were unable to participate in the conference call without damaging their health, Applicants presented medical documentation which focused on Applicants' ability to return to work, noting that Xu had acute pharyngitis (i.e., a sore throat) and that Huang suffered from respiratory infections. Nothing in the documentation demonstrated that they were precluded from participating in a telephone conference call. Moreover, the doctor's diagnosis of Huang did not support Applicants' descriptions of her condition (e.g., "stroke" or "spitting blood"). These medical certificates do not, therefore, support Applicants' claim of good cause for their failures to appear.

Applicants claimed, beginning on February 10, 2005, that they were unable to appear at the February 14, 2005 hearing to set aside the default because the hearing conflicted with previously scheduled medical appointments. Applicants did not suggest an alternate time on February 14, 2005, for the conference. Moreover, the medical documentation Applicants submitted on February 15, 2005 does not provide a diagnosis or statement that supports the conclusion that Applicants were unable to participate in the hearing, nor does the documentation state how long the appointments lasted, or whether it was possible to reschedule them. Applicants have failed to show that they had good cause for their failures to appear at the February 14, 2005 conference. 24/

22/ NASD Procedural Rule 9269(a).

23/ NASD Procedural Rule 9344(a). In evaluating claims of good cause, NASD takes into account the purported reasons for the failure to appear. See NASD Notice to Members 99-77 (Sept. 1999).

24/ Applicants cite instances of problems with respect to OHO's mailing and faxing of documents to Applicants. The record indicates that when these errors were brought to OHO's attention, OHO apologized to the Applicants and re-sent the materials. None of

(continued...)

Applicants claim that Hearing Officer Witherspoon's denial of their motions for adjournment were acts of discrimination against two elderly and disabled individuals. 25/ The Hearing Officer properly required Applicants to provide medical corroboration to substantiate that the claimed disabilities existed and were of such severity as to preclude their participation in the conferences. Applicants failed to demonstrate their medical conditions to NASD or to us. Because Applicants have failed to establish that they had good cause for failing to appear on the telephonic conferences, of which they were duly notified, on January 27 and February 14, 2005, we find that NASD appropriately found Applicants in default. 26/

B. Doing Business While Suspended

NASD suspended the Firm by its order dated November 25, 2002. Applicants note that in November 2002, the Firm had laid off its employees and vacated its New York offices. However, the record reflects that the Firm's customers transacted business using the Firm's on-line trading platform between December 1, 2002 and January 14, 2003 and that Perpetual's customers accessed the clearing firm's trading platform during that time through the Firm. Applicants received revenue from this activity. However, even if, as Applicants contend, the Firm realized no monetary gain from the unauthorized operations, those operations nonetheless violate NASD Rule 2110 because Applicants' disregard for NASD's Suspension Order is itself a failure to observe just and equitable principles of trade. 27/

Applicants argue that they were not notified of the Suspension Order until January 14, 2003, when NASD staff arrived for the on-site audit. 28/ Applicants also assert that, because NASD undertook to send copies of the Suspension Order to the Firm and to Huang, service was

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24/ (...continued)
these errors appears to be intentional, nor do any of them appear to have had any impact on the proceedings.

25/ CRD records reflect that Xu was born in 1945 and that Huang was born in 1946.

26/ Cf. James M. Russen, Jr., 51 S.E.C. 675, 677 (1993) (holding that applicants must demonstrate good cause to set aside default).

27/ David C. Ho, Securities Exchange Act Rel. No. 54481 (Sep. 22, 2006), 88 SEC Docket 3194, aff'd, No. 06-3788 (7th Cir. Apr. 25, 2007) (nonprecedential disposition).

28/ There is nothing in the record to support Applicants' assertions that this proceeding was initiated to "cover up OHO misconduct for failure to serve this Suspension or Decision." The record shows that Applicants did securities business while the Firm was suspended.

not completed and effective until they received it. 29/ However, NASD Procedural Rule 9514(g) provides that non-summary suspension decisions are to be served on the parties pursuant to NASD Procedural Rules 9132 and 9134. 30/ Those rules mandate that when a person is represented by counsel, orders (other than a complaint or document initiating a proceeding) shall be served on such counsel. 31/ Applicants were represented by an attorney, Kevin Tung, in the Suspension Proceeding. Accordingly, Rules 9132(c) and 9134(b) required NASD to serve the Suspension Order on Tung. In compliance with its rules, NASD served Tung by first class mail with a Notice of Decision dated November 25, 2002. The Suspension Order was effective on that date. There is no dispute that Tung received the Suspension Order, because on November 29, 2002, Tung filed an application for review of the suspension decision and a motion to stay its effectiveness with the Commission. 32/

Applicants argue that service of the Suspension Order on Tung was ineffective. They assert that Tung represented the Firm solely for purposes of its appeal and was not the Firm's

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29/ Rule 9134(b)(3). Applicants also suggest that transmission to the Firm and Huang was ineffective because there is no showing that the Federal Express delivery was signed for. NASD rules permit service to be effective on delivery by methods other than first-class mail, and there is evidence in the record that the courtesy copies of the Suspension Order were delivered by Federal Express. The rule does not require a signature for service to be effective. Id.

30/ NASD Procedural Rule 9514(g) provides that

> [t]he Hearing Panel shall provide its proposed written decision to the NASD Board : . . . If the NASD Board does not call the proceeding for review, the proposed written decision of the Hearing Panel shall become final, and the Hearing Panel shall serve its written decision on the Parties pursuant to Rules 9132 and 9134.

Rule 9132(b) provides that "[a]n order . . . shall be served pursuant to Rule 9134."

31/ NASD Procedural Rules 9132(c) and 9134(b)(2).

32/ Applicants also argue that the Suspension Order was required to be served on an officer of the Firm pursuant to NASD Rule 9131 because the Suspension Order "initiated an order." However, Rule 9131 provides the method for serving complaints or documents initiating proceedings only. Rule 9132 governs service of orders, such as the Suspension Order. Rules 9132 and 9134 ("Methods and Procedures for Service") mandate service on counsel.

"general attorney." 33/ NASD rules do not recognize a "limited" appearance for counsel, and Tung's filing of an application for review evidences that he accepted service on Perpetual's behalf.

Applicants make several claims with respect to the validity and correctness of the arbitration award underlying the Suspension Order. The arbitration award is final and is not subject to collateral challenge here. 34/ Any issues raised with respect to the Suspension Proceedings were decided in our opinion in Perpetual Securities, Inc., 35/ and also are not subject to challenge here.

Applicants also attempt to shift the responsibility for their noncompliance to Tung and NASD. They claim that Tung failed to notify Applicants of the service of the Suspension Order and that NASD knew that Tung had not informed the Firm of the Suspension Order. Applicants cannot blame NASD or their counsel for their failure to comply with the Suspension Order. 36/ Here, the Applicants were aware of the Suspension Proceeding, and had begun to close their New York office in anticipation of a possible sanction. They were responsible for being aware of their NASD membership status while they continued to do business. We find that the Firm violated NASD Rule 2110 by conducting a securities business during the period that its registration was suspended.

C. Responsibility of Huang and Xu for the Firm's Violation

Huang was the Firm's Executive Vice President, Chief Financial Officer, FINOP, and — along with Xu — a registered principal. In partial responses to NASD's information requests, she stated that she was the executive in charge of the Firm's shutdown of its operations between November 2002 and January 2003 and that she was responsible for "[a]rranging clients' orders through internet clearing firm's platform." Moreover, as FINOP, Huang was responsible,

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33/ Although Applicants allege that the NAC in its decision "willfully falsified" NASD Rules 9132 and 9134, there is no evidence to support such a characterization. The language of the NAC decision quoted by Applicants is an accurate paraphrase of the rule.

34/ Tony R. Smith, 54 S.E.C. 1097, 1103 n.14 (2000) ("[T]o permit a party dissatisfied with an arbitral award to attack it collaterally for legal flaws in a subsequent disciplinary proceeding would subvert the salutary objective that the NASD's [arbitration] resolution seeks to promote").

35/ 56 S.E.C. at 1008.

36/ B.R. Stickle & Co., 51 S.E.C. 1022, 1025 (1994) (rejecting blame-shifting arguments).

pursuant to NASD Rule 1022(b)(2)(G), for, among other things, any matters "involving the financial and operational management of the member." 37/

As the Firm's President, Xu was responsible for the Firm's compliance with the securities laws unless that duty was responsibly delegated to another. 38/ Although Xu suggests he was away from the Firm because of his mother's illness, he nonetheless had an obligation to ensure that someone was in charge of the Firm in his absence. 39/ Xu does not state that he delegated this responsibility to Huang or the Firm's other employee. However, to the extent he ceded this responsibility to Huang, he had an obligation to monitor her performance. 40/ Consequently, we find Xu to be responsible for Perpetual's operation during the time it was suspended.

Under these circumstances, Huang, as FINOP, and Xu, as president, shared authority regarding the operations of the Firm, and we find that they are both responsible for the Firm's violation of NASD Rule 2110. 41/

D. Huang's Violation of Rules 8210 and 2110

NASD Rule 8210 obligates associated persons to provide information to NASD in the course of an investigation. 42/ NASD Rule 8210 is an essential tool for NASD's enforcement responsibilities under the Securities Exchange Act of 1934. As we have stated, "[i]t is well settled that, because NASD lacks subpoena power over its members, a failure to provide

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37/ NASD Membership and Registration Rule 1022(b)(2)(G).

38/ Pac. On-Line Trading & Sec., 56 S.E.C. 1111, 1117 n.11 (2003); Gary E. Bright, 51 S.E.C. 463, 470-71 (1993).

39/ See PAZ Sec., 86 SEC Docket at 1885.

40/ Bright, 51 S.E.C. at 470-71 (finding firm president "responsible for compliance with all of the requirements imposed on his firm unless and until he reasonably delegates particular functions to another person in that firm, and neither knows nor has reason to know that such person's performance is deficient").

41/ Cf. Steven P. Sanders, 53 S.E.C. 889, 904 & n.30 (1998) (in personnel supervision context when supervisory authority is shared, more than one supervisor can be held responsible for failures to supervise.) (citing Houston A. Goddard, 51 S.E.C. 668 (1993)).

42/ NASD Procedural Rule 8210(a).

information fully and promptly undermines the NASD's ability to carry out its regulatory mandate." 43/

NASD directed three requests for information to Huang with respect to the Firm's operations while suspended. Each request was sent to the CRD addresses for the Firm and Huang. The request for information issued on February 19, 2004 received a partial response from Huang on March 8, 2004. Neither of the requests, issued on March 18 and April 7, 2004 and addressed to the Holmdel post office box received a response of any kind from Huang until August 6, 2004, more than a month after NASD commenced this proceeding.

Huang argues that she did not receive the second and third requests until late July because they were addressed to her CRD address in New Jersey and the mail service took a long time to forward mail to her residence in Canada. She claims she responded "promptly" to the requests for information once she received them. However, NASD Rule 8210 provides that "[a] notice under this Rule shall be deemed received by the member or person to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the member or the last known residential address of the person as reflected in the [CRD]." 44/

Moreover, in her response to the March 8, 2004 request for information, Huang gave the Holmdel, New Jersey post office box as her return address and did not suggest that Xu or Huang or the Firm had moved, or were about to change their CRD addresses. The Wells submission signed by Huang and received by NASD on April 5, 2004 also listed as its return address the Holmdel post office box address. Huang was required to keep her CRD address current, and she must bear the consequences of her failure to do so. 45/

Huang's August responses to the second and third requests, coming as they did after NASD had already filed the complaint, were untimely. We have said repeatedly that NASD should not have to initiate a disciplinary action to provoke a response to its information requests pursuant to Rule 8210. 46/

Huang's responses to the February 19, 2004 request were incomplete. She answered some of the questions but failed to provide any of the requested documents and failed to provide

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43/ Rooney A. Sahai, Exchange Act Rel. No. 51549 (Apr. 15, 2005), 85 SEC Docket at 873 n.24. See also Joseph G. Chiulli, 54 S.E.C. 515, 524 (2000)("[Respondent] substantially undermined the NASD's ability to carry out its regulatory responsibilities by failing to provide the documents when the NASD requested them").

44/ NASD Procedural Rule 8210(d) (emphasis added).

45/ Nazmi C. Hassanieh, 52 S.E.C. 87, 90 (1994).

46/ See, e.g., Charles R. Stedman, 51 S.E.C. 1228, 1232 (1991) and cases cited therein.

evidence of her efforts to obtain documents that Huang claimed were unavailable to her. Instead of including copies of the Firm's written supervisory procedures, Huang provided a narrative of her activity incident to shutting down the Firm's operations in 2002. Huang cannot fulfill her obligation to provide information by "second guessing" NASD's request and providing information NASD did not request in lieu of the documents it did request. 47/

Huang's belated responses to the second and third requests were also incomplete. They included neither the account information nor the telephone records requested by NASD. Huang stated that the Firm did not have the type of records NASD requested and the Firm's telephone company could not provide her with the requested records. However, NASD members have an obligation beyond a mere statement that the records are not available: "[i]f [an associated person] could not readily provide the information that NASD requested, [he or she] ha[s] an obligation to explain, as completely as possible, [his or her] efforts and . . . inability to do so." 48/ Huang failed to provide any evidence of her efforts to obtain the requested documents or of the telephone company's refusal to provide the information.

Huang argues that no harm has been done by her incomplete responses, because NASD was able to get the information it needed from other sources. We have repeatedly held that a recipient of an information request is not permitted to "substitute [his or her] judgment about whether [he or she] was a relevant person to [provide information] for that of the NASD [staff]" conducting an investigation. 49/

By failing to respond completely to the February 19, 2004 request and failing to respond completely and in a timely manner to the March 18, 2004 and April 7, 2004 requests for information, Huang violated NASD Rules 8210 and 2110. 50/

47/ Joseph Patrick Hannan, 53 S.E.C. 854, 859 (1998).

48/ Rooney A. Sahai, Exchange Act Rel. No. 51549 (Apr. 1, 2005), 85 SEC Docket 862, 872 ("We have long said that if a respondent is unable to provide the information requested, there remains a duty to explain that inability. In this case, we would have expected such an explanation from [the applicant] to detail his efforts to obtain the information requested.").

49/ Hannan, 53 S.E.C. at 860.

50/ A violation of NASD Rule 8210 is also a violation of NASD Rule 2110. Stephen J. Gluckman, 54 S.E.C. 175, 185 (1999).

IV.

Applicants have made several allegations regarding the fairness of these proceedings.

- Applicants allege that the NASD District Director "fabricated evidence." Applicants never identify what evidence was allegedly fabricated, and there is no record evidence that the District Director, or anyone at NASD, fabricated evidence.

- Applicants object that Hearing Officer Witherspoon improperly rejected several motions filed by Applicants on the grounds that Applicants did not use the proper caption. 51/ The Hearing Officer has the authority to administer the proceedings in conformity with NASD procedures, 52/ and Applicants' failure to identify the Department of Enforcement as the prosecuting authority was inconsistent with NASD Rule 9136, which requires all papers filed in connection with a proceeding to "include . . . the title of the proceeding, the names of the Parties, the subject of the particular paper . . . and the number assigned to the proceeding." 53/ Requiring Applicants to observe NASD's rules governing the form of pleadings was within Hearing Officer Witherspoon's authority.

- Applicants complain that NASD caused the New Jersey state securities agency to commence administrative proceedings against Applicants. There is no evidence that NASD ordered or urged New Jersey authorities to institute proceedings. NASD properly posts its disciplinary decisions on its website where they are available to regulators and the general public.

V.

Exchange Act Section 19(e)(2) governs our consideration of Applicants' appeal from the sanctions imposed by NASD. 54/ Section 19(e)(2) provides that the Commission will sustain NASD's sanctions unless it finds, having due regard for the public interest and the protection of investors, that the sanctions are excessive or oppressive or impose an unnecessary or

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51/ See supra n.16.

52/ NASD Procedural Rule 9235.

53/ NASD Procedural Rule 9136(a)(3). Procedural Rule 9120(x) defines "Party" in a disciplinary proceeding to mean Enforcement, the Department of Market Regulation, or the Respondent (i.e., as defined in Procedural Rule 9120(z), the member or associated person named in the complaint).

54/ 15 U.S.C. § 78s(e)(2).

inappropriate burden on competition. 55/ NASD concluded that Applicants' operation of a securities business while the Firm's membership was suspended warranted a permanent bar and separately found that Huang's failure to respond to information requests independently warranted a bar. For the reasons set forth below, we conclude that Applicants' operation of a securities business while the Firm's membership was suspended, considered in light of the aggravating factors present in this record and the lack of mitigating factors, demonstrate that barring Applicants is necessary to protect investors. With regard to the separate sanction imposed on Huang for failing to respond in a timely and complete manner to NASD information requests, however, we conclude that a bar is excessive on the facts of this case. Accordingly, we modify that sanction as set forth below.

We begin our analysis with a consideration of whether the imposed sanctions are allowable under NASD's Sanction Guidelines. 56/ Because the Sanction Guidelines do not specifically provide a guideline for sanctions for the operation of a securities business while suspended, NASD looked to the guideline for permitting a disqualified person to associate with a member firm prior to NASD approval. The Sanction Guidelines provide that a firm that allows a disqualified person to associate without prior approval may be fined between $5,000 and $50,000 and, in egregious cases, may be suspended for up to two years. 57/ The Sanction Guidelines provide further that the supervisory principal responsible for allowing the violation may be suspended for up to two years and, in an egregious case, may be barred. 58/

NASD found that there were several aggravating factors that supported expelling the Firm and barring Xu and Huang, the supervisory principals. As an initial matter, NASD determined

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55/ Applicants do not claim, and the record does not show, that NASD's action imposed an unnecessary or inappropriate burden on competition.

56/ The Sanction Guidelines have been promulgated by NASD in an effort to achieve greater consistency, uniformity, and fairness in the sanctions that are imposed for violations. NASD Sanction Guidelines 1 (2006 ed.)(available on line at http://www.nasd.com/web/groups/enforcement/documents/enforcement/nasdw_011038.pdf). Since 1993, NASD has published and distributed the Sanction Guidelines so that members, associated persons, and their counsel will have notice of the types of disciplinary sanctions that may be applicable to various violations. Id. The Sanction Guidelines are not NASD rules that are approved by the Commission, but NASD-created guidance for NASD Adjudicators -- which the Sanction Guidelines define as Hearing Panels and the National Adjudicatory Council. Id. Although the Commission is not bound by the Sanction Guidelines, it uses them as a benchmark in conducting its review under Exchange Act Section 19(e)(2).

57/ NASD Sanction Guidelines at 56.

58/ Id.

that Applicants' conduct was more serious than allowing a disqualified person to associate, and showed a more extreme disregard for NASD regulatory authority. In addition, the Firm operated for a month and a half in violation of the Suspension Order. NASD also found that the misconduct underlying the suspension, failing to pay an arbitration award for several years until discipline was brought, was particularly serious.

NASD also determined that the Firm had a disciplinary history of disregard of NASD rules. NASD found that on November 8, 1999, the Firm and Xu had entered into a Letter of Acceptance, Waiver, and Consent in which they consented to a censure and a $6,000 joint-and-several fine on the basis of allegations that the Firm, acting through Xu, had violated NASD advertising review rules and had opened a branch office without prior NASD approval and without registering the branch office with NASD. NASD found that this conduct "indicates the Firm's demonstrated lack of regard for regulatory requirements."

On the facts of this case as a whole, we concur in NASD's determination that Applicants' misconduct in operating a securities business while the Firm's membership was suspended demonstrates a risk too great to the self-regulatory system – and the markets and investors it protects – to allow Applicants to remain in the securities industry. Applicants were responsible for the Firm's continued operation in violation of the Suspension Order. In addition to the aggravating factors cited by NASD, i.e., the seriousness of the misconduct and Xu's and the Firm's disciplinary history, Applicants' disregard of the Suspension Order put the Firm in a position to earn money from commissions when it should not have been operating at all is an aggravating factor specifically noted in the Sanction Guidelines. 59/ Moreover, throughout this proceeding, Xu and Huang have failed to take responsibility for any of their conduct. Applicants' failure to observe the terms of the Firm's suspension until specifically ordered to do so during an on-site audit also indicates that imposition of another suspension would not be adequately remedial because it would be similarly ignored. By operating after receiving notice of the suspension of its membership, the Firm demonstrated that its disregard for NASD's regulatory authority is sufficiently great that only a bar will deter further misconduct and provide the requisite investor protection. Applicants have not identified any mitigating factors with respect to their operation of the Firm while suspended. 60/

Under these circumstances, we conclude that expulsion of the Firm and a bar against Xu and Huang in all capacities for their operation of the Firm while the Firm was suspended redress the risk to the public interest created by Applicants' continued participation in the securities industry and are neither excessive or oppressive. The expulsion and bar are also appropriate

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59/ Id. at 7, item 17 ("Principal Considerations").

60/ Applicants have claimed that they have been treated unfairly because of their ages and alleged infirmities. However, they do not claim these factors should mitigate the sanctions. They only raised them in the context of whether the default judgment was properly issued. We have addressed those factors, supra, in our discussion of the merits.

because they will serve as deterrents to others who may be inclined to ignore NASD's imposition of disciplinary sanctions less than a bar. 61/

We agree with NASD's finding that Huang failed to respond to the information requests of February 19, 2004 in a complete manner and the information requests of March 18, 2004 and April 7, 2004 in a timely and complete manner. The Sanction Guidelines provide that, for violations of Rule 8210, "[i]f the individual did not respond in any manner, a bar should be standard." 62/ They further provide, however, that NASD consider up to a two-year suspension and a monetary penalty when a respondent fails to respond in a timely manner. 63/ The Sanction Guidelines provide "Principal Considerations in Determining Sanctions" to assist NASD in determining the appropriate sanction. 64/ Among the considerations mentioned in connection with the failure to provide timely and complete information, the nature of the information requested and whether the information was ever provided are specifically applicable to this violation. 65/

The seriousness of the untimely responses is aggravated by the fact that some of the information was never provided at all. Ultimately, Huang's recalcitrance in producing the information requested by NASD frustrated NASD's investigation of the scope of Perpetual's activities in contravention of its suspension and, consequently, is considered to be extremely serious. To the extent that Huang's arguments that her responses were untimely due to the delay in forwarding her mail to Canada could be considered an argument for mitigation of the sanction imposed on her, we found above that these arguments were unpersuasive given Huang's persistence in using her New Jersey address in communications with NASD during the relevant period.

Huang's conduct threatened NASD's self-regulatory function and the investors it was created to protect and, in light of the absence of mitigating factors, warrants a substantial sanction to deter her from engaging in such misconduct in the future and to deter others from failing to respond in a complete and timely manner to NASD information requests. We conclude, however, that the bar imposed by NASD against Huang in all capacities as a sanction

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61/ In making this determination, we are mindful that although "'general deterrence is not, by itself, sufficient justification for expulsion or suspension . . . it may be considered as part of the overall remedial inquiry.'" PAZ Sec., 2007 U.S. App. LEXIS 17412, at *18 (quoting McCarthy v. SEC, 406 F.3d 179, 189 (2d Cir. 2005)).

62/ NASD Sanction Guidelines 35.

63/ Id. at 35.

64/ Id. at 6.

65/ Id. at 35.

for her failure to respond is an excessive remedy on the facts of this case. As discussed, NASD's own Sanction Guidelines provide that, in the absence of mitigating factors, a bar is the standard sanction for those who do not respond to a request for information "in any manner" but that where, as in this case, the individual made some response but "did not respond in a timely manner, [the Adjudicator should] consider suspending the individual in any or all capacities for up to two years." 66/ We agree with the remedial judgment reflected in the Guideline recommendation: a dilatory or incomplete response poses less risk to the self-regulatory system and investors than a complete failure to respond and, in the absence of aggravating circumstances indicating a fundamental unfitness to participate in the securities industry, can be remedied by a sanction less than a bar. 67/ Accordingly, we reduce the sanction imposed by NASD for Huang's failure to provide timely and complete responses to NASD's information requests from a bar to a suspension of Huang in all capacities for two years. 68/

An appropriate order will issue. 69/

By the Commission (Chairman COX and Commissioners ATKINS, NAZARETH and CASEY).

Nancy M. Morris
Secretary

66/ See NASD Sanction Guidelines 39; Sahai, 89 SEC Docket 2402.

67/ See PAZ Sec., 2007 U.S. App. LEXIS 17412, at *15-16 (stating that Exchange Act Section 19(e)(2) authorizes "'expulsion not as a penalty but as a means of protecting investors . . . . The purpose of the order is remedial, not penal.'") (quoting Wright v. SEC, 112 F.2d 89, 94 (2d Cir. 1940)).

68/ We recognize, of course, that, if the bar in all capacities against Huang for the operation of the Firm while the Firm was suspended is sustained after the appeal process has been exhausted, that the two-year suspension for her failure to respond will be redundant. This potential for redundancy does not make it excessive or oppressive, however: NASD may consider and impose sanctions separately and independently of one another for separate violations alleged in the same proceeding. In this way, if one of the sanctions is vacated during the appeal process, the remaining sanction need not be relitigated.

69/ 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 EXCHANGE ACT OF 1934
Rel. No. 56613 / October 4, 2007

Admin. Proc. File No. 3-12416

In the Matter of the Application of

PERPETUAL SECURITIES, INC.,
YOUWEI P. XU,
and
CATHY Y. HUANG
1603 - 7300 Yonge Street
Thornhill, Ontario L4J7Y5
Canada

For Review of Disciplinary Action Taken by

NASD

ORDER SUSTAINING SANCTIONS IN PART AND MODIFYING THEM IN PART

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

ORDERED that the disciplinary action taken by NASD against Perpetual Securities, Inc. and Youwei P. Xu be, and it hereby is, sustained; and it is further

ORDERED that the findings of violation made by NASD against Cathy Y. Huang be, and they hereby are, sustained; and it is further

ORDERED that the bar imposed by NASD on Cathy Y. Huang for violation of NASD Conduct Rule 2110 be, and it hereby is, sustained; and it is further

ORDERED that the bar imposed by NASD on Cathy Y. Huang for violation of NASD Investigations Rule 8210 be, and it hereby is, set aside; and it is further

ORDERED that Cathy Y. Huang be suspended in all capacities for two years for violation of NASD Investigations Rule 8210, the suspension to commence on the date of this order.

By the Commission

Nancy M. Morris
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8857 / October 10, 2007

INVESTMENT ADVISERS ACT OF 1940
Release No. 2670 / October 10, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12865

In the Matter of SANDELL ASSET MANAGEMENT CORP., LARS ERIC THOMAS SANDELL, PATRICK T. BURKE and RICHARD F. ECKLORD, Respondents.	ORDER INSTITUTING ADMINISTRATIVE AND CEASE AND DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTIONS 203(e) AND 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Sandell Asset Management Corp. ("SAM"), Lars Eric Thomas Sandell ("Thomas Sandell"), Patrick T. Burke and Richard F. Ecklord (collectively, "Respondents").

II.

In anticipation of these proceedings, Respondents have each submitted an Offer of Settlement (collectively, the "Offers") which the Commission has determined to accept.

Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and over the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease and Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

Summary

This matter concerns unlawful short selling by an unregistered investment adviser, SAM, on behalf of its client. SAM established long positions of approximately nine million shares of stock of Hibernia Corporation, a financial holding company, in the first half of 2005 in response to an announced business combination between Hibernia and Capital One Financial Corporation. Subsequent to establishing this position, SAM sold its Hibernia shares to third parties and entered into "swap" transactions with the third parties with respect to the Hibernia shares.[2] As a consequence of the swap, the fund managed by SAM, Castlerigg Master Investments, Ltd., no longer owned the shares of Hibernia it had recently purchased, but it retained all of the economic risks of loss should the price of the shares decline.

On August 29, 2005, Hurricane Katrina struck New Orleans, where Hibernia was headquartered and maintained substantial assets. After the hurricane hit and the levees in New Orleans began to break, SAM personnel speculated that Capital One would lower its offering price for Hibernia shares, causing a significant loss in Castlerigg's portfolio. In an attempt to offset this loss by hedging its position, Sandell personnel sold short 9,274,250 shares of Hibernia. Respondents marked the sales orders as "long" even though, in fact, they were short, alleviating the need to locate shares available to borrow and the trading restrictions of the "tick test."[3] Over two million of these sales were

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[1] The findings herein are made pursuant to the Respondents' Offers and are not binding on any other person or entity in this or any other proceeding.

[2] A swap is when one party periodically pays a fixed amount and the other party pays an amount based on the performance of a reference share, a basket of shares or a share index. In this case, after the fund sold the Hibernia shares to swap counterparties, it paid a fixed amount to the counterparties in return for any gain or loss in the value of the stock of Hibernia.

[3] The "tick test" of Rule 10a-1 of the Securities Exchange Act of 1934 provided, in relevant part, that a listed security can be sold short only on a plus tick (that is, at a price above the immediately preceding sale price) or a zero-plus tick (that is, at the last sale price if it is higher than the last different price). The Commission eliminated Rule 10a-1 (effective as of July 3, 2007, with a compliance date of July 6, 2007) but it was in effect when this conduct occurred.

executed on a down tick or zero-minus tick in violation of the "tick test" and could not have been immediately executed had the sales been marked properly as "short."

Respondents

Sandell Asset Management Corp. ("SAM") is a New York based, unregistered investment adviser with affiliated offices in London and Hong Kong. The firm manages over $7 billion in assets held by its clients, including Castlerigg Master Investments, Ltd.

Thomas Sandell is the founder, sole owner and Chief Executive Officer of SAM. His duties include managing the equity event portfolio and managing the firm.

Patrick T. Burke is a Senior Managing Director of SAM and reports directly to Thomas Sandell. His duties include managing the equity event portfolio and managing the firm.

Richard F. Ecklord is the head trader for SAM.

Other Relevant Entities

Hibernia Corporation was a financial services company with operations in Louisiana and Texas. Its stock was traded on the New York Stock Exchange until November 16, 2005 when Capital One Financial Corporation acquired 100% of its outstanding common stock.

Capital One Financial Corporation is a financial services company headquartered in McLean, Virginia. Its stock trades on the New York Stock Exchange.

Background

On March 6, 2005, Capital One and Hibernia announced that Capital One was acquiring Hibernia in a cash and stock transaction valued at $5.3 billion. Both companies were listed on the New York Stock Exchange. The acquisition was set to close on September 1, 2005.

In March 2005, SAM began establishing "risk arbitrage" positions on behalf of its client, Castlerigg Master Investments, Ltd. (the "fund"), by taking a long position in Hibernia. With this strategy, the fund would profit from the difference between the market price for Hibernia shares at the time of the purchase and the deal price of $33 (the price difference reflects the risk that the deal will not be consummated). The fund eventually acquired 9,274,250 shares of Hibernia.

In April and July of 2005, SAM entered into swap agreements with respect to the Hibernia shares with third parties. Pursuant to the terms of the agreements, the fund retained the risks of ownership, but the counterparties paid the fund for, and held legal

title to the shares. As a consequence, the fund no longer owned shares of Hibernia but it bore the risk of loss if the share price declined.

On August 17, 2005, Capital One and Hibernia announced that the Federal Reserve System Board of Governors approved the proposed merger of the two entities and that the companies expected the merger to be completed on September 1, 2005. The deadline for Hibernia shareholders to make an election whether to receive cash or stock in exchange for their shares was then set as August 25, 2005. As of that date, approximately 80% of the 139 million Hibernia shares issued and outstanding were subject to an election, leaving only approximately 20 million available for free trading. The counter-parties to the swap agreements with SAM exercised an election with respect to the shares at the request of SAM.

On Sunday, August 28, 2005, Hurricane Katrina made landfall on the coast of Louisiana. On Monday, August 29, 2005, Lake Pontchartrain began breaking through the levees and flooding parts of New Orleans. On Tuesday, August 30, 2005, some market analysts began predicting that the merger would be postponed until Capital One and Hibernia could assess the damage to New Orleans and Hibernia's assets. Neither company commented at that time regarding changing the closing date.

August 31, 2005 Trades Improperly Marked as "Long"

On early Wednesday morning, August 31, 2005, Thomas Sandell, who was on vacation but in regular, frequent telephone contact, as well as SAM's analysts, traders and portfolio managers, began speculating that the Capital One/Hibernia merger would be delayed and that SAM needed to hedge the fund's position in Hibernia stock to avoid a potential loss if the merger was repriced.[4] In anticipation of the need to borrow Hibernia stock in order to effect short sales, Richard Ecklord and other firm personnel began contacting third parties to assess whether there was stock in the market to borrow. They found that there was an extremely limited number of shares available to borrow at the time.

By mid-morning, Sandell and Burke concluded that the merger would not close on time and that there was a risk that Capital One would lower its offering price. Sandell and Burke decided that SAM would hedge against the fund's exposure to a change in the deal price.[5] However, as noted, Ecklord was unable to locate sufficient stock to borrow

[4] A "short sale" is a sale of a security by a seller who does not actually own the stock. Typically, delivery occurs in three days from the date of the sale. The seller usually borrows the security for delivery from a broker-dealer. The short seller later closes out the position by returning the security to the lender, usually by purchasing securities on the open market. When executing a short sale, Regulation SHO requires a broker-dealer to have reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due before effecting a short sale order in any equity security. This "locate" must be made before effecting the short sale. 17 C.F.R. §242.203(b).

[5] If the fund had been long the Hibernia stock, firm personnel simply could have sold the Hibernia stock in the open market. Since the firm was not long the stock, the firm had to hedge against its swap position by establishing a short position in Hibernia stock.

and he so advised Sandell and Burke. Burke and Sandell discussed the situation and inaccurately concluded that SAM could mark the sales as "long," alleviating the need to locate shares to borrow and the trading restrictions of the "tick test." They based their conclusion on a novel and inaccurate view of existing law. Although SAM had inside and outside counsel to advise management on such areas, Burke and Sandell did not seek advice of counsel at the time. With Sandell's concurrence, Burke directed Ecklord to sell stock in the market, but to mark the sales as "long" instead of "short."[6]

Beginning just after noon, Ecklord began executing short sales through a registered broker-dealer's direct access system, marking the sales as "long," as directed by Burke. Had Ecklord correctly marked the sales as "short," the system would have automatically blocked execution of the trades because of the unavailability of shares to borrow. He sold over 3.5 million shares of Hibernia during the trading day by mismarking the sales as "long." The trades would have been subject to the "tick test" imposed by Exchange Act Rule 10a-1 had they been marked correctly. Of the shares sold, 2,023,300 were executed on a down tick or a zero-minus tick in violation of the "tick test."

Later that afternoon, Burke brought the matter to the attention of in-house counsel, who together with outside counsel, informed Burke, Sandell and Ecklord that SAM had mismarked the order tickets because they were actually short sales.

At approximately 6:30 p.m. that evening, Capital One announced that the merger closing would be postponed until September 7, 2005.

September 2, 2005 Trades Executed Without Proper Borrow

On September 1, 2005, at Thomas Sandell's direction, firm traders continued short selling of Hibernia stock, marking the sales as "short" sales and locating shares to borrow to cover the short sales. On September 2, 2005, after locating one million shares to borrow for short selling, the firm's traders were unable to locate any further shares to borrow. At that point, the trading ceased and firm personnel communicated to Sandell their inability to locate additional shares to borrow. Sandell, mindful that personnel in the past had located shares to borrow despite temporary failures to do so, challenged the conclusions of the firm personnel and an animated discussion followed.

Following this exchange, Sandell instructed firm personnel to keep selling short and to keep searching for shares to borrow despite the apparent unavailability of shares in the market. Sandell did not expressly condition the instruction to sell on the availability

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[6] Rule 200(g) of Regulation SHO provides that a broker-dealer must mark all sell orders of any equity security as "long," "short" or "short exempt." The Rule also provides that an order to sell shall be marked as "long" only if the seller is deemed to own the security being sold and the security is in the possession or control of the broker-dealer or it is reasonably expected that the security will be in the physical possession or control of the broker-dealer no later than the settlement of the transaction. 17 C.F.R. §242.200.

of shares to borrow. Rather, he insisted that firm personnel keep selling. Despite the exchange, the fact that shares could not be located and his instruction to keep selling, Sandell did not take steps to ensure that firm personnel understood that the selling should not occur without locating shares to borrow. He did not make sufficient inquiry to ensure that the firm was locating shares to borrow to cover the short sales. In fact, the traders understood Sandell's instruction to keep selling to mean that they should continue executing short sales of Hibernia stock whether or not they located stock to borrow. Firm personnel executed these sales on September 2 by misrepresenting to the broker-dealers that executed the trades that they had located stock to borrow when in fact they had not.

Proceeds from Short Selling

These short sales and subsequent purchases of Hibernia in the open market at lower prices to cover the positions generated proceeds that the firm used to offset its losses on its swap position.

By placing the short sales on August 31 and September 2 when there was no stock available to be borrowed, instead of waiting until there was stock available, the firm was able to avoid over $6.5 million in losses.

As a result of the conduct described above, Respondent SAM willfully violated Section 10(a) of the Exchange Act and Exchange Act Rule 10a-1, which provides that short sales may be effected only on a plus tick (i.e., at a price above the price at which the immediately preceding last sale was effected) or a zero-plus tick (i.e., at a price equal to the last sale if the last preceding transaction at a different price was at a lower price). As a result of the conduct described above, Sandell, Burke and Ecklord willfully aided and abetted violations of Section 10(a) of the Exchange Act and Exchange Act Rule 10a-1.

As a result of the conduct described above, SAM willfully violated Section 17(a)(2) of the Securities Act which makes it unlawful for any person in the offer or sale of securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly, to obtain money or property by means of any untrue statement of a material fact.[7]

As a result of the conduct described above, Thomas Sandell failed reasonably to supervise firm personnel with a view to preventing violations of the federal securities laws while they were subject to his supervision, within the meaning of Sections 203(e)(6) of the Advisers Act.

Undertakings

[7] "Willfully" as used in this Order means intentionally committing the act which constitutes the violation, Cf. Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000); Tager v. SEC, 344 F.2d 5, 8(2d Cir. 1965). Scienter is not required to prove violations of Section 17(a)(2) of the Securities Act. Aaron v. SEC, 446 U.S. 680, 697 (1980). Violations of this section may be established by showing negligence. SEC v. Hughes Capital Corp., 124 F.3d 449, 453-54 (3d Cir. 1997).

Respondent Sandell Asset Management Corp. has undertaken to:

Within 20 (twenty) days of the date of this Order, Sandell Asset Management Corp. shall employ an independent consultant not unacceptable to the Commission ("Independent Consultant") (1) to conduct a review of the nature of Sandell Asset Management Corp.'s business and operations sufficient to enable him/her to make recommendations as to appropriate internal controls, policies, practices, and procedures reasonably designed to detect violations of the statutes and regulations governing short sales; and (2) to make recommendations for the implementation of any such internal controls, policies, practices or procedures.

Promptly provide the Independent Consultant with any and all documents pertaining to Sandell Asset Management Corp.'s operations (other than materials or information protected by a valid claim of attorney-client privilege or attorney work product) requested to enable the Independent Consultant to identify internal controls, policies and procedures that Sandell Asset Management Corp. should have in place to detect and prevent violations of the statutes and regulations governing short sales. Sandell Asset Management Corp. shall permit the Independent Consultant to meet with any officer, agent, or employee of Sandell Asset Management Corp. to discuss the business and future business plans and prospective operations for the purpose of ensuring that appropriate policies and practices are in place going forward regarding the execution of short sales.

Enter into an agreement with the Independent Consultant which requires that no later than three months from the date that Sandell Asset Management Corp. employs the Independent Consultant, the Independent Consultant shall submit, in writing, to Sandell Asset Management Corp., with a copy to the Division of Enforcement, his/her recommendations, if any, for revised or additional measures reasonably designed to detect and prevent violations of the statutes and regulations governing short sales.

Within 30 days after the date of the issuance of the Independent Consultant's recommendations, shall adopt, implement and maintain any policies, practices or procedures identified by the Independent Consultant, or alternatives proposed in writing by Sandell Asset Management Corp. and accepted in writing by the Independent Consultant or the Commission.

No later than 30 (thirty) days from the date of the issuance of the Independent Consultant's recommendations, through an officer, shall file an affidavit with the Commission stating that Sandell Asset Management Corp. has adopted the recommendations of the Independent Consultant and stating further that Sandell Asset Management Corp. has implemented and will maintain any revised or additional internal controls, policies, practices, or procedures recommended in the Independent Consultant's report, or the alternatives proposed in writing by Sandell Asset Management Corp. and accepted in writing by the Independent Consultant or the Commission.

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 Sandell Asset Management Corp., or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division of Enforcement, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Sandell Asset Management Corp., 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.

Deadlines. For good cause shown, the Commission's staff may extend any of the procedural dates set forth above.

Respondents' Remedial Efforts

In determining to accept the Offers, the Commission considered remedial acts promptly undertaken by Sandell Asset Management and cooperation afforded the Commission by Respondents.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in the Respondents' Offers. Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Sandell Asset Management shall cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act;

B. Pursuant to Section 203(e) of the Advisers Act, Sandell Asset Management is hereby censured;

C. Pursuant to Section 203(f) of the Advisers Act, Thomas Sandell, Patrick Burke and Richard Ecklord are hereby censured;

D. Sandell Asset Management shall pay a civil penalty of $650,000, Thomas Sandell shall pay a civil penalty of $100,000, Patrick Burke shall pay a civil penalty of $50,000 and Richard Ecklord shall pay a civil penalty of $40,000;

E. Sandell Asset Management shall pay $6,716,683.93 in disgorgement, plus $730,811.74 in prejudgment interest, on behalf of its client Castlerigg Master Investments, Ltd., which received the proceeds from the short sales;

F. Each Respondent shall, within 10 days of the entry of this Order, pay the above amounts to the United States Treasury. Such payments 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) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop O-3, Alexandria, VA 22312; and (iv) submitted under cover letter that identifies the paying 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 Scott Friestad, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Mail Stop 5010-B, Washington D.C. 20549; and

G. Sandell Asset Management shall comply with the undertakings set forth above.

By the Commission.

Nancy M. Morris

Secretary

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act of 1934
Release No. 56634 / October 10, 2007

Administrative Proceeding
File No. 3-12864

In the Matter Of	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTIONS 15(b), 15B(c) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934**
MORGAN STANLEY & CO. INCORPORATED,	
Respondent.	

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b), 15B(c) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Morgan Stanley & Co. Incorporated ("MS&Co"), on behalf of itself and as successor to Morgan Stanley DW Inc. ("MSDW" or "Respondent").

II.

In anticipation of the institution of these proceedings, the 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 it and over the subject matter of these proceedings, which are admitted, the Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b), 15B(c) and 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

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III.

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

A. Summary

These proceedings arise out of MSDW's failure over a five year period to provide to its customers accurate and complete written trade confirmations for certain fixed income securities. Starting as early as May 2000, two former MSDW registered representatives complained to management about missing or incorrect information on MSDW trade confirmations relating to yield, call data, and other bond features. For several years, however, MSDW failed to fix the problems identified by the registered representatives even after it established a Task Force in late 2003 to address numerous other fixed income trade confirmation problems known to management. In December 2004, the Commission's staff became aware of the longstanding noncompliance of MSDW's fixed income securities trade confirmations. After the staff contacted MSDW regarding these longstanding regulatory deficiencies, MSDW commenced an internal investigation into its trade confirmation practices, during the course of which it uncovered several additional regulatory problems relating to its trade confirmations. In 2005, MS&Co voluntarily disclosed certain fixed income trade confirmation violations it had discovered during a separate review into its own trade confirmation practices. As a result of the staff's inquiries, MSDW and MS&Co firmly committed the resources to correct their trade confirmation problems.

B. Respondent

1. Morgan Stanley & Co. Incorporated is a Delaware corporation with its principal place of business in New York, New York. MS&Co is a registered broker-dealer with the Commission pursuant to Section 15(b) of the Exchange Act, a member of the Financial Industry Regulatory Authority ("FINRA") (formerly known as the National Association of Securities Dealers ("NASD")), the New York Stock Exchange ("NYSE"), and the Municipal Securities Rulemaking Board ("MSRB"). MS&Co is a wholly owned subsidiary of Morgan Stanley, a Delaware corporation whose common stock trades on the New York Stock Exchange. MS&Co provides comprehensive brokerage, investment and financial services nationwide.

2. Morgan Stanley DW Inc., during the relevant time period of 2000 to 2006, was a Delaware corporation with its principal place of business in New York, New York and then Purchase, New York. Also during the relevant time period, MSDW was a registered broker-dealer with the Commission pursuant to Section 15(b) of the Exchange Act, and a member of the NASD, the NYSE, and the MSRB. MSDW was a wholly owned subsidiary of Morgan Stanley until April 1, 2007, when MSDW merged into MS&Co to form a single broker-dealer. Before the merger, MSDW provided comprehensive brokerage, investment and financial services nationwide.

C. Facts

3. As early as May 2000, customers of two MSDW financial advisors began to complain that their written confirmations of certain fixed income securities transactions contained inaccurate information. After orally providing their clients with the correct information, the financial advisors, along with their branch manager, reported the customers' complaints to MSDW headquarters. The inaccuracies identified by the customers primarily related to (1) missing, exaggerated, understated or multiple yield information, (2) erroneous or missing call and ratings data, and (3) erroneous instrument descriptions on both corporate and municipal bonds. The financial advisors were repeatedly told by managers in MSDW's retail fixed income department that MSDW was working on the problems. However, the problems persisted for many months, and MSDW continued to issue trade confirmations with the identified deficiencies.

4. By August 2003, MSDW was aware of numerous fixed income securities trade confirmation deficiencies, including the issues raised by the financial advisors. As a result, MSDW established a task force comprised of trading, operations, information technology and compliance personnel (the "Task Force") to specifically address these trade confirmation issues. Although the Task Force resolved some of these issues, many problems were not resolved due to insufficient accountability of the relevant MSDW personnel, a general lack of managerial oversight of the Task Force, and a failure to allocate sufficient resources. For example, the Task Force noted on November 12, 2003, that one issue "[n]eed[ed] to be prioritized" but five months later, on April 21, 2004, it stated that there was "[n]o timetable for when the project might be started." By August 2004, the Task Force had resolved only 20 of the 43 regulatory and non-regulatory trade confirmation issues it had identified. Nevertheless, MSDW continued to knowingly issue noncompliant trade confirmations.

5. In December 2004, the Commission staff became aware of the longstanding regulatory deficiencies with MSDW's fixed income trade confirmations. When contacted by the staff, MSDW commenced a comprehensive investigation into its trade confirmation practices and, during the course of its internal review, MSDW uncovered additional regulatory violations relating to its trade confirmations for fixed income securities. MSDW committed substantial resources to correct the fixed income trade confirmation problems. It also reorganized its reporting structure, hired new management, implemented a new process to identify, mitigate and remediate any future confirmation issues, and increased the legal, technical and financial support for its confirmation process.

6. At various times during the relevant period, MSDW's trade confirmations for certain fixed income securities were noncompliant in the following respects, among others:

- Certain trade confirmations failed to disclose MSDW's role as agent and the commissions charged on the agency trade;

- Certain trade confirmations failed to disclose the put details (put date; price; yield-to-put) of corporate and municipal bonds with put features;

- Certain trade confirmations provided inaccurate or outdated call or put dates for municipal bonds with rolling call or put features;

- All sell-side trade confirmations of corporate, agency and treasury bonds failed to disclose the yield;

- Certain trade confirmations failed to disclose the yield information involving purchases of corporate zero coupon bonds as well as asset-backed and mortgage-backed debt securities; and

- Certain trade confirmations provided inaccurate yield calculations for stepped bonds and premium call municipal bonds with declining premiums.

7. In 2005, MS&Co voluntarily disclosed to the Commission's staff that, due to operations system errors, it too had provided its customers with corporate and municipal bond trade confirmations containing noncompliant information. Among other violations, MS&Co had calculated the wrong yield in both corporate and municipal bonds with call or put features, provided an inaccurate description of bonds with negative yields as having positive yields, failed to disclose all put features for municipal bonds, and erroneously disclosed that MS&Co had executed certain trades in a "principal" capacity when in fact it had executed those transactions as an "agent".

D. Violations

8. As a result of the conduct described above, MSDW and MS&Co willfully violated Rule 10b-10 under the Exchange Act which requires broker-dealers, when effecting securities transactions for customers, to accurately disclose certain terms of the transaction in a written confirmation to the customer.[1] See 17 C.F.R. § 240.10b-10(a). Rule 10b-10 mandates that the confirmation disclose whether the broker-dealer is acting as an agent or as principal and, if as an agent, the amount of any remuneration it received. Id. For trades involving debt securities, broker-dealers must disclose, among other things, either the yield to maturity or the yield at which the transaction was effected (depending on whether the transaction was effected exclusively on the basis of a dollar price or on the basis of yield). Id. at § 240.10b-10(a)(5) and (6).

9. As a result of the conduct described above, MSDW and MS&Co willfully violated Section 15B(c)(1) of the Exchange Act and MSRB Rule G-15. Section 15B(c)(1) makes it unlawful to use the mails or other means or instrumentalities of interstate commerce to effect transactions in or induce the purchase or sale of any municipal security in contravention of the MSRB rules. See 15 U.S.C. § 78o-4(c)(1) (2006). MSRB Rule G-15, in particular, requires,

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[1] Rule 10b-10 works to protect investors and combat broker-dealer fraud by ensuring full and fair disclosure to investors of the substance of the transactions effected by their broker. See In re: Hattier, Sanford & Reynoir, Exchange Act Release No. 34-39543, 66 SEC Docket 624, 1998 WL 7454, at *4 n.16 (Jan. 13, 1998).

among other things, that a broker-dealer provide its customer with a written confirmation disclosing whether it acted as "principal" or as an "agent" when effecting the transaction in municipal securities. MSRB, Rule G-15(a)(i)(A)(1)(d) (2003). MSRB Rule G-15 also requires that a broker-dealer disclose on the written trade confirmation the yield information and dollar price of the municipal bond.[2] MSRB, Rule G-15(a)(i)(A)(5). For transactions effected on the yield-to-call date or yield-to-put date, the trade confirmation must indicate if that yield is to a call date or to a put date, "along with the date and dollar price of the call or put." Id.

E. Respondent's Remedial Efforts

10. In determining to accept the Offer, the Commission considered the remedial acts promptly taken by MSDW and MS&Co when contacted by the Commission's staff and the subsequent cooperation the firms afforded.

F. Undertakings

MS&Co has undertaken to do the following actions.

11. The Respondent shall retain, within thirty (30) days of the issuance of the Order, at Respondent's expense, a qualified independent consultant (the "Consultant"), not unacceptable to the Commission staff, to (1) verify that the deficiencies in the Respondent's policies, practices and procedures relating to fixed income securities trade confirmations, which were identified during the course of the Respondent's internal investigation or review (as described in Section III, paragraphs 5, 6 and 7 above), have been eliminated and that these policies, practices and procedures are now sufficient to provide for ongoing compliance with Exchange Act Rule 10b-10 and MSRB Rule G-15; and (2) prepare a Report confirming compliance and, with respect to any policies, practices or procedures not in compliance with Exchange Act Rule 10b-10 or MSRB Rule G-15, making recommendations for how the Respondent should modify or supplement its policies, practices and procedures to remedy the deficiencies identified by the Consultant in the Report. The Respondent shall provide a copy of the engagement letter detailing the Consultant's responsibilities to Fredric D. Firestone, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC, 20549-7561.

12. The Respondent shall cooperate fully with the Consultant, including providing the Consultant with access to its files, books, records, and personnel as reasonably requested for the above-mentioned review, and obtaining the cooperation of its employees or other persons under its control.

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[2] The MSRB has stated that, "[t]he yield disclosure on confirmations of purchases from customers is intended to provide customers with a means of assessing the merits of alternative investment strategies (such as different possible reinvestment transactions) and the merits of the particular transaction being confirmed." MSRB, G-15 Interpretive Notice Concerning Yield Disclosure Requirements for Purchases from Customers (Sept. 1, 1981).

13. The Respondent shall require the Consultant to report to the Commission staff on his/her activities as the staff shall request.

14. The Respondent shall permit the Consultant to engage such assistance, clerical, legal or expert, as necessary and at reasonable cost, to carry out his/her activities, and the cost, if any, of such assistance shall be borne exclusively by the Respondent.

15. The Respondent shall require the Consultant to complete his/her review of the Respondent's policies, practices, and procedures relating to Exchange Act Rule 10b-10 and MSRB Rule G-15, and prepare, within one hundred and eighty (180) days of the issuance of the Order, unless otherwise extended by the staff for good cause, the written Report referenced above in paragraph 11. The Consultant shall provide the Report simultaneously to both the Commission staff (at the address set forth above) and the Respondent. The Respondent shall afford the Consultant the option to seek an extension of time, for good cause shown, to submit the Report by making a written request to the staff at the address set forth above, a copy of which the Consultant shall provide to the Respondent.

16. The Respondent shall adopt and implement all recommendations set forth in the Report within one hundred and twenty (120) days of the Respondent's receipt of the Report; provided, however, that as to any recommendation that the Respondent considers to be, in whole or in part, unduly burdensome or impractical, the Respondent may submit in writing to the Consultant and the staff (at the address set forth above), within sixty (60) days of receiving the Report, an alternative policy, practice, or procedure designed to achieve the same objective or purpose. The Respondent and the Consultant shall then attempt in good faith to reach an agreement relating to each recommendation that the Respondent considers to be unduly burdensome or impractical and the Consultant shall reasonably evaluate any alternative policy, practice, or procedure proposed by the Respondent. Such discussion and evaluation by the Respondent and the Consultant shall conclude within ninety (90) days after the Respondent's receipt of the Report, whether or not the Respondent and the Consultant have reached an agreement. Within fourteen (14) days after the conclusion of the discussion and evaluation by the Respondent and the Consultant, the Respondent shall require that the Consultant inform the Respondent and the staff (at the address set forth above) of his/her final determination concerning any recommendation that the Respondent considers to be unduly burdensome or impractical. The Respondent shall abide by the determinations of the Consultant and, within sixty (60) days after final agreement between the Respondent and the Consultant or final determination by the Consultant, whichever occurs first, the Respondent shall adopt and implement all of the recommendations that the Consultant deems appropriate.

17. The Respondent shall certify in writing to the Consultant and the staff (at the address set forth above) within fourteen (14) days of the Respondent's adoption of all of the recommendations that the Consultant deems appropriate, that the Respondent has adopted and implemented all of the Consultant's recommendations and that the Respondent has established policies, practices, and procedures pursuant to Exchange Act Rule 10b-10 and MSRB Rule G-15 that are consistent with the Order.

18. The Respondent may apply to the Commission's staff for an extension of the deadlines described above before their expiration, and upon a showing of good cause by the Respondent, the Commission's staff may, in its sole discretion, grant such extensions for whatever time period it deems appropriate.

19. The Respondent shall (i) not terminate the Consultant without prior written approval of the Commission's staff, (ii) compensate the Consultant and persons engaged to assist the Consultant for services rendered pursuant to the Order at their reasonable and customary rates; and (iii) not be in and shall not have an attorney-client relationship with the Consultant and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Consultant from transmitting any information, reports, or documents to the Commission or its staff.

20. The Respondent shall require the 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 Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with the Respondent or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the 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 Consultant in the performance of his/her duties under the Order shall not, without the prior written consent of the Commission's staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with the Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in its capacity as such, for the period of the engagement and for a period of two years after the engagement.

21. The Respondent shall certify in writing to the staff (at the address set forth above), in the second year following the issuance of the Order, that the Respondent has established and continues to maintain policies, practices, and procedures pursuant to Exchange Act Rule 10b-10 and MSRB Rule G-15 that are consistent with the Order.

IV.

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

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

A. MS&Co shall be, and hereby is, censured;

B. MS&Co shall cease and desist from committing or causing any violations and any future violations of Rule 10b-10 under the Exchange Act, or Section 15B(c) of the Exchange Act, including failing, at or before the completion of a transaction in municipal securities with or for

the account of a customer, to give or send to the customer a written confirmation that complies with certain requirements under MSRB Rule G-15;

C. Within ten days of the issuance of this Order, MS&Co shall pay a civil money penalty in the aggregate amount of $7,500,000 to the United States Treasury. Such payment shall be: (1) made by United States postal money order, certified check, bank cashier's check or bank money order; (2) made payable to the Securities and Exchange Commission; (3) 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 (4) submitted under cover letter that identifies Morgan Stanley & Co. Incorporated as the Respondent 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 Fredric D. Firestone, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549-7561; and

D. MS&Co shall comply with the undertakings enumerated in Section III, paragraphs 11 through 21 above.

By the Commission.

Nancy M. Morris
Secretary

Commissioner Nazareth Not Participating

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 56649 / October 12, 2007

Admin. Proc. File No. 3-12228

In the Matter of

JAMES E. FRANKLIN

OPINION OF THE COMMISSION

PENNY STOCK BAR PROCEEDING

Grounds for Remedial Action

Injunction

Respondent was permanently enjoined from violations of the federal securities laws. Held, it is in the public interest to bar respondent from participating in any penny stock offering.

APPEARANCES:

James E. Franklin, pro se.

Kenneth J. Guido and Brian J.M. Sano, for the Division of Enforcement.

Appeal filed: December 5, 2006
Last brief received: March 26, 2007

I.

James E. Franklin appeals from the November 15, 2006 decision of an administrative law judge. The law judge found that, on December 15, 2005, the United States District Court for the Southern District of California had permanently enjoined Franklin from violating certain provisions of the federal securities laws and required him to pay a third-tier civil money

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penalty. 1/ The law judge barred Franklin from participating in any penny stock offering. We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal.

II.

On December 15, 2005, following a jury trial, the United States District Court for the Southern District of California permanently enjoined Franklin from violating Sections 5(a), 5(c), 17(a), and 17(b) of the Securities Act of 1933, 2/ Section 10(b) of the Securities Exchange Act of 1934, 3/ and Rule 10b-5 thereunder (the "Franklin Injunctive Action"). 4/ The district court also imposed a third-tier penalty of $770,000 against Franklin.

The Franklin district court based its injunction on the jury's unanimous verdict. The jury found that Franklin had knowingly violated the antifraud provisions of the federal securities laws in connection with the offer, purchase, or sale of seven stocks. 5/ The jury further found that Franklin violated the anti-touting provisions of Securities Act Section 17(b) with respect to two stocks and the registration provisions of Securities Act Sections 5(a) and 5(c) with respect to one stock. The jury also found that Franklin was liable as a control person of two entity defendants in the injunctive action, which had previously defaulted, for their violations of Exchange Act Section 10(b) and Exchange Act Rule 10b-5.

In its complaint in the Franklin Injunctive Action, the Commission alleged that Franklin and two other individuals, Dieter Raabe and Samuel Wolanyk, acting through entity defendants Avalon Trust, Initial Public Offering Consultants, Net Income, and Victor Keel, engaged in a fraudulent "pump-and-dump" scheme. As part of the scheme, Franklin acquired the stock of certain companies at low or nominal cost and "pumped" that stock by touting the companies using the Internet, thereby inducing or attempting to induce investors to purchase the touted

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1/ SEC v. Franklin, No. 3:02CV0084 DMS (S.D. Cal. Dec. 15, 2005). The other defendants were Dieter Raabe, Samuel Wolanyk, Avalon Trust, Initial Public Offering Consultants, Inc. ("IPO Consultants"), Net Income, and Victor Keel Ltd. ("Victor Keel"). The court entered default judgments against Avalon Trust, IPO Consultants, Net Income, and Victor Keel in 2003. Franklin also was found liable as a control person for the antifraud violations of Net Income and Victor Keel, and he stipulated to being a control person of IPO Consultants and Avalon Trust.

2/ 15 U.S.C. §§ 77e(a), (c), and 77q(a), (b).

3/ 15 U.S.C. § 78j(b).

4/ 17 C.F.R. § 240.10b-5.

5/ 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.

stocks. After the price of the stock rose in response to Franklin's efforts, he "dumped" or sold his stock for considerable profit. The complaint alleged that the fraudulent scheme generated over $4 million in profits. The complaint set forth in detail the allegations with respect to Franklin's role in the fraudulent scheme as follows.

Beginning in 1997 and continuing into 1998, Franklin "orchestrated" a "fraudulent scheme to tout companies" on an Internet website known as "Red Hot Stocks," 6/ and then "sell the stocks of the companies profiled" on the website. The Red Hot Stocks website "claimed to be a market analysis and stock profile newsletter that 'searches for undiscovered growth companies with strong upside potential.'" According to the complaint, Red Hot Stocks "profiled largely unknown companies that were not traded on major stock exchanges and made recommendations regarding the purchase of stock in these companies." Franklin touted at least seven stocks on the Red Hot Stocks website, including one, Easy Cellular, Inc. ("EZCL"), which he acquired at prices substantially below $1 per share and which he admitted in his answer to the Order Instituting Proceedings was a penny stock within the meaning of Exchange Act Section 3(a)(51) and Exchange Act Rule 3a51-1. 7/ Pursuant to the scheme, Franklin acquired the touted stocks at low or nominal cost through private offerings, consulting agreements, and open market purchases. He held the stock in various accounts including a brokerage account at Union Securities in Canada in the name of Victor Keel, a corporation registered and located in the Turks & Caicos, British West Indies, that was controlled by Franklin and Raabe.

Franklin sold the touted stocks after their prices increased following false and misleading profiles which appeared on the Red Hot Stocks website. According to the complaint, the profiles recommended that investors purchase the stocks, but "contained unreasonable price predictions," did not disclose that Franklin, through various accounts, "owned, beneficially owned, or controlled stock in the profiled companies" and that, in at least one instance, Franklin negotiated Red Hot Stocks's fee for profiling one of the companies. Moreover, the profiles did not disclose that Franklin had acquired the "stocks of companies to be profiled on Red Hot [Stocks] with the intent to sell in coordination with the tout, while Red Hot [Stocks] recommended that others purchase the stock." As the complaint alleged, "[t]he pattern and timing of [Franklin's] sales

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6/ The Red Hot Stocks website was operated by Net Income, a Nevada corporation that Franklin had organized through a third party to operate Red Hot Stocks in furtherance of the scheme.

7/ 15 U.S.C. § 78c(a)(51), 17 C.F.R. § 240.3a51-1. The other touted stocks were Amalgamated Explorations, Inc., American Technologies Group, LCA-Vision, Inc., Neotherapeutics, Inc., NetUSA, Inc., and Waterpur International.

were contrary to the stated belief in [Red Hot Stocks's] reports that the stocks were good investments." 8/

Following the jury's verdict, on December 15, 2005, the district court held a remedies hearing during which it entered the permanent injunction against Franklin and imposed a third-tier civil money penalty. During that hearing, the court stated that, with respect to the jury's findings of violation by Franklin, "the jury's verdict is supported by all of the evidence." The court stated that Franklin was "the most culpable" participant. The court stated further that "Mr. Franklin was orchestrating this activity . . . and did make a lot of money . . . approximately $831,799 in profits from the fraudulent scheme."

On March 6, 2006, we authorized the institution of administrative proceedings against Franklin to determine whether he had participated in a "penny stock offering" and had been enjoined and, if so, what remedial action would be appropriate in the public interest. On November 15, 2006, the law judge granted the Division of Enforcement's (the "Division") motion for summary disposition, and barred Franklin from participating in an offering of penny stock. This appeal followed.

III.

Exchange Act Section 15(b)(6)(A) authorizes us to bar a person from participating in the offering of any "penny stock" if the person has been, among other things, enjoined from any conduct or practice in connection with the purchase or sale of a security and if, at the time of the misconduct alleged in the injunctive proceeding, was participating in an offering of penny stock. 9/ We find that Franklin was enjoined from violating the antifraud, anti-touting, and registration provisions of the federal securities laws, which involved conduct in connection with the purchase or sale of a security. We also find that the record establishes that, during the time of the misconduct, Franklin participated in an offering of penny stock. 10/

8/ The complaint also alleged that Franklin violated Securities Act Section 5(a) and 5(c) by "offering to sell and/or selling" Amalgamated Explorations, Inc. stock at a time when "no registration statement was filed or in effect . . . for the securities offered and sold . . . nor were those offerings or sales exempt from registration."

9/ Exchange Act Section 15(b)(6)(C) defines a person participating in an offering of a penny stock as "any person acting as any promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer, or issuer for purpose of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock . . . ." 15 U.S.C. § 78o(b)(6)(C).

10/ As is pertinent here, Exchange Act Section 3(a)(51)(A) defines a "penny stock" as "any equity security other than a security that is . . . excluded, on the basis of exceeding a

(continued...)

Franklin does not contest that the jury found him liable for his role in devising and executing a fraudulent "pump-and-dump" scheme with respect to seven stocks, including EZCL, which Franklin admits was a penny stock. Franklin concedes that he was enjoined based on the jury's findings of violation. He is appealing the district court's judgment and concedes that he cannot challenge those findings in this proceeding. 11/

We turn first to certain procedural objections Franklin makes regarding these proceedings. These objections relate to (A) evidentiary rulings by the district court and a finding by the jury in the injunctive action, (B) allegations of Commission staff misconduct, and (C) an allegation that the law judge acted improperly in rejecting Franklin's request to stay this proceeding.

A.

While Franklin concedes that he cannot challenge the injunctive proceedings before us, he nevertheless complains about certain evidentiary rulings made by the district court and one of the jury's verdict findings in the injunctive action. Franklin objects to the district court's order that permitted his co-defendant Raabe to testify under a grant of immunity, and permitted the Commission to introduce into evidence documents that corroborated Raabe's immunized testimony. He objects to the district court's order that permitted the Commission to adduce testimony regarding additional stocks not listed in the Commission's complaint. He objects to the district court's decision to allow the Commission to introduce registers of stock transactions and telephone records from the Canadian brokerage firm where the Victor Keel account was located. 12/ Franklin made each of these objections to the district court, and each time the court

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10/ (...continued)
minimum price, net tangible assets of the issuer, or other relevant criteria, from the definition of such term by rule or regulation which the Commission shall prescribe for purposes of this paragraph . . . ." In general, under Exchange Act Rule 3a51-1, certain equity securities -- including securities priced at five dollars or more, securities subject to last sale reporting and listed on a national securities exchange or quoted on NASDAQ, and securities of an issuer that meets either a minimum net tangible assets or revenues test -- are excluded from the definition of "penny stock." 17 C.F.R. § 240.3a51-1; see Nolan Wayne Wade, Securities Exchange Act Rel. No. 48245 (July 29, 2003), 80 SEC Docket 2683, 2684. Franklin does not allege, and the record contains no evidence, that EZCL, which was unregistered, unlisted, and traded at less than one dollar, satisfied any of the exceptions.

11/ SEC v. Franklin, No. 06-55357 (9th Cir. filed Mar. 14, 2006).

12/ Franklin claims that Division staff acted improperly by conducting a "massive document dump at the last moment in Franklin's trial so that he could/would not have the

(continued...)

ruled against him, finding that Franklin was not unfairly prejudiced and that his due process rights were not violated. In addition to these evidentiary rulings, Franklin alleges that the evidence adduced in the district court proceeding does not support the jury's verdict finding that he controlled the Victor Keel account through which the touted stocks were traded.

It is well established that Franklin is collaterally estopped from challenging in this administrative proceeding the decisions of the district court in the injunctive proceeding. 13/ The doctrine of collateral estoppel precludes the Commission from reconsidering the injunction as well as factual and procedural issues that were actually litigated and necessary to the court's decision to issue the injunction. 14/ The appropriate forum for Franklin's challenge to the validity of the injunction and the district court's evidentiary rulings is through an appeal to the

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12/ (...continued)
opportunity to discover exculpatory evidence." Franklin does not indicate how the register of stock transactions was exculpatory, but he claims that the phone records show that Raabe received "a very large number of phone calls; hence he must have been the party in control [of the Victor Keel account]." However, the fact that Raabe received a large number of phone calls from Union Securities does not establish that he was a control person of the Victor Keel account.

13/ Blinder, Robinson & Co. v. SEC, 837 F.2d 1099, 1109-11 (D.C. Cir. 1988) (finding that collateral estoppel precluded the relitigation of the factual question as to whether there was reliance on counsel because that issue had been decided by a federal district court in the underlying injunctive action); see also Elliott v. SEC, 36 F.3d 86, 87 (11th Cir. 1994) (per curiam) (rejecting a collateral attack on criminal conviction on which the administrative sanction was based); Joseph P. Galluzzi, 55 S.E.C. 1110, 1115-16 (2002) (finding that a party cannot challenge his injunction or criminal conviction in a subsequent administrative proceeding); Ted Harold Westerfield, 54 S.E.C. 25, 32 n.22 (1999) (same); Demitrius Julius Shiva, 52 S.E.C. 1247, 1249 (1997) (stating that the doctrine of collateral estoppel precludes the Commission from reconsidering an injunction as well as factual issues that were actually litigated and necessary to the court's decision to issue the injunction).

14/ Blinder, Robinson, 837 F.2d at 1109-11; Shiva, 52 S.E.C. at 1249 (citations omitted). As the Supreme Court has stated, collateral estoppel "preclude[s] parties from contesting matters that they have had a full and fair opportunity to litigate" and thereby "protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions." Montana v. United States, 440 U.S. 147, 153-54 (1979).

United States Court of Appeals, which, as mentioned, Franklin is pursuing and in which he is raising some of these same issues. 15/

B.

Franklin also argues that Division staff engaged in misconduct in the investigation and prosecution of the injunctive action in federal district court. Franklin contends that, because of the alleged misconduct by the Division, "the government has forfeited its right to seek the relief sought." As with his challenges to the evidentiary rulings made by the district court, this is not the appropriate forum for challenging the propriety of the Division's conduct in the injunctive action; such a challenge should have been brought before the district court and, if necessary, appealed. 16/ Moreover, the doctrine of unclean hands may not generally be invoked against a government agency "which is attempting to enforce a congressional mandate in the public

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15/ See supra note 11 and accompanying text. Franklin seeks a Commission stay of this proceeding pending his appeal to the United States Court of Appeals. However, it is well established that a pending appeal does not affect the injunction's status as a basis for this administrative proceeding. Blinder Robinson, 837 F.2d at 1104 n.6 ("[T]he fact that a judgment is pending on appeal ordinarily does not detract from its finality (and therefore its preclusive effect) for purposes of subsequent litigation."); see also Michael Batterman, Investment Advisers Act Rel. No. 2334 (Dec. 3, 2004), 84 SEC Docket 1349, 1354 n.10 (holding that a pending appeal does not affect the injunction's status as a basis for an administrative proceeding), aff'd, No. 05-0404 (2d Cir. 2005) (unpublished); Joseph P. Galluzzi, 55 S.E.C. at 1116 n.21 (holding that the pendency of an appeal does not preclude the Commission from acting to protect the public interest). Accordingly, we are not precluded from taking action here. See Charles Phillip Elliott, 50 S.E.C. 1273, 1276 n.15 (1992) (finding no need to delay proceeding until outcome of respondent's appeal), aff'd, 36 F.3d 86 (11th Cir. 1994) (per curiam).

To the extent that Franklin prevails in his appeal, he would be entitled to file a motion to vacate the opinion and order in this matter. See Jimmy Dale Swink Jr., 52 S.E.C. 379 (1995) (order granting motion to vacate bar, where respondent's underlying conviction, which was the basis for the Commission's bar order, was reversed by the court of appeals and remanded to the district court).

16/ Harold F. Harris, Exchange Act Rel. No. 53122A (Jan. 13, 2006), 87 SEC Docket 350, 359.

interest." 17/ While courts recognize "the need to deter governmental abuses," 18/ in order to raise an equitable defense such as unclean hands against a government agency, courts "have required that the agency's misconduct be egregious and the resulting prejudice to the defendant rise to a constitutional level." 19/

Franklin has not demonstrated how any of his allegations of misconduct, even if true, might have prejudiced him in his defense of either the injunctive action or the administrative proceeding. Nothing the Division or its staff is alleged to have done prevented Franklin from putting forth his defenses to the injunctive action or to this proceeding. In view of the fact that the misconduct, if any, did not amount to a violation of Franklin's constitutional rights or similarly egregious conduct, the defense of unclean hands is not available here.

For example, Franklin alleges that a Division staff member improperly disclosed the existence of a staff investigation into Red Hot Stocks. Franklin asserts that he became aware of this alleged disclosure during a June 16, 1998 judgment debtors examination in an unrelated private civil lawsuit (the "June 16, 1998 examination") when he was asked a series of questions about the Red Hot Stocks website. Franklin claims that a staff attorney disclosed the investigation to the attorney conducting the June 16, 1998 examination in order to circumvent his assertion of the Fifth Amendment privilege against self incrimination so that "an ordinary debtor examination would be turned into an SEC investigatory deposition." In support of this allegation, Franklin points to a portion of the transcript of the June 16, 1998 examination and a document he describes as an attorney billing record. Nothing in these documents, however,

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17/ SEC v. KPMG LLP, 2003 WL 21976733, at *3 (S.D.N.Y. 2003); SEC v. Rosenfeld, 1997 WL 400131, at *2 (S.D.N.Y. 1997) (quoting SEC v. Gulf & W. Indus., Inc., 502 F. Supp. 343, 348 (D.D.C. 1980)) (citations omitted); see also SEC v. Lorin, 1991 WL 576895, at *1 (S.D.N.Y. 1991) ("Generally, an unclean hands defense is not available in a SEC enforcement action."); SEC v. Condrin, 1985 WL 2054, at *1 (D. Conn. 1985) ("Unclean hands is not a defense against an action sought by the SEC."); see generally Heckler v. Cmty. Health Servs., Inc., 467 U.S. 51, 60 (1984) (stating that the government may not be estopped on the same terms as any other litigant because "[w]hen the Government is unable to enforce the law because the conduct of its agents has given rise to an estoppel, the interest of the citizenry as a whole in obedience to the rule of law is undermined").

18/ SEC v. Lorin, 1991 WL 576895, at *1 (S.D.N.Y. June 18, 1991) ("Recognizing the need to deter governmental abuses, courts do allow the defense of government misconduct to be invoked where it appears that the government may have engaged in outrageous or unconstitutional activity.").

19/ SEC v. Follick, 2002 WL 31833868, at *8 (S.D.N.Y. 2002) (quoting SEC v. Elecs. Warehouse, Inc., 689 F. Supp. 53, 73 (D. Conn. 1988), aff'd, 891 F.2d 457 (2d Cir. 1989)).

establishes that Division staff disclosed the existence of an ongoing investigation. The Division denies that this disclosure occurred. 20/

Franklin also contends that the Division staff engaged in misconduct in SEC v. Cavanagh, 21/ an unrelated "pump-and-dump" case in which Franklin was permanently enjoined for violations of Securities Act Sections 5(a) and 5(c). Franklin claims that Division staff made false statements to the district and appellate courts in Cavanagh indicating that Franklin had instructed another defendant, Thomas R. Brooksbank, "to send subpoenaed records out of the country with the intention of blocking Brooksbank's compliance with the subpoena duces tecum served on him." In essence, Franklin claims that Division staff indicated that Brooksbank was subject to a subpoena for the documents at issue when in fact he was not. Franklin further argues that Commission staff ignored Brooksbank's efforts to recant or explain his deposition testimony in Cavanagh.

Franklin is correct that Brooksbank was not sent a subpoena for documents. In fact, the subpoena for documents was directed to a third person. However, whether Brooksbank was subject to a subpoena for documents is irrelevant. The Cavanagh court found that "during the course of the SEC investigation into the [Red Hot Stocks] website, Franklin instructed Brooksbank to send abroad documents pertaining to [a related] company and Brooksbank complied." The Cavanagh decision makes no mention of a subpoena. Thus, there is no support

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20/ For the same reasons, we reject Franklin's contention that the disclosure of the existence of a Commission investigation is unlawful pursuant to 18 U.S.C. § 1905 which governs the disclosure of confidential information by, among others, "an officer or employee of the United States or of any department or agency thereof."

As a general matter, we note that the Commission permits certain disclosures about pending investigations. Securities Act Section 8(e) and Exchange Act Section 21(a) authorize the Commission to investigate violations of the federal securities laws and to adopt regulations directing the staff's conduct during such investigations. 15 U.S.C. §§ 77h(e) and 78u(a). The Privacy Act of 1974, 5 U.S.C. § 552a, authorizes the Commission to determine the appropriate uses of information gathered in the course of an investigation, and we have published a list of permissible routine uses of such information by Commission staff. Privacy Act of 1974; Modification of Systems and Records, Release No. PA-11, 1989 SEC LEXIS 934. One of the routine uses permitted is disclosure "[t]o any person during the course of any inquiry or investigation conducted by Commission's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry." Id. at *10.

21/ 2004 U.S. Dist. LEXIS 13372 (S.D.N.Y. July 27, 2004), aff'd, 175 Fed. Appx. 467 (2d Cir. 2006) (unpublished).

for Franklin's argument that the district court's finding in Cavanagh was erroneous or that it was the result of alleged misstatements by the Division. 22/ We agree with the law judge that Franklin's instructing Brooksbank to send documents related to the Division's investigation of Red Hot Stocks out of the country provides further support for imposition of a penny stock bar in this proceeding.

Franklin next alleges that Commission staff acted improperly by questioning him about "key issues" relating to the Franklin Injunctive Action during a deposition in Cavanagh. Franklin claims that in so doing, Commission staff were able to circumvent the discovery deadline in the Franklin Injunctive Action which had expired. However, Franklin has offered no evidence to support this assertion. There is no evidence that Franklin's deposition testimony in Cavanagh was used in the Franklin Injunctive Action in district court or in this administrative proceeding. The questions asked in the Cavanagh deposition about events underlying the Franklin Injunctive Action related to whether the Division could establish a likelihood of future violation in the Cavanagh case, one of the considerations relevant to the imposition of an injunction.

22/ Franklin proffers Brooksbank's testimony in the Franklin Injunctive Action in which Brooksbank stated that Commission staff had taken the position that he sent documents out of the country "in violation of a subpoena served upon [Brooksbank], when that is not true." However, in the Franklin Injunctive Action, Brooksbank's testimony continues:

Q. Okay. Now, in either case, isn't it true that Mr. Franklin contacted you after Mr. Rowley had received a subpoena?
A. No, I contacted Franklin.
Q. You contacted Franklin, and notified him that Mr. Rowley had received a subpoena for documents.
A. Correct.
Q. And that Mr. Franklin, in response to that, instructed you to send any documents that you had to the Turks & Caicos.
A. The truth is that I asked Jim [Franklin] where he wanted me to send the documents. He didn't take the affirmative.
I said, I don't want to be involved in whatever dispute you have with the S.E.C., where do you want me to send your documents? I don't want anything to do with them.
Q. And he told you to send them out of the country.
A. Yes.
Q. And you did so.
A. And I did so.

This testimony further supports the conclusion that Franklin instructed Brooksbank to send documents related to the Division's investigation of Red Hot Stocks out of the country.

Franklin further contends that, during the Franklin Injunctive Action, Division staff questioned the accuracy of Franklin's testimony in the June 16, 1998 examination and that this constituted an "implied threat to possibly have me prosecuted for perjury." Franklin argues that Division staff used the threat of criminal prosecution to pressure him to waive his Fifth Amendment privilege against self incrimination or to force a settlement of the civil injunctive action. The declaration by Franklin's trial counsel in the injunctive action that Franklin offers in support of this assertion only states that during a telephone conversation on or about March 31, 2004, Division staff "stated in words or in substance that there was an issue about the possibility of perjury by Mr. Franklin due to his testimony in his judgment debtor exam." Nothing in the declaration gives any indication of an improper motive on behalf of Division staff in alerting Franklin's trial counsel to the presence of potentially untruthful testimony. 23/

C.

Franklin claims that the law judge prejudged this case and, therefore, should have recused herself from the proceeding. Franklin asserts that, during a telephone conference prior to the parties' submissions of their motions for summary disposition, the law judge rejected his request to stay this proceeding pending his appeal of the injunctive action. The law judge stated that the Commission has never held that an appeal of an injunctive action prevents the Commission from exercising its jurisdiction in a follow-on administrative proceeding. Rather than prejudging his request for a stay pending appeal, the law judge's comments were accurate statements of Commission precedent. 24/ We find that Franklin's claim that the law judge prejudged the case is not supported by the record.

IV.

The Division asks that we bar Franklin from participation in any offering of penny stock. As an initial matter, Franklin argues that, because the district court did not impose a penny stock bar in the injunctive action, the imposition of a penny stock bar here is not in the public interest. However, the Commission did not seek a penny stock bar in the district court proceeding. Thus, the district court never considered whether a penny stock bar should be imposed upon Franklin. Nor did the court conclude, as Franklin suggests, that the remedies it imposed were the only ones that were necessary. Rather, the court concluded that Franklin's participation in the illegal scheme posed "a substantial risk of loss to others" and warranted the imposition of serious

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23/ Franklin claims that he "did not have the benefit of an impartial enforcement agency prosecutor." However, as we previously have stated, "[d]ue process does not require a neutral prosecutor." Jean-Paul Bolduc, 54 S.E.C. 1195, 1202 n.25 (2001) (citing Marshall v. Jerrico, Inc., 446 U.S. 238, 248 (1980)). The Division is a party to this proceeding and is entitled to pursue vigorously its claims. In any event, our findings and conclusions here are based on an independent review of the record.

24/ See supra note 15.

sanctions, including a third-tier civil money penalty, the most severe penalty provided in the applicable federal securities laws.

Franklin also accuses the Division of "forum shopping" and argues that the Commission "should fully defer to [the district court's] decision." However, the district court does not have sole jurisdiction over this matter as Franklin suggests. Exchange Act Section 15(b)(6) expressly authorizes the Commission to institute administrative proceedings against any person to determine the need for a penny stock bar in the public interest where the respondent has been, among other things, enjoined from "engaging in any conduct or practice . . . in connection with the purchase or sale of any security." 25/ Thus, as we have stated previously, "the district court proceeding and this proceeding are independent, although this proceeding necessarily follows from the injunctive proceeding." 26/

In evaluating whether an administrative sanction serves the public interest, we consider, among other things, the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his conduct, and the likelihood that the respondent's occupation will present opportunities for future violations. 27/ We also consider the extent to which the sanction will have a deterrent effect. 28/ The appropriate sanction depends on the facts and circumstances of each case. 29/ In proceedings brought based upon the entry of an injunction, we examine the facts and

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25/ 15 U.S.C. § 78o(b)(6).

26/ Vladislav Steven Zubkis, Exchange Act Rel. No. 52876 (Dec. 2, 2005), 86 SEC Docket 2618, 2626.

27/ Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (citation omitted), aff'd on other grounds, 450 U.S. 91 (1981).

28/ See, e.g., Ahmed Mohamed Soliman, 52 S.E.C. 227, 231 n.12 (1995) (stating that the selection of an appropriate sanction involves consideration of several elements, including deterrence); Lester Kuznetz, 48 S.E.C. 551, 555 (1986) (noting that the sanction of a bar "serves the purpose of general deterrence"); see also McCarthy v. SEC, 406 F.3d 179, 190 (2d Cir. 2005) (noting that deterrent value is a relevant factor to consider in deciding sanctions).

29/ See Butz v. Glover Livestock Comm'n Co., 411 U.S. 182, 187 (1973); Michael Batterman, 84 SEC Docket at 1358.

circumstances underlying the entry of the injunction in determining the public interest. 30/ As we have held, "ordinarily, and in the absence of evidence to the contrary, it will be in the public interest to . . . prohibit from participation in an offering of penny stock, a respondent who is enjoined from violating the antifraud provisions." 31/

Franklin's violations were egregious. He participated in a fraudulent scheme to tout seven stocks that he had acquired cheaply and then sold those shares after their price increased following false and misleading statements placed on the Red Hot Stocks website. The record establishes -- and Franklin concedes -- that one of those seven stocks, EZCL, was a penny stock. In addition to his fraudulent conduct with respect to the seven stocks, Franklin also violated the registration provisions of Securities Act Sections 5(a) and 5(c) with respect to one of those seven stocks. The egregiousness of Franklin's conduct is supported further by the district court's imposition of a third-tier penalty of $770,000.

Franklin acted with a high degree of scienter. The district court stated in its post-trial remedies hearing that "Franklin was orchestrating" the fraudulent scheme and was "the most culpable" participant. Moreover, he took steps to conceal his participation in the scheme. He traded in the touted stocks primarily through a Canadian brokerage account in the name of Victor Keel, a foreign corporation registered and located in the Turks & Caicos, British West Indies, and Red Hot Stocks was operated by Net Income, a Nevada corporation that Franklin directed through a third party.

Franklin's misconduct was not an isolated occurrence but extended over many months, between 1997 and 1998, and involved at least seven stocks. Moreover, during 1996 through 1998, Franklin engaged in conduct that resulted in the entry of a permanent injunction for violations of Securities Act Sections 5(a) and 5(c) as part of an unrelated "pump-and-dump" scheme in Cavanagh. In that case, the district court, in evaluating the likelihood of future violations, concluded that Franklin was "at the very least reckless as to whether . . . [his] personal profits were earned through fraud." 32/ In addition to the injunction, the district court ordered Franklin to pay a civil money penalty of $125,000, individual disgorgement in the amount of $50,926.50, and disgorgement jointly and severally with two other defendants in the

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30/ Marshall E. Melton, 56 S.E.C. 695, 713 (2003). As we noted in Melton, "[i]n considering the [public interest] factors, we recognize that conduct that violates the antifraud provisions of the federal securities laws is especially serious and subject to the severest of sanctions under the securities laws." Id.

31/ Id.

32/ Cavanagh, 2004 U.S. Dist. LEXIS 13372, at * 93.

amount of $889,275, plus interest. In light of his past misconduct, it is likely future violations will occur if Franklin is permitted to engage in additional penny stock offerings. 33/

Franklin claims that he presently intends to comply with the securities laws, describing the injunction imposed by the district court as a "sword hanging over my head," that, should he "violate any security law will most assuredly result in severe sanctions including incarceration." However, we find this assurance against future violations is outweighed by the fact that Franklin makes this representation after he has been the subject of two separate injunctive actions.

Franklin asserts, without dispute, that, in 1987, he testified against a person who "had been indicted for securities fraud," despite threats that Franklin alleges the promoter made against him and the prosecutor, and that his doing so should mitigate the sanctions imposed in this proceeding. He also claims that he has "acted in ways that have been beneficial to the community and the public in general" and helped "small legitimate businesses" to "expand . . . by gaining access to the capital markets." Franklin's testimony and his efforts to assist small businesses, however laudable, do not outweigh the need to protect the public given Franklin's more recent and repeated misconduct.

Franklin claims that the public interest does not justify a bar because his reputation, "which is his livelihood," already has been ruined, and he can no longer work in the "broker-dealer community." Franklin does not support this claim and, in any event, we are not persuaded that, absent a bar, his inability to participate in penny stock offerings is permanent. A bar is necessary to protect the public interest because, absent a bar, there would be no obstacle to Franklin's participation in a penny stock offering in the future. 34/

A penny stock bar will deter Franklin and others from violating the provisions of the federal securities laws in the course of participating in a penny stock offering. Moreover, we believe a penny stock bar is necessary to protect investors given Franklin's long history of employment in the securities industry. Although Franklin states that he has no intention of "working in any way in the broker-dealer community," he hopes to "make a modest living by

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33/ See Steadman, 603 F.2d at 1140 (stating that "past misconduct gives rise to an inference of probable future misconduct").

34/ Cf. Schield Mgmt. Co., Exchange Act Rel. No. 53201 (Jan. 31, 2006), 87 SEC Docket 848 at 865 (finding that, despite steps taken by the firm to limit the scope of the respondent's employment to exclude advisory activities, "absent a bar, there would be no obstacle to his being an investment adviser in the future").

writing business plans." As indicated, we believe that the public interest requires that such activities cannot be carried out in connection with any penny stock offering. Accordingly, we find that the public interest warrants barring Franklin from participating in any penny stock offering.

An appropriate order will issue. 35/

By the Commission (Chairman COX and Commissioners ATKINS and CASEY); Commissioner NAZARETH not participating.

Nancy M. Morris
Secretary

Florence E Harmon

By: Florence E. Harmon
Deputy Secretary

35/ We have considered all of the parties' contentions. We have rejected or sustained these contentions to the extent that they are inconsistent or in accord with the views expressed herein.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 56649 / October 12, 2007

Admin. Proc. File No. 3-12228

In the Matter of

JAMES E. FRANKLIN

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that James E. Franklin be, and he hereby is, barred from participating in any offering of penny stock, including acting as a promoter, finder, consultant, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

By the Commission.

Nancy M. Morris
Secretary

Florence E Harmon

By: Florence E. Harmon
Deputy Secretary

Commissioner Nazareth
Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 56673 / October 18, 2007

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2743 / October 18, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12869

In the Matter of

Thomas C. Gentry, C.P.A.

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934

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 Thomas C. Gentry ("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, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

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III.

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

Respondent

Thomas C. Gentry, age 53, served as MQ Associates Inc.'s Chief Financial Officer at all relevant times. Gentry was certified as a CPA in Georgia until his license lapsed in 2001.

Related Party

MQ Associates is a Delaware corporation with its headquarters in Alpharetta, Georgia. MQ Associates is a holding company which owns 100% of the shares of MedQuest, Inc. MedQuest is a health care company that provides diagnostic services like CT scans and MRI's. MQ Associates' debt is registered with the Commission and is lightly traded. Its equity is privately held. MQ Associates' fiscal year ends on December 31.

Discussion

This matter relates to reporting violations by MQ Associates and its failure to keep accurate books and records and to maintain an adequate system of internal accounting controls. At all relevant times, Gentry was MQ Associates' Chief Financial Officer ("CFO") and had primary responsibility for ensuring that its financial statements and books and records were accurate and that its internal accounting controls were adequate. MQ Associates' failures in this regard resulted in a restatement of its financial statements for fiscal years ended December 31, 2002 and 2003, for all quarters during both of those years, and for the first three quarters of 2004. In the aggregate, the restatement resulted in a cumulative reduction of net income by $34.7 million. This restatement had a material impact on net income, reducing it by more than 300% from a profit of $4.6 million to a loss of $11 million during the first 9 months of 2004, by more than 150% from a profit of $5.2 million to a loss of $2.8 million in 2003, and by more than 400% from a profit of $1.2 million to a loss of $3.7 million in 2002. In connection with the accounting errors underlying the restatement, MQ Associates violated Sections 13(b)(2)(A), 13(b)(2)(B), and 15(d) of the Exchange Act and Rules 12b-20, 15d-1 and 15d-13 thereunder. Gentry was a cause of these violations.

MQ Associates' restatement largely resulted from an understatement of its allowance for contractual adjustments for accounts receivable. When services were rendered, MQ Associates booked the transaction by recording revenue and accounts receivable at equal gross amounts. However, MQ Associates was seldom compensated for the gross billable amount because its contractual arrangements with insurance carriers and governmental reimbursement rates often stipulated payment at rates significantly lower than the gross rate. Due to the difference between the gross billable rate and the net billable rate for the procedure, MQ Associates established an

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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.

allowance for contractual adjustments which was deducted from the gross accounts receivable amount to calculate net, reportable accounts receivable. This allowance was materially understated, which resulted in MQ Associates' overstatement of accounts receivable and revenue.

To monitor the size of the allowance for contractual adjustments, MQ Associates chiefly relied on what it called a cash trend analysis. It compared net accounts receivable (gross accounts receivable minus the allowance) to the actual cash subsequently collected at the end of the average collection period. Beginning in 2002, MQ Associates' auditors advised the company and Gentry that there were inadequacies with the methodology it was using to calculate the allowance for contractual adjustment, and suggested that they be corrected by acquiring a billing system capable of an automated liquidation analysis. A liquidation analysis matches the revenue booked for each transaction with the actual amount collected for that transaction. Despite these warnings, MQ Associates did not acquire and fully implement a billing system with this capability until the third quarter of 2004. As CFO, Gentry signed MQ Associates' annual and quarterly reports (Forms 10-K and 10-Q, respectively) and had an obligation to ensure they were accurate. He also had primary responsibility for ensuring that MQ Associates dedicated the attention and resources necessary to accurately determine its allowance for contractual adjustments. He knew that this account was important to MQ Associates' financial statements and that it was difficult to estimate correctly. Gentry received information suggesting that the allowance might be understated. However, he failed to take sufficient corrective action until mid-2004, after MQ Associates had made several materially false filings with the Commission.

From time to time beginning in late 2002, when MQ Associates registered its debt with the Commission, the allowance for contractual adjustment declined in terms of its percentage of gross accounts receivable. The percentage remained relatively flat throughout 2003, however, it began to steadily decline in 2004. By late 2004, certain employees grew concerned that the allowance for contractual adjustment was not correctly stated. The finance department began conducting additional analyses, including using the new billing system which permitted a liquidation analysis on part of the company's accounts receivable. In light of what was discovered, in January 2005 company management informed the Audit Committee of a potential overstatement in accounts receivable. On March 30, 2005, the company announced in a Form 8-K filed with the Commission that it determined that its historical financial statements for the years ended December 31, 2002 and 2003, all quarters during those years, and the first three quarters of 2004 could not be relied upon. Eventually, on September 22, 2005, the company filed a Form 10-K for fiscal year ending December 31, 2004 which included the $34.7 million restatement.

Legal Analysis

Section 15(d) of the Exchange Act requires each issuer which has filed a registration statement that has become effective to file periodic reports with the Commission containing information prescribed by specific Commission rules. Rules 15d-1 and 15d-13 require, respectively, the filing of Forms 10-K and 10-Q. Rule 12b-20 requires, in addition to information required in periodic reports by Commission rules, such further information as may

be necessary to make the required statements not misleading. The obligation to file such reports embodies the requirement that they be true and correct. MQ Associates failed to do so by incorrectly setting its allowance for contractual adjustment, which caused it to materially overstate its accounts receivable and revenue as described above. It therefore violated Section 15(d) of the Exchange Act and Rules 12b-20, 15d-1, and 15d-13 thereunder. As CFO, Gentry had primary responsibility for ensuring that MQ Associates correctly determined its allowance for contractual adjustments and he knew or should have known that the allowances were understated. Gentry therefore was a cause of MQ Associates' violations.

Section 13(b)(2)(A) of the Exchange Act requires issuers to "make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer." Section 13(b)(2)(B) of the Exchange Act requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP and to maintain the accountability of assets. MQ Associates violated Section 13(b)(2)(A) by failing to make and keep accurate books and records and Section13(b)(2)(B) by failing to maintain sufficient internal accounting controls, as described above. As CFO, Gentry was responsible for ensuring that MQ Associates' books and records were accurate and its internal controls were adequate. Gentry knew or should have known that MQ Associates did not make and keep accurate books and records and maintain sufficient internal accounting controls. Consequently, he was a cause of those violations.

IV.

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

Accordingly, pursuant to Section 21C of the Exchange Act it is hereby ORDERED that:

Respondent Thomas C. Gentry cease and desist from causing any violations and any future violations of Sections 13(b)(2)(A), 13(b)(2)(B), and 15(d) of the Exchange Act and Rules 12b-20, 15d-1, and 15d-13 thereunder.

By the Commission.

Nancy M. Morris
Secretary

Florence E Harmon

By: Florence E. Harmon
Deputy Secretary

Commissioner Nazareth
Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 56674 / October 18, 2007

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2744 / October 18, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12870

In the Matter of

MQ Associates, Inc.,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934

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 MQ Associates, Inc. ("MQ Associates" 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, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

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III.

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

Summary

This matter relates to reporting violations by MQ Associates and its failure to keep accurate books and records and to maintain an adequate system of internal accounting control. This failure resulted in a restatement of its financial statements for fiscal years ended December 31, 2002 and 2003, for all quarters during both of those years, and for the first three quarters of 2004. In the aggregate, the restatement resulted in a cumulative reduction of net income by $34.7 million. This restatement had a material impact on net income, reducing it by more than 300% from a profit of $4.6 million to a loss of $11 million during the first 9 months of 2004, by more than 150% from a profit of $5.2 million to a loss of $2.8 million in 2003, and by more than 400% from a profit of $1.2 million to a loss of $3.7 million in 2002. In connection with the accounting errors underlying the restatement, MQ Associates violated Sections 13(b)(2)(A), 13(b)(2)(B), and 15(d) of the Exchange Act and Rules 12b-20, 15d-1 and 15d-13 thereunder.

Respondent

MQ Associates is a Delaware corporation with its headquarters in Alpharetta, Georgia. MQ Associates is a holding company which owns 100% of the shares of MedQuest, Inc. MedQuest is a health care company that provides diagnostic services like CT scans and MRI's. MQ Associates' debt is registered with the Commission and is lightly traded. Its equity is privately held. MQ Associates' fiscal year ends on December 31.

Discussion

MQ Associates' restatement largely resulted from an understatement of its allowance for contractual adjustments for accounts receivable. When services were rendered, MQ Associates booked the transaction by recording revenue and accounts receivable at equal gross amounts. However, MQ Associates was seldom compensated for the gross billable amount because its contractual arrangements with insurance carriers and governmental reimbursement rates often stipulated payment at rates significantly lower than the gross rate. Due to the difference between the gross billable rate and the net billable rate for the procedure, MQ Associates established an allowance for contractual adjustments which was deducted from the gross accounts receivable amount to calculate net, reportable accounts receivable. This allowance was materially understated, which resulted in MQ Associates' overstatement of accounts receivable and revenues.

To monitor the size of the allowance for contractual adjustments, MQ Associates chiefly relied on what it called a cash trend analysis. It compared net accounts receivable (gross

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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.

accounts receivable minus the allowance) to the actual cash subsequently collected at the end of the average collection period. Beginning in 2002, MQ Associates' auditors advised the company that there were inadequacies with the methodology it was using to calculate the allowance for contractual adjustment, and suggested that they be corrected by acquiring a billing system capable of an automated liquidation analysis. A liquidation analysis matches the revenue booked for each transaction with the actual amount collected for that transaction. Despite these warnings, MQ Associates did not acquire and fully implement a billing system with this capability until the third quarter of 2004.

From time to time beginning in late 2002, when MQ Associates registered its debt with the Commission, the allowance for contractual adjustment declined in terms of its percentage of gross accounts receivable. The percentage remained relatively flat throughout 2003, however, it began to steadily decline in 2004. By late 2004, certain employees grew concerned that the allowance for contractual adjustment was not correctly stated. The finance department began conducting additional analyses, including using the new billing system which permitted a liquidation analysis on part of the company's accounts receivable. In light of what was discovered, in January 2005 company management informed the Audit Committee of a potential overstatement in accounts receivable. In February 2005, the Audit Committee retained outside counsel and accountants to assist in an investigation of this shortfall. On March 30, 2005, the company announced in a Form 8-K filed with the Commission that it determined that its historical financial statements for the years ended December 31, 2002 and 2003, all quarters during those years, and the first three quarters of 2004 could not be relied upon. Eventually, on September 22, 2005, the company filed a Form 10-K for fiscal year ending December 31, 2004 which included the $34.7 million restatement.

Legal Analysis

Section 15(d) of the Exchange Act requires each issuer which has filed a registration statement that has become effective to file periodic reports with the Commission containing information prescribed by specific Commission rules. Rules 15d-1 and 15d-13 require, respectively, the filing of Forms 10-K and 10-Q. Rule 12b-20 requires, in addition to information required in periodic reports by Commission rules, such further information as may be necessary to make the required statements not misleading. The obligation to file such reports embodies the requirement that they be true and correct. MQ Associates failed to do so by incorrectly setting its allowance for contractual adjustment, which caused it to materially overstate its accounts receivable and revenue as described above. It therefore violated Section 15(d) of the Exchange Act and Rules 12b-20, 15d-1, and 15d-13 thereunder.

Section 13(b)(2)(A) of the Exchange Act requires issuers to "make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer." Section 13(b)(2)(B) of the Exchange Act requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP and to maintain the accountability of assets. MQ Associates violated Section 13(b)(2)(A) by failing to make and keep accurate books and records

and Section 13(b)(2)(B) by failing to maintain sufficient internal accounting controls, as described above.

MQ Associates' Remedial Efforts

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

IV.

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

Accordingly, pursuant to Section 21C of the Exchange Act it is hereby ORDERED that:

Respondent MQ Associates cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A), 13(b)(2)(B), and 15(d) of the Exchange Act and Rules 12b-20, 15d-1, and 15d-13 thereunder.

By the Commission.

Nancy M. Morris
Secretary

By: Florence E. Harmon
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 56691 / October 24, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12877

In the Matter of **Hydromaid International, Inc.,** **Respondent.**	**ORDER INSTITUTING PROCEEDINGS, MAKING FINDINGS, AND REVOKING REGISTRATION OF SECURITIES 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 Hydromaid International, Inc. ("Hydromaid" or "Respondent").

II.

In anticipation of the institution of these proceedings, Hydromaid 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, Hydromaid consents to the entry of this Order Instituting Proceedings, Making Findings, and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Order"), and to the findings as set forth below.

III.

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

1. Hydromaid (CIK No. 1054524) is a Nevada corporation located in Springville, Utah. At all times relevant to this proceeding, the common stock of Hydromaid was registered with the Commission under Exchange Act Section 12(g). As of May 7, 2007, the common stock of Hydromaid (symbol "HYII") was quoted on the Pink Sheets.

2. Hydromaid has failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder while its securities were registered with the Commission in that it has not filed any periodic reports for any fiscal period subsequent to the period ended September 30, 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 or 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 deems it 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 Hydromaid's securities registered pursuant to Section 12 of the Exchange Act be, and hereby is, revoked.

By the Commission.

Nancy M. Morris
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. 56692 / October 24, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12878

In the Matter of **Grand Central Silver Mines, Inc.,** **Respondent.**	**ORDER INSTITUTING PROCEEDINGS, MAKING FINDINGS, AND REVOKING REGISTRATION OF SECURITIES 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 Grand Central Silver Mines, Inc. ("GCSM" or Respondent).

II.

In anticipation of the institution of these proceedings, GCSM, 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, GCSM consents to the entry of this Order Instituting Proceedings, Making Findings, and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Order"), and to the findings as set forth below.

III.

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

1. GCSM (CIK No. 836123) is a Utah corporation located in Carrollton, Texas. At all times relevant to this proceeding, the common stock of GCSM has been registered with the Commission under Exchange Act Section 12(g). As of March 8, 2007, the company's common stock was quoted on the Pink Sheets (symbol "GSLM"), had twelve market makers, and was eligible for the piggyback exemption of Exchange Act Rule 15c2-11(f)(3).

2. GCSM has failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder while its securities were registered with the Commission in that it has failed to file any annual reports since the period ended September 30, 1998, and has failed to file any quarterly reports since the period ended June 30, 1999.

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

By the Commission.

Nancy M. Morris
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. 56693 / October 24, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12879

In the Matter of **Alpha Generation, Inc.,** **Respondent.**	**ORDER INSTITUTING PROCEEDINGS, MAKING FINDINGS, AND REVOKING REGISTRATION OF SECURITIES 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 Alpha Generation, Inc. ("Alpha Generation" or "Respondent").

II.

In anticipation of the institution of these proceedings, Alpha Generation, 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, Alpha Generation consents to the entry of this Order Instituting Proceedings, Making Findings, and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Order"), and to the findings as set forth below.

III.

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

1. Alpha Generation (CIK No. 350915) is a Texas corporation located in Houston, Texas. At all times relevant to this proceeding, the common stock of Alpha Generation has been registered with the Commission under Exchange Act Section 12(g).

2. Alpha Generation has failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder while its securities were registered with the Commission in that it has failed to file any annual reports since the period ended December 31, 2002, and has failed to file any quarterly reports since the period ended June 30, 2003.

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 or 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 deems it 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 Alpha Generation's securities registered pursuant to Section 12 of the Exchange Act be, and hereby is, revoked.

By the Commission.

Nancy M. Morris
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. 56690 / October 24, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12876

In the Matter of **iPhone2, Inc.,** **Respondent.**	**ORDER INSTITUTING PROCEEDINGS, MAKING FINDINGS, AND REVOKING REGISTRATION OF SECURITIES 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 iPhone2, Inc. ("iPhone2" or Respondent).

II.

In anticipation of the institution of these proceedings, iPhone2, 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, iPhone2 consents to the entry of this Order Instituting Proceedings, Making Findings, and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Order"), and to the findings as set forth below.

III.

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

1. iPhone2 (CIK No. 1136760) is a Washington corporation located in Albuquerque, New Mexico. At all times relevant to this proceeding, the common stock of iPhone2 has been registered with the Commission under

Exchange Act Section 12(g). As of January 26, 2007, the company's common stock was quoted on the Pink Sheets (symbol "IPHE"), had seventeen market makers, and was eligible for the piggyback exemption of Exchange Act Rule 15c2-11(f)(3).

2. iPhone2 has failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder while its securities were registered with the Commission in that it has failed to file a periodic report since it filed a Form 10-SB registration statement on March 21, 2001.

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 or 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 deems it 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 iPhone2's securities registered pursuant to Section 12 of the Exchange Act be, and hereby is, revoked.

By the Commission.

Nancy M. Morris
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. 56689 / October 24, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12875

In the Matter of **Liquitek Enterprises, Inc.,** **Respondent.**	**ORDER INSTITUTING PROCEEDINGS, MAKING FINDINGS, AND REVOKING REGISTRATION OF SECURITIES 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 Liquitek Enterprises, Inc. ("Liquitek" or "Respondent").

II.

In anticipation of the institution of these proceedings, Liquitek 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, Liquitek consents to the entry of this Order Instituting Proceedings, Making Findings, and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Order"), and to the findings as set forth below.

III.

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

1. Liquitek (CIK No. 773603) is a Nevada corporation located in Springville, Utah. At all times relevant to this proceeding, the common stock of Liquitek was registered with the Commission under Exchange Act Section 12(g). The common stock of Liquitek (symbol "LQTK") is traded on the over-the-

counter markets. Liquitek filed a Chapter 11 bankruptcy proceeding on November 17, 2006, which was still pending as of April 6, 2007.

2. Liquitek has failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder while its securities were registered with the Commission in that it has not filed any periodic reports for any fiscal period subsequent to the period ended March 31, 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 or 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 deems it 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 Liquitek's securities registered pursuant to Section 12 of the Exchange Act be, and hereby is, revoked.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Atkins
Not Participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2673 / October 24, 2007

INVESTMENT COMPANY ACT OF 1940
Release No. 28022 / October 24, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12611

In the Matter of

GEOFFREY BROD,

Respondent.

ORDER MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940 and SECTIONS 9(b) AND 9(f) OF THE INVESTMENT COMPANY ACT OF 1940

I.

The Securities and Exchange Commission ("Commission") has instituted public administrative and cease-and-desist proceedings on April 9, 2007 pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act") against Geoffrey Brod ("Respondent").

II.

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

III.

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

RESPONDENT

1. Geoffrey Brod, 64 and resides in Avon, Connecticut. From 1996 to 2003, Brod was a portfolio manager at Aeltus Investment Management, LLC, an investment adviser registered with the Commission. From 1996 to 2001, Brod managed the portfolios of several investment companies registered with the Commission and advised by Aeltus. From 2001 to 2003, Brod managed a hedge fund affiliated with Aeltus.

OTHER RELEVANT ENTITY

2. Aeltus Investment Management, LLC (now known as ING Investment Management Co.) is an investment adviser registered with the Commission since January 7, 1973. Located in Hartford, Connecticut, it currently manages both ING mutual funds that are registered with the Commission as investment companies as well as private client accounts. As of September 1, 2005, Aeltus managed nearly $60 billion in assets. It was a wholly-owned subsidiary of Aetna, Inc. until December 2000, when it became an indirect wholly-owned subsidiary of ING Group. Aeltus changed its name to "ING Investment Management Co." in July 2004, but it will be referred to throughout this Order as "Aeltus" because that was the name of the entity during the period of the violations alleged.

OVERVIEW

3. This matter involves antifraud and reporting violations resulting from undisclosed personal stock trading by Geoffrey Brod, a former portfolio manager at Aeltus Investment Management, LLC (now known as ING Investment Management Co.), an investment adviser to certain mutual funds. From 1999 through 2003, Brod engaged in active personal short-term trading in stocks of public companies, including stock held or to be acquired by mutual funds under his management. During this period, Brod executed about 3,500 personal trades in stocks. Brod concealed the trades by failing to disclose them as required by Commission Rules and Aeltus' Code of Ethics, and by falsifying internal reports. As a result, Brod willfully violated certain antifraud and reporting provisions of the Investment Company Act and rules thereunder.

BROD'S STOCK TRADING ACTIVITY

4. From 1999 through 2003, Brod engaged in active personal short-term trading in public company stocks, including stocks of companies held or to be acquired by mutual funds under his management. Brod's trading methodology dictated an extremely short-term trading

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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.

pattern. From 1999 through 2003, Brod executed approximately 3,500 personal trades in stocks, and the holding period was usually two to seven days.

5. The Commission's rules required Brod to submit to Aeltus quarterly and annual reports of his personal securities transactions during the quarter or the year. In addition, Aeltus' Code of Ethics, which applied to Brod, contained further restrictions on when and how Brod could trade in securities. Aeltus' Code of Ethics (i) required pre-clearance of all securities trades by portfolio managers, (ii) prohibited "Frequent Securities Transactions," which the code defined as more than 30 securities transactions in a quarter, (iii) prohibited short-term trading and required a holding period of 60 days to avoid conflicts of interest, (iv) required quarterly and annual reporting of all securities transactions and holdings, and (v) required annual certification of compliance with the Code. Aeltus' compliance department conducted annual NASD compliance meetings, in which employees were educated about, and reminded of, their obligations related to insider trading, personal trading, and outside business activities. Brod attended the annual compliance meeting from 1999 to 2003.

6. From 1999 through 2003, Brod failed to comply with the Commission's reporting requirements and Aeltus' Code of Ethics with regard to his personal stock trading. Brod did not pre-clear or report his trades, and his short-term trading did not comply with Aeltus' required 60-day holding period. To conceal his trading, Brod submitted false quarterly and annual reports to Aeltus stating that he had no securities transactions or securities holdings to report for the periods, and falsely certified his annual compliance with Aeltus' Code of Ethics.

VIOLATIONS

7. Section 17(j) of the Investment Company Act prohibits persons affiliated with a registered investment company (a "fund" such as a mutual fund) from engaging in any acts, practices, or courses of business in connection with the purchase or sale of a security held or to be acquired by the fund that violate the Commission's rules adopted to prevent fraud. Rule 17j-1(b) (formerly Rule 17j-1(a)) makes it unlawful for persons affiliated with a Fund to, among other things, engage in any act, practice or course of business that operates or would operate as a fraud or deceit on the Fund in connection with the purchase or sale, directly or indirectly, of a Security Held or to be Acquired by a Fund.[2] Rule 17j-1(d) (formerly Rule 17j-1(c)) further requires that persons employed by an investment adviser who have access to a fund's portfolio must timely submit reports regarding personal securities trading.

8. As a result of the conduct described above, Brod willfully violated Section 17(j) of the Investment Company Act and Rule 17j-1(b) (formerly Rule 17j-1(a)) thereunder. With access to important information about mutual funds he managed, Brod made, but did not disclose, thousands of transactions in public securities, including many stocks held or acquired by the funds that he managed. In addition, by submitting false quarterly and annual securities transactions reports and falsely certifying his compliance with Aeltus' Code of Ethics between 1999 and 2003, Brod made misrepresentations and omissions to the mutual funds he managed.

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[2] A Security Held or to be Acquired by a Fund is defined by Rule 17j-1(a)(10).

Brod's overall conduct described in paragraphs 4-6 above constituted a "practice or course of business that operate[d] . . . as a fraud or deceit on the Fund[s]" in violation of 17j-1(b)(3).

9. Also as a result of the conduct described above, Brod willfully violated Section 17(j) of the Investment Company Act and Rule 17j-1(d) (formerly Rule 17j-1(c)) thereunder by failing to report thousands of securities transactions and holdings that he was required to report given his access to the mutual funds' portfolios.

RESPONDENT'S COOPERATION

10. In determining to accept the Offer, the Commission considered cooperation Brod afforded the Commission staff during its investigation.

IV.

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

Accordingly, pursuant to Section 203(f) of the Advisers Act and Section 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Brod cease and desist from committing or causing any violations and any future violations of Section 17(j) of the Investment Company Act and Rule 17j-1 promulgated thereunder;

B. Respondent Brod 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;

C. 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.

D. IT IS FURTHERED ORDERED that Respondent shall, within 20 days of the entry of this Order, pay disgorgement of $63,892.67, prejudgment interest of $11,107.33, and a civil money penalty in the amount of $100,000.00 to the United States Treasury. 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 Brod as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Michele Wein Layne, Associate Director, Los Angeles Regional Office, Securities and Exchange Commission, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036.

By the Commission.

Nancy M. Morris
Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 56705 / October 25, 2007

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2747 / October 25, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12880

In the Matter of FRED GOLD, 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 Fred Gold, CPA ("Gold" 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.

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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 them 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. Gold, age 61, is and has been a certified public accountant licensed to practice in the State of New York. He was a partner at Arthur Andersen LLP ("Andersen") and was the Andersen engagement partner responsible for the fiscal 2000 audit of American Tissue, Inc. ("ATI"). He signed the auditor's report contained in American Tissue's 2000 annual report in its Form 10-K, which was filed with the Commission on December 29, 2000.

2. ATI was a manufacturer of tissue and paper products with paper mills and converting facilities located throughout the United States and Mexico. It became a reporting company in February 2000, after conducting an offering of secured notes to institutional investors. ATI never sold equity securities to the public, but a limited secondary market for its secured notes developed.

3. On October 16, 2007, a final judgment was entered against Gold, permanently enjoining him, by consent, from future violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and from aiding and abetting violations of Section 15(d) of the Exchange Act and Exchange Act Rules 12b-20 and 15d-1, in the civil action entitled Securities and Exchange Commission v. Fred Gold, et al., Civil Action Number 05-CV-4713 (JS), in the United States District Court for the Eastern District of New York. Gold was also ordered to pay civil money penalties of $100,000.

4. The Commission's complaint alleged, among other things, that ATI materially overstated its assets, shareholders' equity, revenue, and net income in periodic reports filed with the Commission during 2000 and 2001 by capitalizing previously recorded expenses as inventory and overvaluing finished goods inventory in amounts well in excess of the selling price. As a result, ATI's $24.5 million reported net income for its fiscal year ended September 30, 2000 was overstated by at least $28.1 million and its $15.5 million reported net income for the nine months ended June 30, 2001 was overstated by at least $21.8 million. Andersen was ATI's auditor during the relevant period. Andersen issued an unqualified audit report on ATI's financial statements for its fiscal year ended September 30, 2000 though its audit was not conducted in

accordance with generally accepted auditing standards and ATI's financial statements were not fairly presented in conformity with generally accepted accounting principles. Gold, the audit engagement partner on ATI's 2000 audit, was responsible for the audit failure.

5. The Commission's complaint alleged further that subsequent to the completion of the audit, Gold directed an audit manager and a senior accountant to alter audit workpapers in preparation for a peer review conducted by Deloitte & Touche. On September 3, 2001, Gold instructed them to arrange for the immediate, unscheduled destruction and shredding of all Andersen documents and emails that were not part of the "official" ATI work paper files. In response, the senior accountant gave two instructions to members of Andersen's ATI audit staff on September 3, 2001. Initially, the audit staff was instructed to save everything from the hard drives on their laptop computers to a disk and send the disk to the senior manager's house. Shortly thereafter, the staff was instructed to delete everything related to ATI from the hard drives on their laptop computers. On or about September 4, 2001, at Gold's direction, the senior accountant instructed Andersen's ATI audit staff to gather all ATI related documents for shredding, other than the "official" work paper file. Thereafter, at the request of Andersen, an outside shredding company made an unscheduled visit to pick up and shred ATI audit documents and e-mails that were not part of the "official" ATI work paper files.

IV.

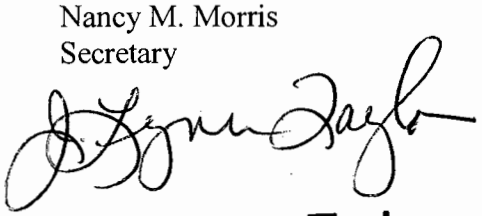
In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent's Offer.

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

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

By the Commission.

Nancy M. Morris
Secretary



By: J. Lynn Taylor
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56713; File No. SR-Amex-2007-74)

October 29, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of Shares of Funds of the Rydex ETF Trust

I. Introduction

On July 13, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder.[2] On July 31, 2007, Amex filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on August 14, 2007 for a 15-day comment period.[3] The Commission received one comment letter regarding the proposal.[4] This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

Amex Rules 1000A–AEMI and 1001A - 1005A provide standards for the listing of Index Fund Shares, which are securities issued by an open-end management investment company for exchange trading. These securities are registered under the Investment Company Act of 1940, as well as under the Act. Index Fund Shares are defined in Amex Rule 1000A–AEMI(b)(1) generally as securities based on a portfolio of stocks or fixed income securities that seek to

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 56218 (August 7, 2007), 72 FR 45469 ("Notice").

4 See letter to Nancy M. Morris, Secretary, Commission, from Melanie C. Maloney, Dickstein Shapiro LLP on behalf of ProFund Advisors LLC and ProShare Advisors LLC, dated August 28, 2007 ("ProFunds Letter").

provide investment results that correspond generally to the price and yield of a specified foreign or domestic stock index or fixed income securities index. Amex Rule 1000A–AEMI(b)(2) permits the Exchange to list and trade Index Fund Shares that seek to provide investment results that exceed the performance of an underlying securities index by a specified multiple or that seek to provide investment results that correspond to a specified multiple of the inverse or opposite of the index's performance.[5]

The Exchange proposes to list and trade under Amex Rule 1000A–AEMI shares (the "Shares") of forty-five new funds of the Rydex ETF Trust (the "Trust") that are designated as the Rydex Leveraged Funds (the "Leveraged Funds"), Rydex Inverse Funds (the "Inverse Funds"), and Rydex Leveraged Inverse Funds (the "Leveraged Inverse Funds," and together with the Leveraged Funds and Inverse Funds, collectively, the "Funds"). Each of the Funds has a distinct investment objective by attempting, on a daily basis, to correspond to a specified multiple of the performance, or the inverse performance, of a particular equity securities index.

The Funds will be based on the following benchmark indexes: (1) the S&P 500 Index; (2) the S&P MidCap 400 Index; (3) the S&P Small Cap 600 Index; (4) the Russell 1000 Index; (5) the Russell 2000 Index; (6) the Russell 3000 Index; (7) the S&P 500 Consumer Discretionary Index; (8) the S&P 500 Consumer Staples Index; (9) the S&P 500 Energy Index; (10) the S&P 500 Financials Index; (11) the S&P 500 HealthCare Index; (12) the S&P 500 Industrials Index; (13) the S&P 500 Information Technology Index; (14) the S&P 500 Materials Index; and (15)

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[5] See Amex Rule 1000A–AEMI(b)(2)(iii) and Commentary .02 thereto (providing that the listing and trading of Index Fund Shares under paragraph (b)(2) thereof may not be approved by the Exchange pursuant to Rule 19b-4(e) under the Act (17 CFR 240.19b-4(e))).

the S&P 500 Utilities Index (each individually, an "Underlying Index," and all Underlying Indexes collectively, the "Underlying Indexes").[6]

The Leveraged Funds will seek daily investment results, before fees and expenses, that correspond to twice (200%) the daily performance of the corresponding Underlying Indexes. The net asset value ("NAV") of the Shares of each of these Leveraged Funds, if successful in meeting its objective, should increase, on a percentage basis, approximately twice as much as the respective Fund's Underlying Index gains when the prices of the securities in such Underlying Index increase on a given day, and should decrease approximately twice as much as the respective Underlying Index loses when such prices decline on a given day.

The Inverse Funds will seek daily investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (-100%) of the Underlying Indexes. If each of these Inverse Funds is successful in meeting its objective, the NAV of the Shares of each Inverse Fund should increase approximately as much, on a percentage basis, as the respective Underlying Index loses when the prices of the securities in the Underlying Index decline on a given day, or should decrease approximately as much as the respective Underlying Index gains when the prices of the securities in the Underlying Index rise on a given day.

The Leveraged Inverse Funds will seek daily investment results, before fees and expenses, that correspond to twice the inverse (-200%) of the daily performance of the Underlying Indexes. If each of these Leveraged Inverse Funds is successful in meeting its

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[6] A detailed discussion of each of the Underlying Indexes, the investment objective of the Funds, the portfolio investment methodology, and the investment techniques, can be found in the Notice. See Notice, supra note 3, 72 FR at 45471-45474. See also Amex Rule 1002A(b)(i)(B) (providing that the Exchange will consider the suspension of trading in, or removal from listing of, a series of Index Fund Shares if, among other circumstances, the Underlying Index or portfolio is replaced with a new index or portfolio, subject to certain exceptions).

objective, the NAV of the Shares of each Leveraged Inverse Fund should increase approximately twice as much, on a percentage basis, as the respective Underlying Index loses when the prices of the securities in the Underlying Index decline on a given day, or should decrease approximately twice as much as the respective Underlying Index gains when the prices of the securities in the Underlying Index rise on a given day.

Rydex Investments is the investment advisor (the "Advisor") to each Fund and is registered under the Investment Advisers Act of 1940. While the Advisor will manage each Fund, the Trust's Board of Trustees (the "Board") will have overall responsibility for the Funds' operations. Rydex Distributors, Inc. (the "Distributor"), a broker-dealer registered under the Act, will act as the distributor and principal underwriter of the Shares. State Street Bank & Trust will act as the index receipt agent (the "Index Receipt Agent") for which it will receive fees and will be responsible for transmitting the Deposit List (as defined below) to the National Securities Clearing Corporation ("NSCC") and for the processing, clearance, and settlement of purchase and redemption orders through the facilities of the Depository Trust Company ("DTC") and NSCC on behalf of the Trust. The Index Receipt Agent will also be responsible for the coordination and transmission of files and purchase and redemption orders between the Distributor and the NSCC.

Availability of Information about the Shares and Underlying Indexes

Quotations and last-sale information for the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CT").[7] In addition, to provide updated information relating to each Fund for use by investors, professionals, and persons wishing to

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[7] E-mail from Nyieri Nazarian, Assistant General Counsel, Amex, to Edward Cho, Special Counsel, Division of Market Regulation, Commission, dated August 22, 2007 (confirming the information to be disseminated through the facilities of the CT).

create or redeem Shares, the Exchange will calculate and disseminate through the CT and Consolidated Quote High Speed Lines an Indicative Intra-Day Value ("IIV") at least every 15 seconds throughout Amex's trading day,[8] the market value of a Share for each Fund, the most recent NAV for each Fund, the number of Shares outstanding for each Fund, and the estimated cash amount and total cash amount per Creation Unit (as defined below). The Exchange will make available on its Web site daily trading volume, the closing prices, the NAV, and the final dividend amounts to be paid for each Fund.

In addition, the value of each Underlying Index will be updated intra-day on a real-time basis as its individual component securities change in price. These intra-day values of each Underlying Index will be disseminated at least every 15 seconds throughout the trading day by Amex or another organization authorized by the relevant Underlying Index provider. Several independent data vendors also package and disseminate Underlying Index data in various value-added formats, including vendors displaying both securities and Underlying Index levels and vendors displaying Underlying Index levels only.

The Trust's Internet Web site (www.rydexinvestments.com) will contain the following information for each Fund's Shares: (1) the prior business day's closing NAV, the reported closing price, and a calculation of the premium or discount of such price in relation to the closing NAV; (2) data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's Shares traded at a premium or discount to NAV based on the daily closing price and the closing NAV, and the magnitude of such premiums and discounts; (3) its prospectus and product description; and (4) other quantitative information, such as daily trading volume. The prospectus and/or product description for each

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[8] A detailed discussion of the calculation methodology of the IIV for each of the Funds can be found in the Notice. See Notice, supra note 3, 72 FR at 45477.

Fund will inform investors that the Trust's Internet Web site has information about the premiums and discounts at which the Fund's Shares have traded.

Each Fund's total portfolio composition will be disclosed on the Web site of the Trust or another Internet Web site as determined by the Trust and/or the Exchange. The Trust will provide Web site disclosure of each Fund's portfolio holdings daily and will include, as applicable, the names and number of Shares held of each specific equity security, the specific types of Financial Instruments[9] and characteristics of such Financial Instruments, and the cash equivalents and amount of cash held in the portfolio of each Fund. This public Web site disclosure of the portfolio composition of each Fund and the disclosure by the Advisor of the "IIV File" (as described below) and the portfolio composition file, or "PCF," will occur at the same time. Therefore, the same portfolio information (including accrued expenses and dividends) will be provided on the public Web site(s), as well as in the IIV File and PCF provided to Authorized Participants.[10]

Creation and Redemption of Shares[11]

Each Fund will issue and redeem Shares only in aggregations of at least 50,000 (each aggregation, a "Creation Unit"). Purchasers of Creation Units will be able to separate the

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9 The financial instruments to be held by any of the Funds may include stock index futures contracts, options on futures contracts, options on securities and indices, equity caps, collars and floors, as well as swap agreements, forward contracts, repurchase agreements, and reverse repurchase agreements (the "Financial Instruments"). See Notice, supra note 3, 72 FR at 45472 n.22.

10 An Authorized Participant is: (1) either (a) a broker-dealer or other participant in the continuous net settlement system of the NSCC, or (b) a DTC participant; and (2) a party to a participant agreement with the Distributor. See Notice, supra note 3, 72 FR at 45473 n.26.

11 A detailed discussion of the procedures for creating and redeeming Shares with respect to each of the Funds, including a description of the relevant transaction fees, can be found in the Notice. See Notice, supra note 3, 72 FR at 45474-45476.

Creation Units into individual Shares. Once the number of Shares in a Creation Unit is determined, it will not change thereafter (except in the event of a stock split or similar revaluation). The initial value of a Share for each of the Funds is expected to be in the range of $50-$250.

At the end of each business day, the Trust will prepare the list of names and the required number of Shares of each Deposit Security (as defined below) to be included in the next trading day's Creation Unit for each Leveraged Fund (the "Deposit List"). The Trust will then add to the Deposit List the cash information effective as of the close of business on that business day and create a PCF for each Fund, which will be transmitted to NSCC before the open of business the next business day. The information in the PCF will be available to all participants in the NSCC system.

Because the NSCC's system for the receipt and dissemination to its participants of the PCF is not currently capable of processing information with respect to Financial Instruments, the Advisor has developed an "IIV File," which it will use to disclose the Funds' holdings of Financial Instruments. The IIV File will contain, for each Leveraged Fund (to the extent that it holds Financial Instruments) and Inverse and Leveraged Inverse Fund, information sufficient by itself or in connection with the PCF and other available information for market participants to calculate a Fund's IIV and effectively value such Fund. The IIV File, together with the applicable information in the PCF in the case of Leveraged Funds, will also be the basis for the next business day's NAV calculation.

Under normal circumstances, the Leveraged Funds will be created and redeemed either entirely for cash and/or for a deposit basket of equity securities ("Deposit Securities"), plus a "Balancing Amount." The Deposit Securities and the Balancing Amount collectively are

referred to as the "Creation Deposit." The Balancing Amount is a cash payment designed to ensure that the value of a Creation Deposit is identical to the value of the Creation Unit. The Balancing Amount is an amount equal to the difference between the NAV of a Creation Unit and the market value of the Deposit Securities.[12] Under normal circumstances, the Inverse and Leveraged Inverse Funds will be created and redeemed entirely for cash. The IIV File published before the open of business on a business day will, however, permit NSCC participants to calculate (by means of calculating the IIV) the amount of cash required to create a Creation Unit and the amount of cash that will be paid upon redemption of a Creation Unit, for each Inverse and Leveraged Inverse Fund for that business day.

Criteria for Initial and Continued Listing

The Shares are subject to the criteria for initial and continued listing of Index Fund Shares under Amex Rule 1002A. A minimum of two Creation Units (at least 100,000 Shares) will be required to be outstanding at the start of trading. This minimum number of Shares required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously listed series of Index Fund Shares. The Exchange believes that the proposed minimum number of Shares outstanding at the start of trading is sufficient to provide market liquidity. The Exchange, pursuant to Amex Rule 1002A(a)(ii), will obtain a representation from the Trust (for each Fund), prior to listing, that the NAV per Share for each Fund will be calculated daily and made available to all market participants at the same time. The

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[12] While not typical, if the market value of the Deposit Securities is greater than the NAV of a Creation Unit, then the Balancing Amount will be a negative number, in which case the Balancing Amount will be paid by the Leveraged Fund to the purchaser, rather than vice-versa.

Exchange represents that the Trust is required to comply with Rule 10A-3 under the Act[13] for the initial and continued listing of the Shares.

Amex Trading Rules and Trading Halts

The Shares are equity securities subject to Amex rules governing the trading of equity securities. The Exchange states that Amex Rule 154–AEMI(c)(ii)[14] and Commentary .04 to Amex Rule 190[15] apply to Index Fund Shares listed on the Exchange, including the Shares.

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares. These factors include, but are not limited to, (1) the extent to which trading is not occurring in securities comprising an Underlying Index and/or the Financial Instruments of a Fund, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In the case of Financial Instruments held by a Fund, the Exchange represents that a notification procedure will be implemented so that timely notice from the Advisor is received by the Exchange when a particular Financial Instrument is in default or shortly to be in default. Notification from the Advisor will be made by phone, facsimile, or e-mail. The Exchange would then determine on a case-by-case basis whether a default of a particular Financial Instrument justifies a trading halt of the Shares. Trading in Shares of the

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13 17 CFR 240.10A-3 (setting forth listing standards relating to audit committees).

14 Amex Rule 154–AEMI(c)(ii) provides that stop and stop limit orders to buy or sell a security, the price of which is derivatively priced based upon another security or index of securities, may be elected by a quotation. The Exchange states that the Shares are eligible for this treatment.

15 Commentary .04 states that nothing in Amex Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security or securities that can be subdivided or converted into the listed security from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

Funds will also be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

Amex Rule 1002A(b)(ii) sets forth the trading halt parameters with respect to Index Fund Shares. If the IIV or the Underlying Index value applicable to that series of Index Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the Underlying Index value occurs. If the interruption to the dissemination of the IIV or the Underlying Index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

Information Circular

The Exchange, in an Information Circular to Exchange members and member organizations, prior to the commencement of trading, will inform members and member organizations regarding the application of Commentary .06 of Amex Rule 1000A–AEMI to the Funds. The Information Circular will further inform members and member organizations of the prospectus and/or product description delivery requirements that apply to the Funds.

The Information Circular will also provide guidance with regard to member firm compliance responsibilities when effecting transactions in the Shares and highlighting the special risks and characteristics of the Funds and Shares as well as applicable Exchange rules. In particular, the Information Circular will set forth the requirements relating to Commentary .05 to Amex Rule 411 (Duty to Know and Approve Customers). Specifically, the Information Circular will remind members of their obligations in recommending transactions in the Shares so that members have a reasonable basis to believe that: (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial

situation, needs, and any other information known by such member; and (2) that the customer can evaluate the special characteristics, and is able to bear the financial risks, of such investment. In connection with the suitability obligation, the Information Circular will also provide that members make reasonable efforts to obtain the following information: (a) the customer's financial status; (b) the customer's tax status; (c) the customer's investment objectives; and (d) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer. In addition, the Information Circular will disclose that the procedures for purchases and redemptions of Shares in Creation Units are described in each Fund's prospectus, and that Shares are not individually redeemable, but are redeemable only in Creation Unit aggregations or multiples thereof.

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, Amex will rely on its existing surveillance procedures governing Index Fund Shares. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

III. Comment Letter

The Commission received one comment letter, submitted on behalf of ProFund Advisors LLC and ProShare Advisors LLC (collectively referred to as "ProFunds"), which asserted that the listing and trading of the Shares of the Funds by the Exchange would infringe on ProFunds' intellectual property rights. In particular, ProFunds believes that it has a proprietary interest, through a pending patent application, in the process and system for calculating an intra-day indicative value relating to leveraged and inverse exchange traded funds to be purportedly used

by the Trust. As a result, the commenter requested that the Commission institute proceedings to disapprove the proposed rule change.[16]

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[18] which requires that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that it has previously approved the original listing and trading of various fund shares that seek to provide investment results that correspond to a specified multiple of the performance, or the inverse of the performance, of an underlying portfolio of securities.[19] The Commission also notes that it has previously approved the listing and trading of exchange-traded funds based on each of the Underlying Indexes.[20]

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16 See ProFunds Letter at 1-2, supra note 4.

17 In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

18 15 U.S.C. 78f(b)(5).

19 See Securities Exchange Act Release Nos. 55117 (January 17, 2007), 72 FR 3442 (January 25, 2007) (SR-Amex-2006-101) (approving the listing and trading of shares of funds of the Trust based on certain underlying indexes); 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006) (SR-Amex-2006-41) (approving the listing and trading of shares of other funds of the Trust based on certain underlying indexes); and 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) (SR-Amex-2004-62) (approving the listing and trading of shares of funds of the xtraShares Trust based on certain underlying indexes).

20 See Securities Exchange Act Release Nos. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) (SR-Amex-92-18) (approving the listing and trading of portfolio

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[21] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. As described above, quotations and last-sale information for the Shares will be disseminated over the CT. In addition, the Exchange will calculate and disseminate through the CT the IIV per Share for each Fund at least every 15 seconds throughout Amex's trading day, as well as other information regarding the value of the Shares. The value of each Underlying Index will also be updated intra-day on a real-time basis as its individual component securities change in price and will be disseminated at least every 15 seconds throughout the trading day. Finally, the Trust's Web site will include important information for each Fund's Shares.

Furthermore, the Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately. The Commission notes that the Exchange will obtain a representation from the Trust (for each Fund), prior to listing, that the NAV per Share for each Fund will be calculated daily and made available to all market participants at the same time.[22] In addition, the

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depository receipts ("PDRs"), including receipts based on the S&P 500 Index); 35534 (March 24, 1995), 60 FR 16686 (March 31, 1995) (SR-Amex-94-52) (approving the listing and trading of PDRs based on the S&P 400 Midcap Index); 35532 (March 24, 1995), 60 FR 16518 (March 30, 1995) (SR-CBOE-94-43) (approving the listing and trading of options on the S&P SmallCap 600 Index); 53191 (January 30, 2006), 71 FR 6111 (February 6, 2006) (SR-Amex-2005-061) (approving the listing and trading of options on the Russell Indexes, including the Russell 1000, 2000, and 3000 Indexes); and 40749 (December 4, 1998), 63 FR 68483 (December 11, 1998) (SR-Amex-98-29) (approving the listing and trading of certain Select SPDR exchange-traded funds).

21 15 U.S.C. 78k-1(a)(1)(C)(iii).

22 See Amex Rule 1002A(a)(ii).

Exchange represents that the Web site disclosure of the portfolio composition of each Fund and the disclosure by the Advisor of the IIV File and the PCF will occur at the same time. Moreover, Commentary .02(b) to Amex Rule 1000A–AEMI provides for "fire wall" procedures with respect to personnel who have access to information concerning changes and adjustments to the Underlying Index and the implementation of procedures to prevent the use and dissemination of material non-public information regarding the Underlying Index. Further, Commentary .09 to Amex Rule 1000A–AEMI sets forth restrictions on members or persons associated with members who have knowledge of the terms and conditions of certain orders (the execution of which are imminent) to enter, based on such knowledge, an order to buy or sell a Share that is the subject of such orders, an order to buy or sell the overlying option class, or an order to buy or sell any related instrument.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. Amex Rule 1002A(b)(ii) provides that the Exchange will halt trading in the Shares if the circuit breaker parameters of Amex Rule 117 have been reached. In exercising its discretion to halt or suspend trading in the Shares, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) and other relevant factors. In addition, Amex Rule 1002A(b)(ii) provides that, if the IIV or the Underlying Index value applicable to that series of Index Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the Underlying Index value occurs. If the interruption to the dissemination of the IIV or the Underlying Index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Shares are equity securities subject to Amex's rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

(1) The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, Amex will rely on its existing surveillance procedures governing Index Fund Shares.

(2) Prior to the commencement of trading, the Exchange will inform its members and member organizations in an Information Circular regarding the application of Commentary .06 to Amex Rule 1000A–AEMI to the Funds and the prospectus and/or product description delivery requirements that apply to the Funds. The Information Circular will also provide guidance with regard to member firm compliance responsibilities when effecting transactions in the Shares and highlighting the special risks and characteristics of the Funds and Shares, as well as applicable Exchange rules. In addition, the Information Circular will disclose that the procedures for purchases and redemptions of Shares in Creation Units are described in each Fund's prospectus, and that Shares are not individually redeemable, but are redeemable only in Creation Unit aggregations or multiples thereof.

This approval order is based on the Exchange's representations.

Finally, the Commission believes that the commenter's concerns over its proprietary interest in the process and system for calculating an intra-day indicative value relating to

leveraged and inverse exchange traded funds to be purportedly used by the Trust do not preclude the Commission from approving the proposed rule change. Specifically, to the extent that the commenter's argument raises a claim of misappropriation or infringement of a protected property right, the Commission believes it is inappropriate for the Commission to attempt to resolve these issues in a proceeding involving the approval of a proposed rule change by a national securities exchange under the federal securities laws. To take such delaying action whenever a third party claim is asserted could stifle Commission review of new products proposed by self-regulatory organizations. The plain language of the U.S. securities laws does not suggest that Congress intended that the Commission attempt, in the context of an approval proceeding for a securities product, to resolve intellectual property right claims that can be pursued elsewhere.[23] Accordingly, the commenter's assertions do not form a basis for the Commission to either disapprove or delay approval of the Exchanges' proposals.[24]

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23 The Commission notes that Congress has enacted an elaborate statutory framework for the establishment, preservation, and protection of intellectual property rights and has established specific federal agencies to administer these laws. Separate state causes of action also may be available to the holders of these proprietary rights as well. The Commission is not required by the Act to make, and has not made, a legal determination of proprietary claims flowing from the Trust's application of the process and system for calculating an intraday indicative value for the Shares of each Fund. This is not to say, however, that the Commission might not separately have a federal interest in the outcome of any proceeding challenging a new product or be willing to express a view regarding such a proceeding in the event a subsequent action provides the Commission opportunity to address these matters, e.g., to protect investors and the public interest.

24 See Securities Exchange Act Release Nos. 36070 (August 9, 1995), 60 FR 42205 (August 15, 1995) (SR-Amex-94-55 and SR-CBOE-95-01) (order approving the listing and trading of warrants on the Deutscher Aktien Index by Amex and the Chicago Board Options Exchange, Incorporated ("CBOE")); 28475 (September 27, 1990), 55 FR 40492 (October 3, 1990) (SR-Amex-89-16) (order approving the trading by Amex of options on the Japan Index); and 26709 (April 11, 1989), 54 FR 15280 (April 17, 1989) (SR-Phlx-88-07; SR-Amex-88-10; and SR-CBOE-88-09) (order approving the listing of index participations by Amex, CBOE, and the Philadelphia Stock Exchange, Inc.).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR-Amex-2007-74), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

By the Commission.

Nancy M. Morris
Secretary

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25 15 U.S.C. 78s(b)(2).