

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 56518 / September 25, 2007**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 27980 / September 25, 2007**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-12824**

**In the Matter of**

**RYAN D. GOLDBERG and**  
**MICHAEL H. GRADY,**

**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,  
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”) and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Ryan D. Goldberg (“Goldberg”) and Michael H. Grady (“Grady”) (collectively, the “Respondents”).

**II.**

In anticipation of the institution of these proceedings, each Respondent has submitted an Offer 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, each 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) and 21C of the Securities Exchange Act of 1934 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<sup>1</sup> that:

#### Summary

1. This matter involves unlawful late trading of mutual fund shares by Goldberg and Grady, former registered representatives and officers of Brean Murray & Co., Inc. (“Brean Murray”), a registered broker-dealer, and principals of an investment adviser formerly registered with the state of New York (“Investment Adviser”). Between August 2001 and September 2003, Goldberg and Grady engaged in a late trading scheme on behalf of certain market timing customers, including the hedge fund Canary Capital Partners, LLC (“Canary”), and at least four other hedge funds.<sup>2</sup>

2. Goldberg and Grady, through Brean Murray and the Investment Adviser, negotiated market timing capacity with at least 20 mutual fund complexes, and then accepted and executed more than 4,100 trades in dozens of mutual funds after 4:00 p.m. ET, the time as of which those funds calculated their Net Asset Value (“NAV”).<sup>3</sup> The Respondents accepted and placed nearly all of these trades after 4:30 p.m., and the overwhelming majority after 5:00 p.m., using Bear Stearns Securities Corp. (“Bear Stearns”), the clearing broker for Brean Murray and the Investment Adviser. Each of these trades improperly received the current day’s NAV rather than the next trading day’s NAV as required by law. In exchange for their assistance in placing late trades and negotiating timing capacity, Goldberg and Grady each received more than \$2.1 million in fees. As a result of their conduct, Goldberg and Grady violated and/or aided and abetted and caused violations of the antifraud and mutual fund pricing provisions of the federal securities laws.

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<sup>1</sup> The findings herein are made pursuant to the Respondents’ Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> “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.

<sup>3</sup> Unless otherwise noted, all times refer to Eastern Time (ET).

## **Respondents**

3. Ryan D. Goldberg, age 31, resides in New York City. At all times relevant to the conduct at issue, Goldberg was a registered representative and Executive Vice President of Brean Murray, and held Series 7 and 63 licenses with the National Association of Securities Dealers (“NASD”). He was a principal and 50 percent owner of the Investment Adviser.

4. Michael H. Grady, age 30, resides in New York City. At all times relevant to the conduct at issue, Grady was a registered representative and Executive Vice President of Brean Murray, and held Series 7 and 63 licenses with the NASD. He was a principal and 50 percent owner of the Investment Adviser.

## **Other Relevant Entity**

5. Brean Murray & Co., Inc., located in New York City, was at all times relevant to the conduct at issue registered with the Commission as a broker-dealer. Brean Murray cleared its trades through Bear Stearns on a fully disclosed basis. Brean Murray did not have dealer agreements with the mutual funds.<sup>4</sup>

## **Background – Late Trading**

6. Rule 22c-1(a) under the Investment Company Act (the “forward pricing rule”) requires any registered investment company issuing redeemable securities (“fund”), its principal underwriter and dealers in the fund’s shares, and any person designated in the fund’s prospectus as authorized to consummate transactions in securities issued by the fund to sell and redeem fund shares at a price based on the current NAV next computed after receipt of an order to buy or redeem. Mutual funds generally determine the NAV of mutual fund shares as of 4:00 p.m. ET. In these circumstances, orders received by the entities identified in Rule 22c-1 before 4:00 p.m. must be executed at the price determined as of 4:00 p.m. that day. Orders received by these entities after 4:00 p.m. must be executed at the price determined as of 4:00 p.m. the next trading day. Mutual fund prospectuses typically identify the time as of which the NAV is determined for purposes of pricing fund shares for purchases and redemptions.

7. “Late trading” is the practice of placing orders to buy, redeem, or exchange mutual fund shares after the time as of which a mutual fund has calculated its NAV (usually as of the close of trading at 4:00 p.m. ET), but receiving the price based on the prior NAV already determined as of 4:00 p.m. Late trading enables the trader improperly to profit from market events that occur after 4:00 p.m., such as earnings announcements and futures trading, that are not reflected in that

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<sup>4</sup> In December 2005, Brean Murray merged with another entity to form Brean Murray, Carret & Co., LLC, a registered broker-dealer. On February 17, 2005, the Commission instituted settled administrative and cease-and-desist proceedings against Brean Murray for aiding and abetting violations of Rule 22c-1 under the Investment Company Act. See *In the Matter of Brean Murray & Co., Inc.*, Exchange Act Rel. No. 51219 (Feb. 17, 2005).

day's price. Late trading violates Rule 22c-1(a) under the Investment Company Act, defrauds innocent shareholders in those mutual funds by giving to the late trader an advantage not available to other shareholders, and harms shareholders by diluting the value of their shares.

8. Bear Stearns had dealer agreements with the mutual funds whose shares were traded late by the customers and clients of Goldberg and Grady. These agreements generally required Bear Stearns to sell and redeem mutual fund shares only in accordance with the terms and conditions of the current fund prospectus. Most if not all of the mutual funds required trades to be placed prior to 4:00 p.m. in order to receive that day's NAV. By executing orders placed after 4:00 p.m. at that day's NAV, Bear Stearns violated Rule 22c-1(a).<sup>5</sup>

### **Respondents' Late Trading**

9. In July 2001, Goldberg and Grady joined Brean Murray after leaving another broker-dealer.<sup>6</sup> While associated with their previous employer, Goldberg and Grady facilitated market timing transactions for a Bermuda-based hedge fund ("Hedge Fund A"). Goldberg and Grady were hired by Brean Murray specifically to bring their market timing business to Brean Murray. Brean Murray appointed Goldberg and Grady co-heads of its newly formed Mutual Fund Market Timing Group ("Timing Group") and gave each the title of Executive Vice President.

10. Their primary business activity at Brean Murray was to facilitate market timing on behalf of hedge fund customers by negotiating timing capacity, or the ability to market time, directly with mutual fund complexes. Goldberg and Grady approached high-level officers of mutual fund complexes and obtained their permission to time certain funds under agreed upon conditions. They eventually negotiated more than \$1.8 billion in market timing capacity with more than 20 mutual fund families. The great majority of the late trading engaged in by Goldberg and Grady took place in the shares of mutual funds with which they had negotiated timing capacity.

11. On or about July 10, 2001, almost immediately upon joining Brean Murray, Goldberg, Grady, and other representatives of Brean Murray met with representatives of Canary's investment adviser, whose principal was Edward Stern, to discuss establishing a brokerage relationship for the purpose of market timing mutual funds. Following the meeting, Canary opened several Bear Stearns accounts through Brean Murray. By the end of August 2001, Canary had deposited approximately \$160 million into these accounts.

12. Before trading in these accounts began in August 2001, Canary requested from Brean Murray the ability to place its mutual fund orders after 4:00 p.m. Goldberg, Grady and

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<sup>5</sup> On March 16, 2006, the Commission instituted settled administrative and cease-and-desist proceedings against Bear Stearns. Among other things, the Commission found that Bear Stearns violated Rule 22c-1 under the Investment Company Act for allowing Brean Murray to submit late trades. See *In the Matter of Bear Stearns & Co., Inc., et al.*, Securities Act Rel. No. 8668 (March 16, 2006).

<sup>6</sup> Goldberg and Grady maintained their securities licenses with Brean Murray until November 2003. They have not been associated with Brean Murray or any other broker-dealer since that time.

others at Brean Murray were told by employees of Bear Stearns that Brean Murray could accept orders from Canary after 4:00 p.m., and as late as 5:45 p.m., for entry into Bear Stearns' electronic mutual fund order entry platform, the Mutual Fund Routing System ("MFRS"), for processing at that day's NAV. Brean Murray had Internet-based access to the MFRS and, as part of their duties, Goldberg and Grady had access to the MFRS from their computers.

13. In August 2001, Goldberg and Grady began entering mutual fund orders directly into the MFRS for Canary. Canary called in virtually all of its mutual fund trades to Goldberg and Grady after 4:00 p.m., and they then executed these trades so that Canary received that day's NAV. Most of Canary's orders were placed with Goldberg and Grady later than 5:00 p.m., and sometimes as late as 5:45 p.m. Between August 2001 and March 2003, when Canary transferred its account to the Investment Adviser, Goldberg and Grady, through Brean Murray, executed approximately 916 late trades for Canary.

14. Goldberg and Grady used Brean Murray's late trading capability as a marketing tool. For example, after developing the Canary relationship, Goldberg and Grady made a pitch for Hedge Fund A's business, using late trading as a selling point. In October 2001, Goldberg, Grady and other Brean Murray representatives met with representatives of Hedge Fund A in Bermuda. They made a marketing presentation which, among other things, highlighted Brean Murray's relationship with Bear Stearns and the ability to place mutual fund orders until 5:30 p.m. at that day's NAV. Hedge Fund A had not previously asked Goldberg or Grady for the ability to late trade.

15. In late November 2001, Hedge Fund A began placing late trades with Goldberg and Grady and developed its own market timing strategy specifically for its Brean Murray trading, which took into account post-4:00 p.m. information. Between November 2001 and March 2003, Goldberg and Grady, through Brean Murray, executed approximately 918 late trades for Hedge Fund A.

16. Goldberg and Grady also entered into market timing and late trading arrangements with two other hedge funds ("Hedge Fund B" and "Hedge Fund C"). Goldberg and Grady offered these hedge funds the ability to trade until 5:30 p.m. as a valuable service that Brean Murray could provide. As with Hedge Fund A, neither Hedge Fund B nor Hedge Fund C had asked Goldberg or Grady for the ability to late trade.

17. Goldberg and Grady began entering mutual fund orders into Bear Stearns' platform on behalf of Hedge Fund B in January 2002 and Hedge Fund C in March 2002. Between January 2002 and March 2003, when Hedge Fund B transferred its account to the Investment Adviser, Goldberg and Grady, through Brean Murray, executed approximately 1,108 late trades for Hedge Fund B. While at Brean Murray, Goldberg and Grady executed approximately 619 late trades for Hedge Fund C.

18. While at Brean Murray, Goldberg and Grady also engaged in late trading on behalf of Hedge Fund D, a hedge fund that they founded and managed, executing 22 late trades between June 2002 and November 2002.

19. Goldberg and Grady received fees pursuant to what were described as “wrap fee” agreements with both Brean Murray and, subsequently, the Investment Adviser. The fee was a percentage of the fair market value of the accounts for which Goldberg and Grady had negotiated market timing capacity.

20. While at Brean Murray, Goldberg and Grady executed 3,420 late trades and each received \$1,081,963 in fees.

21. After leaving Brean Murray in April 2003, Goldberg and Grady continued to engage in late trading for their hedge fund clients through their Investment Adviser. In doing so, they executed trades through the MFRS system exactly as they had at Brean Murray, i.e., they accepted orders from their clients after 4:00 p.m., and placed them so as to receive that day’s NAV.

22. They executed late trades as they had before on behalf of Canary, Hedge Fund A and Hedge Fund B. Goldberg and Grady continued to execute trades for Hedge Fund C, even though its account remained at Brean Murray.

23. Through the Investment Adviser, Goldberg and Grady developed additional market timing clients, largely investment advisers to hedge funds. Between April 2003 and September 2003, Goldberg and Grady executed a total of 740 late trades for new and existing clients.

24. The Investment Adviser charged its clients “wrap fees,” similar to those at Brean Murray, which Goldberg and Grady split evenly. While at the Investment Adviser, Goldberg and Grady received fees of approximately \$1,034,742 each.

25. During the course of the late trading scheme, Goldberg and Grady executed a total of 4,160 late trades and each received fees of \$2,116,705.

26. As a result of the conduct described above, Goldberg and Grady each willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

27. As a result of the conduct described above, Goldberg and Grady each willfully aided and abetted and caused Bear Stearns’ violations of Rule 22c-1(a) under the Investment Company Act, which provides that “[no] registered investment company issuing any redeemable security, no person designated in such issuer’s prospectus as authorized to consummate transactions in any such security, and no principal underwriter of, or dealer in any such security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.”

### **Disgorgement and Civil Penalties**

28. Respondent Goldberg has submitted a sworn Statement of Financial Condition dated February 28, 2007 and other evidence and has asserted his inability to pay disgorgement plus prejudgment interest or a civil penalty.

29. Respondent Grady has submitted a sworn Statement of Financial Condition dated February 28, 2007 and other evidence and has asserted his inability to pay the entire amount of disgorgement plus prejudgment interest or a civil penalty.

#### **IV.**

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

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

A. Respondent Goldberg cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Rule 22c-1 under the Investment Company Act.

B. Respondent Grady cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Rule 22c-1 under the Investment Company Act.

C. Respondent Goldberg be, and hereby is barred from association with any broker or dealer, 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, with a right to reapply for association after three (3) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

D. Respondent Grady be, and hereby is barred from association with any broker or dealer, 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, with a right to reapply for association after three (3) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

E. Any reapplication for association by Respondent Goldberg or Respondent Grady 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 Respondent Goldberg or Respondent Grady, 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.

F. Respondent Goldberg shall pay disgorgement of \$2,116,705, plus prejudgment interest in the amount of \$473,282, but that payment of such amount is waived and the Commission is not imposing a penalty against Respondent Goldberg based upon Respondent Goldberg's sworn representations in his Statement of Financial Condition dated February 28, 2007 and other documents submitted to the Commission.

G. Respondent Grady shall pay disgorgement of \$2,116,705, plus prejudgment interest in the amount of \$473,282, but that payment of all but \$25,000 of the disgorgement is waived and the Commission is not imposing a penalty against Respondent Grady based upon Respondent Grady's sworn representations in his Statement of Financial Condition dated February 28, 2007 and other documents submitted to the Commission. Respondent Grady shall pay disgorgement in the amount of \$25,000 pursuant to the payment plan outlined below.

H. Respondent Grady shall pay \$25,000 in four installments of \$6,250 over a twelve month period to the United States Treasury. Grady's first payment of \$6,250 shall be due 90 days after the date of entry of this Order and the remaining three payments of \$6,250 each shall be paid no later than 180, 270 and 360 days after the date of entry of this Order. Such payments shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Respondent Grady 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 Elaine C. Greenberg, Securities and Exchange Commission, Philadelphia Regional Office, Mellon Independence Center, 701 Market Street, Suite 2000, Philadelphia, PA 19106.

I. Respondent Grady agrees that if the full amount of any payment described above is not made by the date the payment is required by this Order, all outstanding payments, plus any interest accrued pursuant to SEC Rule of Practice 600, minus payments made, if any, is due and payable immediately without further application.

J. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondents Goldberg and Grady provided accurate and complete financial information at the time such representations were made; (2) seek an order directing payment of disgorgement and prejudgment interest; and (3) seek an order directing payment of the maximum civil penalty

allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondents may not, by way of defense to any such petition; (1) contest the findings in this Order; (2) assert that payment of disgorgement and interest should not be ordered; (3) contest the amount of disgorgement and interest to be ordered; (4) contest the imposition of the maximum penalty allowable under the law; or (5) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Nancy M. Morris  
Secretary