

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2815 / December 11, 2008

INVESTMENT COMPANY ACT OF 1940
Release No. 28534 / December 11, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-12978

In the Matter of)	
)	
SCOTT E. DeSANO,)	ORDER MAKING FINDINGS AND IMPOSING
THOMAS H. BRUDERMAN,)	REMEDIAL SANCTIONS AND A CEASE-AND-
TIMOTHY J. BURNIEIKA,)	DESIST ORDER PURSUANT TO SECTIONS
ROBERT L. BURNS,)	203(f) and 203(k) OF THE INVESTMENT
DAVID K. DONOVAN,)	ADVISERS ACT OF 1940 AND SECTIONS 9(b)
EDWARD S. DRISCOLL,)	AND 9(f) OF THE INVESTMENT COMPANY
JEFFREY D. HARRIS,)	ACT OF 1940 AS TO SCOTT E. DESANO
CHRISTOPHER J. HORAN,)	
STEVEN P. PASCUCCI and)	
KIRK C. SMITH,)	
)	
Respondents.)	
)	

I.

On March 5, 2008, the Securities and Exchange Commission (“Commission”) instituted public administrative and cease-and-desist proceedings 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 Scott E. DeSano (“DeSano” or “Respondent”), 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.

II.

In response to these proceedings, Respondent DeSano has submitted an Offer of Settlement (“Offer”) which the Commission has determined to accept. Solely for the purpose of

these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent DeSano consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order 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 as to Scott E. DeSano ("Order"), as set forth below.

III.

On the basis of this Order and Respondent DeSano's Offer, the Commission finds¹ that:

Settling Respondent

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 during the relevant period. DeSano resigned on July 25, 2007, and is currently not employed in the financial services industry. During the period from 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.² DeSano supervised more than thirty equity traders during the Relevant Period. He also appeared as a representative of FMR Co. in public testimony before Congress, the Commission, and other regulatory bodies.

Other Relevant Parties

2. **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").

3. **FMR Co., Inc.** 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., Inc. is a wholly owned

¹ The findings herein are made pursuant to Respondent DeSano's Offer and are not binding on any other person or entity in this or any other proceeding.

² 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.

subsidiary of FMR (collectively “Fidelity”) and provides portfolio management services as a sub-adviser to certain clients of FMR, including the Fidelity Funds.³

4. **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.

5. **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.

6. **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.

7. **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.

8. **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 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.

9. **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.

10. **Christopher J. Horan** (“Horan”), age 37, lives in Milton, 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, aerospace and defense, and restaurant stocks.

³ On March 5, 2008, the Commission instituted related administrative and/or cease-and-desist proceedings against Fidelity and certain of its employees. See *In the Matter of Fidelity Management & Research Co. and FMR Co. Inc.*, Advisers Act Release No. 2713, Admin. Proc. File No. 3-19276 (March 5, 2008); *In the Matter of Peter S. Lynch, Company Act Release No. 28189*, Admin. Proc. File No. 3-12980 (March 5, 2008); *In the Matter of Bart A. Grenier*, Advisers Act Release No. 2714, Admin. Proc. File No. 3-12977 (March 5, 2008); *In the Matter of Marc C. Beran*, Advisers Act Release No. 2716, Admin. Proc. File No. 3-12979 (March 5, 2008).

11. **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.

12. **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.

13. **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. On March 5, 2008, the Commission accepted Beran’s offer of settlement and entered an Order that found that Beran willfully violated Section 17(e) of the Investment Company Act through the receipt of compensation in the form of travel and gifts paid for by brokers doing business with Fidelity.

Summary

14. During the Relevant Period, DeSano and ten Fidelity equity traders whom he supervised accepted a significant amount of travel, entertainment and/or gifts from brokerage firms that sought and obtained orders to buy or sell securities on behalf of Fidelity’s advisory clients, including the Fidelity Funds. Those brokerage firms each received millions of dollars in commission revenue for handling orders from Fidelity’s advisory clients’ accounts. Among the items accepted by DeSano from brokers were a three-day trip by private jet to Las Vegas and Cabo San Lucas, Mexico, travel by private jet to Fidelity trader Bruderman’s bachelor party in Miami, golf excursions in locations such as Pebble Beach, California and Shinnecock, New York, lodging at fine hotels, and more than fifty tickets to over twenty events, including Celtics and Red Sox playoff games and a Rolling Stones concert. The ten equity traders whom DeSano supervised (Beran, Bruderman, Burnieika, Burns, Donovan, Driscoll, Harris, Horan, Pascucci and Smith, hereafter, the “ten equity traders”), 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, for Bruderman, an extravagant, three-day bachelor party in Miami. Brokers also provided the traders premium tickets to events including the World Series, the U.S. Open, and Wimbledon, and dozens of other sporting events and concerts.

15. Under Section 17(e)(1) of the Investment Company Act, affiliated persons of a registered investment company, such as DeSano and the ten equity 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. During the Relevant Period, DeSano and the ten equity traders 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. As a result, DeSano and the ten equity traders willfully violated Section 17(e)(1) of the Investment Company Act.⁴

16. 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 (on at least two occasions) and to satisfy requests from his supervisor. Certain traders also told DeSano about some of the other private jet trips and tickets they received from brokers. Nevertheless, DeSano took inadequate steps to limit traders' receipt of travel, entertainment and gifts, and failed to monitor their receipt in any systematic way. As a result, DeSano failed reasonably to supervise the ten equity traders 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.

17. Under Section 206 of the Advisers Act, an investment adviser has a fiduciary duty to seek best execution for its clients' securities transactions. During the Relevant Period, certain Fidelity traders allowed factors other than best execution -- 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.⁵ DeSano was a cause of Fidelity's violation of Section 206(2) of the Advisers Act because, as head of the equity trading desk, he did not ensure that factors other than best execution, (i.e., certain traders' receipt of travel, entertainment and gifts from, and family or romantic relationships with, brokers) were excluded from the traders' selection of brokers.

18. 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 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 doing business with Fidelity. Fidelity also failed to disclose that such travel, entertainment, gifts and relationships were additional factors in the traders' selection of brokers. DeSano was a cause of Fidelity's violation of Section 206(2) of the Advisers Act because he did not disclose that certain traders received travel, entertainment and gifts from, and had family and romantic relationships with, brokers doing business with Fidelity.

⁴ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

⁵ Two traders not identified in this Order sent Fidelity brokerage business to brokers with whom they were having romantic relationships.

19. In addition, during the Relevant Period, DeSano made periodic presentations on behalf of Fidelity concerning Fidelity's equity trading to a committee of the trustees of the Fidelity Funds. At those presentations, DeSano failed to disclose that certain equity traders received travel, entertainment and gifts from, and had family or romantic relationships with, brokers doing business with Fidelity. The receipt of such travel, entertainment and gifts from, and family or romantic relationships with, brokers doing business with Fidelity constituted material conflicts of interest. As a result, Fidelity willfully violated Section 206(2) of the Advisers Act, and DeSano was a cause of Fidelity's violation.

Background on Fidelity's Equity Trading Desk

20. Fidelity manages 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. 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.

21. During the Relevant Period, Fidelity'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 by Brokers Doing Business with Fidelity

22. During the Relevant Period, 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 DeSano and/or traders on weekend excursions by private jet.⁶ 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, a private band, meals, and golf. The group continued by private jet to Cabo San Lucas, Mexico,

⁶ 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).

where Quinn provided accommodations in villas at the Esperanza Hotel, meals, more golf, and entertainment.

23. 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.

24. On numerous occasions, brokers made a private jet available for the personal use of an equity trader (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).

25. Besides the trips, brokers gave DeSano more than fifty tickets to at least twenty events, including numerous baseball and basketball playoff and regular season games and a Rolling Stones concert. Brokers gave the ten equity traders in the aggregate hundreds of tickets for some of the best seats at 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. 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.

DeSano Violated Section 17(e)(1) of the Investment Company Act

26. DeSano received a significant amount of travel, entertainment and gifts from brokers during the Relevant Period. He received the personal use of Quinn's private jet for two trips, and he went on six private jet trips with brokers, primarily Quinn. The trips by private jet included the "Fall Classic" golfing excursion 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 and West Palm Beach, Florida. Brokers also gave DeSano more than fifty tickets to over twenty events, including several Celtics and Red Sox playoff games. On several occasions, DeSano reimbursed brokers some or all of the costs of the trips and events they provided him.

27. Under Section 17(e)(1) of the Investment Company Act, affiliated persons of a registered investment company, such as DeSano, 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. DeSano's receipt of travel,

entertainment and gifts paid for by brokers doing business with the Fidelity Funds constituted compensation in violation of Section 17(e)(1).

DeSano Failed Reasonably to Supervise the Equity Traders

28. 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.”

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.”

29. On an annual basis during the Relevant Period, DeSano and the ten equity traders 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 ten equity traders each acknowledged receipt and compliance with Fidelity’s code of ethics at least once during the Relevant Period.

30. 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 ten equity traders attended the code of ethics training at least once during the Relevant Period.

31. DeSano and the ten equity traders each violated Fidelity's gifts and gratuities policy when they accepted certain travel, entertainment and gifts from brokers doing business with Fidelity. For example:

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

b. DeSano and the ten equity traders solicited brokers for tickets to particular events. In fact, sometimes brokers were 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, no reimbursement was made by recipients of 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.

32. 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.

33. DeSano knew that some traders received travel, entertainment and gifts from brokers. He also knew or should have known that certain traders received adult entertainment from brokers. On three occasions he accompanied up to three traders on trips and twice accompanied a trader to a golf event paid for by brokers. He also communicated regularly with Bruderman and several other traders about trading desk matters, and 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.

34. DeSano took insufficient 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, DeSano 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.

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.

35. Indeed, rather than effectively supervising the traders' receipt of travel, entertainment and gifts from brokers, DeSano's actions contributed to the traders' violative receipt of travel, entertainment, and gifts in several respects. DeSano personally asked brokers for tickets or asked traders to ask brokers for tickets, sometimes for himself and sometimes for other senior Fidelity executives, and he personally went on two trips paid for by brokers without reimbursing his full share of the expenses. Because soliciting brokers for tickets and certain travel at a broker's expense were violations of Fidelity's gifts and gratuities policy, his conduct sent the message that the traders too could violate Fidelity's policy with impunity. In addition, DeSano traveled numerous times with Quinn, the most significant source of travel and gifts for the traders. For example, DeSano attended both the November 2002 "Fall Classic" and part of Bruderman's bachelor party in March 2003, two excursions for which brokers picked up the tab. Finally, DeSano also took steps to conceal his and others' participation in one event paid for by brokers doing business with Fidelity.

36. 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 ten equity 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 the ten equity traders 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**

37. During the Relevant Period, the ten equity traders directed equity trading business generating millions of dollars in commissions to brokers from whom they received travel, entertainment and gifts. The traders' receipt of travel, entertainment and gifts from brokers doing business with Fidelity created material conflicts of interest. In addition, certain Fidelity traders sent securities transactions to brokers with whom they had a family or romantic relationship. These family and romantic relationships with brokers doing business with Fidelity also created material conflicts of interest.

38. DeSano knew that certain traders did business with brokers from whom they received travel, entertainment or gifts. He also knew that at least two traders did business with brokers with whom they had a family relationship and, in one case, a romantic relationship.

39. 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.”⁷ 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. As set forth above, certain Fidelity traders allowed factors other than best execution -- 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. DeSano was a cause of Fidelity’s violation of Section 206(2) of the Advisers Act because, as head of the equity trading desk, he did not ensure that factors other than best execution (i.e., certain traders’ receipt of travel, entertainment and gifts from, and family or romantic relationships with, brokers) were excluded from the traders’ selection of brokers.

**DeSano Was a Cause of Fidelity’s Failure to Disclose
Conflicts of Interest in Violation of Section 206(2) of the Advisers Act**

40. 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 willfully violated Section 206(2) of the Advisers Act by failing to disclose material conflicts arising from certain traders’ receipt of travel, entertainment and gifts from, and certain traders’ family and romantic relationships with, brokers doing business with Fidelity. DeSano was a cause of Fidelity’s violation because he did not disclose that certain traders received travel, entertainment and gifts from, or had family or romantic relationships with, brokers doing business with Fidelity.

41. During the Relevant Period, DeSano made periodic presentations on behalf of Fidelity concerning Fidelity’s equity trading to a committee of the trustees of the Fidelity Funds. At those presentations, DeSano did not disclose that certain equity traders received travel, entertainment and gifts from, or had family or romantic relationships with, brokers doing business with Fidelity. The receipt of such travel, entertainment and gifts from, and relationships with, brokers doing business with Fidelity constituted material conflicts of interest. As a result, Fidelity willfully violated Section 206(2) of the Advisers Act, and DeSano was a cause of Fidelity’s violation.

Violations

42. As described above, DeSano willfully violated Section 17(e)(1) of the Investment Company Act, which makes it unlawful for an affiliated person of a registered

⁷ 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).

investment company, or an affiliate of an affiliate, when acting as an agent, to accept compensation from any source (other than a salary or wages from the registered investment company) for the purchase or sale of any property to or for the registered investment company. A violation of Section 17(e)(1) is complete upon receipt of the compensation. DeSano was an affiliated person of Fidelity, which is an affiliated person of registered investment companies (the Fidelity Funds), because Fidelity advises those funds. DeSano's receipt of travel, entertainment, and gifts from representatives of brokerage firms constituted compensation in violation of Section 17(e)(1) of the Investment Company Act.

43. As described above, DeSano failed reasonably to supervise ten equity 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.

44. As described above, Fidelity violated Section 206(2) of the Advisers Act by failing to seek best execution of its clients' securities transactions because certain Fidelity traders allowed factors other than best execution -- 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, and DeSano was a cause of Fidelity's violation.

45. As described above, Fidelity violated Section 206(2) of the Advisers Act by failing to disclose to its clients material conflicts of interest arising from certain traders' receipt of travel, entertainment and gifts from, and certain traders' family or romantic relationships with, brokers seeking and obtaining business from Fidelity, and DeSano was a cause of Fidelity's violation.

46. As described above, Fidelity violated Section 206(2) of the Advisers Act by failing to disclose during periodic presentations concerning Fidelity's equity trading to a committee of the trustees of the Fidelity Funds that certain equity traders received travel, entertainment and gifts from, and certain traders had family or romantic relationships with, brokers seeking and obtaining orders to buy and sell securities on behalf of the Fidelity Funds, and DeSano was a cause of Fidelity's violation.

IV.

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

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

A. Respondent DeSano cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Investment Advisers Act and Section 17(e)(1) of the Investment Company Act;

B. Respondent DeSano be, and hereby is, barred from association with any investment adviser, and is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter, with the right to reapply for association after one (1) year to the appropriate self-regulatory organization, or if there is none, to the Commission;

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order; and

D. Respondent DeSano shall, within ten days of the entry of this Order, pay disgorgement of \$106,000 and prejudgment interest of \$36,475, and a civil money penalty in the amount of \$125,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment shall be: (1) made by United States postal money order, certified check, bank cashier's check or bank money order; (2) made payable to the Securities and Exchange Commission; (3) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, VA 22312, Stop 0-3; and (4) submitted under cover letter that identifies DeSano 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 David P. Bergers, Regional Director, Securities and Exchange Commission, 33 Arch St., 23rd Floor, Boston, MA 02110.

By the Commission.

Florence E. Harmon
Acting Secretary