UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
March 6, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-12978A

In the Matter of	)	
SCOTT E. DeSANO,	)	**CORRECTED ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940 AND SECTIONS 9(b) AND 9(f) OF THE INVESTMENT COMPANY ACT OF 1940**
THOMAS H. BRUDERMAN,	)	
TIMOTHY J. BURNIEIKA,	)	
ROBERT L. BURNS,	)	
DAVID K. DONOVAN,	)	
EDWARD S. DRISCOLL,	)	
JEFFREY D. HARRIS,	)	
CHRISTOPHER J. HORAN,	)	
STEVEN P. PASCUCCI and	)	
KIRK C. SMITH	)	
Respondents.	)	

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(f) 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 the individual respondents identified below.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. **Scott E. DeSano** ("DeSano"), age 47, lives in Boston, Massachusetts. He was associated with the adviser to the Fidelity group of mutual funds, FMR Co., Inc. (FMR Co.), from 1991 to July 2005, and was its senior vice president in charge of global equity trading from 1996 until he was reassigned to employment with an affiliated entity in July 2005. DeSano resigned on July 25, 2007, and is currently not employed in the financial services industry. From at least January 1, 2002 through October 31, 2004 (the "Relevant Period"), DeSano supervised FMR Co.'s Boston domestic equity trading desk, ("Equity Trading Desk") and other equity trading operations.[1] DeSano supervised more than thirty equity traders during the Relevant Period. He reported to a senior vice president of FMR Co. (Bart Grenier). He also appeared as a representative of FMR Co. in public testimony before Congress, the Commission, and other regulatory bodies.

2. **Thomas H. Bruderman** ("Bruderman"), age 39, lives in Boston, Massachusetts. He was an equity trader at FMR Co. from 1998 until his resignation in December 2004. During the Relevant Period, he was a sector trader specializing in healthcare and pharmaceuticals stocks.

3. **Timothy J. Burnieika** ("Burnieika"), age 38, lives in Cohasset, Massachusetts. He was an equity trader at FMR Co. from 2000 until September 2005, when he was reassigned to other duties that do not involve trading. During the Relevant Period, he was a primary trader reporting to respondent Steven P. Pascucci.

4. **Robert L. Burns** ("Burns"), age 46, lives in Brookline, Massachusetts. He was an equity trader at FMR Co. from 1986 until his resignation in December 2004. During the Relevant Period, he was a sector trader specializing in technology stocks and reporting to respondent David K. Donovan.

5. **David K. Donovan** ("Donovan"), age 45, lives in Marblehead, Massachusetts. He was an equity trader at FMR Co. from 1992 until his resignation in March 2005. During the Relevant Period, he was a sector trader specializing in technology stocks, and he was also a team leader of several sector traders, including respondents Burns, Jeffrey D. Harris and Kirk C. Smith.

6. **Edward S. Driscoll** ("Driscoll"), age 42, lives in Scituate, Massachusetts. Aside from a ten-month stint at another firm, he was an equity trader at FMR Co. from 1997 until his

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[1] As discussed below, the Equity Trading Desk included "primary" traders, who worked closely with certain FMR Co., Inc. portfolio managers, and "sector" traders, who were responsible for trading equities in certain industries.

resignation in March 2005. During the Relevant Period, he was a sector trader specializing in food and beverage, household items, materials, and capital goods stocks.

7. **Jeffrey D. Harris** ("Harris"), age 35, lives in Charlestown, Massachusetts. He was an equity trader at FMR Co. from 1998 until his resignation in July 2005. During the Relevant Period, he was a sector trader specializing in technology stocks and reporting to respondent Donovan.

8. **Christopher J. Horan** ("Horan"), age 37, lives in Boston, Massachusetts. He was an equity trader at FMR Co. from 1999 until September 2005, when he was reassigned to other duties that do not involve trading. During the Relevant Period, he was a sector trader specializing in insurance, capital goods, and restaurant stocks.

9. **Steven P. Pascucci** ("Pascucci"), age 41, lives in Concord, Massachusetts. He was an equity trader at FMR Co. from 1997 until September 2005, when he was reassigned to other duties that do not involve trading. During the Relevant Period, he was a primary trader, and from 1998 until early 2005, he was a team leader of the other primary traders, including respondent Burnieika.

10. **Kirk C. Smith** ("Smith"), age 43, lives in Walpole, Massachusetts. He was an equity trader at FMR Co. from 1997 until September 2005, when he was reassigned to other duties that do not involve trading. During the Relevant Period, he was a sector trader specializing in technology stocks and reporting to respondent Donovan.

B. OTHER RELEVANT PARTIES[2]

11. **Fidelity Management & Research Company** ("FMR") is a privately-held Massachusetts corporation registered with the Commission as an investment adviser pursuant to Section 203(c) of the Advisers Act, with its principal place of business in Boston, Massachusetts. FMR is a wholly owned subsidiary of FMR LLC, a privately held Delaware corporation. FMR is an adviser to various institutional clients and has approximately $1.25 trillion in assets under management. FMR's institutional clients include a group of approximately 350 registered investment companies marketed under the "Fidelity Investments" trade name and managed by FMR and its affiliates (hereafter "the Fidelity Funds").

12. **FMR Co.** is a privately held Massachusetts corporation registered with the Commission as an investment adviser pursuant to Section 203(c) of the Advisers Act, with its principal place of business in Boston, Massachusetts. FMR Co. is a wholly owned subsidiary of FMR and provides portfolio management services as a sub-adviser to certain clients of FMR, including the Fidelity Funds.

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[2] The following related administrative proceedings were instituted today: In the Matter of Fidelity Management & Research Company and FMR Co., Inc.; In the Matter of Peter S. Lynch; In the Matter of Bart A. Grenier; and In the Matter of Marc C. Beran.

13. **Peter S. Lynch** ("Lynch"), age 64, lives in Marblehead, Massachusetts. He has been associated with FMR and FMR Co. in various capacities since 1969, and was the portfolio manager of Fidelity's Magellan Fund from 1977 to 1990. Since retiring from managing Magellan, respondent Lynch has been the vice chairman and a director of FMR and FMR Co. He was an interested trustee of the Fidelity family of mutual funds from 1990 until February 2003, and has since served as a member of the Advisory Board of the Fidelity family of mutual funds.

14. **Bart A. Grenier**, age 49, lives in Boston, Massachusetts. Aside from a four-month period in 1997, Grenier was associated with FMR Co. from 1991 until June 2005. During the Relevant Period, he was a senior vice president of FMR Co. with supervisory responsibility for FMR Co.'s equity trading operations and several of its other business groups.

15. **Marc C. Beran**, age 38, lives in Southborough, Massachusetts. He was an equity trader at FMR Co. from 1997 until his resignation in January 2005. During the Relevant Period, he was a sector trader specializing in energy and materials stocks.

C. FACTS

Summary

16. FMR and FMR Co. (collectively "Fidelity") manage one of the largest mutual fund complexes in the United States. Its equity trading desk buys and sells millions of shares of stock every day for the Fidelity Funds and other institutional clients. As an investment adviser, Fidelity has a fiduciary duty to seek best execution for its clients' securities transactions and to disclose to its clients all material conflicts of interest.

17. During the period from at least January 2002 through October 2004 ("the Relevant Period"), the respondents in aggregate accepted more than $1.5 million worth of travel, entertainment and gifts from brokerage firms that sought and obtained orders to buy or sell securities on behalf of Fidelity's advisory clients. Those brokerage firms each received millions of dollars in commission revenue for handling orders from Fidelity's advisory clients' accounts. The respondents in aggregate accepted from brokers dozens of expensive trips, frequently by private jet, including excursions to the Super Bowl, family vacations to Bermuda, Nantucket and the Caribbean, golf outings at exclusive clubs in Florida and South Carolina, weekends in Las Vegas, lodging at fine hotels, and even an extravagant, three-day bachelor party for Bruderman in Miami. Brokers also provided the respondents with gifts including premium tickets to the World Series, the U.S. Open, Wimbledon, Rolling Stones concerts, and dozens of other sporting events and concerts. In addition, Bruderman accepted illegal drugs from brokers, and Driscoll's illegal gambling was facilitated by a broker, but neither Bruderman nor Driscoll disclosed that information to any manager at Fidelity.

18. Under Section 17(e)(1) of the Investment Company Act, affiliated persons of a registered investment company, such as Fidelity executives and traders, are prohibited from accepting "from any source any compensation (other than a regular salary or wages from such

registered company) for the purchase or sale of any property" of the investment company. The objective of Section 17(e)(1) of the Investment Company Act is to prevent persons affiliated with registered investment companies from having conflicts of interest impair their judgment and loyalty. A violation of Section 17(e)(1) of the Investment Company Act is complete upon receipt of the compensation. During the Relevant Period, the respondents each received compensation within the meaning of Section 17(e)(1) of the Investment Company Act in the form of travel, entertainment and gifts paid for by brokers who sought and obtained transactions for Fidelity's clients. In addition, Burns and Harris each obtained tickets from brokers to satisfy requests from Lynch. As a result, the respondents each willfully violated Section 17(e)(1) of the Investment Company Act.

19. DeSano, who supervised Fidelity's equity trading operations, personally accompanied certain traders on several trips by private jet paid for by brokers, including attending part of Bruderman's bachelor party in Miami, and personally solicited tickets from brokers for himself and to satisfy requests from his supervisor, Grenier. Traders also told DeSano about some of the other private jet trips and tickets they received from brokers. Nevertheless, DeSano failed to monitor traders' receipt of travel, entertainment and gifts in any systematic way. As a result, DeSano failed reasonably to supervise ten traders (Beran, Bruderman, Burnieika, Burns, Donovan, Driscoll, Harris, Horan, Pascucci and Smith), within the meaning of Section 203(e)(6) of the Advisers Act, with a view to preventing their violations of Section 17(e)(1) of the Investment Company Act.[3]

20. Under Section 206 of the Advisers Act, an investment adviser has a fiduciary duty to seek best execution for its clients' securities transactions – that is, to seek the most favorable terms reasonably available under the circumstances. In determining whether an adviser is seeking best execution, the key criterion is whether the adviser selects the transaction which "represents the best qualitative execution for the managed account."[4] During the Relevant Period, the respondent traders (plus Beran) allowed the receipt of travel, entertainment and gifts to influence their selection of brokers to handle transactions for Fidelity's clients. As one trader commented to another, "Word is out that order flow is for sale."[5] In addition, certain traders

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[3] As set forth in a separate administrative proceeding instituted today, Beran willfully violated Section 17(e)(1) of the Investment Company Act through the receipt of compensation in the form of travel and gifts paid for by brokers handling transactions for Fidelity's clients.

[4] Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934, Exchange Act Rel. No. 23170, 1986 SEC LEXIS 1689, at *38 (Apr. 23, 1986) ("1986 Soft Dollar Release"); *see also* Market 2000 Report: Study V, Best Execution, 1994 SEC LEXIS 136, at *42 n.65 ("Market 2000 Report") ("[M]oney managers in fulfilling their duties of best execution . . . must evaluate periodically the performance of the broker-dealers that execute their transactions."); *Renberg Capital Management, Inc.*, Advisers Act Rel. No. 2064, 2002 WL 31174796, *2 (Oct. 1, 2002); *Portfolio Advisory Services, LLC*, Advisers Act Rel. No. 2038, 2002 WL 1343823, *2 (June 20, 2002).

[5] All communications among DeSano, traders and brokers cited in this Order are from an email network maintained by Bloomberg for Fidelity and are quoted with their original spelling and punctuation. Brackets are used to clarify abbreviations or other terms and to indicate where names have been omitted.

routinely sent transactions to brokers who were members of their families or brokers with whom they had a romantic relationship.[6] DeSano knew that certain traders directed transactions to brokers who provided them with travel, entertainment and gifts, and he also knew that certain traders directed transactions to brokers who were members of their family or with whom they had a romantic relationship. Nevertheless, DeSano failed to take reasonable steps to prevent such factors from entering into the traders' selection of brokers or to ensure that the traders were seeking best execution. Accordingly, DeSano was a cause of Fidelity's violation of Section 206(2) of the Advisers Act.[7]

21. Under Section 206 of the Advisers Act, an investment adviser has a fiduciary duty to disclose all material conflicts of interest to its advisory clients. During the Relevant Period, Fidelity failed to disclose to its advisory clients the conflicts of interest arising from the receipt by certain Fidelity executives and traders, as described herein, of travel, entertainment and gifts (including illegal drugs for Bruderman and the facilitation of illegal gambling for Driscoll) paid for by brokers, and certain traders' family and romantic relationships with brokers who sought and obtained securities transactions for Fidelity's clients, and failed to disclose that such travel, entertainment, gifts and relationships were additional factors in the traders' selection of brokers. Accordingly, DeSano, Bruderman and Driscoll were each a cause of Fidelity's violation of Section 206(2) of the Advisers Act.

22. Under Sections 204, 206 and 207 of the Advisers Act and Rule 204-1 thereunder, an investment adviser may not make materially false and misleading statements in public disclosure documents, such as an investment adviser's Form ADV. During the Relevant Period, Fidelity's Forms ADV stated that Fidelity selected brokers for its clients' transactions based on an itemized list of factors but failed to include the additional significant factors considered by certain traders – their receipt of travel, entertainment and gifts from brokers and their family or romantic relationships with brokers. DeSano was, at least, negligent in not knowing that Fidelity's Forms ADV contained misleading statements concerning the factors considered in selecting brokers. Moreover, DeSano's acceptance of TEGG from brokers caused Fidelity's disclosures to be false and misleading. As a result, DeSano caused Fidelity's violations of Sections 204, 206(2) and 207 of the Advisers Act and Rule 204-1 thereunder.

23. On behalf of Fidelity, DeSano made presentations to committees of the trustees of the Fidelity Funds in which he identified the factors that Fidelity used in selecting brokers. DeSano also told the trustees that Fidelity required brokers to compete for its brokerage business based on the quality of their trade execution. Those statements were false and misleading because DeSano failed to disclose: (1) that certain Fidelity traders selected brokers for Fidelity's business based on additional significant factors of which he was aware – travel,

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[6] Two traders not named in this Order sent Fidelity brokerage business to brokers with whom they were having romantic relationships.

[7] Fidelity's violations of Section 206 of the Advisers Act as identified in this paragraph and in paragraphs 21 and 22 is addressed in the separate administrative proceeding instituted today against FMR and FMR Co.

entertainment and gifts from brokers and family or romantic relationships with brokers – and (2) that brokers competed for Fidelity's business based on those additional factors as well. As a result, DeSano willfully aided and abetted and was a cause of Fidelity's violation of Section 206(1) of the Advisers Act.

Background on Fidelity's Equity Trading Desk

24. The Fidelity Funds and certain of Fidelity's other institutional clients' accounts are managed by portfolio managers who make investment decisions on their behalf. The portfolio managers send their orders to equity traders, who are responsible for selecting brokers to handle the transactions. During the Relevant Period, the Equity Trading Desk bought and sold more than 73 billion shares of equity securities (nearly 26 billion shares per year) with a total principal of more than $1.4 trillion (nearly $500 billion per year). Fidelity's equity trading generated more than $2.3 billion in commissions (over $800 million per year) paid to brokerage firms by Fidelity's clients, including the Fidelity Funds.

25. During the Relevant Period, FMR Co.'s equity trading operations employed nearly sixty people, including 33 traders (seven "primary" traders and 26 "sector" traders). Under DeSano's supervision, the traders had broad discretion to select brokerage firms to handle securities transactions. The primary limitation was that the traders could only select from a list of approximately 100 firms that had been formally approved by Fidelity.

DeSano and Traders Received Travel, Entertainment and Gifts Paid for Brokers Seeking and Obtaining Securities Transactions for Fidelity's Clients

Overview

26. During the Relevant Period, the respondents in aggregate accepted over $1.5 million worth of travel, entertainment and gifts from brokerage firms that sought and obtained orders to buy or sell securities on behalf of Fidelity's advisory clients.[8] Brokers took DeSano and certain traders, sometimes in groups, on more than thirty trips to such destinations as the Super Bowl, Las Vegas, Florida, the Caribbean, and Nantucket. These excursions sometimes included travel by private jet, lodging at fancy resorts, entry to exclusive golf courses, tickets to major sporting events, limousine service, expensive dinners, other amenities such as spa services, and, for certain traders, adult entertainment and illegal drugs. Bruderman even organized, and brokers paid for, his own extravagant, three-day bachelor party in Miami, part of which DeSano attended and which cost brokers approximately $160,000.

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[8] The aggregate cost to the brokerage firms was approximately $3 million, primarily because they sent one or more brokerage firm employee on entertainment trips with Fidelity employees.

27. One brokerage firm seeking and obtaining Fidelity's business, Jefferies & Co., Inc. ("Jefferies"), gave one of its brokers, Kevin W. Quinn, a travel and entertainment budget of $1.5 million per year. From that budget, Quinn entertained DeSano and several traders, primarily by taking them on weekend excursions by private jet.[9] For example, Quinn organized an annual trip he called the "Fall Classic," which included private jet travel, exclusive golf outings, lodging at expensive resorts, and other activities. During the November 2002 Fall Classic, for example, Quinn took DeSano, Bruderman and Harris by private jet to Las Vegas. Quinn provided accommodations at the Bellagio Hotel, several thousand dollars worth of golf merchandise, a private band, meals, golf, and entertainment at a nearby strip club. The group continued by private jet to Cabo San Lucas, Mexico, where Quinn provided accommodations in villas at the Esperanza Hotel, meals, more golf, and other entertainment. Jefferies paid approximately $200,000 for the expenses incurred on this trip.

28. Brokers other than Quinn also took Fidelity traders on a variety of trips. For example, during the Relevant Period, various brokers took several traders to Super Bowls. Brokers often provided the traders with travel by private jet, lodging at expensive hotels, admission to exclusive pre-game parties, tickets to the Super Bowl, golf greens fees, limousines, and other lavish entertainment. Even when they did not provide private jets, brokers often took traders on trips to Las Vegas and on golf weekends to Florida and other warm-weather locations, usually paying for the traders' lodging and meals and sometimes paying for other travel expenses such as commercial airfare.

29. On more than twenty other occasions, brokers made a private jet available for personal use by DeSano and/or certain traders (and at times, their families), without accompanying the Fidelity employee on the trip. Some of the private jet trips were short (such as weekend excursions to Nantucket), but others were quite long (such as flights to Florida and the Caribbean) and cost brokers up to $50,000 or more per trip.

30. Besides the trips, brokers gave the respondents a total of approximately 900 tickets for some of the best seats at more than 270 sporting events, concerts, and other events, none of which the broker attended with the recipient. The events included the World Series, prominent tennis tournaments (Wimbledon, the U.S. Open, and the French Open), Broadway shows, concerts by nationally-known performers (such as the Rolling Stones and Bruce Springsteen), and dozens of sporting events, including baseball, basketball, football and hockey playoff and regular season games.[10]

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[9] Quinn signed an employment agreement with Jefferies in May 2002 and began working in the firm's Boston office on September 3, 2002. On December 1, 2006, the Commission instituted settled administrative proceedings against Jefferies, a Jefferies senior executive, and Quinn with respect to Quinn's provision of approximately $2 million in travel, entertainment and gifts to DeSano and certain Fidelity traders. *See* Matter of Jefferies & Co., Inc. *et al.*, Release No. 34-54861 (Dec. 1, 2006), *and* Matter of Kevin W. Quinn, Release No. 34-54862 (Dec. 1, 2006).

[10] Most of the sporting events involved the Boston-area professional teams: the Bruins, Celtics, Patriots, and Red Sox.

31. Most of the tickets were for premium or exclusive seats (such as luxury boxes or seats close to the stage, court or field). Brokers frequently provided multiple tickets to the event, so that the recipient could bring his family or friends. The tickets often cost the brokers hundreds of dollars each, and tickets to special events such as playoff games often cost them more than $1,000 each.

32. In addition, brokers sent certain traders expensive wine (including cases that cost from $1,000 to $7,700 and were delivered straight to their homes), and other costly items such as entry to a racing school (over $5,000) and a humidor filled with cigars (approximately $1,300).

<u>The Individual Respondents</u>

33. DeSano received more than $145,000 worth of travel, entertainment and gifts from brokers during the Relevant Period. He received the personal use of Quinn's private jet for at least two trips, and he went on at least six private jet trips with brokers, primarily Quinn.[11] The trips by private jet included the "Fall Classic" in Las Vegas and Mexico in November 2002, Bruderman's bachelor party in Miami in March 2003, and golf trips to locations such as Sea Island, Georgia, West Palm Beach, Florida, and the Winged Foot Golf Club in Mamaroneck, New York. Brokers also gave DeSano nearly fifty tickets to more than twenty events, including several Bruins, Celtics, Patriots and Red Sox playoff games.

34. Bruderman received more than $450,000 worth of travel, entertainment and gifts from brokers during the Relevant Period.[12] One example was his bachelor party in Miami, Florida in March 2003. Bruderman solicited certain brokers to arrange and pay for the event, and the brokers complied – at a total cost of approximately $160,000. The festivities included private jet travel, luxury accommodations at the Delano Hotel, a chartered yacht, golf, a limousine, and other entertainment such as expensive dinners and strip clubs. Brokers hired two women to entertain the attendees at the party and provided a bag filled with illegal drugs (ecstasy pills) to Bruderman.[13] (DeSano, who attended the bachelor party and flew to Miami on the private jet with Bruderman, several brokers, and the two women, believed that the

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[11] DeSano's frequent absences from the trading desk, which earned him the nickname "The Owl," (short for "the spotted owl", as in something rarely seen), hindered his ability to supervise the equity traders. Traders gossiped about DeSano's frequent absences. In January 2003, for example, Pascucci commented to another trader that DeSano had been on his "129th golf junket of last year."

[12] One representative at a firm that provided Bruderman with extravagant trips and gifts expressed the firm's attitude as, "Whatever Brudy wants, Brudy gets."

[13] Brokers sometimes offered illegal drugs to Bruderman. For example, in February 2002, a broker through whom Bruderman executed securities transactions for Fidelity clients sent him an email asking, "U want beans." (Certain traders and brokers used slang such as "beans" and "Scooby snacks" to refer to ecstasy.) On other occasions, Bruderman solicited drugs from brokers. For example, in January 2004, he asked a broker, "Long any snacks?" The broker responded, "For the Superbowl??? I most likely will b able to take care of that." Bruderman replied, "I would like to order 10 if you have a guy?" Bruderman failed to inform anyone at Fidelity of the conflicts created by his receipt of illegal drugs from brokers.

women hired by the brokers were prostitutes.) In addition to his bachelor party and other wedding-related expenses, brokers paid all or part of Bruderman's share of approximately 25 other trips. Bruderman obtained private jet travel on more than twenty of those occasions. The trips included such destinations as the Super Bowl (twice), the Caribbean, and Cabo San Lucas, Mexico (on the November 2002 "Fall Classic"). On approximately ten of the trips, brokers were not present and simply provided Bruderman and/or his fiancée (later wife) with the use of a private jet. These included trips to Puerto Rico, Florida, and his honeymoon in Los Angeles. Brokers also provided Bruderman with lodging on at least fourteen occasions, airfare on commercial jets on at least six occasions, and other gifts such as entry to a racing school (over $5,000), thousands of dollars worth of wine, a humidor with cigars ($1,300), and limousine service. Finally, brokers gave Bruderman at least thirty tickets to at least seven events, including the U.S. Open tennis tournament and front-row seats at a Dave Matthews concert.

35. Burnieika received more than $55,000 worth of travel, entertainment and gifts from brokers during the Relevant Period, mostly consisting of premium tickets to professional sporting events. Indeed, brokers gave Burnieika approximately 175 tickets to more than fifty events that the brokers did not attend, including several Celtics and Red Sox playoff games, numerous other Celtics and Red Sox games, and concerts by the Rolling Stones and Bruce Springsteen. Burnieika also went on ten trips with brokers to such destinations as the Super Bowl, Las Vegas, and Aspen, Colorado. Four of the trips were by private jet, while the other six trips were by commercial jet with brokers who paid for some of his lodging and other travel and entertainment expenses.

36. Burns received more than $180,000 worth of travel, entertainment and gifts from brokers during the Relevant Period. Burns received more than 190 tickets to more than forty events that the brokers did not attend, plus fourteen tickets for Burns' friends to attend three events that Burns attended with brokers. Burns received at least $140,000 of tickets and other gifts from Quinn at Jefferies, and Quinn did not attend any of the events for which he provided tickets. For example, over a three-year period, Quinn spent more than $100,000 so that Burns could attend the Wimbledon tennis tournament. In 2002 and 2003, Quinn simply gave Burns tickets to the tournament. In 2004, he not only gave Burns tickets that cost more than $38,000, but he also paid for Burns and his friends to stay at the Lanesborough Hotel in London, at a cost of nearly $13,000. Quinn also had cases of expensive wine delivered to Burns' home as Christmas gifts – at a cost of more than $5,900 in December 2002 and more than $7,700 in December 2003. In addition, on certain occasions at Lynch's request, Burns solicited and obtained tickets to sporting and theater events from brokers doing business or seeking to do business with Fidelity.

37. Donovan received more than $270,000 worth of travel, entertainment and gifts from brokers during the Relevant Period, mostly consisting of trips by private jet to the Super Bowl, Las Vegas, the Bahamas, Florida, and other vacations. In total, brokers paid all or most of Donovan's expenses on 24 trips, including travel by private jet to at least sixteen destinations, first-class flights on the Concorde on at least two occasions, and lodging on eighteen occasions. For example, in June 2002, one broker took Donovan to Paris for the French Open tennis tournament and paid for his lodging at the Hotel George V, and in August 2003, the same broker took Donovan and his wife to London for the Wimbledon tennis tournament and paid for their lodging

at the Ritz Hotel. On six occasions, the broker did not attend but simply provided Donovan with the use of a private jet for himself and sometimes his family. In addition, brokers gave Donovan a case of wine valued at approximately $1,000 on two separate occasions, as well as more than sixty tickets to more than twenty events.

38. Driscoll received more than $45,000 worth of travel, entertainment and gifts from brokers during the Relevant Period. This included the exclusive use of Quinn's private jet, as well as car service, for a family vacation to DisneyWorld in Florida, at a cost to Jefferies of approximately $25,000. Driscoll also went on four trips with brokers to the Super Bowl and Las Vegas, two of which included private jet travel and three of which included lodging. Brokers also gave Driscoll more than 55 tickets to at least sixteen events that the brokers did not attend, primarily Celtics games.[14]

39. Harris received more than $125,000 worth of travel, entertainment and gifts from brokers during the Relevant Period, including some or all of the costs associated with more than twenty trips.[15] On three occasions, the brokers did not attend but simply provided Harris with the use of a private jet, such as a March 2004 trip with Horan to Turks & Caicos in the Caribbean. On eight other occasions, brokers took Harris by private jet on trips such as the "Fall Classic" in 2002 and 2003, the Super Bowl, various other golf trips, and vacations to places such as Nantucket and Florida. On nearly all the trips, brokers paid for his lodging and other expenses. In addition, brokers gave Harris more than thirty tickets to at least fourteen events, including several Patriots and Red Sox games and concerts by Santana and Fleetwood Mac. In addition, on at least one occasion at Lynch's request, Harris solicited and obtained tickets to a concert from a broker doing business or seeking to do business with Fidelity.

40. Horan received more than $120,000 worth of travel, entertainment and gifts from brokers during the Relevant Period, including some or all of his lodging and other travel expenses on at least 24 trips. Eleven of the trips were by private jet, including excursions to the Super Bowl, one "Fall Classic" sponsored by Quinn, and trips to destinations such as Las Vegas, Martha's Vineyard, and the Pebble Beach golf course in California. On three occasions, the brokers did not attend but simply provided Horan with the use of a private jet. For example, Quinn provided a private jet for Horan and his girlfriend (as well as Harris) to return from a weekend in Florida in February 2003, and the flight cost Jefferies more than $56,000. In addition, brokers gave Horan more than seventy tickets to at least 25 events, including Super Bowl and several Celtics and Red Sox playoff games. In addition, Horan received over twenty gifts from brokers, including a case of wine valued at $400-$500 and other items such as gift certificates and clothing.

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[14] In addition, one broker facilitated Driscoll's illegal gambling by delivering his bets to a bookie and even, at one point, by temporarily covering his $10,000 debt to the bookie. Driscoll failed to inform any Fidelity manager of that conduct.

[15] After Quinn took Harris on a golf trip to South Carolina, Harris offered in an email to split the greens fee and condominium rental. Quinn declined, replying "OPM [other people's money]."

41. Pascucci received more than $50,000 worth of travel, entertainment and gifts from brokers during the Relevant Period, consisting primarily of more than 165 tickets to more than fifty events that the broker did not attend, including several Patriots and Red Sox playoff games, numerous Celtics and Red Sox regular season games, and a performance of "The Producers." Brokers also paid for some of Pascucci's lodging and other travel expenses on at least five trips, including one trip to Dallas involving a stay at the Four Seasons Hotel, attendance at a Dallas Cowboys football game, a meeting with Bill Parcells (then the Cowboys coach), a return flight to Boston on a broker's private jet, and limousine service to and from the airport.

42. Smith received more than $85,000 worth of travel, entertainment and gifts from brokers during the Relevant Period. In November 2003, Quinn provided Smith with the use of a private jet so that Smith and his wife could take a vacation in the Caribbean, and the trip cost Jefferies more than $46,000. In addition to paying some of Smith's lodging and other travel expenses on two other trips, brokers gave Smith more than 150 tickets to more than forty events that the broker did not attend, including several Celtics, Patriots and Red Sox playoff games, numerous other Patriots and Red Sox games, several college hockey games, and concerts by the Rolling Stones and Van Morrison.

Violation of Section 17(e)(1)
of the Investment Company Act

43. Under Section 17(e)(1) of the Investment Company Act, affiliated persons of a registered investment company, such as Fidelity executives and traders, are prohibited from accepting "from any source any compensation (other than a regular salary or wages from such registered company) for the purchase or sale of any property" of the investment company.

44. During the Relevant Period, each of the respondents received prohibited compensation within the meaning of Section 17(e)(1) of the Investment Company Act in the form of travel, entertainment and gifts paid for by brokers who sought and obtained from the traders securities transactions for the Fidelity Funds.[16]

DeSano Failed Reasonably to Supervise the Traders' Receipt of Travel, Entertainment and Gifts from Brokers

DeSano's and Traders' Violations of Fidelity's Gifts and Gratuities Policy

45. During the Relevant Period, Fidelity had a gifts and gratuities policy for its employees. The policy stated that it was designed to avoid "any actual or apparent conflict of interest or impropriety."

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[16] In addition, as set forth in the separate administrative proceedings instituted against them today, Grenier received approximately $38,500 worth of tickets from brokers during the Relevant Period, and Beran received more than $11,000 worth of travel, entertainment and gifts from brokers during the Relevant Period.

a. The policy prohibited employees from "condition[ing] any business or other transaction on the giving or acceptance of any gift or favor," from "accept[ing] gifts or other gratuities with a value of more than $100 per calendar year to or from any Company or individual" doing business with Fidelity and from "accept[ing] tickets valued at more than $100 per calendar year if the one giving does not attend the event with the recipient." Employees were required to submit written requests for approval to receive gifts beyond the $100 limit.

b. The policy prohibited employees from "soliciting any gift, favor or other form of preferential treatment" and from "accept[ing] transportation (other than local ground transportation), lodging or other travel-related expenses to attend an athletic, cultural, social or entertainment event with a current or prospective vendor, customer, or supplier" unless the employee reimbursed the giver. Further, this section of the policy required "[a]n employee invited to attend such an event (whether attending with the giver or not) [to] either pay his or her own way, or reimburse the vendor, customer or supplier for these expenses."

c. The policy permitted "[o]ccasional business entertainment (such as a meal or a recreational activity) where the giver attends the event with the recipient and the primary purpose is to discuss business or build a business relationship."

46. On an annual basis during the Relevant Period, the respondents were asked to acknowledge receipt of Fidelity's code of ethics and certify that they understood the policies that applied to them and conducted themselves in accordance with the policies. Accompanying the acknowledgement form was the actual code of ethics. It typically was an approximately 20-page document that primarily covered personal securities transactions. Each version of the code of ethics during the Relevant Period referred to Fidelity's gifts and gratuities policy by name, summarized its major requirements, and, in one instance, contained a hyperlink to the policy. The respondent traders each acknowledged receipt and compliance with Fidelity's code of ethics at least once during the Relevant Period.

47. On an annual basis, Fidelity's ethics office provided code of ethics training to employees, including presentation of a slide setting forth the major requirements of Fidelity's gifts and gratuities policy. Each of the respondent traders attended the code of ethics training at least once during the Relevant Period.

48. The respondents each violated Fidelity's gifts and gratuities policy when they accepted travel, entertainment and gifts from brokers who sought and obtained securities transactions from Fidelity. For example:

a. Many of the travel and entertainment events and gifts that the respondents received from brokers were worth more than $100, yet none of the employees ever submitted a written request for approval.

b. The traders frequently solicited brokers for tickets to a particular event. In fact, they sometimes asked for tickets so close to the date of the event that the brokers had to obtain the tickets from ticket agencies at prices well above face value.

c. On many occasions, the respondents did not reimburse the brokers for the private jets, lodging, and other travel expenses, in violation of Fidelity's gifts and gratuities policy. On some occasions, brokers refused to accept reimbursement checks from traders; and on other occasions, the broker accepted a check not intending to cash it and informed the trader the check was just for "paper trail" purposes.

DeSano's Failure to Supervise the Traders' Receipt of Travel, Entertainment and Gifts under Section 17(e)(1) of the Investment Company Act

49. As Fidelity's head of equity trading, DeSano's duties included supervision of the traders' compliance with applicable legal requirements and with Fidelity's policies and procedures, including its gifts and gratuities policy.

50. DeSano knew that some traders received travel, entertainment and gifts from brokers, in part because he accompanied them on several trips, in part because he communicated regularly with Bruderman and several other traders about trading desk matters, and in part because he made sporadic attempts to have the traders tell him about their upcoming trips with brokers. For example, each year he asked the traders about their plans for the Super Bowl.

51. DeSano took only limited and ineffective steps to police the traders' receipt of travel, entertainment and gifts from brokers. For example:

a. At one point, DeSano caused Fidelity to issue credit cards to the traders so they could pay for their own business entertainment, but the traders did not use the cards or submit expenses for approval, and he did not follow up. At another point, he suggested to senior management of Fidelity that Fidelity might consider adopting a formal policy concerning its employees' use of private jets provided by brokers and other vendors, but again he did not follow up.

b. In early May 2004 (after a weekend when brokers had taken Harris to Las Vegas and Burnieika and Horan to Florida), he announced that traders would have to notify him in advance about all trips with brokers. A month later, he announced that traders would have to pay their own way on all future events with brokers. However, he did not enforce these policies, and traders continued to go on trips without informing him in advance and without reimbursing the brokers. For example, Quinn took DeSano and Bruderman golfing on Nantucket in June 2004, providing them with hundreds of dollars worth of golf items and arranging for Bruderman to take a private jet home from Nantucket. Similarly, Quinn took DeSano, Harris and his wife, and Horan to a charity golf event on Nantucket in August 2004. Quinn provided lodging for the group at his home, and gave the Harrises and

Horan the use of his private jet to return to Boston. There is no evidence that the Fidelity employees reimbursed Quinn for these trips.

c. DeSano instructed the traders to reimburse brokers for private jet travel at the rate for first-class commercial airfare to the same destination, but he did not require proof of reimbursement, and, as a result, the traders rarely made reimbursement to brokers for their trips on private jets.

52. Indeed, far from effectively supervising the traders' receipt of travel, entertainment and gifts from brokers, DeSano actually made matters worse, in several respects.

a. DeSano personally asked brokers for tickets or asked traders to ask brokers for tickets, sometimes for himself and sometimes for other senior Fidelity executives like Grenier, and he personally went on several trips paid for by brokers without reimbursing his full share of the expenses. His conduct sent the clear message that the traders could engage in similar activities, and because soliciting brokers for tickets and traveling at a broker's expense were violations of Fidelity's gifts and gratuities policy, his conduct also sent the message that the traders too could violate Fidelity's policy with impunity.

b. DeSano traveled frequently with Quinn, the most significant source of travel and gifts for the traders.[17] For example, DeSano attended both the November 2002 "Fall Classic" and part of Bruderman's bachelor party in March 2003 – two visible and extravagant excursions for which brokers picked up the tab. (Jefferies paid approximately $200,000 for the former, and several brokers including Quinn paid a total of approximately $160,000 for the latter.)

c. DeSano also took steps to conceal his and others' participation in the 2002 "Fall Classic." In an October 2002 email to Quinn, DeSano asked, "What happens when I get fired for this?" Quinn responded, "SEC rule first class plane fare and we are all set.[18] . . . Plus no one is allowed 2 say anything . . . Last yr never got out . . . If someone talks, we kill . . . That conversation happens first thing on the plane . . . Just a simple golf trip." DeSano then said, "Brudy [Bruderman] will be on a trip with [his fiancée]. You [Quinn] will be trying to qualify for a tourney somewhere down south. Harris has to make something up. And what I do is no one's G.D. business!" In a subsequent email, DeSano told Harris, "This needs to be excessively covert . . . Not even your desk can know. Make something else up." Harris responded, "I will, but when Brudy [Bruderman] and I are out and Kevin [Quinn] is out . . . people start talking. I am going to Seattle to see [my wife's] grandmother with her parents . . . That's my story and I am sticking to it." DeSano then gave Harris the cover stories for Bruderman and Quinn. Harris replied, "Sounds good."

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[17] The demoralizing effect for the trading desk of DeSano's travels with Quinn is apparent from Pascucci's comment to Smith in December 2003, "How can u enforce the no nepotism rule when SCD [DeSano] is such buddies with Quinn? It is absurd the one guy gets so [much] favored treatment from the head."

[18] There is no such SEC rule.

53. DeSano failed to monitor traders' receipt of travel, entertainment and gifts from brokers on any systematic basis, and he failed to take reasonable steps to enforce Fidelity's gifts and gratuities policy or to ensure that traders did not receive compensation from brokers within the meaning of Section 17(e)(1) of the Investment Company Act. During the Relevant Period, the respondent traders willfully violated Section 17(e)(1) by receiving compensation in the form of gifts, travel, and entertainment from brokers. As a result, DeSano failed reasonably to supervise ten Fidelity traders (Beran, Bruderman, Burnieika, Burns, Donovan, Driscoll, Harris, Horan, Pascucci and Smith), within the meaning of Section 203(e)(6) of the Advisers Act, with a view to preventing their violations of Section 17(e)(1) of the Investment Company Act.

DeSano Was a Cause of Fidelity's Failure to Seek
Best Execution for its Clients' Securities Transactions

The Traders Sent Securities Transactions to Brokers from
Whom They Received Travel, Entertainment and Gifts

54. The receipt by ten equity traders and DeSano (the traders' supervisor) of travel, entertainment and gifts from brokers who sought and obtained securities transactions from Fidelity created material conflicts of interest that influenced the traders' selection of brokers to execute securities transactions on behalf of Fidelity's clients.

55. In their emails to each other and to brokers, DeSano and the traders acknowledged the link between the traders' receipt of travel, entertainment and gifts from brokers and their direction of business to brokers. For example:

a. In January 2002, Bruderman asked DeSano not to approve a certain brokerage firm that wanted to handle some of Fidelity's securities transactions: "Please do not approve him and I am not going anywhere on his or his company's dime. That is the last guy in the world I want to feel indebted to."

b. In April 2002, Pascucci asked a broker, "Pls ask the ticketmaster if the firm's single biggest customer cud have 2 tix [to an Andreas Bocelli concert]. (They are for his madre.)" Pascucci received the tickets from the broker.

c. In September 2002, Pascucci complained to Smith about the trading desk, "Big picture thot [sic]. This room suks [sic]. Total country club. The number of people making golf plans, or ticket plans, or vacation plans during trading hours far outnumbers the number of people thinking about their names [i.e., stocks] or assuming any risk."

d. In October 2002, Pascucci told DeSano that a broker was offering two tickets to that night's Celtics game. DeSano replied, "[Name omitted] works there. Bad guy. I wouldn't want to feel obligated."

e. Also in October 2002, a broker made the following offer to Donovan, "SANM [Sanmina-Sci Corp.] – 500 k at 2.52. 500 trades away at 2.53. Plus 2 50-yard line seats to VA Tech-BC."

f. In January 2003, Pascucci forwarded to Smith an email he received from a broker, "Like 'build it they will come,' the sell side mantra of 'plan fun trip with clients and they will come' still rings true in these parts."

g. In February 2003, Quinn told Bruderman about plans for the upcoming bachelor party and added, "If I do the plane that I might do, you better load me up when it gets busy again."

h. In March 2003, Pascucci commented to Smith that the conflicts between DeSano, Bruderman, Quinn and others was "a WSJ [*Wall Street Journal*] article ready for the front page."

i. In March 2003, Beran declined a broker's invitation to a golf trip, saying that he was already going on two trips in the next two months. He added that, although he had heard that the site of his second trip (a private golf club in Maryland) was "great," the "only problem is that I have to trade w/ [the brokerage firm] after I go!" Also in March 2003, Beran told another trader, "I figure I owe [the broker] 3 orders to pay for my annual . . . golf shirt."

j. Also in March 2003, Burns had this email exchange with a broker:

Broker : You must have a hankering to do a big CSCO [Cisco Systems] trade w/ me. At the very least, your prompt response will be rewarded w/ Celtic playoff seats. Thanks for caring.

Burns: No hankering here, and you can send the tickets over.

Broker : Our friendship has taken a significant step forward this AM. I could not be more pleased.

Burns: Thank you!!!!

Broker : Our friendship is boundless. Now, if you would please think of me next time a big situation appears on your desk, our friendship would be to the moon.

k. In April 2003, a broker told Burnieika, "Keep up the flow and I will get you and [another Fidelity trader] a car to the airport Fri." Two days later, the broker took Burnieika on a golf weekend in North Carolina.

l. In April 2003, a broker told Pascucci, "Nice sales in FBF [FleetBoston Financial], thanks for the bus today, talk to you in AM. If you need any seats for Celts thurs night, I've got 2 courtside if you want them."

m. In August 2003, Smith used an analogy to the team-building techniques of certain baseball teams to explain to Pascucci his theory of how brokers use their travel and entertainment budget to attract Fidelity's business:

> If you map out a strategy for "attacking FIDO [Fidelity]" to maximize commission $$, it seems there are 2 strategies. . . attack the generals, i.e. ingratiate yourself w/ the powerbrokers thru extensive use of the expense account (let's call them the Yankees) who curry favor w/ THB [Bruderman], DKD [Donovan], and SCD [DeSano] . . . or recruit youth early (let's call them the A's) by showering the youngsters w/ service and small $$ perks.

n. In April 2004, the broker told Burns that he was sending Red Sox tickets and added "ANDW [Andrew Corp.] 6 figs for sale." Burns thanked him. The broker replied, "Thx for sending over the Sox tix or thx for sending over the ANDW INDI or thx for being such a great guy or all of the above?" Burns responded, "All of the above."

56. Indeed, some of the emails between traders and brokers reflect a shared perception that the job of a so-called "sell side" broker includes the provision of travel and tickets, and that one advantage of being a so-called "buy side" trader is the opportunity to receive such benefits. For example:

a. In May 2002, Burnieika told a broker that he was going to two upcoming Celtics playoff games. The broker commented, "Nice to be king!" Burnieika replied, "Right side of the street when U2 concerts and Celts playoff games come around."

b. In August 2002, Smith observed to Pascucci ". . . Golf, dinners, tickets, Super Bowl, trips. Everything is for sale." Two days later, Smith complained to Pascucci, "It's bad enough w/ SCD [DeSano], DKD [Donovan], and Brudy [Bruderman], but when Horan and JDH [Harris] start in on the exclusive golf dates, it's pathetic." Pascucci replied, "Agreed 500%."

c. In September 2002, Bruderman sent a broker an email concerning plans for his wedding. Bruderman told the broker, "As of this morning you and [a broker at another firm] and Quinn are paying for it." The broker replied, "Can't wait. Send me the bill." Later that day, Bruderman told Quinn, "Bad news. You and [another broker] have to pay for the wedding." Quinn replied, "Creative T&E. Again."

d. In May 2003, Pascucci asked several brokers, "Who will be first guy on sell side to offer Green Monster seats?" One broker replied, "Me." (The "Green Monster" was a new area of expensive seats for Red Sox games at Fenway Park.)

e. In September 2003, Bruderman received and forwarded an email that parodied a beer company's advertising campaign to several brokers:

> Here's to you Mr. Institutional Sales Trader. Because you spend all day lying to people with MBA's from Ivy League schools, even though you failed Econ 101 at the Community College. And if the stock goes up or down, you don't care – as long as you get your nickel. Five cents a share! So crack open an ice cold Bud Light you overpaid sack of sh*t, because without you there would be a lot of buy side guys sitting in bad seats at the concert.

f. In October 2003, Bruderman complained to one broker that a broker at another firm had been unable to get him tickets to a Bare Naked Ladies concert: "Say he has no tickets left. Gave em all to [name omitted] and his hedge fund pals. I think I am going to request a change in coverage."

g. In May 2004, a broker asked Burns, "Are you aware of a guy who delivers Yankee tix to your desk faster than me? Seller of good size CSCO."

h. Also in May 2004, Pascucci offered Driscoll this praise for a broker: "[Name of broker] has not had a misstep for 1 second in his [name of firm] career. Trading is first rate. Research effort is consistent and impactful, and he is 500 times the ticket broker [name omitted] from Friend St. is. The new sales trading model."

57. As reflected by the traders' conduct and their email communications with brokers and each other, the conflicts of interest were not merely theoretical, and the traders did in fact allow their receipt of travel, entertainment and gifts to influence their selection of brokers to handle securities transactions for Fidelity's clients. For example:

a. In January 2002, Driscoll told another trader that he was going to the Super Bowl in New Orleans with a certain broker and added, "The good news is, the TYC [Tyco] order paid for [the broker's] jet." That day, Driscoll sent orders to the broker's firm (including more than 8 million shares of Tyco stock) that generated more than $487,000 in commissions. Driscoll's Tyco trade did not go unnoticed on Fidelity trading desk. Smith observed to Pascucci: "[P]oor broker selection. Superbowl trip should not affect judgment" and "7 million shares of TYC [actually, 8 million shares] buys you a seat on a private jet."

b. Also in January 2002, Bruderman told a broker, "This BSX [Boston Scientific] order works to 1 mill. That should get us part of the way to paying for the band. How much is it so I know what I need to do to pay for it?" The broker responded that the band (Counting Crows) would cost "3 bills + love."

c. In March 2002, Smith commented to Pascucci that Bruderman sent most of his business to Quinn and brokers at two other firms who took him on trips and asked "Who says Fido can't be bot?" Pascucci responded, "No comment on record. Off record, THB [Bruderman] has killed the integrity of this desk." Smith replied, "How that does not raise red flags, I do not know."

d. In April 2002, Pascucci complained to Smith, "Here's the truth. Image on street at all time low. We are VWAP[19] robots and gift whores."

e. A broker told Burns in a May 2002 email, "For better or for worse, I am [a] liquidity provider of stocks and tickets. Please do not hesitate to knock on my door for either. My door is open to you 24 hours a day 7 days a week." Burns took him up on the offer. Indeed, that same month, after the broker provided Burns with tickets to a Celtics playoff game, Burns sent 1.2 million shares to the broker – his first orders to the firm all year. The trades generated more than $60,000 in commissions.

f. In June 2002, a broker offered Burnieika tickets to a Red Sox game for his parents. One hour later, Burnieika began sending orders to the broker. While Burnieika had traded the same security with that broker the prior two trading days, his total for the day exceeded 860,000 shares – his heaviest single trading day with the firm during the entire 2002-2004 period. The trades generated $43,000 in commissions.

g. In June 2002, a broker took Donovan to Paris for the French Open tennis tournament, and Donovan's expenses cost the broker more than $24,000. The day he returned, Donovan sent more than 1.8 million shares to the broker. The trades generated $90,750 in commissions.

h. In August 2002, Harris thanked a broker for their recent trip to the Red Tail resort in Toronto: "I owe you bro. Can't thank you enough for including me in such a special trip. Place is over the top!" That day, Harris sent trades involving more than two million shares to the broker's firm, and the trades generated $103,000 in commissions.

i. In September 2002, several brokers from the same firm took Smith for a weekend in Illinois and Indiana that included a Notre Dame-Michigan college football game. During the two weeks after the trip (ten trading days), Smith sent nearly 19.3 million shares to the brokers (more than 1.9 million shares per day). The trades generated nearly $456,000 in commissions.

j. In September 2002, Harris told Quinn that he might not be able to attend the upcoming "Fall Classic". Quinn complained, "Pls don't do this 2 me." Harris replied, "Bro, I may have to but I will make it up with a lot of shares."

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[19] VWAP is "volume weighted average price."

k. In September 2002, Smith asked Pascucci, "2 guesses who is paying for BB's [Burns] Super Saturday [U.S.] Open tickets." Pascucci answered, "Jeff Reece [Jefferies]." Smith observed that Quinn had taken four months off after leaving another firm, and that Burns had greeted his arrival at Jefferies in September 2002 with a million-share order.

l. In September 2002, Quinn gave Burns tickets to the US Open tennis tournament. Two days before the event, Burns sent 2.1 million shares to Quinn. The next day, Burns sent another 2.8 million shares. The trades on these two days generated more than $160,000 in commissions.

m. In November 2002, a broker told Harris, "Thx for the order. Have some B's tix for tomorrow if interested."

n. In November 2002, Smith complained in an email that "Brudy and Jeff [Harris] load up Jeff [Jefferies] for 2 weeks before the trip [the "Fall Classic"]. THB [Bruderman] has clearly made it known that his order flow is for sale to the highest bidder, and nobody else in the room would get away w/ that sh1t."

o. Quinn provided a private jet to Driscoll for a family Disney World trip. In a November 2002 email, Quinn cautioned Driscoll, "You did not tell anyone about this, did you?" Then Quinn added, "By the way, I view private travel as one of the great perks of this biz and am more than willing to do it for a few guys when I can, just as long as they keep it low." Driscoll replied, "We are on the same page." Driscoll also rewarded Quinn for his generosity. In the two weeks (seven trading days) before the Disney World trip, Driscoll sent more than 8.9 million shares to Quinn (almost 1.3 million shares per day). The trades generated more than $445,000 in commissions.

p. In December 2002, Driscoll thanked a broker for a holiday gift certificate. The broker replied, "No. Thx u. Wish was for more. Wud be luggin furniture if not for u."

q. In January 2003, a broker offered Pascucci tickets to "Disney on Ice." Pascucci asked for five tickets for his brother and his children. The broker replied, "No problem. And Steve, don't EVER hesitate to ask for tix if u need 'em. That's one of the beni's of my job. U've done a lot for me, I am more than happy to help you out." On the two days after the event, Pascucci sent more than 1.1 million shares to the broker (more than 550,000 shares per day). The trades generated more than $44,000 in commissions.

r. In January 2003, Quinn offered Burns a package with first class airfare to Wimbledon, which Burns declined. The same day, Burns sent Jefferies a total of 2.2 million shares, which generated $70,000 in commissions, and told Quinn "I am totally committed to assisting you in your efforts."

s. In February 2003, Smith commented to a Fidelity trader about "the obvious pattern of loading up a broker, then disappearing on a golf trip, etc. It used to be Red Sox tickets and a dinner, now it's private jets to the Masters."

t. In April 2003, Bruderman told a broker, "I owe you money. Paying it today w/ SGP [Schering Plough]." That day, Bruderman asked the broker to sell 100,000 shares of SGP, generating a $5,000 commission.

u. In June 2003, Quinn told Bruderman, "You're welcome for the Sox tix by the way." Bruderman replied, "You're welcome for the house in Needham [the location of Quinn's residence]."

v. In June 2003, Smith asked a broker for tickets to a Van Morrison concert. The broker offered him two front-row seats. Smith responded. "Right on." Two minutes later, Smith wrote "Work 250m MSFT [Microsoft] for me."

w. Shortly after Quinn joined Jefferies, Quinn asked if Smith was upset with him. Smith replied, "Never have been. Just shocked how the red carpet has been rolled out to you. Your 'new' firm offers me nothing that I don't already get from every other firm in the Top 30, so I apologize if I don't drink the Kool-Aid." Indeed, from September 2002 until mid-October 2003, Smith traded with Jefferies very infrequently. In mid-October 2003, however, that changed. On or about October 20, 2003, Smith began exchanging emails with Quinn about a trip to the Caribbean that Smith was planning with his wife. During the course of that exchange, Quinn offered to provide Smith with a private jet for his vacation. On the day Quinn offered to supply the jet, Smith sent more than 1.5 million shares to Jefferies. The next day, Smith sent nearly 1.4 million shares. All told, Smith traded with Quinn on sixteen of the seventeen trading days between the day Quinn offered his private jet and the day Smith left for his vacation. Smith's heavy use of Jefferies continued after his return. Smith traded with Quinn on fourteen of the first sixteen trading days after the trip, including one day with nearly 1.2 million shares. The three days with orders totaling over 1 million shares were three of Smith's four heaviest trading days with Jefferies during the Relevant Period, and the trades on those three days alone generated nearly $190,000 in commissions.

x. In December 2003, Pascucci asked a broker for courtside tickets to that night's Celtics game. The broker offered four tickets. Pascucci told him where to deliver the tickets and added, "Thks. Buy 50K."

y. In February 2004, brokers took several traders to see the New England Patriots play in the Super Bowl in Houston. On the day before he left, Burnieika sent more than 500,000 shares to the broker who took him – his second largest day with the firm in the entire 2002-2004 period – and the trades generated more than $25,000 in commissions.

z. In July 2004, Quinn provided tickets and a hotel for Burns to attend the Wimbledon tennis tournament in London at a cost of over $50,000. During the week after he returned (four trading days), Burns sent more than 7.6 million shares to Jefferies (more than

1.9 million shares per day). On one of the days, he sent 4 million shares – his second heaviest trading day with the firm in the entire 2002-2004 period. The trades on these four days generated $255,000 in commissions.

aa. After the broker who facilitated Driscoll's gambling changed firms in April 2004, Driscoll received the following request from the broker: "If you can find it in your heart not to let me get shut out by the end of the day that would be greatly appreciated. Not a very good first impression. Have to go down to NY for the day tomorrow to meet all the traders." Driscoll forwarded the broker's message to Horan and commented, "How is it that we owe all these fuking millionaires something after we got them where they are?" Despite his griping, Driscoll began sending regular trades to the broker's new firm two days later.

58. The decision of Harris to start sending business to Jefferies after Quinn joined the firm reflects how the receipt of travel, entertainment and gifts influenced his selection of brokerage firms.

a. In May 2002, Harris learned that Quinn was moving to Jefferies after rejecting an offer from a major brokerage firm that handled a substantial amount of Fidelity business. Harris was unhappy about Quinn's choice and complained to Bruderman, "Between me and you, I am frustrated he put me in this situation. It compromises your position on the desk to do a lot of bus with a firm like Jeff [Jefferies]. [The other firm] is easy because you can justify it. The desk will be pissed, especially now that commission dollars are under a microscope . . ."[20]

b. Despite his misgivings, Harris began sending a substantial amount of business to Jefferies in September 2002 after Quinn started working there. In late November 2002, however, Harris complained to Quinn about his trade execution:

Harris: Just went out back . . . You were my 3rd broker for the month and 30th on [Fidelity's trader performance measurement] and I was still number 3 on the desk . . . Guys wanted to know what Jeff[eries] was and why I was doing all the volume, hurting my [performance statistics] when I could have taken number 1. Reminds me of my [name of firm] numbers. [Harris named the firm where Quinn had worked before joining Jefferies.]

Quinn: Pick up [the dedicated phone line between Fidelity and Jefferies].

Harris: One of 2 things will change: 1. your volume will drop. 2. my numbers will go up.

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[20] Harris was not the only trader to worry about Quinn's move to Jefferies. Beran observed to Pascucci, "Don't ask THB [Bruderman] about Jeffco . . . I think he is trying to figure out how he is going to justify laying all those orders into Quinn!"

Quinn: You're right. It is all my fault.

c. Nevertheless, Harris continued trading – and traveling – with Quinn. In December 2002, Quinn and another Jefferies broker took Harris for a golf weekend in South Carolina. The week he returned (three trading days), Harris sent more than 2.6 million shares to the brokers (almost 870,000 shares per day). The trades generated more than $118,000 in commissions.

d. In two July 2003 emails, Harris again complained to Quinn about his performance. In the first, Harris "thank[ed]" Quinn "for all the crummy [trader performance statistics] for last year and this year." In the second, Harris warned Quinn that the "[t]ech guys in back are on to you. Brudy's [Bruderman] numbers suk [sic] with you too."

e. Despite his complaints, Harris's trading with Jefferies remained heavy throughout Quinn's employment at the firm. Harris sent nearly 142 million shares to Jefferies after Quinn arrived, and the trades generated more than $6.5 million in commissions.

59. During the Relevant Period, the ten traders each directed equity trading business generating millions of dollars in commissions to brokers from whom they received travel, entertainment and gifts. The influence of travel, entertainment and gifts on Fidelity's order flow is particularly apparent with respect to Jefferies:

a. In the second quarter of 2002 (before Quinn's arrival), Jefferies handled 12.9 million shares of securities for Fidelity. With this volume, Jefferies ranked 44th among the brokerage firms used by Fidelity. Jefferies' volume rose quickly after Quinn's arrival. In the fourth quarter of 2002 (Quinn's first full quarter of employment), Jefferies' ranking had risen to 12th. In the third quarter of 2004 (Quinn's final full quarter of employment), Jefferies handled 112.9 million shares of securities, and its volume ranking was 13th.

b. The brokerage commissions that Jefferies received from Fidelity increased in a similar fashion. In the first six months of 2002, just prior to Quinn's arrival, Jefferies received nearly $888,000 in commissions, ranking it 42nd among the firms used by Fidelity. By contrast, in the first nine months of 2004, Jefferies received $20.7 million in brokerage commissions from the Fidelity Funds, improving its ranking to 10th among the firms used by Fidelity. During the period of Quinn's employment, Jefferies received over $60 million in commissions from Fidelity's client accounts.

c. Most of the brokerage business that Jefferies received from Fidelity came from four traders (Bruderman, Donovan, Harris and Horan), who went on most of Quinn's golf and other excursions, and from a fifth trader (Burns), who received expensive wine and expensive tickets to sporting events such as Wimbledon and the U.S. Open. During the period of Quinn's employment at Jefferies (September 2002 to October 2004), these five traders alone sent trades generating approximately $39.4 million in commissions for Jefferies.

Certain Traders Sent Securities Transactions to Brokers with
<u>Whom They Had a Family or Romantic Relationship</u>

60. During the Relevant Period, five Fidelity traders sent securities transactions to brokers with whom they had a family or romantic relationship. In each instance, the trader sent millions of shares of transactions to the broker's firm, and the trades generated millions of dollars of commissions.

a. One of Donovan's family members was a broker who covered (*i.e.*, handled transactions for) several Fidelity traders, including Donovan himself. During the Relevant Period, Donovan sent more than 678 million shares to his family member's firm, and the trades generated more than $31 million in commissions.

b. One of Driscoll's family members was a broker who changed firms in January 2003 and thereafter covered several Fidelity traders. The family member did not cover Driscoll himself, but the family member's compensation depended in part on the firm's total commissions from Fidelity's business. Driscoll sent no trades to the new firm before his family member joined it, but from January 2003 through October 2004, he sent more than 56 million shares to the firm, and the trades generated more than $2.7 million in commissions.

c. One of Pascucci's family members was a broker who changed firms in late December 2002 and thereafter covered several Fidelity traders, including Pascucci himself. Pascucci did little business with the new firm before his family member joined it, but from late December 2002 through October 2004, he sent more than 138 million shares to the firm, and the trades generated more than $6.8 million in commissions.

d. In addition, two Fidelity traders not named in this Order were involved in romantic relationships with brokers to whom they sent trades generating, in aggregate, several million dollars in commissions.

e. In October 2003, Smith commented to Pascucci, "so 2 of our . . . [brokerage firms] are absolutely zero value-added on research and mkt intelligence, but loaded to the gills w/ nepotism, incestual relationships, and issues of conflict." Pascucci replied, "I cannot poke a hole in that."

DeSano Caused Fidelity's Failure to Seek Best Execution in
<u>Violation of Section 206(2) of the Advisers Act</u>

61. As set forth above, DeSano was aware of significant conflicts of interest involving Fidelity's equity traders. He knew that some traders sent securities transactions to brokers from whom they received travel, entertainment and gifts. He also knew that some traders sent securities transactions to brokers with whom they had a family or romantic relationship. For example, he knew that one of Donovan's family members was a broker at one of the largest firms handling transactions for Fidelity. He also knew that a Fidelity trader not named in this Order was romantically involved with a broker because the trader told

him about the relationship and asked Desano for permission to continue sending business to the broker's firm, and he approved.

62. Section 206(2) of the Advisers Act provides that an investment adviser shall not "engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client."[21] One aspect of an investment adviser's fiduciary duty under Section 206 of the Advisers Act is the duty to seek best execution for its clients' securities transactions – that is, to seek the most favorable terms reasonably available under the circumstances.

63. As set forth above, Fidelity traders allowed their receipt of travel, entertainment and gifts from brokers and their family or romantic relationships with brokers to influence their selection of brokers to handle Fidelity's securities transactions. As a result, Fidelity willfully violated Section 206(2) of the Advisers Act, and DeSano was a cause of Fidelity's violation of Section 206(2) of the Advisers Act.

Materially False and Misleading Public Disclosures about
Fidelity's Conflicts of Interest with Respect to its Selection of Brokers

Material Misrepresentations and Omissions
by DeSano to the Fidelity Funds' Trustees

64. During the Relevant Period, DeSano made periodic presentations to the trustees of the Fidelity Funds concerning equity trading operations and the selection of brokers for the Fidelity Funds' transactions. For example:

a. On September 19, 2002, DeSano attended a meeting of the Brokerage Committee of the Fidelity Funds' trustees and presented Fidelity's annual report on equity trading and the use of brokerage commissions. DeSano's written report to the trustees stated that the "sole criterion" for broker selection was "execution capability" and that "brokers compete on [the] basis of execution quality."

b. On September 18, 2003, DeSano attended a meeting of the Shareholder Services, Brokerage and Distribution Committee of the Fidelity Funds' trustees and presented Fidelity's annual report on equity trading and the use of brokerage commissions. According to the minutes of the meeting:

> Mr. DeSano provided an overview of the equity trading process, stating that FMR's approach to trading is *to focus solely on execution quality, trade with the best brokers* and closely manage

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[21] A violation of Section 206(2) of the Advisers Act does not require a finding of scienter and may be established by a showing of negligence. SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 195 (1963); SEC v. Steadman, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992).

> the impact of the funds' trades on the market. He stated that as a result of the "broker segmentation" program implemented over five years ago, FMR now trades with a relatively small number of core brokers, which reduces information leakage and *allows the brokers to compete based on the quality of their execution*. [Emphasis added]

c. On September 16, 2004, DeSano attended a meeting of the Shareholder Services, Brokerage and Distribution Committee of the Fidelity Funds' trustees and presented Fidelity's annual report on equity trading and the use of brokerage commissions. According to the minutes of the meeting:

> Mr. DeSano provided an overview of the equity trading process, stating that FMR's *highest priority in trading for the funds is execution quality*. He stated that FMR seeks to trade with the best brokers and closely manage the impact of the funds' trades on the market. He stated that as a result of broker segmentation program in place for the last six years, FMR trades with a relatively small number of core brokers, which reduces information leakage and *allows the brokers to compete based on the quality of their execution*. [Emphasis added]

65. Section 206(1) of the Advisers Act provides that an investment adviser shall not "employ any device, scheme, or artifice to defraud any client or prospective client." The statements by Fidelity, through DeSano, to the trustees of the Fidelity Funds were materially misleading because DeSano failed to disclose that, as set forth above, the traders' receipt of travel, entertainment and gifts and their family and romantic relationships were also factors in the selection of brokers for the Fidelity Funds' transactions, and brokers competed for Fidelity's business on the basis of travel, entertainment and gifts in addition to execution performance. As a result, Fidelity, through DeSano, violated Section 206(1) of the Advisers Act, and DeSano willfully aided and abetted and was a cause of Fidelity's violation of Section 206(1) of the Advisers Act.

<u>DeSano Caused Fidelity's Failure to Disclose Certain Conflicts of Interest</u>

66. As set forth above, DeSano was aware of significant conflicts of interest involving Fidelity's equity traders. He knew that some traders sent securities transactions to brokers from whom they received travel, entertainment and gifts. He also knew that some traders sent securities transactions to brokers with whom they had a family or romantic relationship.

67. Under Section 206(2) of the Advisers Act, an investment adviser has a fiduciary duty to disclose all material conflicts of interest to its advisory clients. During the Relevant Period, Fidelity failed to disclose to its clients, including the Fidelity Funds, the material conflicts of interest arising from the receipt by certain Fidelity executives and traders, as

described herein, of travel, entertainment and gifts paid for by brokers and certain traders' family and romantic relationships with brokers seeking and obtaining securities transactions for Fidelity's clients. As a result, Fidelity willfully violated Section 206(2) of the Advisers Act, and DeSano was a cause of Fidelity's violation of Section 206(2) of the Advisers Act.

Material Misrepresentations and Omissions in Form ADV

68. Section 204 of the Advisers Act and Rule 204-1 thereunder require an investment adviser annually to amend and file with the Commission its Form ADV. Section 207 of the Advisers Act prohibits any person from willfully making any untrue statement of material fact or omitting to state any material fact required to be stated in any report filed with the Commission under Section 204.

69. Form ADV requires the disclosure of certain material information about the investment adviser. For an investment adviser like Fidelity with discretion to select brokers to execute its clients' securities transactions, Item 12.B of Part II of Form ADV requires a description of the factors that the adviser considers when selecting brokers. Fidelity provides copies of its Form ADV to the independent trustees acting on behalf of the Fidelity Funds and to other clients.

70. During the Relevant Period, the Forms ADV prepared by Fidelity contained language to the effect that Fidelity selected brokers for its clients' transactions "on the basis of professional capability and the value and quality of services." The Forms ADV also listed specific factors that Fidelity considered when selecting brokers, including: (a) price, size and type of transaction; (b) reasonableness of commissions; (c) speed and certainty of trade executions; (d) nature and character of the markets for the security; (e) liquidity and depth offered by a market center or market-maker; (f) reliability of the market center or broker; (g) the degree of anonymity that the broker or market center can provide; (h) the broker's execution services rendered on a continuing basis; and (i) the execution efficiency, settlement capability, and financial condition of the brokerage firm.

71. Annually, Fidelity's legal and compliance departments determine what, if any, changes to Fidelity's Form ADV were required. To that end, they submitted the relevant portion(s) of the Form ADV to each interested department at Fidelity, including DeSano's. On one occasion during March 2004, Fidelity's legal/compliance staff sent an e-mail to the equity trading desk's manager of operations, who reported to DeSano, that included the sections of Fidelity's Form ADV concerning broker selection and best execution and noted that it was important for the trading desk to review the disclosures. The operations manager forwarded the e-mail to DeSano and asked him if he had any comments. Despite his knowledge of the extensive receipt of gifts, travel, and entertainment by employees of the equity trading desk and the direction of Fidelity's brokerage business to immediate family members and a romantic partner, DeSano failed in March 2004 and on other occasions to ensure that Fidelity's broker selection disclosures were amended to reflect those factors and material conflicts of interest or that those conflicts were otherwise disclosed to Fidelity's clients.

72. The Forms ADV were materially misleading because they failed to disclose that, as set forth above, the traders' receipt of travel, entertainment and gifts and their family and romantic relationships were also factors in the traders' selection of brokers for Fidelity's clients' transactions, including transactions for the Fidelity Funds, and that Fidelity did not have a sufficient system of controls to detect, deter, and prevent such factors from entering into the selection of brokers. As a result, Fidelity willfully violated Sections 204 and 207 of the Advisers Act, and Rule 204-1 thereunder, and DeSano was a cause of Fidelity's violations of Sections 204 and 207 of the Advisers Act, and Rule 204-1 thereunder.

Bruderman and Driscoll Caused Fidelity's
Failure to Disclose Certain Conflicts of Interest

73. As set forth above, Bruderman did not inform anyone at Fidelity that he received illegal drugs from brokers, and Driscoll did not inform anyone at Fidelity that his illegal gambling was facilitated by a broker.

74. Under Section 206 of the Advisers Act, an investment adviser has a fiduciary duty to disclose all material conflicts of interest to its advisory clients. During the Relevant Period, Fidelity failed to disclose to its clients, including the Fidelity Funds, the material conflicts of interest arising from Bruderman's receipt of illegal drugs from brokers or the facilitation of Driscoll's illegal gambling by a broker. As a result, Fidelity willfully violated Section 206(2) of the Advisers Act, and Bruderman and Driscoll were each a cause of Fidelity's violation of Section 206(2) of the Advisers Act.

D. VIOLATIONS

75. As described above, the respondents each willfully violated Section 17(e)(1) of the Investment Company Act, in that they received travel, entertainment and gifts (and illegal drugs for Bruderman and the facilitation of illegal gambling for Driscoll) from brokerage firms that sought and obtained brokerage business from Fidelity.

76. As described above, DeSano failed reasonably to supervise ten Fidelity traders (Beran, Bruderman, Burnieika, Burns, Donovan, Driscoll, Harris, Horan, Pascucci and Smith), within the meaning of Section 203(e)(6) of the Advisers Act, with a view to preventing their violations of Section 17(e)(1) of the Investment Company Act.

77. As described above, DeSano was a cause of Fidelity's violation of Section 206(2) of the Advisers Act through its failure to seek best execution for its clients' securities transactions by allowing the traders' receipt of travel, entertainment and gifts and the traders' family or romantic relationships to enter into its traders' selection of brokers.

78. As described above, DeSano willfully aided and abetted and was a cause of Fidelity's violation of Section 206(1) of the Advisers Act through his materially false and misleading statements and omissions to the trustees of the Fidelity Funds concerning the

factors considered in its selection of brokers and the bases upon which brokers competed for the Fidelity Funds' brokerage business.

79. As described above, DeSano was a cause of Fidelity's violations of Sections 204, 206(2) and 207 of the Advisers Act and Rule 204-1 thereunder through its materially false and misleading statements and omissions in its Forms ADV about its selection of brokers.

80. As described above, DeSano was a cause of Fidelity's violation of Section 206(2) of the Advisers Act through its failure to disclose to its clients, including the Fidelity Funds, material conflicts of interest arising from the receipt by certain Fidelity executives and traders, as described herein, of travel entertainment and gifts from, and certain traders' family or romantic relationships with, brokers seeking and obtaining securities transactions for Fidelity's clients.

81. As described above, Bruderman and Driscoll were each a cause of Fidelity's violation of Section 206(2) of the Advisers Act through its failure to disclose to its clients, including the Fidelity Funds, the material conflict of interest arising from the receipt of illegal drugs for Bruderman from brokers, and the facilitation of illegal gambling for Driscoll by a broker.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford the respondents an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is necessary and appropriate in the public interest against the respondents pursuant to Sections 203(f), 203(i) and 203(k) of the Advisers Act and Sections 9(b), 9(d) and 9(f) of the Investment Company Act and whether orders to cease and desist are appropriate and in the public interest.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order 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 each respondent shall file an Answer to the allegations contained in this Order within 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 any respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, that respondent may be deemed in default and the proceedings may be determined against the respondent 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 each respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 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 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