UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2310 / October 6, 2004

INVESTMENT COMPANY ACT OF 1940
Release No. 26627 / October 6, 2004

Administrative Proceedings
File No. 3-11696

In the Matter of **RS Investment Management, Inc., RS Investment Management, L.P., G. Randall Hecht and Steven M. Cohen,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS 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, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The United States Securities and Exchange Commission (the "Commission") deems it appropriate and in the public interest that 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 RS Investment Management, Inc., RS Investment Management, L.P. (collectively "RS"), G. Randall Hecht ("Hecht"), Steven M. Cohen ("Cohen") (collectively "Respondents").

II.

In anticipation of the institution of these proceedings, the Respondents have 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 in which the Commission is a party, and without admitting or denying the findings herein, except those findings pertaining to the Commission's jurisdiction over it and the

subject matter of these proceedings, the Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings 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, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and the Respondents' Offer, the Commission finds[1] that:

Summary

1. RS, a San Francisco Bay Area investment adviser, entered into undisclosed arrangements allowing selected investors – typically high-dollar value investors – to engage in excessive trading prohibited by the mutual funds' prospectus. These select investors reaped millions of dollars in excess profits, while RS earned approximately $1.7 million in additional fees as a result of the special trading arrangements.

2. RS allowed at least five investors to engage in frequent short term trading in substantial dollar amounts. In some instances, RS allowed this trading simultaneously with the client's agreement to place long-term (also known as "sticky") assets in the RS funds. For example, in 2002 RS – with the approval of its CEO and CFO – entered into an agreement with one of its largest investors allowing the investor to make unlimited trades in RS's largest mutual fund, notwithstanding a provision in the prospectus limiting investors to four exchanges per year.[2] At the same time, the investor agreed to deposit $130 million in long-term assets into the same mutual fund, generating approximately $626,000 in management fees for RS.

3. Respondents never disclosed to the Funds' Board of Trustees or RS shareholders that the firm only selectively enforced the exchange provisions set forth in the Funds' prospectus. Nor did they disclose the potential conflict of interest created when the firm allowed some investors to trade in excess of the prospectus's exchange provision while simultaneously investing long-term assets.

4. By virtue of the activities alleged herein, RS willfully violated Sections 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, Cohen caused and willfully aided and abetted RS's violations of Sections 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, and Hecht caused and willfully aided and abetted RS's violation of Section 206(2) of the Advisers Act and Sections 17(d) and 34(b) of the Investment Company Act and Rule 17d-1 thereunder.

[1] The findings herein are made pursuant to the Respondents' Offer and are not binding on any other persons or entities in this or any other proceeding.

[2] An exchange is a trade between one of the RS funds and another, including the Money Market Fund.

Respondents

5. **RS Investment Management, L.P.**, (RSLP) is an employee-owned California limited partnership, formerly part of Robertson Stephens & Co. RSLP is the investment adviser for a family of ten mutual funds (the "Funds") that comprise the RS Investment Trust, a registered open-end investment company. The funds specialize in small- and mid-cap equity investing. RSLP provides investment advisory, portfolio management, and administrative services to its Funds. RSLP earns fees based on assets that are under management in the funds for which RSLP serves as investment adviser. Until February 2002, **RS Investment Management, Inc.** acted as the investment adviser for RS's then largest fund, the Emerging Growth Fund ("EGF"); after that, RS Investment Management, L.P. acted as investment adviser for the EGF. Today, RS Investment Management, L.P. and RS Investment Management, Inc. are functionally the same entity with the same management (hereinafter the firms will be collectively referred to as "RS"). As of March 31, 2004, RS's assets under management were approximately $7.5 billion.

6. **G. Randall Hecht**, age 53 and a resident of Tiburon, California, is the Chief Executive Officer and Chairman of RS. Hecht has been a trustee of the RS Investment Trust since at least 1999 (other than March through May of 2001). Hecht owns a substantial interest in RS.

7. **Steven M. Cohen**, age 38 and a resident of San Francisco, California, has served as the Chief Financial Officer of RS since March 1999. During the same period, he acted as the treasurer of the RS Investment Trust. Cohen owns an interest in RS.

Facts

RS's Trading Policies And Practices

8. RS is the investment adviser to the ten Funds. The Funds are equity funds with approximately $5.1 billion in assets under management as of December 31, 2003. Between 1999 and December 31, 2003, the Funds also included a money market fund. During this period, the fund with the highest asset value was consistently the EGF, with approximately $1.6 billion in assets under management as of December 31, 2003.

9. From at least 2000 through mid-2003, the ten equity Funds issued a single prospectus to potential investors. The money market fund had its own prospectus. Both prospectuses expressly limited the number of exchanges an investor could make in and out of the Funds. During the relevant time period, the Funds' prospectus made the following disclosure:

> **Exchanges**
> Shares of one Fund may be exchanged for shares of another Fund…. However, you may not exchange your investment more than four times in any 12-month period (including the initial exchange of your investment from that Fund during the period, and subsequent

exchanges of that investment from other Funds or the RS Money Market Fund during the same 12-month period).

The prospectus further disclosed that "[e]xchange privileges may be terminated, modified, or suspended by a Fund upon 60 days prior notice to shareholders." The Money Market Fund prospectus also limited shareholders to four exchanges per 12 months. Hecht and Cohen signed the RS Investment Trust's registration statements, which incorporated the prospectuses, for the years 2000 through 2003.

10. Notwithstanding the language in the prospectuses, RS had no consistent policy with regard to shareholders who exceeded the exchange limit. While RS did not stringently enforce the four-exchange limitation, the firm, during the relevant period, took action against some customers who were excessively trading in the Funds. Such actions were usually taken against customers engaged in "market timing," the practice of frequently buying and selling shares of the same fund, in part to exploit potential inefficiencies in mutual fund pricing.[3]

11. The words "market timing" did not appear in the RS prospectuses. However, on certain occasions RS admonished investors to discontinue their market timing activities and stated that market timing was not permitted in its Funds. For example, in February 2001, RS's sales department informed several investors that: "Our Firm's policy on market timing is as follows: The frequent trading of large dollar amounts in our group of Funds is disruptive to the asset base and ultimately can damage the performance of the portfolio. We do not tolerate market timers in our Funds, and we want all [] accounts that are market timing our Funds to be banned from market timing our Funds."

12. RS's sales department frequently used the four-exchange limitation language from the prospectuses as the basis for prohibiting market timing. Indeed, in response to a questionnaire about RS's policies and practices, RS stated: "RS Investments does not allow market timing in any funds. You may not exchange your investment more than four times in any 12-month period."

Unlimited Trading and Long-Term Asset Arrangements

13. Notwithstanding the exchange provisions in the prospectuses, and the internal practices described above, RS entered into at least four arrangements with three customers allowing the customers to engage in an unlimited number of trades. These arrangements included the simultaneous investment of long-term assets in the RS mutual fund. These long-term assets generated additional management fees for RS.

[3] Market timing includes (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.

14. For example, as of October 2001, an RS sales representative entered into a written agreement with a brokerage firm allowing an investor to make unlimited trades of up to $20 million per transaction (provided that advance notice was given to RS). Simultaneously, the investor made a long-term asset commitment of $1 million to be invested in one of the RS Funds. This asset generated approximately $46,000 in management fees for RS.

15. In addition, by late 2002, RS had at least two other long-term asset arrangements with investors in place. These arrangements allowed the investors to engage in unlimited trading in amounts ranging from $15 million to $33 million per trade; at the same time, these investors invested long-term assets ranging from approximately $2.3 million to $5 million.

16. In about the fall of 2002, RS decided to disallow market timing in the EGF due to a decline in EGF's asset base. RS began to notify its large short-term traders (who made up the majority of the short-term trading assets) that they would no longer be welcome to market-time the EGF. In response, several of these frequent traders proposed to RS that they be allowed to continue their short-term trading in the EGF and would place a long-term asset into the EGF. Hecht and Cohen reviewed these proposals and selected the proposal that was the most financially advantageous for the firm. Under the proposal accepted by RS in October 2002, the investor was permitted to make an unlimited number of trades of up to $65 million per transaction in return for a $130 million long-term investment to be placed in the EGF. All other large timers were prohibited from market timing in the EGF.

17. As a result of this arrangement, between October 2002 and July 2003 the investor was permitted to make approximately 80 exchanges, which resulted in millions of dollars of net profits. When the investor later expressed its intention to withdraw some portion of the long term asset from the EGF and decided to invest a portion in an RS hedge fund, RS requested that the trader's market timing activity be limited so that the 2:1 ratio of long term assets to timing assets would be maintained. However, by the time the investment was made in the RS hedge fund in July 2003, the investor had ceased its market timing activity.

18. Between 2000 and mid-2003, the large investors who were granted trading privileges netted millions of dollars in profits from their trading activities. Notwithstanding the four-exchange limitation language in the prospectuses, some of these investors made hundreds of exchanges annually, potentially driving up the specific Funds' management costs at the expense of other shareholders. During this time period, RS reaped at least $1.7 million in additional fees generated by the excessive trading assets and long-term assets resulting from RS's arrangements with certain investors.

19. Neither RS nor its officers conducted any written study or analysis to determine whether such trading was harmful to the specific RS Funds and their shareholders.

Failure to Disclose the Long-Term Asset Arrangements and the Potential Conflicts Associated With Them

20. At no time did the Respondents notify the Funds' shareholders and Board of Trustees that it was permitting certain investors to market time by exceeding the four-exchange

language in the RS Funds while excluding others from exceeding it. The Respondents also failed to disclose the potential conflict of interest created by RS's acceptance of long-term assets from market timers and management fees generated on those assets, contrary to the interests of other investors.

RS's Remedial Actions

21. On its own volition, RS has taken the following voluntary remedial actions:

a. has taken steps to prevent market-timing in any of its Funds;

b. has undertaken to use its best efforts to ensure the Funds' compliance with the Funds' stated four-exchange per 12 month period limitation, including adopting a zero-tolerance policy for identified market-timing activity;

c. has begun daily review of investor activity to identify market timing or other suspicious trading activity;

d. has begun to hold a quarterly risk assessment meeting between the independent trustees, senior compliance including the Chief Compliance Officer ("CCO"), trading desk personnel and outside counsel (including counsel to the independent trustees and counsel to the Funds) prior to each board meeting (the "Risk Management Committee"). As part of this effort, RS has increased its legal and compliance personnel to six from two;

e. has closed the RS Money Market Fund and ceased active operations of all domestic hedge funds managed by RS mutual fund managers;

f. effective August 31, 2004, caused the Funds to comply with Rule 38a-1, notwithstanding the October 5, 2004 compliance date for each rule as adopted by the Commission. See Compliance Programs of Investment Companies and Investment Advisers, Investment Company Act Rel. No. 26299 (Dec. 17, 2003) (adopting release).

Violations

22. As a result of the conduct described in Paragraphs 1 through 20 above, RS willfully violated Sections 206(1) and 206(2) of the Advisers Act, Cohen caused and willfully aided and abetted RS's violations of Sections 206(1) and 206(2) of the Advisers Act, and Hecht caused and willfully aided and abetted RS's violation of Section 206(2) of the Advisers Act. Specifically, the Respondents knowingly, recklessly and/or negligently entered into arrangements that permitted certain investors to exceed the exchange limitation in the prospectus, and did not disclose the existence of arrangements that allowed certain investors to conduct unlimited trading while simultaneously placing long-term assets in the RS Funds. The Respondents failed to disclose these arrangements to the Funds' Trustees or shareholders.

23. As a result of the conduct described in Paragraphs 1 through 20 above, RS willfully violated, and Cohen and Hecht caused and willfully aided and abetted RS's violations of, Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder in that RS as an affiliated person of RS Funds and acting as principal, effected transactions in which certain RS Funds were joint participants with RS in contravention of rules and regulations the Commission has prescribed for the purpose of limiting or preventing participation by registered companies, such as the RS Funds, on a basis different from or less advantageous than that of such other participants without obtaining a Commission order approving the transaction. Specifically, RS, as investment adviser, is an affiliated person of the RS Funds. RS caused certain RS Funds to enter into joint arrangements whereby RS accepted a long-term asset from a shareholder in an RS Fund pursuant to an arrangement allowing the same shareholder to exceed exchange limits set by the prospectus in the same, or other, RS Fund. For example, RS accepted a long-term asset in the EGF from a shareholder, while allowing that shareholder to effect excessive exchanges in the EGF. RS earned increased management fees on those long-term assets held by the RS Funds while allowing the approved exchange activity. By contrast, the affected RS Funds obtained little or no benefit from this unauthorized activity. The Commission never granted an order approving the transactions.

24. As a result of the conduct described in Paragraphs 1 through 20 above, RS willfully violated, and Cohen and Hecht caused and willfully aided and abetted violations of, Section 34(b) of the Investment Company Act, which provides in pertinent part, that it is "unlawful for any person to make any untrue statement of a material fact in any registration statement … or other document filed or transmitted pursuant to" the Investment Company Act, and to "omit to state therein any fact necessary in order to prevent the statements made therein, in light of the circumstances under which they were made, from being materially misleading."

Undertakings

25. In determining to accept the Offer, the Commission considered the following efforts to be voluntarily undertaken by RS and the RS Funds:

a. Effective 10 business days following the entry of the Order, RS will use its best efforts to cause the RS Funds to operate in accordance with the following governance policies and practices:

i. no more than 25 percent of the members of the board of Trustees of any RS fund will be persons who either (a) were directors, officers or employees of RS 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 RS. In the event that the board of Trustees fails to meet this "independent trustee" 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 board of Trustees of any RS fund will either (a) have been a director, officer or employee of RS 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 RS; and

iii. any person who acts as counsel to the independent Trustees of any RS fund will be an "independent legal counsel" as defined by Rule 0-1 under the Investment Company Act.

iv. no action will be taken by the 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 of employees of RS at any point during the preceding 10 years nor (ii) interested persons, as defined in the Investment Company Act, of the fund or of RS. In the event that any action proposed to be taken is opposed by a vote of *one or more* of the independent Trustees of a fund, then the fund will disclose such proposal, the related board vote, and the reason, if any, for such independent Trustee(s)' vote against the proposal in its shareholder report for such period.

b. Commencing in 2005 and not less than every fifth calendar year thereafter, each RS Fund will hold a meeting of shareholders at which the board of Trustees will be elected.

26. Compliance, Ethics and Legal Oversight Infrastructure: RS shall comply with the following undertakings:

a. RS at its own expense will strengthen its compliance and legal and ethics oversight infrastructure by:

i. Hiring a CCO. RS shall require that its CCO or a member of his or her staff review compliance with the policies and procedures established to address compliance issues under the Investment Advisers Act and Investment Company Act and that any violations be reported to the Chief Executive Officer ("CEO") and the RS Board of Trustees. However, during the period in which the CEO, Hecht, is complying with undertakings enumerated in Paragraph 32, below, the CCO will report to the COO. In his or her role, the CCO shall also report at least quarterly to the independent trustees. In addition to these duties, the CCO shall, among other things:

(a). be the conflicts of interest designee charged with responsibility for identifying potential conflicts of interest issues;

(b). be the corporate ombudsman to RS employees in order to convey concerns about RS business matters that they believe implicate matters of ethics or questionable practices. RS shall establish procedures to investigate matters brought to the attention of the CCO in his or her capacity as ombudsman, and these procedures shall be presented for review and approval by the independent Trustees of the RS funds. RS

shall also review matters, with the independent Trustees of the RS funds with such frequency as the independent Trustees of such funds may instruct;

(c). identify potential or actual conflicts of interest issues;

(d). report regularly to the Risk Management Committee;

(e). assist the Board of Trustees in taking steps to ensure that RS fulfills its fiduciary duties and complies with its Code of Ethics and the securities laws;

(f). review, at least annually, RS's compliance with the policies and procedures established to address compliance issues under the federal securities laws.

ii. Hiring a Chief Operating Officer ("COO"). RS shall require its CCO to communicate to the COO, for implementation and execution, any and all compliance-related activities and operations deemed necessary and appropriate by the CCO and/or the Board of Trustees. The COO shall have responsibility, in consultation with the CCO, for implementing and executing such compliance-related activities and operations. In addition, RS shall require its COO to report directly to the independent trustees of the RS Funds related to RS mutual fund investors during the period of Hecht's undertakings. Furthermore, RS shall vest the COO with full and exclusive supervisory power and responsibility over shareholder trading, shareholder trading agreements or arrangements, and all other operational issues relating to shareholder trading in the RS funds during the period of Hecht's undertakings. RS shall also vest the COO with full and exclusive supervisory power and responsibility over RS's finances, as well as over the implementation and execution of all compliance-related activities and operations deemed necessary and appropriate by the CCO and/or the Board of Trustees ;

iii. Establishing a Compliance Systems Committee (the "committee") whose purpose it is to coordinate compliance goals with operations. Members of the committee will include the CEO, COO, CFO, CCO, General Counsel, and personnel representing Sales and Marketing. Meetings of the committee shall be held weekly. The Compliance Systems Committee shall be chaired by RS's Chief Compliance Officer, and shall have as its members senior executives of RS's operating businesses. Notice of all meetings of the Compliance Systems Committee shall be given to the independent staff of the Trustees of the RS funds, who shall be invited to attend and participate in such meetings. The Compliance Systems Committee shall review compliance issues throughout the business of RS, endeavor to develop solutions to those issues as they may arise from time to time, and oversee implementation of those solutions. The Compliance Systems Committee shall provide reports on internal compliance matters to the Risk Management Committee of the Trustees of the RS funds with such frequency as the independent Trustees of such funds may instruct, and in any event at least quarterly. RS shall also provide to the Risk Management Committee of RS the

same reports of the Code of Ethics Oversight Committee and the Compliance Systems Committee that it provides to the Risk Management Committee of the RS funds;

iv. Hiring a full-time General Counsel experienced in securities law regulation. The General Counsel shall oversee, in conjunction with the CCO, all legal and compliance personnel and practices;

v. Creating procedures and rules to ensure that all incoming and outgoing correspondence with investors is reviewed by compliance personnel;

vi. Drafting a new Code of Ethics and maintaining a Code of Ethics Oversight Committee having responsibility for all matters relating to issues arising under the RS Code of Ethics. The Code of Ethics Oversight Committee shall be comprised of senior executives of RS's operating businesses. RS shall hold at least quarterly meetings of the Code of Ethics Oversight Committee to review violations of the Code of Ethics, as well as to consider policy matters relating to the Code of Ethics. RS shall report on issues arising under the Code of Ethics, including all violations thereof, to the Audit Committee of the Trustees of the RS funds with such frequency as the Audit Committee may instruct, and in any event at least quarterly, provided however that any material violation shall be reported promptly; and

vii. Effective August 31, 2004, RS will comply with Rule 206(4)-7, notwithstanding the October 5, 2004 compliance date for each rule as adopted by the Commission. See Compliance Programs of Investment Companies and Investment Advisers, Investment Company Act Rel. No. 26299 (Dec. 17, 2003) (adopting release). See also, Section III., paragraph 26(d)(vi), above.

b. RS shall require its CCO and COO to report to the independent trustees of the RS Funds any breach of fiduciary duty and/or the federal securities laws to the extent relating to fund business of which he or she becomes aware in the course of carrying out his or her duties, with such frequency as the independent directors may instruct, and in any event at least quarterly, provided however that any material breach (i.e., any breach that would be important, qualitatively or quantitatively, to a reasonable director) shall be reported promptly;

c. RS shall use its best efforts to cause the RS Investment Trust to establish a "lead independent trustee" of the RS Investment Trust. After respondent Hecht's resignation from the Board of Trustees, described below, no more than 25% of the Board's trustees shall be comprised of interested persons, officers or employees.

27. Compliance Consultant. RS has undertaken as follows:

RS has retained, or within 30 days of the date of entry of the Order, will retain, the services of a Compliance Consultant not unacceptable to the staff of the Commission and a majority of the independent Trustees of the RS funds. The Compliance Consultant's

compensation and expenses related to the review described below shall be borne exclusively by RS or its affiliates. The Compliance Consultant shall conduct a comprehensive review of RS'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 RS and its employees. This review shall include, but shall not be limited to, a review of RS's market timing controls across all areas of its business, a review of the RS funds' pricing practices that may make those funds vulnerable to market timing, a review of the RS funds' utilization of short term trading fees and other controls for deterring excessive short term trading, and a review of RS's policies and procedures concerning conflicts of interest, including conflicts arising from advisory services to multiple clients. RS shall cooperate fully with the Compliance Consultant and shall provide the Compliance Consultant with access to its files, books, records, and personnel as reasonably requested for the review.

a. RS shall require that, at the conclusion of the review, which in no event shall be more than 120 days after the date of entry of the Order, the Compliance Consultant shall report to RS and the Trustees of the RS funds on the issues described in the preceding subparagraph, any recommendations for changes in or improvements to policies and procedures of RS and the RS funds, and a procedure for implementing the recommended changes in or improvements to RS's policies and procedures.

b. RS shall adopt the recommendations of the Compliance Consultant; provided, however, that within 150 days after the date of entry of the Order, RS shall advise the Compliance Consultant and the Trustees of the RS funds of any recommendations that it considers unnecessary or inappropriate. With respect to any recommendation that RS considers unnecessary or inappropriate, RS 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.

c. As to any recommendation with respect to RS's policies and procedures on which RS and the Compliance Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 180 days of the date of entry of the Order. In the event RS and the Compliance Consultant are unable to agree on a proposal, RS will abide by the determinations of the Compliance Consultant and the majority of independent trustees.

d. RS (i) shall not have the authority to terminate the Compliance Consultant without the prior written approval of the majority of independent Trustees; (ii) shall compensate the Compliance Consultant, and persons engaged to assist the Compliance Consultant, for services rendered pursuant to this paragraph at their reasonable and customary rates; and, (iii) shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Compliance Consultant from transmitting any information, reports, or documents to the Trustees.

28. Periodic Compliance Review. RS has undertaken that, commencing in 2006, and at least once every other year thereafter, RS shall undergo a compliance review by a third party, who is not an interested person, as defined in the Investment Company Act, of RS. At the conclusion of the review, the third party shall issue a report of its findings and recommendations concerning RS'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 RS and/or its employees in connection with their duties and activities on behalf of and related to the RS Funds. Each such report shall be promptly delivered to RS's chief compliance officer and to the Compliance or Audit Committee of the Board of Trustees or directors of each RS fund.

29. Distribution of Disgorgement and Civil Money Penalty. RS has undertaken as follows:

a. RS shall retain, within 45 days of the date of entry of the Order, the services of an Independent Distribution Consultant acceptable to the staff of the Commission and the independent Trustees of the RS Funds. The Independent Distribution Consultant's compensation and expenses shall be borne exclusively by RS. RS 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. RS shall require the Independent Distribution Consultant to develop a Distribution Plan for the distribution of the total disgorgement and penalty ordered in Paragraph IV.G. below, and any interest or earnings thereon, according to a methodology developed in consultation with RS and acceptable to the staff of the Commission and the independent Trustees of the RS Funds. The Distribution Plan shall provide for fund investors to receive, in order of priority, (i) their proportionate share of losses suffered by the fund(s) due to market timing trading activity as calculated by the Independent Distribution Consultant, and (ii) a proportionate share of advisory fees paid by the fund(s) that suffered such losses in connection with the violative trading activity.

b. RS shall require the Independent Distribution Consultant to submit the Distribution Plan to RS and the staff of the Commission no more than 30 days after the date of the final payment required following the entry of the Order.

c. The Distribution Plan as developed by the Independent Distribution Consultant shall be binding unless, within 60 days of receipt of the proposed Distribution Plan, RS 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.

d. With respect to any determination or calculation with which RS or the staff of the Commission does not agree, such parties shall attempt in good faith to reach an agreement within 60 days after receipt of the proposed Distribution Plan. In the event that RS 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;

e. Within 100 days of the date of the final payment required following the entry of the Order, RS shall require that 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, RS shall require that the Independent Distribution Consultant, with RS, take all necessary and appropriate steps to administer the final

plan for distribution of disgorgement and penalty funds.

f. RS 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, shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with RS Investments L.P., RS Investments, Inc. or RS Investment Management, Co. LLC or any of their present or former subsidiaries, affiliates, Trustees, directors, officers, employees, or agents acting in their capacity as such. RS shall require that any firm with which the Independent Distribution Consultant is affiliated in the performance of his or her duties under the Order not, without prior written consent of the independent trustees of the RS Funds and the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with RS or its affiliates or any of their present or former subsidiaries, affiliates, trustees, 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.

30. Ongoing Cooperation. The Respondents undertake to cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, the Respondents have undertaken:

a. To produce, without service of a subpoena, any and all documents and other information requested by the Commission's staff;

b. To use their best efforts to cause RS's employees to be interviewed by the Commission's staff at such times as the staff reasonably may direct;

c. To use their best efforts to cause RS's employees to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and

d. That in connection with any testimony of the Respondents to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, Respondents:

i. Agree that any such notice or subpoena for Respondents' appearance and testimony may be served by regular mail on its attorneys, (i) Tower C. Snow, Jr., Esq., of Clifford Chance U.S. LLP, One Market Street, Steuart Tower, San Francisco, California 94105, (ii) James E. Burns, Jr., Esq. of Orrick, Harrington LLP, 405 Howard Street, San Francisco, California 94105, and (iii) Susan S. Muck, Esq., Fenwick & West, LLP, 275 Battery Street, San Francisco, CA 94111; and

ii. Agree that any such notice or subpoena for Respondents' appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

31. Respondent Hecht undertakes to:

a. Resign as trustee of the RS Investment Trust within 10 business days of the entry of the Order and agree not to serve as a trustee of the RS Investment Trust for a period of five years from his date of resignation. Hecht further agrees that he shall not serve as a trustee or director of any other mutual fund investment trust or investment company board at any future time;

b. Limit his activities with respect to RS or any investment adviser beginning the second Monday after the date of this Order for a period of twelve months, as follows:

i. Hecht shall not perform any duties for RS or any other investment adviser relating to prospectuses or other public disclosures, compliance matters, internal audit functions, or shareholder trading activities. Hecht may, consistent with his obligation to shareholders as Chief Executive Officer and his duties under Paragraph 31(b)(ii), below, continue to remain apprised of RS's compliance policies and procedures. Neither the CCO nor the COO of RS shall report to Respondent Hecht with respect to any of the duties described in this Paragraph 31(b)(i). Furthermore, with respect to such duties the COO shall serve as RS's Acting Co-CEO during this period.

ii. Hecht may, to the extent such duties are not prohibited in Paragraph 31(b)(i), above: (a) perform duties involving strategic planning, business analysis and development, and finance, (b) participate in marketing of the non-mutual fund business of RS, (c) continue to perform duties in and make decisions in the areas of Human Resources, IT, and compensation at RS.

32. Certification. RS has undertaken that, no later than twenty-four months after the date of entry of the Order, the Chief Executive Officer of RS shall certify to the Commission in writing that RS has fully adopted and complied in all material respects with the undertakings set forth in this Section and with the recommendations of the Chief Compliance Officer, or in the event of material non-adoption or non-compliance, shall describe such material non-adoption and non-compliance.

33. Recordkeeping. RS 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 RS's compliance with the undertakings set forth in this Section, Paragraphs 26-33.

IV.

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

A. Pursuant to Section 203(e) of the Advisers Act, RS is hereby censured.

B. Pursuant to Section 203(k) of the Advisers Act and Section 9(f) of the Investment Company Act, Respondents RS and Cohen shall cease and desist from committing or causing any

violations and any future violations of Sections 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, and Respondent Hecht shall cease and desist from committing or causing any violations and any future violations of Section 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, Respondent Cohen shall be suspended from association with an investment adviser for a period of nine months beginning on the second Monday after the date of the entry of the Order.

D. Pursuant to Section 9(b) of the Investment Company Act, Respondent Cohen shall be 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 for a period of nine months beginning on the second Monday after the date of the entry of the Order.

E. Pursuant to Section 203(f) of the Advisers Act, for two years following the completion of the suspensions described in Paragraph IV.C -D. above, Cohen shall not serve as an officer or director of any investment company or investment adviser.

F. The Respondents shall comply with the undertakings enumerated in Section III.B., Paragraphs 26-29 and 31-33.

G. Payment of Disgorgement and Civil Money Penalties by RS:

1. RS shall pay disgorgement in the total amount of $11.5 million ("Disgorgement") and a civil money penalty in the total amount of $13.5 million ("Penalty"), for a total amount of $25,000,000. The payments shall be made on the following schedule:

a. RS shall pay $13,000,000 within 30 days of the entry of this Order;

b. RS shall pay an additional $6,000,000 within 180 days of the first payment, but under no circumstances later than December 31, 2004; and

c. RS shall pay the remaining $6,000,000 within 180 days of the second payment, but under no circumstances later than by May 31, 2005.

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.G.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, RS 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 RS ("RS Penalty Offset"). If the court in any Related Investor Action grants such an offset or reduction, RS 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 RS 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 RS in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against RS 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, RS shall, within 30 days of the entry of this Order, begin payments of the Disgorgement and Penalty on the schedule described in Section IV.G.1., into an escrow account. The escrow agreement shall, among other things: (1) require that all funds in escrow be invested as soon as reasonably possible and to the extent practicable 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. RS shall be responsible for all costs associated with the escrow agreement.

H. Payment of Civil Money Penalties by Cohen and Hecht. Cohen and Hecht shall each, within 30 days of the entry of the Order, pay a civil monetary penalty of $150,000 for a total of $300,000 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 Cohen and Hecht as Respondents in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent, within 10 days of the payment, to Helane L. Morrison, District Administrator, San Francisco District Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 1100, San Francisco, California, 94104. 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, Cohen and Hecht agree that they 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, Cohen and Hecht agrees that they 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 Cohen or Hecht in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Cohen or Hecht by or on behalf of one or more investors based on substantially the same facts as alleged in the Order in this proceeding.

I. Deadlines. For good cause shown, the Commission's staff may extend any of the procedural dates set forth above.

J. Other Obligations and Requirements. Nothing in this Order shall relieve the Respondents 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