

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58880/October 30, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13281

In the Matter of

**LAZARD CAPITAL
MARKETS LLC,**

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS,
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AS TO
LAZARD CAPITAL MARKETS LLC**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Lazard Capital Markets LLC (“Lazard Capital Markets” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) that 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings, Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions as to Lazard Capital Markets LLC (“Order”), as set forth below

III.

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

Respondent

1. **Lazard Capital Markets** is registered with the Commission as a broker-dealer (File No. 8-2595) pursuant to Section 15(b) of the Exchange Act, with its principal place of business in New York, New York. Lazard Freres & Co. LLC 's capital markets assets were separated from its other businesses and transferred to Lazard Capital Markets in 2005.² At all relevant times, Lazard Freres & Co. LLC was registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act and provided securities brokerage services to institutional customers.

Other Relevant Parties

2. **David L. Tashjian** ("Tashjian"), age 52, resides in New York, New York and has been a licensed securities professional since 1982. From 1992 until 2006, when he resigned, Tashjian held various senior positions with Lazard Capital Markets, becoming a managing director in 1993 and, for a period of time, serving on the firm's management committee. In 2002, Tashjian became the head of Lazard Capital Markets' U.S. sales and trading department, in which two Lazard Capital Markets registered representatives within his supervisory authority, Robert A. Ward and W. Daniel Williams, were employed. In 2005, he became head of Lazard Capital Markets' equity sales and trading department.

3. **Louis Gregory Rice** ("Rice"), age 42, resides in New York, New York and has been a licensed securities professional since 1987. From 1987 until he resigned in March 2005, Rice held various positions with Lazard Capital Markets. He became a managing director in 1996 and from 1996 to 2005, was the head of Lazard Capital Markets' equity sales and trading department in the United States, supervising, among others, Robert A. Ward and W. Daniel Williams and reporting to Tashjian.

4. **Robert A. Ward** ("Ward"), age 47, resides in New York, New York and has been a licensed securities professional since 1983. From April 1998 until he was permitted to resign in March 2005, he was associated with Lazard Capital Markets as a registered account executive in the equity sales and trading department, becoming a managing director in January 2003.

5. **W. Daniel Williams** ("Williams"), age 47, resides in Westport, Connecticut and has been a licensed securities professional since 1985. From April 1998 until he was permitted

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

² For purposes of this Order, unless otherwise described, the term "Lazard Capital Markets" includes its predecessor entity, Lazard Freres & Co., LLC.

to resign in March 2005, he was associated with Lazard Capital Markets as a registered account executive in the equity sales and trading department, becoming a managing director in January 2003.

6. **FMR Co., Inc.** (“Fidelity”) is registered with the Commission as an investment adviser (File No. 801-3447) pursuant to Section 203(c) of the Investment Advisers Act of 1940 (“Advisers Act”), with its principal place of business in Boston, Massachusetts. Fidelity is a wholly owned subsidiary of Fidelity Management & Research Company (“FMR”), which is also an investment adviser registered with the Commission (File No. 801-7884) pursuant to Section 203(c) of the Advisers Act. Fidelity provides portfolio management services as a sub-adviser to certain customers of FMR, including approximately 350 registered investment companies marketed under the “Fidelity Investments” trade name and managed by FMR and its affiliates (the “Fidelity Funds”).³

7. **Thomas H. Bruderman** (“Bruderman”), age 39, lives in Boston, Massachusetts. He was a domestic equity trader at Fidelity from 1998 until December 2004.⁴

Facts

Summary

8. These proceedings concern Lazard Capital Markets’ provision of travel, entertainment and gifts to certain employees of Fidelity. From 2000 to 2004 (the “Relevant Period”), two Lazard Capital Markets registered representatives, Ward and Williams, and Tashjian, who headed Lazard Capital Markets’ U.S. sales and trading department, used a total of over \$600,000 in connection with entertaining and providing travel and gifts, much of which violated Lazard Capital Markets’ policies, to Fidelity equity trader Thomas H. Bruderman and certain other members of Fidelity’s equity trading desk. Bruderman and the other Fidelity equity traders who received such travel, entertainment and gifts were responsible for selecting brokerage firms to execute orders to buy and sell securities for the Fidelity Funds. Lazard Capital Markets employees took Bruderman on trips to Europe, the Bahamas, the Caribbean, Florida, and Napa Valley, California, often by private plane, including meals and lodging at high-end restaurants and hotels; and provided Bruderman race car driving lessons, adult entertainment and expensive wine. In addition, Lazard Capital Markets employees contributed

³ On March 5, 2008, the Commission instituted a related administrative proceeding against Fidelity. *See In the Matter of Fidelity Management & Research Co. and FMR Co. Inc.*, Advisers Act Release No. 2713, Admin. Proc. File No. 3-19276 (March 5, 2008).

⁴ On March 5, 2008, the Commission instituted a related administrative proceeding against Bruderman and nine other employees of Fidelity’s equity trading desk. *See In the Matter of Scott DeSano, et al.*, Admin. Proc. File No. 3-12978 (March 5, 2008).

approximately \$50,000 to the expenses associated with Bruderman's elaborate bachelor party in Miami.⁵

9. Throughout the Relevant Period, the brokerage commissions Ward and Williams generated from Fidelity were a significant portion of Lazard Capital Markets' overall commission revenue. For example, from 2001 to 2003, Fidelity commissions generated by Fidelity traders to whom Tashjian, Ward and Williams provided travel, entertainment and gifts constituted an average of over 16% of Lazard Capital Markets' annual commission revenue during that period. During the Relevant Period, commissions from Fidelity far exceeded commissions from any other Lazard Capital Markets customer.

10. During the Relevant Period, Bruderman personally directed Fidelity securities orders to Ward and Williams that generated approximately \$21.6 million in commissions - over ten percent of Lazard Capital Markets' overall commission revenue during that five-year period.

11. Section 17(e)(1) of the Investment Company Act of 1940 ("Investment Company Act") makes it unlawful for an affiliated person of a registered investment company, or an affiliate of an affiliate, when acting as an agent, to accept compensation from any source (other than a salary or wages from the registered investment company) for the purchase or sale of any property to or for the registered investment company. Bruderman and the other Fidelity employees were affiliated persons of Fidelity, which is an affiliated person of registered investment companies (the Fidelity Funds), because Fidelity is the adviser to those funds. Bruderman's and the other Fidelity traders' receipt of travel, entertainment and gifts from Lazard Capital Markets employees constituted compensation within the scope of the prohibition of Section 17(e)(1) of the Investment Company Act.

12. Section 15(b)(4) of the Exchange Act authorizes the Commission to censure and

⁵ Simultaneously with the commencement of this proceeding, the Commission has issued Orders with respect to Messrs. Tashjian, Rice, Ward and Williams. See the following Commission Orders: *In the Matter of David L. Tashjian*, Admin. Proc. File No. 3-13284 (October 30, 2008); *In the Matter of Louis Gregory Rice*, Admin. Proc. File No. 3-13282 (October 30, 2008); *In the Matter of Robert A. Ward*, Admin. Proc. File No. 3-13283 (October 30, 2008); and *In the Matter of W. Daniel Williams*, Admin. Proc. File No. 3-13285 (October 30, 2008).

impose civil penalties on a broker or dealer for failing reasonably to supervise, with a view to preventing violations of the federal securities laws, another person who commits such a violation, if that person is subject to the broker's or dealer's supervision.

13. Lazard Capital Markets failed reasonably to supervise, within the meaning of Section 15(b)(4)(E) of the Exchange Act, Tashjian, Ward, and Williams, with a view to preventing their aiding and abetting and causing Bruderman's and, in several instances, other Fidelity traders' violations of Section 17(e)(1) of the Investment Company Act.

Lazard Capital Markets' Policies

14. Lazard Capital Markets' policies prohibited providing gifts in excess of \$100. From 2001 through at least mid-2004, Lazard Capital Markets' Compliance Manual stated:

An employee may not give any gratuity in excess of \$100 per person per year to any principal, officer, or employee of another ... *financial institution*.... Records shall be retained for at least three years of all such gratuities and compensation for inspection by Exchange examiners. (emphasis added).

Lazard Capital Markets also subjected its managing directors and employees to the prerequisites of relevant law and reasonable conduct and required that:

Any questions regarding the application or interpretation of behavior or conduct that may be acceptable must be brought to the attention of the General Counsel or his designee *before* any action is taken. (emphasis added).

15. Lazard Capital Markets' General Supervision manual made it clear that supervisors were responsible for ensuring employee compliance with its gifts and entertainment policies. Under the heading "Conflicts of Interest," the manual provided that:

Supervisory Personnel are responsible for being familiar with these [gifts and gratuities] rules, and they must make certain that the employees under their supervision fully comply with them. Any doubts or concerns regarding the propriety of a gift or gratuity should be brought to the attention of the Legal and Compliance Department.

16. Under the heading "Entertainment of Customers," Lazard Capital Markets' General Supervision Manual stated:

Firm policy provides that a Managing Director must approve all entertainment expenditures and document their approval in writing on the appropriate forms.... If a Supervisor confronts a compliance problem concerning the entertainment of customers, he should immediately contact the Legal and Compliance Department to plan an appropriate response.

NASD Conduct Rule 3060

17. NASD Conduct Rule 3060, which was in effect during the Relevant Period, prohibited an NASD member, such as Lazard Capital Markets, or persons associated with a member, such as Lazard Capital Markets' employees, from providing a gift or gratuity:

in excess of one hundred dollars per individual per year to any person, principal, proprietor, employee, agent or representative of another person where such payment or gratuity is in relation to the business of the employer of the recipient of the payment or gratuity.”⁶

18. The NASD staff's published guidance concerning Rule 3060's application to business entertainment, also in effect during the Relevant Period, stated:

when a member or its associated persons are hosting clients and their guests at *an occasional meal, sporting event, theater production or comparable entertainment event*, the [NASD] staff would not regard such business entertainment as governed by Rule 3060 *so long as it is neither so frequent nor so extensive as to raise any question of propriety.*” (emphasis added).⁷

⁶ NASD Conduct Rule 3060.

⁷ June 10, 1999 letter from NASD staff to T. Rowe Price Investment Services, Inc., located at: http://www.finra.org/web/idcplg?IdcService=SS_GET_PAGE&siteId=5&siteRelativeUrl=%2FRulesRegulation%2FPublicationsGuidance%2FInterpretiveLetters%2FConductRules%2FP002715&ssUrlPrefix=/&PrinterFriendly=1

Tashjian, Ward and Williams Aided and Abetted and Caused Bruderman's and Certain Other Fidelity Traders' Violations of Section 17(e)(1) of the Investment Company Act

19. During the Relevant Period, Tashjian expensed to Lazard Capital Markets over \$350,000, Ward expensed over \$200,000, and Williams expensed over \$100,000 in connection with entertaining and providing travel and gifts primarily to Bruderman and, on several occasions, to certain other members of Fidelity's equity trading desk.

20. From 2001 through 2004, Tashjian provided Bruderman certain gifts and took him on ten out-of-town trips. For example, Tashjian attended lavish trips to California and Miami with Rice, Ward and Williams during which Lazard Capital Markets employees provided to Bruderman air travel, luxury hotel accommodations, meals, boat rentals, golf, and/or car services. Lazard Capital Markets reimbursed its employees a total of \$50,000 in connection with their attendance and entertainment of Bruderman at his 2003 bachelor party in Miami, including paying for hotel rooms, adult entertainment, car services, and golf for Bruderman and/or his guests. In addition, Lazard Capital Markets paid for two trips in which Tashjian and Ward took Bruderman and his fiancé to the Bahamas, including providing them both private air travel, exclusive hotel accommodations, and meals. Lazard Capital Markets paid for Tashjian to take Bruderman and his significant other on three additional trips in the Caribbean.

21. During the Relevant Period, Ward took Bruderman on several out-of-town trips. For example, Lazard Capital Markets paid over \$16,000 for Ward to take Bruderman and his fiancé on a trip to Napa, California, providing meals and lodging. Lazard Capital Markets also paid for Ward to take Bruderman on a trip to Florida, providing airfare, lodging and meals. On that trip, Ward expensed to Lazard Capital Markets Bruderman's attendance at an auto racing school. Ward also provided at least several expensive gifts to Bruderman and certain other Fidelity traders, including providing to Bruderman a case of wine and a humidior, each of which cost Lazard Capital Markets over \$1,000.

22. Williams also took Bruderman on several trips. For example, he expensed to Lazard Capital Markets a trip to Las Vegas, Nevada and Mexico, on which he and certain other broker representatives provided Bruderman and three other Fidelity trading desk employees golf outings, lodging and entertainment.

23. Tashjian accompanied Ward and Williams on certain trips on which Lazard Capital Markets employees provided Bruderman travel and entertainment that failed to comply with Lazard Capital Markets' policies, and applicable rules and regulations.

24. Rice actively encouraged Ward and Williams to use Lazard Capital Markets' expense account to provide travel and entertainment to Bruderman and several other Fidelity traders, in an effort to generate brokerage business for Lazard Capital Markets. During much of the Relevant Period, Rice reviewed and approved each of Ward's and Williams's travel and

entertainment expenses and approved certain extravagant events that were not in compliance with Lazard Capital Markets' policies, and applicable rules and regulations.

25. The travel, entertainment and gifts provided to Bruderman by Lazard Capital Markets employees constituted prohibited "compensation" within the scope of the prohibition of Section 17(e)(1) of the Investment Company Act.

Lazard Capital Markets Received Substantial Business from Fidelity During the Period its Employees Provided Travel, Entertainment and Gifts to Certain Fidelity Traders

26. During the Relevant Period, Tashjian, Ward and Williams used travel, entertainment and gifts in a manner that violated Lazard Capital Markets' policies requiring that entertainment be reasonable, based on the nature, scale and frequency of the entertainment targeted toward Bruderman.

27. Throughout the Relevant Period, the brokerage commissions Lazard Capital Markets generated from Fidelity were a significant portion of Lazard Capital Markets' overall commission revenue. In addition, the commissions Lazard Capital Markets received from the Fidelity Funds grew after Ward and Williams joined Lazard Capital Markets. In 1998, the year Lazard Capital Markets hired Ward and Williams, Lazard Capital Markets received \$1.4 million in commissions from Fidelity. By contrast, during the 2001 to 2003 period, for example, Ward and Williams were responsible for generating the following commissions from Fidelity, representing the following percentages of Lazard Capital Markets' overall gross commission revenue:

Year	Approximate Gross Commission Revenue Ward and Williams Generated From Fidelity	Approximate Percentage of Lazard Capital Markets' Overall Commission Revenue
2001	\$7.4 million	16.2%
2002	\$7.2 million	16.4%
2003	\$6.1 million	16.1%

During the Relevant Period, commissions from Fidelity far exceeded commissions from any other Lazard Capital Markets customer.

28. Bruderman, the primary beneficiary of travel, entertainment and gifts from employees of Lazard Capital Markets, alone sent trades generating a total of \$21.6 million in brokerage commissions to Lazard Capital Markets during the Relevant Period, as follows:

2000	\$3.6 million
2001	\$6.4 million
2002	\$5.6 million
2003	\$3.8 million

2004 \$2.2 million

The commissions generated from Bruderman represented over ten percent of Lazard Capital Markets' overall commission revenue during that five-year period.

Lazard Capital Markets Failed to Supervise Tashjian, Ward, and Williams

29. Lazard Capital Markets failed reasonably to implement its policies with respect to supervisory review of its employees' provision of travel, entertainment and gifts. Moreover, Lazard Capital Markets did not have reasonable procedures for monitoring the nature and extent of Tashjian's, Ward's and Williams' provision of travel, entertainment and gifts to Bruderman and other Fidelity traders. Expense reports for Tashjian, Ward and Williams generally were reviewed only to ensure proper documentation of the expenses. However, Lazard Capital Markets supervisors generally did not review Tashjian's, Ward's and Williams' provision of travel, entertainment and gifts to Fidelity traders for compliance with applicable policies, rules, and regulations.

30. If Lazard Capital Markets had reasonably implemented its existing policies to oversee Tashjian's, Ward's and Williams' provision of travel, entertainment and gifts to Bruderman and other Fidelity traders, it is likely Lazard Capital Markets could have prevented and detected Tashjian's, Ward's and Williams' securities law violations.

Violations of the Federal Securities Laws

31. As a result of the conduct described above, Lazard Capital Markets failed reasonably to supervise Tashjian, Ward and Williams, with a view to preventing their aiding and abetting and causing of Bruderman's and certain other Fidelity's traders' violations of Section 17(e)(1) of the Investment Company Act, within the meaning of Section 15(b)(4)(E) of the Exchange Act.

Lazard Capital Markets' Cooperation

32. In determining to accept Lazard Capital Markets' Offer, the Commission considered the extraordinary cooperation afforded the Commission staff.

IV.

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

Accordingly, pursuant to Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent Lazard Capital Markets is hereby censured; and

B. IT IS FURTHER ORDERED THAT Respondent Lazard Capital Markets shall, within 10 days of the entry of this Order, pay disgorgement of \$1,817,629 and prejudgment interest of \$429,379.04, and a civil monetary penalty of \$600,000, to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Lazard Capital Markets as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to David P. Bergers, Regional Director, Boston Regional Office, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, Massachusetts 02110-1424.

By the Commission.

Florence E. Harmon
Acting Secretary