

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940

Release No. 2254 / June 29, 2004

INVESTMENT COMPANY ACT OF 1940

Release No. 26490 / June 29, 2004

ADMINISTRATIVE PROCEEDING

File No. 3-11530

In the Matter of

BANC ONE INVESTMENT
ADVISORS CORPORATION AND
MARK A. BEESON,

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE AND
CEASE-AND-DESIST PROCEEDINGS, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST ORDER
PURSUANT TO SECTIONS 203(e), 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**

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(e), 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 Banc One Investment Advisors Corporation (“BOIA”) and Mark A. Beeson (“Beeson”) (collectively, “Respondents”).

II.

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

Desist Order Pursuant to Sections 203(e), 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 (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds¹ that:

OVERVIEW

1. From at least March 2002 through April 2003, BOIA, an investment adviser, and Beeson, President and Chief Executive Officer of One Group Mutual Funds (“One Group”) and a senior managing director of BOIA, violated and/or aided and abetted and caused violations of the antifraud provisions of the Advisers Act and the Investment Company Act by: (1) allowing excessive short-term trading in One Group funds by a hedge-fund manager that was inconsistent with the terms of the funds’ prospectuses and that was potentially harmful to the funds; (2) failing to disclose to the One Group Board of Trustees or to shareholders the conflict of interest created when Respondents entered into a market-timing arrangement with a hedge-fund manager that was potentially harmful to One Group, but that would increase BOIA’s advisory fees and potentially attract additional business; (3) failing to charge the hedge-fund manager redemption fees as required by the international funds’ prospectuses when other investors were charged the redemption fees; (4) having no written procedures in place to prevent the nonpublic disclosure of One Group portfolio holdings and improperly providing confidential portfolio holdings to the hedge-fund manager when shareholders were not provided with or otherwise privy to the same information; and (5) causing One Group funds, without the knowledge of the funds’ trustees, to participate in joint transactions raising a conflict of interest in violation of the Investment Company Act.

2. In addition, between June 1999 and May 2003, BOIA further violated the antifraud provisions of the Advisers Act and the Investment Company Act by: (1) allowing excessive short-term trading in One Group funds by a Michigan market-timer that was inconsistent with the terms of the funds’ prospectuses and that was potentially harmful to the funds; (2) failing to disclose to the One Group Board of Trustees or to shareholders the conflict of interest created when BOIA entered into a market-timing arrangement with a Michigan market-timer that was potentially harmful to One Group, but that would increase BOIA’s advisory fees; (3) failing to charge a Texas hedge fund redemption fees as required by the international funds’ prospectuses when other investors were charged the redemption fees; and (4) having no written procedures in place to prevent the nonpublic disclosure of One Group portfolio holdings and improperly providing confidential portfolio holdings to certain other entities.

3. The One Group funds’ prospectuses stated that One Group restricted excessive exchange activity in all One Group funds. BOIA enforced those provisions. But despite the prospectuses’ language, Beeson entered into an agreement with hedge-fund manager Edward J. Stern (“Stern”) pursuant to which Stern executed approximately 300 exchange transactions within certain

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

One Group funds. This agreement was made in the hope that it would lead to additional business from Stern for various BOIA affiliates. The transactions, which occurred between June 2002 and May 2003, earned Stern a profit of approximately \$5.2 million. In connection with some of those transactions, BOIA and Beeson also failed to charge Stern approximately \$4 million in redemption fees, as required by those funds' prospectuses.

4. Also despite language of the One Group funds' prospectuses, from June 1999 to December 2001, BOIA allowed a Michigan market timer to execute approximately 100 exchange transactions in One Group international funds, resulting in a profit to the market timer of approximately \$1.24 million. Further, in March 2003, certain BOIA employees allowed a Texas hedge fund to execute two exchange transactions in the international funds without collecting approximately \$840,000 in redemption fees required by the prospectuses.

5. Finally, BOIA regularly provided listings of the confidential portfolio holdings of many One Group funds to favored clients (including Stern), prospective clients, and consultants when that information was not provided to the public, to the possible detriment of the funds and their shareholders.

RESPONDENTS

6. **Banc One Investment Advisors Corporation** is an Ohio corporation, headquartered in Columbus, Ohio, that registered with the Commission as an investment adviser on November 22, 1991. BOIA is a wholly owned subsidiary of Bank One, National Association (Ohio), which in turn is a wholly owned subsidiary of **Bank One Corporation** ("Bank One"), a multi-state bank holding company headquartered in Chicago, Illinois. BOIA provides discretionary investment management services to individuals and companies, including **One Group Mutual Funds**, a Bank One-sponsored mutual-fund complex, which presently holds approximately \$100 billion in assets under management.

7. **Mark A. Beeson**, age 46, was President and CEO of One Group and Senior Managing Director of BOIA from January 2000 to October 2003, when he resigned those positions. Beeson joined BOIA as its chief financial officer in 1994 and was promoted to chief administrative officer in 1996.

FACTS

The One Group Prospectuses Restricted Excessive Exchange Activity

8. "Market-timing" or "timing" refers to (a) frequent buying and selling of shares of the same mutual fund or (b) buying or selling mutual fund shares in order to exploit inefficiencies in mutual fund pricing. Market timing, while not illegal *per se*, can harm other mutual fund shareholders because it can dilute the value of their shares, if the market timer is exploiting pricing inefficiencies, or disrupt the management of the mutual fund's investment portfolio and can cause the targeted mutual fund to incur costs borne by other shareholders to accommodate frequent buying and selling of shares by the market timer.

9. During all relevant times, the One Group prospectuses restricted excessive exchange activity in all One Group funds. First, One Group limited the movement of any investment between funds (referred to in the prospectuses as the “exchange privilege”) to “two substantive exchange redemptions within 30 days of each other.”² Second, because its international funds were particularly susceptible to timing, in November 2001, One Group began imposing a 2% early redemption fee for any international fund redemption made within 90 days of purchase. Finally, One Group reserved the right to reject any exchange request if One Group reasonably believed that the exchange would adversely affect shareholders.

BOIA Enforced the One Group Anti-Timing Restrictions

10. As adviser to the One Group funds, BOIA enforced these anti-timing provisions through Beeson by assigning an employee to detect and sanction excessive exchange activity within the funds. The employee manually reviewed most fund activity for exchanges or redemptions greater than a certain size, set at \$50,000 in the domestic funds and greater than \$10,000 in the international funds since December 2002. For domestic and international fund exchange-privilege violations, the employee could refuse any purchase order and restrict an offending account to “redemptions-only” status. In addition, in the international funds, the employee was required to impose the 2% redemption fee if the trader redeemed within 90 days of the purchase. From January 2002 to September 2003, BOIA and Beeson sanctioned or expelled individuals or entities for exchange-privilege violations on more than 300 occasions. Further, with the exceptions noted herein, BOIA has consistently imposed the redemption fees required by the prospectuses since the time they were adopted.

BOIA Allowed a Michigan Market Timer to Engage in Timing Without Penalty

11. In June 1999, without Beeson’s knowledge, a Michigan market timer received approval from an unidentified BOIA official to execute timing trades in One Group international funds. The market timer was allowed to execute transactions of \$3 million or less in two One Group international funds without having his exchange privileges revoked under the terms of the One Group prospectuses. From June 1999 to December 2001, the market timer executed approximately 100 exchange transactions in the two funds, gaining a total net profit of approximately \$1.24 million. BOIA did not disclose this arrangement to the One Group Board of Trustees or fund shareholders prior to the outset of the investigation by the Commission staff.

² In November 2001, the prospectus was amended to add the statement, “excessive exchange activity will result in revocation of your exchange privilege.”

BOIA Allowed Stern to Engage in Timing Without Penalty

12. Beginning in late-2001, Security Trust Corporation (“STC”), which represented Stern, approached Bank One, through various channels, proposing that Stern borrow \$25 million from Bank One, match the loan with \$25 million of Stern’s own funds, and trade the total in what was described by Stern as an “asset allocation” strategy. Beeson and the operations department rejected the Stern proposal on numerous occasions.

13. In late February 2002, Beeson met with STC and Bank One employees to further discuss the Stern proposal. In early March 2002, Beeson spoke with Stern and others, and agreed to consider allowing Stern to trade in selected One Group funds.

14. Between March and May 2002, Beeson further considered Stern's proposal and consulted with other BOIA personnel about the language of the prospectus and ways to protect the interest of the funds. Although the chief operating officer recommended against it, Beeson approved Stern’s proposal to trade in several domestic and two international funds. The agreement allowed Stern to trade in and out of these funds in amounts up to one-half of 1% of the value of each fund. The agreed terms also included a \$15 million loan from Bank One to Stern, matched with \$15 million in Stern funds. The entire \$30 million was to remain exclusively within certain One Group funds to provide security for the loan, and Stern was given permission to execute more exchange transactions in the agreed funds than were allowed by the prospectuses. Beeson told Stern that the trading restrictions were intended to protect the funds and that BOIA would monitor his trading activity for dollar amount and round trip activity. The required 2% redemption fees in the two international funds were not discussed or addressed.

15. From the time Beeson entered into the agreements with Stern until shortly before the State of New York sued Stern and associated companies on September 3, 2003, Beeson did not disclose these agreements to the president of BOIA, to the One Group Board of Trustees, or to fund shareholders.

Bank One Hoped For Additional Business From Stern

16. From Stern’s initial contact with Bank One in 2001 until the relationship dissolved in April 2003, there were periodic discussions of the possibility of Stern conducting additional business with various BOIA affiliates. For example, in or about March 2002, Stern met with Bank One’s hedge fund manager to discuss a \$10 million Stern investment in a Bank One hedge fund. From that meeting until May 2003, Stern and the manager discussed the investment, which was never finalized. Although Stern ultimately never deposited additional assets with any Bank One entity, the possibility of managing additional Stern assets and assisting other channels of the Bank One organization in cultivating Stern as a client were principal factors in Beeson’s decision to allow Stern to trade One Group funds under parameters that resulted in trading that was inconsistent with the funds’ prospectuses.

BOIA Failed to Charge Stern Required Redemption Fees

17. The agreement between BOIA and Stern allowed Stern to trade in two of One Group's international funds, among other funds. Both of the international funds charged a 2% fee on any redemption made less than 90 days after an initial purchase. Beeson and Stern did not discuss or address these redemption fees in their initial agreement, and BOIA inadvertently failed to charge the fees from the beginning of Stern's trading in June 2002 through December 2002.

18. In late December 2002, when Beeson learned that BOIA was not charging Stern the redemption fees, he directed that the fees be charged going forward, but decided not to attempt to collect prior redemption fees from Stern or to reimburse the international funds for the lost fees. Because Beeson and Stern had not discussed redemption fees, Beeson further decided to allow Stern to liquidate his outstanding positions in the international funds without incurring the fees.

19. In total, BOIA failed to charge Stern approximately \$4.2 million in required redemption fees. Conversely, BOIA charged other investors the fees. For example, from January 2002 to September 2003, BOIA collected approximately \$1.3 million in redemption fees from other investors in One Group's international funds.

20. In January 2003, Beeson called Stern to discuss the redemption fees and inform Stern that, going forward, Stern would be charged any required redemption fees on international-fund trades. To avoid the fees, Stern decided to immediately liquidate his international-fund positions and to stop trading in those funds. This left Stern with money he could not use to market time other One Group funds in excess of the funds' exchange limits because the size of his trades, under the arrangement negotiated with Beeson, was limited to 1/2 of 1% of the value of any particular fund. Stern also had new money to invest because he had recently received a second Bank One loan of \$15 million, which he again matched with \$15 million of his own funds, bringing his total investment to \$60 million.

21. Taking these various factors into account, Stern and Beeson reached a second agreement under which Stern was further permitted to invest in four additional One Group funds at levels higher than allowed in the original funds (3/4 of 1% of the value of the additional funds) but not to actively trade more than half that value at any given time. As in the first agreement, Beeson told Stern that the number of exchanges would be limited and that the trading restrictions were intended to protect the funds. He further stated that BOIA would monitor his trading activity for dollar amount and round trip activity. Nevertheless, the agreement permitted Stern to trade at a frequency inconsistent with the restrictions in the funds' prospectuses.

22. In total, between June 2002 and April 2003, Stern executed approximately 300 exchange transactions within One Group mutual funds, earning a total net profit of approximately \$5.2 million.

BOIA Failed to Charge A Texas Hedge Fund With Required Redemption Fees

23. In March 2003, a Texas hedge fund invested a total of \$43 million in two One Group international funds. Three days later, the hedge fund redeemed the investment at a loss, placing the remaining \$42 million in a short-term bond fund. Under the terms of the relevant prospectuses, these redemptions should have triggered a 2% redemption-fee, but BOIA, without Beeson's knowledge, chose not to impose the approximately \$840,000 in required redemption fees and did not reimburse the two international funds for the lost fees. BOIA did not disclose this to the One Group Board of Trustees or fund shareholders prior to the outset of the investigation by the Commission staff.

BOIA Released One Group's Confidential Portfolio Holdings to Stern and Others

24. During all relevant times, One Group considered its portfolio holdings to be confidential business information and did not publish them, except as required by law. However, sometime in April or May 2002, before Stern began trading under the agreement, Stern asked Beeson for monthly access to the portfolio holdings of eight funds in which he invested. Beeson knew that Stern employed a strategy whereby he hedged a short basket of equity securities with a long position in mutual funds that held some of those same securities. Beeson agreed to provide the holdings without discussing their release with anyone at BOIA or One Group or requiring any confidentiality terms from Stern. In all, Stern received month-end portfolio holdings of eight One Group funds approximately five days after the end of each month from July 2002 until the relationship ended in April 2003.

25. More generally, at various times over the last decade, BOIA (without Beeson's knowledge) released One Group's portfolio holdings as often as once a week to seven clients, eight prospective clients, and several dozen consultants representing pension funds or fund advisers. In so doing, BOIA failed, among other things, to require confidentiality agreements from these clients, prospective clients, and consultants. BOIA did not disclose this to the One Group Board of Trustees or fund shareholders prior to the outset of the investigation by the Commission staff.

VIOLATIONS

26. As a result of the conduct described above, BOIA willfully violated Sections 206(1) and 206(2) of the Advisers Act in that it, while acting as an investment adviser, employed devices, schemes, or artifices to defraud clients or prospective clients; and engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon clients or prospective clients. First, BOIA permitted Stern and the Michigan market timer to engage in excessive exchanges when it knew that these acts were restricted by the One Group's published prospectuses and were potentially harmful to the funds. Second, BOIA failed to disclose to the One Group Board of Trustees or to shareholders the conflict of interest created when BOIA entered into market-timing arrangements with Stern and the Michigan market timer that were potentially harmful to One Group, but that would increase BOIA's advisory fees and, in one instance, potentially attract additional business. Third, BOIA failed to charge Stern and the Texas hedge fund with redemption fees required by the fund prospectuses when other investors were charged

the redemption fees. Fourth, BOIA had no written procedures in place to prevent the nonpublic disclosure of One Group portfolio holdings and improperly provided confidential portfolio holdings to Stern and others when shareholders were not provided with or otherwise privy to the same information.

27. As a result of the conduct described above, BOIA willfully violated Section 204A of the Advisers Act in that it, while acting as an investment adviser, failed to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such investment adviser's business, to prevent the misuse of material, nonpublic information by such investment adviser or any person associated with such investment adviser. Specifically, BOIA had no written procedures in place to prevent the nonpublic disclosure of One Group portfolio holdings and improperly provided confidential portfolio holdings to Stern when shareholders were not provided with or otherwise privy to the same information.

28. As a result of the conduct described above, BOIA willfully violated Section 34(b) of the Investment Company Act in that it made untrue statements of a material fact and omitted to state facts necessary in order to prevent the statements made, in the light of the circumstances under which they were made, from being materially misleading in any registration statement, application, report, account, record, or other document filed with the Commission or the keeping of which is required pursuant to Section 31(a) of the Investment Company Act. Specifically, BOIA filed registration statements with the Commission that incorporated the prospectuses at issue. The prospectuses were materially false and misleading at the time they were filed because they failed to disclose: (1) BOIA's allowance of excessive short-term trading in certain One Group funds by Stern and the Michigan market timer that was inconsistent with the terms of the funds' prospectuses and that was potentially harmful to the funds; (2) BOIA's failure to charge Stern and a Texas hedge fund redemption fees as required by the funds' prospectuses when other investors were charged the redemption fees; and (3) the conflict of interest created when BOIA entered into market-timing arrangements with Stern and the Michigan market timer that were potentially harmful to One Group, but that would increase BOIA's advisory fees and, in one instance, potentially attract additional business.

29. As a result of the conduct described above, BOIA willfully violated Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder in that it, while acting as an affiliated person of a registered investment company, effected transactions in which certain One Group funds were joint participants in contravention of rules and regulations the Commission has prescribed for the purpose of limiting or preventing participation by registered companies, such as the One Group funds, on a basis different from or less advantageous than that of such other participants without filing an application with the Commission and without a Commission order approving the transaction. Specifically, BOIA, as investment adviser, is an affiliated person of One Group funds. BOIA caused certain One Group funds to enter into joint arrangements whereby Bank One loaned money to Stern and the Michigan market timer with the express understanding that the loan proceeds would be invested in One Group funds. BOIA never disclosed any of these arrangements to the One Group Board of Trustees. Bank One earned interest on those loans and BOIA generated mutual fund sales and associated fees by allowing approved timing activity in One Group funds. By contrast, the affected One Group funds obtained little or no benefit from this unauthorized

activity. No application was made for and the Commission never issued an order approving the transactions.

30. As a result of the conduct described above, Beeson willfully aided and abetted and caused BOIA's violations of Sections 204A, 206(1), and 206(2) of the Advisers Act and Sections 17(d) and 34(b) of the Investment Company Act and Rule 17d-1 thereunder. Specifically, Beeson: (1) allowed excessive short-term trading by Stern in One Group funds that was inconsistent with the terms of the funds' prospectuses and that was potentially harmful to the funds; (2) failed to disclose to the One Group Board of Trustees or to shareholders the conflict of interest created when Respondents entered into a market-timing arrangement with Stern that was potentially harmful to One Group, but that would increase BOIA's advisory fees and potentially attract additional business; (3) failed to charge Stern redemption fees as required by the funds' prospectuses when other investors were charged the redemption fees; (4) had no written procedures in place to prevent the nonpublic disclosure of One Group portfolio holdings and improperly provided confidential portfolio holdings to Stern when shareholders were not provided with or otherwise privy to the same information; and (5) caused One Group funds, without the knowledge of the funds' trustees, to participate in joint transactions raising a conflict of interest in violation of the Investment Company Act.

31. In determining to accept the Offers, the Commission considered cooperation afforded the Commission staff by BOIA and Beeson during its investigation as well as various remedial measures already implemented by Bank One, BOIA and the One Group Board of Trustees during the pendency of the investigation.

UNDERTAKINGS

32. The Commission further considered the following efforts voluntarily undertaken by BOIA:

- a. BOIA will use its best efforts to cause the One Group funds to operate in accordance with the following governance policies and procedures:
 - i. no more than 25% of the members of the One Group Board of Trustees will be persons who either (a) were directors, officers or employees of BOIA at any point during the preceding 10 years or (b) are interested persons, as defined in the Investment Company Act, of the fund or of BOIA.³ In the event that the Board of Trustees fails to meet this requirement at any time due to the death, resignation, retirement or removal of any independent Trustee, the independent Trustees will take such steps as may be necessary to bring the Board in compliance within a reasonable period of time;
 - ii. no chairman of the One Group Board of Trustees will either (a) have been a director, officer or employee of BOIA at any point during the preceding 10 years or (b) be an interested person, as defined in the Investment Company Act, of the fund or of BOIA or any fund advised by BOIA; and

³ From the time of the conduct to the present, at least 75% of the Board was independent.

- iii. any person who acts as counsel to the independent Trustees of One Group will be an “independent legal counsel” as defined by Rule 0-1 under the Investment Company Act.
- b. No action will be taken by the One Group Board of Trustees or by any committee thereof unless such action is approved by a majority of the members of the Board of Trustees or of such committee, as the case may be, who are neither (i) persons who were directors, officers or employees of BOIA at any point during the preceding 10 years nor (ii) interested persons, as defined in the Investment Company Act, of the fund or of BOIA. In the event that any action proposed to be taken by and approved by a vote of a majority of the independent Trustees of a fund is not approved by the full Board of Trustees, the fund will disclose such proposal and the related Board vote in its shareholder report for such period.
- c. Commencing no later than in 2005 and not less than every fifth calendar year thereafter, One Group will hold a meeting of its fund shareholders at which the Board of Trustees will be elected.
- d. One Group will designate an independent compliance officer reporting to its Board of Trustees as being responsible for assisting the Board of Trustees and any of its committees in monitoring compliance by BOIA with the federal securities laws, BOIA’s fiduciary duties to fund shareholders and its Code of Ethics in all matters relevant to the operation of the One Group funds. The duties of this person will include reviewing all compliance reports furnished to the Board of Trustees or its committees by BOIA, attending meetings of BOIA’s internal controls committee to be established pursuant to BOIA’s undertakings set forth below, serving as liaison between the Board of Trustees and its committees and the Chief Compliance Officer of BOIA, making such recommendations to the Board of Trustees regarding BOIA’s compliance procedures as may appear advisable from time to time, and promptly reporting to the Board of Trustees any material breach of fiduciary duty, breach of the Code of Ethics and/or violation of the federal securities laws of which he or she becomes aware in the course of carrying out his or her duties.

33. Compliance and Ethics Oversight Infrastructure. BOIA has undertaken to ensure that a compliance and ethics oversight infrastructure is established and maintained within BOIA or elsewhere within Bank One’s Investment Management Group (“IMG”) which shall be responsible for monitoring compliance by BOIA with the relevant rules, regulations and procedures applicable to its investment advisory responsibilities in relation to One Group funds and which shall include the following:

- a. An internal controls committee (the “Committee”) shall be established which shall be chaired by a senior IMG executive and shall also comprise at least BOIA’s Chief Compliance Officer (the “BOIA CCO”), senior representatives from the other internal control functions (such as Risk, Legal and Internal Audit) of BOIA or IMG and senior BOIA business executives responsible for the conduct of BOIA’s investment advisory activities for One Group. The Committee shall meet at least quarterly and notice of all of

its meetings shall also be given to the Chief Compliance Officer appointed by One Group (“One Group’s CCO”) who shall be invited to attend and participate at such meetings.

b. The Committee shall consider and review compliance issues and related policy in respect of the discharge of BOIA’s responsibilities to One Group, including BOIA’s compliance with its Code of Ethics, the handling of any conflicts of interest and compliance with its policies and procedures established to address compliance issues under the Investment Advisers Act and the Investment Company Act. Breaches of BOIA’s Code of Ethics or other compliance policies and procedures relating to its responsibilities to One Group shall be reported to the Committee and any such serious compliance matter about which One Group’s Board of Trustees would reasonably expect to be informed without delay shall be notified promptly to One Group’s CCO and to One Group’s Board of Trustees (or its Audit Committee or such other committee or representative as One Group’s Board may designate). Quarterly reports on the activities of the Committee, including violations and other compliance matters considered, recommendations made and actions taken, shall also be provided to One Group’s Board or such other designee.

c. The BOIA CCO shall provide or otherwise make available to One Group’s CCO such BOIA compliance information as One Group’s CCO may reasonably require from time to time in connection with the latter’s role in monitoring, on behalf of One Group’s Board of Trustees, compliance by BOIA with its Code of Ethics, relevant rules, regulations and procedures applicable to the discharge of its investment advisory responsibilities to One Group.

d. The One Group’s CCO shall generally act as liaison between One Group’s Board of Trustees (and its committees) and the BOIA CCO and shall make such recommendations to One Group’s Board of Trustees regarding BOIA’s relevant compliance policies and procedures as may appear advisable from time to time and shall promptly report to One Group’s Board of Trustees (or its Audit Committee or other designee) any material breach by BOIA of fiduciary duty, compliance policies and procedures or federal securities laws in relation to One Group of which One Group’s CCO becomes aware in the course of carrying out his or her duties.

e. BOIA shall also ensure that procedures are established and maintained whereby employees of BOIA may report to the Legal and Compliance, Internal Audit, Human Resources or other appropriate Bank One control function department on a confidential and, if desired, anonymous basis any issues of concern regarding possible violations of BOIA’s Code of Ethics or of relevant laws or regulations. All such issues of concern will be investigated and corrective action will be taken if appropriate. One Group’s CCO shall be informed of any such issues which relate to BOIA’s responsibilities to One Group and of the outcome of the investigation of such issues.

34. Distribution of Disgorgement and Civil Monetary Penalty. BOIA has undertaken as follows:

- a. BOIA shall retain, within 90 days of the date of entry of the Order, the services of an Independent Distribution Consultant not unacceptable to the staff of the Commission and a majority of the independent members of the One Group Board of Trustees. The Independent Distribution Consultant's compensation and expenses shall be borne exclusively by BOIA. BOIA shall cooperate fully with the Independent Distribution Consultant and shall provide the Independent Distribution Consultant with access to its files, books, records, and personnel as reasonably requested for the review.
- b. BOIA shall require that the Independent Distribution Consultant develop a Distribution Plan for the distribution of all of the disgorgement and penalties to be paid by BOIA pursuant to this Order, and any interest or earnings thereon, according to a methodology developed in consultation with BOIA and acceptable to the staff of the Commission and the independent Trustees of the One Group funds. The Distribution Plan shall provide for investors to receive, in order of priority, (i) their proportionate share of losses from market-timing, and (ii) a proportionate share of advisory fees paid by funds that suffered such losses during the period of such market timing.
- c. BOIA shall require that the Independent Distribution Consultant submit a Distribution Plan to BOIA and the staff of the Commission no more than 160 days after the date of entry of the Order.
- d. The Distribution Plan developed by the Independent Distribution Consultant shall be binding unless, within 190 days after the date of entry of the Order, BOIA or the staff of the Commission advises, in writing, the Independent Distribution Consultant of any determination or calculation from the Distribution Plan that it considers to be inappropriate and states in writing the reasons for considering such determination or calculation inappropriate.
- e. With respect to any determination or calculation with which BOIA or the staff of the Commission do not agree, such parties shall attempt in good faith to reach an agreement within 220 days of the date of entry of the Order. In the event that BOIA and the staff of the Commission are unable to agree on an alternative determination or calculation, the determinations and calculations of the Independent Distribution Consultant shall be binding.
- f. Within 235 days of the date of entry of this Order, the Independent Distribution Consultant shall submit the Distribution Plan for the administration and distribution of disgorgement and penalty funds pursuant to Rule 1101 [17 C.F.R. § 201.1101] of the Commission's Rules of Practice. Following a Commission order approving a final plan of disgorgement, as provided in Rule 1104 [17 C.F.R. § 201.1104] of the Commission's Rules of Practice, BOIA shall require that the Independent Distribution Consultant, with BOIA,

take all necessary and appropriate steps to administer the final plan for distribution of disgorgement and penalty funds.

g. BOIA shall require that the Independent Distribution Consultant, for the period of the engagement and for a period of two years from completion of the engagement, not enter into any employment, consultant, attorney-client, auditing or other professional relationship with BOIA, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. BOIA shall require that any firm with which the Independent Distribution Consultant is affiliated in performance of his or her duties under the Order not, without prior written consent of the independent Trustees and the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with BOIA or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

35. Independent Compliance Consultant. BOIA has undertaken as follows:

a. BOIA shall retain, within 90 days of the date of entry of the Order, the services of an Independent Compliance Consultant not unacceptable to the staff of the Commission and a majority of the independent members of the One Group Board of Trustees. The Independent Compliance Consultant's compensation and expenses shall be borne exclusively by BOIA. BOIA shall require that the Independent Compliance Consultant shall conduct a comprehensive review of BOIA's supervisory, compliance, and other policies and procedures designed to prevent and detect breaches of fiduciary duty, breaches of the Code of Ethics and federal securities law violations by BOIA and its employees. This review shall include, but shall not be limited to, a review of BOIA's market-timing controls across all areas of its business, a review of the One Group funds' pricing practices that may make those funds vulnerable to market timing, a review of the One Group funds' utilization of short-term trading fees and other controls for deterring excessive short-term trading, a review of possible governance changes in the One Group funds board to include committees organized by market sector or other criteria so as to improve compliance, and a review of BOIA's policies and procedures concerning conflicts of interest, including conflicts arising from advisory services to multiple clients. BOIA shall cooperate fully with the Independent Compliance Consultant and shall provide the Independent Compliance Consultant with access to its files, books, records, and personnel as reasonably requested for the review.

b. BOIA shall require that at the conclusion of the review, which in no event shall be more than 180 days after the date of entry of the Order, the Independent Compliance Consultant shall submit a Report to BOIA, the Trustees of the One Group funds, and the staff of the Commission. The Report shall address the issues described in subparagraph 35.a. of these undertakings, and shall include a description of the review performed, the conclusions reached, the Independent Compliance Consultant's recommendations for changes in or improvements to policies and procedures of BOIA and the One Group funds,

and a procedure for implementing the recommended changes in or improvements to BOIA's policies and procedures.

c. BOIA shall adopt all recommendations with respect to BOIA contained in the Report of the Independent Compliance Consultant; provided, however, that within 210 days after the date of entry of the Order, BOIA shall in writing advise the Independent Compliance Consultant, the Trustees of the One Group funds and the staff of the Commission of any recommendations that it considers to be unnecessary or inappropriate. With respect to any recommendation that BOIA considers unnecessary or inappropriate, BOIA need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.

d. As to any recommendation with respect to BOIA's policies and procedures on which BOIA and the Independent Compliance Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 240 days of the date of entry of the Order. In the event BOIA and the Independent Compliance Consultant are unable to agree on an alternative proposal acceptable to the staff of the Commission, BOIA will abide by the determinations of the Independent Compliance Consultant.

e. BOIA (i) shall not have the authority to terminate the Independent Compliance Consultant, without the prior written approval of a majority of the independent Trustees and the staff of the Commission; (ii) shall compensate the Independent Compliance Consultant, and persons engaged to assist the Independent Compliance Consultant, for services rendered pursuant to the Order at their reasonable and customary rates; (iii) shall not be in and shall not have an attorney-client relationship with the Independent Compliance Consultant and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Independent Compliance Consultant from transmitting any information, reports, or documents to the Trustees or the Commission.

f. BOIA shall require that the Independent Compliance Consultant, for the period of the engagement and for a period of two years from completion of the engagement, shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with BOIA, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. BOIA shall require that any firm with which the Independent Compliance Consultant is affiliated in performance of his or her duties under the Order shall not, without prior written consent of the independent Trustees and the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with BOIA, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

36. Periodic Compliance Review. BOIA has undertaken that, commencing no later than in 2005, and at least once every other year thereafter, BOIA shall undergo a compliance review by a third party, who is not an interested person, as defined in the Investment Company Act, of BOIA. At the conclusion of the review, the third party shall issue a report of its findings and

recommendations concerning BOIA's supervisory, compliance, and other policies and procedures designed to prevent and detect breaches of fiduciary duty, breaches of the Code of Ethics and federal securities law violations by BOIA and its employees in connection with their duties and activities on behalf of and related to the One Group funds. Each such report shall be promptly delivered to the Committee described in paragraph 33.a. above and to the One Group Board of Trustees (or its Audit Committee or such other Committee as the Board may designate).

37. Certification. BOIA has undertaken that, no later than twenty-four months after the date of entry of the Order, the President or Chief Executive Officer of BOIA shall certify to the Commission in writing that BOIA has fully adopted and complied in all material respects with the undertakings set forth in paragraphs 33 through 39 herein (to the extent applicable) and with the recommendations of the Independent Compliance Consultant or, in the event of material non-adoption or non-compliance, shall describe such material non-adoption and non-compliance.

38. Record-keeping. BOIA has undertaken to preserve for a period not less than six years from the end of the fiscal year last used, the first two years in an easily accessible place, any record of BOIA's compliance with the undertakings set forth in paragraphs 33 through 39 herein.

39. Continuing Application of Undertakings. The undertakings of BOIA herein shall continue to apply to BOIA or its successors for as long as it continues to provide investment advisory services to the One Group funds or any successors thereof, provided, however, that any successor to BOIA may petition the Commission and obtain relief from such undertakings if it can demonstrate that it has sufficient controls and procedures reasonably designed and implemented to detect and prevent the occurrence of the conduct summarized herein.

IV.

In view of the foregoing, the Commission deems it appropriate in the public interest and for the protection of investors to impose the sanctions agreed to in Respondents' Offers. Accordingly, it is hereby ORDERED, effective immediately, that:

A. Pursuant to Sections 203(e) of the Advisers Act, BOIA is hereby censured;

B. Pursuant to Section 203(k) of the Advisers Act and Section 9(f) of the Investment Company Act, BOIA and Beeson shall cease and desist from committing or causing any violations and any future violations of Sections 204A, 206(1), and 206(2) of the Advisers Act and Sections 17(d) and 34(b) of the Investment Company Act and Rule 17d-1 thereunder;

C. Pursuant to Section 203(f) of the Advisers Act, Beeson is barred from association with any investment adviser, with a right to reapply to the Commission to serve or act in any such capacity after 2 years from the date of the Order. Any reapplication for association by Beeson 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 Beeson, 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.

D. Pursuant to Section 9(b) of the Investment Company Act, Beeson 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 to the Commission to serve or act in any such capacity after 2 years from the date of the Order. Any reapplication for association by Beeson 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 Beeson, 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.

E. For three years from the date of the Order, Beeson:

1. Shall not serve as an employee, officer, or director of any registered investment company; and
2. Shall not serve as a chairman, director, or officer of any investment adviser;

F. Payment of Disgorgement and Civil Monetary Penalties by BOIA.

1. BOIA shall pay disgorgement in the total amount of \$10 million (“Disgorgement”) and civil money penalties in the amount of \$40 million (“Penalties”), for a total payment of \$50 million.
2. There shall be, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund established for the funds described in Section IV. F. 1. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, BOIA agrees that it shall not, in any Related Investor Action, benefit from any offset or reduction of any investor’s claim by the amount of any Fair Fund distribution to such investor in this proceeding that is proportionately attributable to the civil penalty paid by BOIA (“BOIA Penalty Offset”). If the court in any Related Investor Action grants such an offset or reduction, BOIA agrees that it shall, within 30 days after entry of a final order granting the offset or reduction, notify the Commission’s counsel in this action and pay the amount of the BOIA Penalty Offset to the United States Treasury or to a Fair Fund, as the

Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed against BOIA in this proceeding. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against BOIA by or on behalf of one or more investors based on substantially the same facts as those set forth in the Order.

3. Pursuant to an escrow agreement not unacceptable to the staff of the Commission, BOIA shall, within 10 days of the entry of this Order, pay the Disgorgement and Penalties into an escrow account. The escrow agreement shall, among other things: (1) require that all funds in escrow be invested in short-term U.S. Treasury securities with maturities not to exceed six months; (2) name an escrow agent who shall be appropriately bonded; and (3) provide that escrowed funds be disbursed only pursuant to an order of the Commission. BOIA shall be responsible for all costs associated with the escrow agreement.

G. Payment of Civil Monetary Penalty by Beeson. Beeson shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$100,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier’s check, wire transfer 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, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies Beeson 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 Robert J. Burson, Senior Associate Regional Director, Securities and Exchange Commission, 175 West Jackson Blvd., Chicago, IL 60604. Such civil money penalty may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Beeson agrees that he shall not, in any Related Investor Action, benefit from any offset or reduction of any investor’s claim by the amount of any Fair Fund distribution to such investor in this proceeding that is proportionately attributable to the civil penalty paid by him (“Penalty Offset”). If the court in any Related Investor Action grants such an offset or reduction, Beeson agrees that he shall, within 30 days after entry of a final order granting the offset or reduction, notify the Commission’s counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed against Beeson in this proceeding. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against Beeson by or on behalf of one or more investors based on substantially the same facts as alleged in the Order in this proceeding.

H. BOIA’s Compliance With Undertakings. BOIA shall comply with the undertakings set forth in paragraphs 33 through 39 above.

I. Other Obligations and Requirements. Nothing in this Order shall relieve Respondents or any One Group fund of any other applicable legal obligation or requirement, including any rule adopted by the Commission subsequent to this Order.

By the Commission.

Jonathan G. Katz
Secretary