UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8469 / August 25, 2004

SECURITIES EXCHANGE ACT OF 1934
Release No. 50248 / August 25, 2004

ADMINISTRATIVE PROCEEDING
File No. 3-11601

In the Matter of **PRUDENTIAL EQUITY GROUP, LLC f/k/a PRUDENTIAL SECURITIES INC.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b)(4) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b)(4) of the Securities Exchange Act of 1934 ("Exchange Act") against Prudential Equity Group, LLC, f/k/a Prudential Securities Incorporated[1] ("Prudential Equity" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-

[1] Prudential Equity formally exited the underwriting and domestic retail securities businesses in or about July 2003. Around that time, the firm was renamed Prudential Equity Group, Inc. and has since been reorganized as Prudential Equity Group, LLC.

Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b)(4) of the Securities Exchange Act of 1934, as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[2] that:

A. RESPONDENT

Prudential Equity Group, LLC is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act and is a member of NASD, Inc. and the New York Stock Exchange, Inc. Prudential Equity's principal place of business is in New York, New York.

B. SUMMARY

During September 1999 through August 2000, Prudential Equity received three payments in consideration for publishing research on three public companies. Prudential Equity did not disclose those payments in its research reports. The firm's failure to disclose these payments was in violation of Section 17(b) of the Securities Act.

C. FACTS

1. **Background**

During the period 1999 through at least 2003, broker-dealers that were underwriting public offerings sometimes paid other broker-dealers to issue research on or "cover" their issuer clients. These arrangements were made with regard to both initial public offerings ("IPOs") and secondary offerings. In some situations, the issuer directed the lead underwriters to make the payments, and in others, the lead underwriters selected the firms that received the payments. Some firms issuing the research actively solicited the payment.

In certain instances, the payments were made to firms that were not participating in the underwriting, and therefore not earning investment banking fees from the issuer on the particular offering. In other instances, firms that were underwriting small portions of the offering received additional payments in consideration for publishing research. These payments often were significantly larger than the underwriting fee the firm received.

Section 17(b) of the Securities Act requires that any person who receives consideration, directly or indirectly, from an issuer, underwriter, or dealer for issuing research must fully

[2] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

disclose the receipt of the payment (whether past or prospective) and the amount. However, the broker-dealers that received these payments failed to disclose in their research reports that they received payment for publishing research.

2. **Prudential Equity Did Not Disclose Its Receipt of Payments In Consideration for Publishing Research**

On three occasions during the period 1999 through 2000, Prudential Equity received payments from other investment banking firms for research coverage of those firms' investment banking clients (the "issuers"). These payments ranged in amounts from $50,000 to $200,000. Prudential Equity published research regarding these issuers without disclosing in the reports the receipt of the consideration and the amount received.

For example, on or about January 14, 2000, Prudential Equity was paid $50,000 by the lead underwriter for issuing research on Inhale Therapeutic Systems, Inc. in connection with a convertible bond offering on January 26, 2000. The letter accompanying the check to Prudential Equity stated, "Enclosed please find a check in gratitude for your continued research coverage and banking support of Inhale Therapeutic Systems." Prudential Equity internal e-mail revealed that the firm was aware by at least October 27, 1999 that it would receive the $50,000 payment for research coverage. Prudential Equity did not participate as an underwriter in the offering. Internally, the firm's accounting documents reflected that the payment was "in connection with [the covering analyst's] research coverage..." Prudential Equity issued a research report on Inhale on February 24, 2000 without disclosing the $50,000 payment.

In another instance, on December 20, 1999, Prudential Equity received a $75,000 payment from an investment bank in consideration for research in connection with a November 29, 1999 convertible debt offering for At Home Corporation. The cover letter accompanying the payment stated, "Enclosed is our check for $75,000, a research guarantee related to the At Home Corporation convertible debt offering priced on November 29, 1999." In its internal accounting documents relating to the $75,000 payment, Prudential Equity noted that the "fee [was] paid because of our research coverage and that there should be a "50% payout to research." Prudential Equity issued a report on At Home Corporation on January 6, 2000 without disclosing the $75,000 payment.

D. LEGAL DISCUSSION

Prudential Equity Violated Section 17(b) of the Securities Act

Section 17(b) of the Securities Act provides:

> It shall be unlawful for any person, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security

> for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

15 U.S.C. § 77q(b).

In order to violate Section 17(b), a person must "(1) publish or otherwise circulate (using a means of interstate commerce), (2) a notice or type of communication (which describes a security), (3) for consideration received (past, currently, or prospectively, directly or indirectly), (4) without full disclosure of the consideration received and the amount." *SEC v. Gorsek*, 222 F. Supp. 2d 1099, 1105 (C.D. Ill. 2001). Courts have held that Section 17(b) does not require a showing of scienter. *SEC v. Liberty Capital Group, Inc.*, 75 F. Supp. 2d 1160, 1163 (W.D. Wash. 1999); *SEC v. Huttoe*, 1998 WL 34078092 (D.D.C. Sept. 14, 1998).

Prudential Equity published and circulated communications in the form of research reports that described certain securities for consideration received, but did not disclose the receipt or amount of this payment. As a result, investors did not receive information relating to the objectivity of the research.

E. CONCLUSIONS

Based on the foregoing and Prudential Equity's Offer of Settlement, the Commission finds that with respect to payments received for the issuance of research, Prudential Equity willfully violated Section 17(b) of the Securities Act by publishing communications that described securities for consideration received, directly from an underwriter, without disclosing the receipt of such consideration and the amount thereof.

IV.

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

Accordingly, it is hereby ORDERED**:**

A. Pursuant to Section 8A of the Securities Act, that Respondent cease and desist from committing or causing any violations and any future violations of Section 17(b) of the Securities Act.

B. Respondent is censured pursuant to Section 15(b)(4) of the Exchange Act.

C. It is further ordered that Respondent shall, within ten days of the entry of this Order, pay a civil money penalty in the amount of $375,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange

Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Prudential Equity Group, LLC 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 Antonia Chion, Division of Enforcement, Securities and Exchange Commission, 450 5th Street N.W., Washington, D.C. 20549-0801.

By the Commission.

Jonathan G. Katz
Secretary