

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 55118 / January 18, 2007**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 2580 / January 18, 2007**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 27663 / January 18, 2007**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-12540**

**In the Matter of**

**FRED ALGER  
MANAGEMENT, INC. AND  
FRED ALGER & COMPANY,  
INCORPORATED,**

**Respondents.**

**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) AND 21C OF THE  
SECURITIES EXCHANGE ACT OF 1934,  
SECTIONS 203(e) AND 203(k) 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”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(e) and 203(k) 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 Fred Alger Management, Inc. (“Alger Management”) and Fred Alger & Company, Incorporated (“Alger Inc.”) (collectively the “Respondents” or “Alger”).

## 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 Sections 15(b) and 21C of the Securities Exchange Act of 1934, Sections 203(e) and 203(k) 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 Respondents’ Offers, the Commission finds that:

### A. SUMMARY

1. This matter involves market timing and late trading of mutual funds in the Alger Fund Group (including the “Alger Fund”). Alger Management, the investment adviser to mutual funds in the Alger Fund Group, and Alger Inc., a broker-dealer that serves as the principal underwriter and distributor of Alger Fund Group mutual funds, permitted numerous select investors to market time the Alger Fund. This timing activity contradicted representations in the Alger Fund’s prospectus that limited shareholders to six exchanges a year. Additionally, Alger Management failed to disclose that Alger Inc. had entered into numerous arrangements with select investors, including “sticky asset” arrangements, to permit them to time the Alger Fund.

2. More specifically, from at least 2000 through late 2002, Alger Inc. permitted select investors to time the Alger Fund. Over time, Alger Inc. also began to demand that market timers place “static” or “buy and hold” investments in certain portfolios within the Alger Fund in exchange for timing capacity (these arrangements are sometimes referred to as “sticky asset” arrangements). In early 2003, Alger Inc. formalized this practice by requiring sales employees to negotiate a buy and hold investment equal to twenty percent of an investor’s funds within the Alger Fund Group mutual fund complex in return for new timing capacity. Alger Inc.’s sales force then negotiated a number of these arrangements with market timers.

3. Alger Inc. permitted one hedge fund customer, Veras Investment Partners (“Veras”), to engage in late trading of Alger Fund portfolios.

4. The market timing in the Alger Fund diluted the value of long-term shareholders’ investments. At the same time, Alger Inc. and Alger Management benefited through advisory fees paid to Alger Management and distribution and servicing fees paid to Alger Inc.

## **B. RESPONDENTS**

5. **Alger Management** is a registered investment adviser located in New York, New York. Alger Management is a wholly-owned subsidiary of Alger Inc. Alger Management serves as the manager for portfolios within the Alger Fund Group mutual fund complex including the Alger Fund, the Alger American Fund, the Alger Institutional Fund, and the Spectra Fund. As of December 31, 2005, Alger Management managed assets of approximately \$9.4 billion within the Alger Fund Group. Alger Management is an affiliate of the Alger Fund, a registered investment company.

6. **Alger Inc.** is a registered broker-dealer. Alger Inc. is a wholly-owned subsidiary of Alger Associates, Inc., a privately-held financial services holding company. Alger Inc. is the parent of Alger Management. Alger Inc. serves as the principal underwriter and distributor for mutual funds in the Alger Fund Group. Alger Inc. is an affiliate of the Alger Fund, a registered investment company.

## **C. RELEVANT PERSON AND ENTITIES**

7. **Alger Fund Group** consists of several mutual funds advised by Alger Management. The primary products within the Alger Fund Group are the Alger Fund (the retail product), the Alger American Fund (the insurance and retirement product), and the Alger Institutional Fund (the institutional investor-oriented fund). In addition, Alger Management serves as the investment adviser to the Spectra Fund, a mutual fund which seeks long-term capital appreciation by investing in growth stocks.

8. **The Alger Fund** was a diversified, open-end registered investment company organized as a business trust under the laws of the Commonwealth of Massachusetts during the relevant period. The Alger Fund operated as a series company that issued shares in eight portfolios: LargeCap Growth, SmallCap Growth, Balanced, MidCap Growth, Capital Appreciation (or CapApp), Health Sciences, SmallCap and MidCap Growth, and Money Market. Each of the portfolios within the Alger Fund was operated as if it were a separate mutual fund. Beginning in February 2004, the name of the Alger Fund was changed to "The Alger Funds." For simplicity, this Order refers to the Alger Fund.

9. **James P. Connelly, Jr.**, a resident of New Jersey, served as an Executive Vice President of Alger Inc. Connelly was the Vice Chairman of the Board of the Alger Fund from 2001 to 2003. Connelly served as a member of Alger's Office of the President during 2002. In October 2003, Connelly consented to an administrative and cease-and-desist order for his role in allowing customers to market time the Alger Fund in exchange for buy and hold investments. See In the Matter of James Patrick Connelly Jr., Admin. Proc. File No. 3-11303 (Oct. 16, 2003). Simultaneously, Connelly pled guilty to obstructing the New York Attorney General's and Commission's investigations in this matter. The People of the State of New York v. James P. Connelly Jr., SCI-5648/03 (N.Y. Sup. Ct. Oct. 16, 2003 and Dec. 17, 2003).

## **D. FACTS**

### **Market Timing and Late Trading of Mutual Funds**

10. Market timing includes: (i) frequent buying and selling of shares of the same mutual fund or (ii) buying or selling mutual fund shares in order to exploit inefficiencies in mutual fund pricing. Market timing can harm other mutual fund shareholders because it can dilute the value of their shares. Market timing, while not illegal per se, can also disrupt the management of the mutual fund's investment portfolio and cause the targeted mutual fund to incur considerable extra costs associated with excessive trading and, as a result, cause damage to other shareholders in the funds.

11. Rule 22c-1(a), as adopted under Section 22(c) of the Investment Company Act, requires registered investment companies issuing redeemable securities and principal underwriters, among others, to sell and redeem fund shares at a price based on the current net asset value, or NAV, next computed after receipt of an order to buy or redeem. Mutual funds generally determine the daily price of mutual fund shares as of 4:00 p.m. E.T. Mutual funds' prospectuses, such as the Alger Fund's prospectus, state that orders received before 4:00 p.m. are executed at the price determined as of 4:00 p.m. that day, and that orders received after 4:00 p.m. are executed at the price determined as of 4:00 p.m. the next trading day.

12. "Late trading" refers to the practice of placing orders to buy, redeem, or exchange mutual fund shares after the time as of which mutual funds calculate their NAVs, usually as of the close of trading at 4:00 p.m. E.T., but receiving the price based on the prior NAV already determined as of 4:00 p.m. Late trading enables the trader to profit from market events that occur after 4:00 p.m. but that are not reflected in that day's price. In particular, the late trader obtains an advantage – at the expense of the other shareholders of the mutual fund – when he learns of market moving information and is able to purchase (or redeem) mutual fund shares at prices set *before* the market moving information was released. Late trading violates Rule 22c-1(a), as adopted under Section 22(c) of the Investment Company Act, and harms other shareholders when late trading dilutes the value of their shares.

### **The Alger Fund Prospectuses Purported to Limit Frequent Trading**

13. The Alger Fund prospectuses indicated that the mutual funds were intended for long-term investors and that all investors would be limited to a certain number of exchanges per year.

14. The prospectuses for the Alger Fund in effect from 2001 through 2003 for each of its seven equity portfolios identified the investment goal as "long-term capital appreciation." Further, these Alger Fund prospectuses indicated that investors were permitted to make up to six exchanges per year, and indicated that Alger reserved the right to reject purchase orders. Specifically, the Alger Fund prospectuses incorporated the Statement of Additional Information ("SAI") into the prospectuses. The SAI to the February 28, 2003 Alger Fund prospectus contained the following disclosure:

## EXCHANGES AND CONVERSIONS

You may make up to six exchanges annually by telephone or in writing. The Fund may charge a transaction fee for each exchange, although it does not intend to do so at present. You will be notified at least 60 days in advance if the Fund decides to impose this fee. The Fund reserves the right to terminate or modify the exchange privilege upon notice to shareholders.

15. Further, prospectuses for the Alger Fund disclosed the fund's policy for enforcing Rule 22c-1, as adopted under Section 22(c) of the Investment Company Act. The February 28, 2003 prospectus stated:

### NET ASSET VALUE

The price of one share is its "net asset value," or NAV, next determined after a purchase request is received in good order, plus any applicable sales charge. The NAV for each portfolio . . . is calculated as of the close of business (normally 4:00 p.m. Eastern time) every day the New York Stock Exchange is open.

. . . .

### PURCHASING AND REDEEMING FUND SHARES

You can purchase or redeem shares on any day the New York Stock Exchange is open. They will be processed at the NAV next calculated after your purchase or redemption request is received in good order by the Transfer Agent. . . . The Transfer Agent or Fund may reject any purchase order.

16. The SAI to the Alger Fund's February 28, 2003 prospectus contained additional details about how the fund would process trades in accordance with Rule 22c-1. Specifically, the SAI stated:

The price of one share of a class is based on its "net asset value." . . . The net asset value is calculated as of the close of business (normally 4:00 p.m. Eastern time) . . . on each day the New York Stock Exchange ("NYSE") is open.

. . . .

Purchases . . . will be based upon the next net asset value calculated for each class after your order is received and accepted. If your purchase is made by check, wire or exchange and is received by the close of business of the NYSE (normally 4:00 p.m. Eastern time), your account will be credited on the day of receipt.

If your purchase is received after such time, it will be credited the next business day.

17. The prospectuses for the Alger Fund in effect from 2000 through 2003 made untrue statements of material fact by stating that investors were limited to six annual exchanges and that purchases and redemptions would be processed at the NAV next calculated after such request was received. Moreover, the February 28, 2003 prospectus failed to disclose that Alger Inc. had instituted a buy and hold program through which select investors were able to market time certain Alger Fund portfolios in exchange for making a long-term investment in other portfolios.

18. Connelly, as Vice Chairman of the Board of the Alger Fund from 2001 to 2003 and a member of Alger's Office of the President during 2002, was aware that the Alger Fund prospectuses limited exchanges to six per year. In addition, in early 2003, several Alger, Inc. management employees formed a working group to review the Alger Fund prospectus language with respect to market timing.

**Alger Management and Alger Inc. Permitted  
Select Investors To Market Time Alger Fund Portfolios**

*Alger Management and Alger Inc. Permitted Market Timing*

19. Despite the statements in the Alger Fund prospectus, Alger Management and Alger Inc. permitted certain investors to market time the Alger Fund.

20. Connelly was generally aware of and approved allowing select investors to market time the Alger Fund. In early 2001, Connelly appointed the Director of Internal Wholesaling as Alger Inc.'s "timing police." The Director of Internal Wholesaling did not function, however, as the name "timing police" implied (*i.e.*, to seek to identify market timers and to bar them from trading in Alger Fund Group mutual funds). Rather, the Director of Internal Wholesaling sought to keep track of the amount of approved market timing capacity within the Alger Fund, and only sought to bar market timers that had not negotiated timing capacity. Alger employees only invoked the six-exchange limit as a means to require timers to negotiate capacity.

21. Following the events of September 11, 2001, when Alger's offices in the World Trade Center were destroyed and numerous employees were lost, the Alger Fund Group's assets under management began to diminish, at least in part, because investors were concerned about its ability to continue in operation. Connelly, with input from others such as Alger Inc.'s National Sales Manager, decided to seek additional market timing assets as a means of increasing assets under management. Consequently, in October 2001, Connelly authorized an increase in timing capacity in the Alger Fund.

*Alger Inc. Instituted a Twenty Percent Buy and  
Hold Requirement In Exchange For Timing Capacity*

22. As Alger Inc. was seeking additional timing assets, investors seeking timing capacity often offered to make "buy and hold" investments in exchange for timing capacity.

Recognizing an opportunity, Connelly developed over time a de facto practice of asking timers to commit assets to buy and hold positions in exchange for timing capacity. The Director of Internal Wholesaling then regularly provided Connelly with updates about the flow of timing assets in the Alger Fund, as well as total timing assets and breakdowns identifying the portfolios in which timing assets were invested. As of November 30, 2002, there were at least thirty-three known market timers in the Alger Fund.

23. Near the end of 2002, Connelly decided to require that all market timers make a twenty percent buy and hold investment in exchange for timing capacity. Connelly then directed the Director of Internal Wholesaling to institute this policy beginning in January 2003. In mid-January 2003, the Director of Internal Wholesaling sent an e-mail to Alger Inc.'s wholesalers to implement the twenty percent buy and hold policy. She wrote that any timers who refused to comply with the "new [twenty percent buy and hold] policy" "will not be granted any additional space in the portfolios," and their accounts will "be monitored on a weekly basis and any unauthorized trades will be rejected."

24. Alger Inc. employees negotiated numerous buy and hold market timing arrangements. For example, in February 2003, an outside wholesaler negotiated an arrangement with Veras to allow it to make fifteen exchanges per quarter (or sixty exchanges per year). Veras agreed to make a \$10 million buy and hold investment in the Alger Fund SmallCap portfolio. In exchange, Connelly granted Veras \$50 million in timing capacity in other Alger Fund portfolios. In July 2003, Veras agreed to make an additional \$12 million buy and hold investment in exchange for an additional \$30 million of timing capacity. In fact, Veras made eighty-eight exchanges between February 2003 and August 2003.

*Alger Inc. Allowed Select Investors to Market Time the  
Alger Fund While Preventing Other Investors from Market Timing*

25. Alger Inc. prohibited certain investors from market timing the Alger Fund. For example, in June 2003, an Alger Inc. vice-president instructed a telemarketing representative in an email to respond to an inquiry from a potential investor that "we do not tolerate market timing." This statement was false.

26. In August 2003, Alger Inc. turned to the six-exchange limitation to prevent timers who had not made buy and hold investments from seeking to time the Alger Fund. The Director of Internal Wholesaling instructed the supervisors for the Alger Fund telemarketing staff to refer to the six-exchange limit to keep out unwanted timers. She wrote in an e-mail that "[i]n an ongoing effort to prevent new timers from entering the funds, I wanted to make sure your group was aware of the exchange limitation policy in our SAI."

*Alger Management Portfolio Managers  
Voiced Concerns About the Effects of Market Timing*

27. Alger Management was aware that investors were excessively market timing the mutual funds, including the Alger Fund.

28. Indeed, portfolio managers responsible for managing portfolios in Alger Fund Group mutual funds, including the Alger Fund and Alger American Fund (where timing also occurred), were aware that investors were timing their portfolios and they raised numerous concerns about the effects of market timing.

29. For example, a portfolio manager managed Alger Fund's SmallCap portfolio, as well as Alger American Fund's SmallCap portfolio, beginning in the Fall of 2001. Shortly after beginning managing these portfolios, the portfolio manager raised concerns about market timing with the Vice Chairman of Alger Inc., who was responsible for the distribution of the Alger American Fund (the "Vice Chairman"), as well as others at Alger Management and Alger Inc. The portfolio manager complained that excessive trading was disrupting her ability to manage the Alger American Fund's SmallCap portfolio. On December 28, 2001, the portfolio manager sent an e-mail to the Alger Inc. Vice Chairman, as well as Alger Management's Chief Investment Officer ("CIO"). In the e-mail, the portfolio manager stated:

Currently the [Alger American Fund SmallCap portfolio] is showing 14% cash while all the other funds [i.e., Alger Fund and Alger Institutional Fund SmallCap portfolios] have about 2 to 3 percent. . . . I have been spending a good deal of time just managing this cash issue while trying to keep the funds having similar holdings and similar performance. . . . Please help-this has become a large daily frustration which is hurting the performance of all the small cap funds. (emphasis added.)

In this December 28, 2001 email, the portfolio manager also stated that she had to purchase a significant amount of equity securities to avoid showing a large amount of cash on the fund's books for year-end 2001:

I am running a buy program today so that we don't show this cash position for year end but obviously if they take the funds out we will be overdrawn.

30. In November 2002, the SmallCap portfolio manager sent an e-mail to Connelly, the Alger Inc. Vice Chairman, and the Alger Management CIO indicating that market timing in the Alger American Fund Small Cap portfolio was "getting out of hand." In addition, the portfolio manager expressed her frustration with dealing with timers:

I have managed all year with market timers moving in and out of this fund; however recently the amount of funds has become close to 25 percent of the funds (sic) assets and the frequency of trades is such that I could not possibly respond to these money flows.

31. In December 2002, the SmallCap portfolio manager sent an e-mail to Connelly, the Alger Inc. Vice Chairman, and the CIO inquiring whether they were "comfortable (sic) with the fact I cannot respond to these inflows?"

32. In February 2003, an Alger Trustee was appointed the Managing Director for Alger

Management responsible for taking over day-to-day management of the Alger Fund Group mutual fund complex. The SmallCap portfolio manager immediately alerted the Managing Director to her concerns about the impact of market timing on the Alger American Fund SmallCap portfolio. Specifically, the portfolio manager indicated that the market timing transactions had caused a discrepancy between the performance of the SmallCap portfolio in the Alger American Fund and the other Alger SmallCap portfolios. She also indicated that the magnitude of market timing transactions prevented her from being able to buy and sell securities. Further, the portfolio manager voiced her opinion that timers were preventing her from carrying out her fiduciary duty. The Alger Inc. Vice Chairman, however, then noted that terminating market timing in the Alger American Fund would jeopardize Alger's relationships with variable annuity companies, whose contract holders were timing the Alger American Fund portfolios, and possibly result in the loss of millions of dollars in assets from the Alger Fund Group mutual fund complex.

33. Additionally, the Alger Management Capital Appreciation portfolio manager noticed timing flows and complained. In April 2003, the Capital Appreciation portfolio manager, as well as Alger Management's CIO co-authored an e-mail to Connelly and the Vice Chairman, with a copy sent to the Managing Director. The e-mail indicated that timers were "increasing their dollar amounts in cap app and mid cap. They're now 5% of cap app which is too high and having a negative impact on my running the fund." They asked whether the amount of timing assets could be reduced.

34. No one at Alger Management or Alger Inc. responded to the portfolio managers' complaints, and market timing in the Alger Fund (and the Alger American Fund) continued.

35. Neither Alger Inc. nor Alger Management disclosed to the Board of Trustees of the Alger Fund that Alger Inc. had entered into numerous arrangements, including "sticky asset" arrangements, with select investors to permit them to market time the Alger Fund.

*Portfolio Managers' Efforts to Deal with  
Market Timer Cash Flows Harmed Long-Term Investors*

36. Alger Management portfolio managers for the Alger Fund (and Alger American Fund) employed various tactics to deal with the harmful effects of market timers' cash flows.

37. For example, portfolio managers kept more assets in cash or cash equivalents than they otherwise would have in order to meet redemption requests by timers. On numerous occasions, portfolio managers then acquired significant amounts of equity securities at the end of a month or quarter to be able to show that the portfolios were fully invested (and not in cash or cash equivalents).

38. Further, portfolio managers drew down on lines of credit when they were not able to sell enough securities to deal with timer withdrawals. For example, in January 2002, Alger Management's CIO, who also managed the MidCap Fund, requested daily notification from the fund's back-office operations about timer transactions. In a January 2, 2002 e-mail making the request, the CIO noted that one portfolio had "13% of its assets go out today" and that he had

“almost entered in trades based on that that would have really screwed it up big time.” In August 2002, the CIO sent an e-mail to the person in charge of Alger’s back-office operations to inquire about withdrawals from the MidCap portfolio. The CIO noted that he felt “obligated to sell into this, as I have not ever had the fund that negative.” The person in charge of back office operations responded to the CIO that “we have a line of credit to cover the overdraft.” Eventually, the MidCap portfolio was forced to access the line of credit to deal with timers. For example, in May 2003, the MidCap portfolio drew down \$7.6 million on its line of credit.

### **Alger Inc. Approved an Arrangement to Permit a Hedge Fund to Engage in Late Trading**

39. Alger Inc. also approved late trading for one market timer.

40. In early 2003, an Alger Inc. wholesaler held a series of conversations with Veras’ principals about timing Alger Fund portfolios. The Veras principals indicated that one of their requirements for investing in the Alger Fund was that they be permitted to enter trades after 4:00 p.m. Specifically, Veras’ principals informed the Alger Inc. wholesaler that they needed until 4:30 p.m. to enter trades because their trading model was based on a “signal” from the close of the futures market (e.g., 4:15 p.m.). Thus, Veras’ principals asked whether they could place orders to trade shares of Alger Fund portfolios after the futures market closed but still receive that day’s NAV. The Alger Inc. wholesaler transmitted this request to Connelly. On February 21, 2003, the wholesaler sent an e-mail to Connelly indicating that Veras had “asked for a 4:30 cutoff and I said it wouldn’t be a problem. Any problem?” Connelly replied “No.” The wholesaler then sent an e-mail to Veras indicating that “[w]e got everything you wanted including a 4:30 cutoff.” During the approximately six months the late trading arrangement was in effect, Veras executed trades after 4:00 p.m. E.T. on approximately eighteen occasions. In each instance, the late trades received that day’s NAV.

### **The Government’s Investigation Brought Market Timing and Late Trading at Alger to a Halt**

41. In the Fall of 2003, Alger Inc. moved to curtail the buy and hold program. On October 16, 2003, the day that Connelly was criminally charged and the Commission issued its Order as to him, Alger Management issued a public “letter to clients” in which it announced that, “[e]ffective immediately, we will not permit market timing in our funds.” (emphasis in original.)

### **Alger Management and Alger Inc. Benefited From the Market Timing Arrangements While Investors Were Harmed**

42. Alger Management earned advisory fees from the mutual funds it managed, including the Alger Fund. Alger Inc. earned distributor fees on class B and C shares for the Alger Fund, as well as servicing fees on the Alger Fund.

43. At the same time, the market timing in the Alger Fund diluted the value of long-term shareholders’ investments.

## VIOLATIONS

44. As a result of the conduct described above, Alger Management willfully violated, and Alger Inc. willfully aided and abetted and caused Alger Management's violations of, Sections 206(1) and 206(2) of the Advisers Act. Specifically, while acting as an investment adviser, Alger Management employed devices, schemes, or artifices to defraud clients or prospective clients, and engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon clients or prospective clients. Alger Management breached its fiduciary duty to the Alger Fund when it permitted harmful excessive trading contrary to the Alger Fund's prospectus disclosures without disclosing to the Board of Trustees that Alger, Inc. had entered into arrangements with select investors, including sticky asset arrangements, to permit them to time the Alger Fund. Alger Management also failed to disclose that in early 2003 Alger Inc. formalized this practice by requiring sales employees to negotiate a twenty percent buy and hold investment in return for new timing capacity. Finally, Alger Management failed to disclose that Alger Inc. permitted Veras to engage in late trading. By approving market timing arrangements and obtaining buy and hold investments in return for timing capacity, and failing to disclose these facts to the Board of Trustees, Alger Inc. aided and abetted and caused Alger Management's violations of Sections 206(1) and 206(2) of the Advisers Act.

45. As a result of the conduct described above, Alger Management and Alger Inc. willfully violated Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder, which prohibits affiliated persons of a registered investment company from participating in transactions in which an investment company is a joint participant without filing an application with the Commission and without a Commission order approving the transaction. Specifically, Alger Management and Alger Inc., as the investment adviser and principal underwriter, respectively, for the Alger Fund, participated in timing arrangements, including sticky asset arrangements, with select investors to permit them to time the Alger Fund without filing an application with the Commission and without a Commission order approving the transaction.

46. As a result of the conduct described above, Alger Management willfully violated Section 34(b) of the Investment Company Act by making untrue statements of material fact or omitting to state facts necessary in order to prevent the statements made, in the light of the circumstances under which they were made, from being materially misleading in a registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Investment Company Act or the keeping of which is required pursuant to Section 31(a) of the Investment Company Act. Specifically, Alger Management, on behalf of the Alger Fund, filed registration statements with the Commission that were materially misleading. Among other things, the registration statements, which included the Alger Fund prospectuses, falsely indicated that Alger Fund shareholders were limited to six exchanges per year.

47. As a result of the conduct described above, Alger Inc. willfully violated Section 15(c) of the Exchange Act in that, while registered with the Commission as a broker-dealer, it effected transactions in or induced or attempted to induce the purchase or sale of a security by means of a manipulative, deceptive, or other fraudulent device or contrivance. Among other

things, Alger Inc. participated in a fraudulent scheme by entering into arrangements with select investors, including sticky asset arrangements, that permitted these investors to market time in the Alger Fund, and this timing activity, among other things, exceeded limitations on exchanges in the Alger Fund prospectuses. Alger Inc. disseminated the materially false Alger Fund prospectuses to investors, knowing that these prospectuses contained materially false information. Alger Inc. also permitted one investor, Veras, to submit late trades in Alger mutual funds, but receive the same day's NAV in order to take advantage of post-market close information.

48. As a result of the conduct described above, Alger Inc. willfully violated Rule 22c-1 as adopted under Section 22(c) of the Investment Company Act in that, as the principal underwriter of a registered investment company issuing redeemable securities it sold, redeemed, or repurchased the shares of registered investment companies at prices not based upon the current net asset value of such securities computed after receipt of orders to sell, redeem, or purchase the shares of such registered investment companies. For example, Alger Inc. allowed Veras to engage in late trading in the Alger Fund.

### **RESPONDENTS' REMEDIAL ACTS**

49. In determining to accept the Offers, the Commission considered the remedial acts undertaken by Respondents and the cooperation afforded the Commission staff.

### **UNDERTAKINGS**

50. In determining to accept the Offers, the Commission has considered the following undertakings by Respondents.

51. Ongoing Cooperation. Respondents shall cooperate fully with the Commission in any and all investigations, litigations or other proceedings to which the Commission is a party relating to or arising from the matters described in the Order. In connection with such cooperation, Respondents have undertaken:

- a. To produce, without service of a notice or subpoena, any and all documents and other information requested by the Commission's staff;
- b. To use their best efforts to cause their employees to be interviewed by the Commission's staff at such times as the staff reasonably may direct;
- c. To use their best efforts to cause their employees to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and
- d. That in connection with any testimony of Respondents to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, Respondents:

- i. Agree that any such notice or subpoena for Respondents' appearance and testimony may be served by regular mail on their attorney; and
- ii. Agree that any such notice or subpoena for Respondents' appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

52. Independent Compliance Consultant. Respondents shall retain, within 30 days of the date of entry of the Order, the services of an Independent Compliance Consultant not unacceptable to the staff of the Commission and a majority of the independent Trustees of the Alger funds. The Independent Compliance Consultant's compensation and expenses shall be borne exclusively by Respondents or their affiliates. Respondents shall require that the Independent Compliance Consultant shall conduct a comprehensive review of Respondents' supervisory, compliance, and other policies and procedures designed to prevent and detect breaches of fiduciary duty, breaches of the Code of Ethics and federal securities law violations by Respondents and their employees. This review shall include, but shall not be limited to, a review of Respondents' market timing controls, Respondents' sales and distribution practices, a review of the Alger funds' pricing practices that may make those funds vulnerable to market timing, a review of the Alger funds' utilization of short term trading fees and other controls for deterring excessive short term trading. Respondents shall cooperate fully with the Independent Compliance Consultant and shall provide the Independent Compliance Consultant with access to their files, books, records, and personnel as reasonably requested for the review.

- a. Respondents shall require that, at the conclusion of the review, which in no event shall be more than 120 days after the date of entry of the Order, the Independent Compliance Consultant shall submit a Report to Respondents, the Trustees of the Alger funds, and the staff of the Commission. The Report shall address the issues described in Paragraph 52 of these undertakings, and shall include a description of the review performed, the conclusions reached, the Independent Compliance Consultant's recommendations for changes in or improvements to policies and procedures of Respondents and the Alger funds, and a procedure for implementing the recommended changes in or improvements to Respondents' policies and procedures.
- b. Respondents shall adopt all recommendations with respect to Respondents contained in the Report of the Independent Compliance Consultant; provided, however, that within 150 days after the date of entry of the Order, Respondents shall in writing advise the Independent Compliance Consultant, the Trustees of the Alger funds and the staff of the Commission of any recommendations that they consider to be unnecessary or inappropriate. With respect to any recommendation that Respondents

consider unnecessary or inappropriate, Respondents need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.

- c. As to any recommendation with respect to Respondents' policies and procedures on which Respondents and the Independent Compliance Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 180 days of the date of entry of the Order. In the event Respondents and the Independent Compliance Consultant are unable to agree on an alternative proposal acceptable to the staff of the Commission, Respondents will abide by the determinations of the Independent Compliance Consultant; provided, however, that if the Respondents believe it necessary to challenge any such determination of the Independent Compliance Consultant, the Respondents may apply to the Commission for an appropriate modification to this Order.
- d. Respondents (i) shall not have the authority to terminate the Independent Compliance Consultant, without the prior written approval of the majority of independent Trustees and the staff of the Commission; (ii) shall compensate the Independent Compliance Consultant, and persons engaged to assist the Independent Compliance Consultant, for services rendered pursuant to the Order at reasonable and customary rates as negotiated with the Respondents; and, (iii) shall not be in and shall not have an attorney-client relationship with the Independent Compliance Consultant and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Independent Compliance Consultant from transmitting any information, reports, or documents to the Trustees or the Commission.
- e. Respondents shall require that the Independent Compliance Consultant, for the period of the engagement and for a period of two years from completion of the engagement, shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondents, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Respondents shall require that any firm with which the Independent Compliance Consultant is affiliated or of which the Independent Compliance Consultant is a member, and any person engaged to assist the Independent Compliance Consultant in performance of his or her duties under the Order shall not, without prior written consent of the independent Trustees and the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondents, or any of their 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.

53. Compliance Review. In 2008, Respondents shall undergo a compliance review by a third party, who is not an interested person, as defined in the Investment Company Act, of Respondents. At the conclusion of the review, the third party shall issue a report of its findings and recommendations concerning Respondents' supervisory, compliance, and other policies and procedures designed to prevent and detect breaches of fiduciary duty, breaches of the Code of Ethics and federal securities law violations by Respondents and their employees in connection with their duties and activities on behalf of and related to the Alger funds. The report shall be promptly delivered to Respondents' Compliance Oversight Committee and to a designated representative of the independent Board of Trustees of each Alger fund.

54. Independent Distribution Consultant. Respondents shall retain, within 30 days of the date of entry of the Order, the services of an Independent Distribution Consultant not unacceptable to the staff of the Commission and the independent Trustees of the Alger funds. The Independent Distribution Consultant's compensation and expenses, and all other costs of distributing the disgorgement and penalty ordered in Section IV of the Order, shall be borne exclusively by Respondents. Respondents shall cooperate fully with the Independent Distribution Consultant and shall provide the Independent Distribution Consultant with access to their files, books, records, and personnel as reasonably requested for the review. Respondents shall require that the Independent Distribution Consultant develop a Distribution Plan for the distribution of all of the disgorgement and penalty ordered in Section IV of the Order, and any interest or earnings thereon, according to a methodology developed in consultation with Respondents and acceptable to the staff of the Commission and the independent Trustees of the Alger funds. The Distribution Plan shall provide for investors in Alger Fund portfolios during the period from September 12, 2001 to October 15, 2003 to receive, from the monies available for distribution, in order of priority, (i) proportionate share of losses suffered by Alger Fund portfolios due to market timing and late trading, and (ii) a proportionate share of advisory fees paid by Alger Fund portfolios that suffered such losses during the period of such market timing and late trading.

- a. Respondents shall require that the Independent Distribution Consultant submit a Distribution Plan to Respondents and the staff of the Commission no more than 100 days after the date of entry of the Order.
- b. The Distribution Plan developed by the Independent Distribution Consultant shall be binding unless, within 130 days after the date of entry of the Order, Respondents or the staff of the Commission advises, in writing, the Independent Distribution Consultant of any determination or calculation from the Distribution Plan that it considers to be inappropriate and states in writing the reasons for considering such determination or calculation inappropriate.
- c. With respect to any determination or calculation with which Respondents or the staff of the Commission do not agree, such parties shall attempt in good faith to reach an agreement within 160 days of the date of entry of the Order. In the event that Respondents and the staff of the Commission are

unable to agree on an alternative determination or calculation, the determinations and calculations of the Independent Distribution Consultant shall be binding.

- d. Within 175 days of the date of entry of this Order, Respondents shall require that the Independent Distribution Consultant submit the Distribution Plan for the administration and distribution of disgorgement and penalty funds pursuant to Rule 1101 [17 C.F.R. 201.1101] of the Commission's Rules of Practice. Following a Commission order approving a final plan of disgorgement, as provided in Rule 1104 [17 C.F.R. 201.1104] of the Commission's Rules Regarding Fair Fund and Disgorgement Plans, Respondents shall require that the Independent Distribution Consultant, with Respondents, take all necessary and appropriate steps to administer the final plan for distribution of disgorgement and penalty funds.
- e. Respondents shall require that the Independent Distribution Consultant, for the period of the engagement and for a period of two years from completion of the engagement, not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondents, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Respondents shall require that any firm with which the Independent Distribution Consultant is affiliated or of which the Independent Distribution Consultant is a member, and any person engaged to assist the Independent Distribution Consultant in performance of his or her duties under the Order not, without prior written consent of the independent Trustees and the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondents, or any of their 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.

55. Independent Certification. No later than twenty-four months after the date of entry of the Order, the chief executive officers of Respondents shall certify to the Commission in writing that Respondents have fully adopted and complied in all material respects with the undertakings set forth in paragraphs 52 through 54 and 56 and with the recommendations of the Independent Compliance Consultant or, in the event of material non-adoption or non-compliance, shall describe such material non-adoption and non-compliance.

56. Recordkeeping. Respondents shall preserve for a period not less than six years from the end of the fiscal year last used, the first two years in an easily accessible place, any record of Respondents' compliance with the undertakings set forth in paragraphs 52 through 55 and with the recommendations of the Independent Compliance Consultant.

57. Deadlines. For good cause shown, the Commission's staff may extend any of the

procedural dates set forth above.

#### 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 Offers.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, Sections 203(e) and 203(k) of the Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Pursuant to Section 203(e) of the Advisers Act, Respondent Alger Management is hereby censured.

B. Pursuant to Section 203(e) of the Advisers Act and Section 15(b)(4) of the Exchange Act, Respondent Alger Inc. is hereby censured.

C. Respondent Alger Management shall cease and desist from committing or causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act, and Sections 17(d) and 34(b) of the Investment Company Act and Rule 17d-1 thereunder.

D. Respondent Alger Inc. shall cease and desist from committing or causing any violations and any future violations of Section 15(c) of the Exchange Act, and Section 17(d) of the Investment Company Act and Rules 17d-1 and 22c-1 as adopted under Section 22(c) of the Investment Company Act, and causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act.

E. Respondents shall, within 30 days of the entry of this Order, pay, on a joint and several basis, \$30,000,000 in disgorgement plus a civil money penalty in the amount of \$10,000,000 for a total of payment of \$40,000,000. Such payment shall be: (A) made by wire transfer, 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) wired, 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 22132; and (D) submitted under cover letter that identifies Alger Management and Alger Inc. as Respondents in these proceedings, the file number of these proceedings, a copy of which cover letter, wire transfer instruction, money order, or check shall be sent to Mark K. Schonfeld, Regional Director, Securities and Exchange Commission, Northeast Regional Office, 3 World Financial Center, 4<sup>th</sup> Floor, New York, New York 10281-1022. Such civil money penalty may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 ("Fair Fund distribution"). Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that they shall not, in any Related Investor Action, benefit from any offset or reduction of any investor's claim by the amount of any Fair Fund distribution to such investor in

this proceeding that is proportionately attributable to the civil penalty paid by Respondents (“Penalty Offset”). If the court in any Related Investor Action grants such an offset or reduction, Respondents agree that they shall, within 30 days after entry of a final order granting the offset or reduction, notify the Commission’s counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed against Respondents in this proceeding. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order in this proceeding.

F. Respondents shall comply with the undertakings set forth in paragraphs 52 through 56 above.

By the Commission.

Nancy M. Morris  
Secretary