

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 8841 / September 14, 2007

SECURITIES EXCHANGE ACT OF 1934

Release No. 56440 / September 14, 2007

INVESTMENT ADVISERS ACT OF 1940

Release No. 2647 / September 14, 2007

INVESTMENT COMPANY ACT OF 1940

Release No. 27969 / September 14, 2007

ADMINISTRATIVE PROCEEDING

File No. 3-12799

In the Matter of

**DAVID BYCK, WILLIAM
COLE, CHARLES IRWIN,
MICHAEL PRICE, AND JAY
SUMNER,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER PURSUANT TO
SECTION 8A OF THE SECURITIES ACT OF
1933, SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
SECTION 203(f) 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 Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Section 203(f) 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 David Byck (“Byck”), William Cole (“Cole”), Charles Irwin (“Irwin”), Michael Price (“Price”) and Jay Sumner (“Sumner”) (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, which are admitted, 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 Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, Section 203(f) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings as to David Byck, William Cole, Charles Irwin, Michael Price, and Jay Sumner (“Order”), as set forth below.

III.

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

Summary

1. Between March 2002 and September 2003, Respondents operated two registered investment advisers, LP Advisors, Inc. (“LP Advisors”) and Freedom Capital, Inc. (“Freedom Capital”) (collectively, the “Advisers”). Through the Advisers, between August 2002 and April 2003, the Respondents utilized two schemes to enable their hedge fund clients to place mutual fund orders after 4:00 p.m. ET, but receive the net asset valuation (“NAV”) determined as of 4:00 p.m.

2. Initially, Respondents conducted their late trading through a California broker-dealer, J.B. Oxford Holdings, Inc. (“JB Oxford”). Pursuant to a written agreement between LP Advisors and JB Oxford, LP Advisors could submit trade orders to JB Oxford until 4:15 p.m. ET, and “confirm” or “activate” the orders until 4:45 p.m., and still receive that day’s NAV. Between August 22, 2002 and February 26, 2003, Respondents transmitted approximately 1,959 mutual fund purchase orders (with an equal number of sale orders) on behalf of their hedge fund clients to JB Oxford. With respect to each of the 1,959 orders, Respondents allowed their clients the privilege of choosing to confirm, modify, or cancel the order after 4:00 p.m. ET. At least 95 of the 1,959 orders were placed or modified after 4:00 p.m. ET.

3. In March 2003, Respondents began using a new fraudulent scheme to process trades. Respondents created five entities, Unified Pension Services, Inc., National Pension Plans, Inc., Retirement Planning Consultants, Inc., Pension Planning Professionals, Inc., and Benefit Planning Consultants, Inc. (collectively, the “Entities”) and, based upon misrepresentations to the

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.

National Securities Clearing Corporation (“NSCC”) that the Entities were third-party administrators on behalf of retirement or other benefit plans, received approval to register the Entities as members of NSCC. As NSCC members, the Entities could submit mutual fund trade orders as late as 3:00 a.m. ET the next day and still receive the previous day’s NAV. To take advantage of this 3:00 a.m. ET order transmission time, Respondents rented office space near their homes and took turns manning this office space until 3:00 a.m. Between March 5 and April 16, 2003, Respondents processed 63 late mutual fund purchases and 50 sales through two of the Entities on behalf of their hedge fund clients.

Respondents

4. **Byck**, age 32, is a resident of Wellington, Florida. Byck was the sole principal of LP Advisors, an investment adviser registered with the Commission. At all relevant times herein, Byck was associated with the Advisers and the Entities.

5. **Cole**, age 38, is a resident of Orlando, Florida. Cole was a principal of Freedom Capital, an investment adviser registered with the Commission. At all relevant times herein, Cole was associated with the Advisers and the Entities.

6. **Irwin**, age 39, is a resident of Winter Garden, Florida. Irwin was a principal of Freedom Capital, an investment adviser registered with the Commission. At all relevant times herein, Irwin was associated with the Advisers and the Entities.

7. **Price**, age 36, is a resident of Legmary, Florida. Price was a principal of Freedom Capital, an investment adviser registered with the Commission. At all relevant times herein, Price was associated with the Advisers and the Entities.

8. **Sumner**, age 35, is a resident of Windermere, Florida. Sumner was a principal of Freedom Capital, an investment adviser registered with the Commission. At all relevant times herein, Sumner was associated with the Advisers and the Entities.

Other Relevant Entities

9. **LP Advisors** is a New York corporation owned by Byck. Between August 2001 and December 2003, it was registered with the Commission as an investment adviser. In December 2003, its registration with the Commission was withdrawn.

10. **Freedom Capital** is a New York corporation owned initially by Byck and then by Irwin, Price, Cole and Sumner. Between May 2002 and December 2003, it was registered with the Commission as an investment adviser. In December 2003, its registration with the Commission was withdrawn.

11. **Unified Pension Services, Inc.** (“UPS”) is a Wisconsin corporation that Byck incorporated in March 2002. UPS is a wholly-owned subsidiary of Freedom Capital; Irwin and Sumner are its officers. In April 2002, UPS became a member of the NSCC, based upon representations that it was a third-party administrator to retirement or other benefit plans. In May 2003, UPS withdrew from NSCC membership.

12. **National Pension Plans, Inc.** (“NPP”) is a Georgia corporation that Byck incorporated in March 2002. NPP is a wholly-owned subsidiary of Freedom Capital; Price and Cole are its officers. In April 2002, NPP became a member of the NSCC, based upon representations that it was a third-party administrator to retirement or other benefit plans. In May 2003, NPP withdrew from NSCC membership.

Late Trading of Mutual Funds

13. “Late trading” refers to the practice of placing orders to buy or sell mutual fund shares after the time as of which a mutual fund has calculated its NAV (usually as of the close of trading at 4:00 p.m. ET) but receiving the price based on the prior NAV already determined as of 4:00 p.m. Late trading enables the trader to profit from market events that occur after 4:00 p.m. ET but that are not reflected in that day’s price. In particular, the late trader obtains an advantage – at the expense of the other shareholders of the mutual fund – when he learns of market moving information and is able to purchase (or sell) mutual fund shares at prices set *before* the market moving information was released. Late trading harms other shareholders when it dilutes the value of their shares.

Byck Founded LP Advisors and Freedom Capital

14. In April 2001, Byck incorporated LP Advisors and, on August 9, 2001, registered it with the Commission as an investment adviser.

15. In early 2002, Irwin, Price, Sumner and Cole associated themselves with LP Advisors. As Byck resided in New York, and Irwin, Price, Sumner and Cole resided in Florida, Irwin, Price, Sumner and Cole opened a LP Advisors office in Delray, Florida. Byck subsequently transferred control of Freedom Capital, then an inactive corporation, to Irwin, Price, Sumner and Cole. In May 2002, Irwin, Price, Sumner and Cole registered Freedom Capital with the Commission as an investment adviser.

16. Respondents operated LP Advisors and Freedom Capital pursuant to a written agreement, under which Byck received 50% of each entity’s profits, while Irwin, Price, Cole and Sumner split the remaining 50%. While nominally separate, Respondents operated the two advisers as a single entity. Byck signed documents as Treasurer of Freedom Capital, and Irwin, Price, Cole and Sumner signed documents as partners of LP Advisors. The Advisers shared office space, a single e-mail server, and telephone lines. Respondents placed trades on behalf of clients for each entity from the Florida office.

Late Trading

17. In 2002 and 2003, Respondents engaged in late trading, whereby their hedge fund clients placed, confirmed or modified orders after 4:00 p.m. ET, but received the NAV determined as of 4:00 p.m.

Late Trading Through JB Oxford

18. In June 2002, Byck, on behalf of LP Advisors, established a business relationship with JB Oxford. JB Oxford offered a service to LP Advisors (and other customers involved in market timing) that the other broker-dealers utilized by the Advisors did not – the ability to submit mutual fund trades as late as 4:15 p.m. ET and to “activate” and “confirm” these trades as late as 4:45 p.m. Sumner took orders from clients up until 4:15 p.m. ET, and from one client until 4:41 p.m. Sumner then submitted these trades to JB Oxford by 4:45 p.m. ET. Although Sumner was the primary individual responsible for trading via JB Oxford, Respondents were each aware that clients were sending or confirming final trade orders after the close of the market, but were receiving that day’s NAV. Between August 22, 2002 and February 20, 2003, LP Advisors submitted a total of approximately 1,959 mutual fund purchase orders and 1,959 sale orders through JB Oxford in which it had the privilege of choosing to confirm, modify, or cancel the order after 4:00 p.m. ET. On at least thirteen trading days, trades were transmitted to JB Oxford based on post-4:00 p.m. ET decisions from clients. A total of ninety-five trades were either initially submitted or modified after 4:00 p.m. ET on these trade dates.

19. LP Advisors stopped using JB Oxford as a broker-dealer in February 2003.

Late Trading Through UPS and NPP

20. In 2003, Respondents developed a new method for late trading – placing orders up to 3:00 a.m. ET and still receiving the prior day’s NAV by submitting late trades for processing through Entities that they created for the sole purpose of processing Respondents’ hedge fund clients’ trades.

21. Respondents utilized two entities, UPS and NPP, obtained NSCC membership for UPS and NPP through fraudulent means, and then processed mutual fund orders on behalf of their hedge fund clients through the NSCC’s automated mutual fund trading platform, Fund/SERV, until 3:00 a.m. ET, while obtaining the NAV as of 4:00 p.m. the previous day.

22. In March 2002, Byck incorporated the five Entities. He incorporated these Entities in five different states – Wisconsin, Michigan, Texas, Georgia and Florida. Using a mail drop box service, Byck obtained mailing addresses for each Entity in the state in which it was incorporated and cell telephones for each Entity with an area code appropriate for the city in which the relevant mailing address was located.

23. Byck, Price, and Sumner applied for third-party administrator membership with the NSCC on behalf of the five Entities. However, the requisite NSCC membership documentation they submitted contained false and misleading statements. Price and Sumner executed TPA Member's Agreements on behalf of NPP and UPS respectively, that represented that these entities were third-party administrators acting on behalf of a retirement or benefit plan. Byck filled out and submitted these Agreements to NSCC. All Respondents also signed TPA Member Consent and Authorization Forms on behalf of the Entities which represented that these Entities were third-party administrators acting on behalf of a retirement or other benefit plan. All Respondents knew the Entities applied for NSCC membership and falsely represented that the Entities provided administrative services on behalf of retirement or other benefit plans. They knew that the Entities had no such clients. Rather, they knew the Entities were not third-party administrators to retirement or other benefit plans and were designed solely to facilitate late trading by the Respondents' hedge fund clients.

24. Byck also misrepresented the operational capacities of the Entities. Byck submitted NSCC membership questionnaires that: (a) overstated the number of operational personnel employed by each entity; (b) identified Byck's relatives and business associates as officers of the Entities when they had no involvement with the Entities; and (c) represented that a friend of Byck's family, who was unaware of the Entities' existence, served as the Entities "outside law firm/general counsel."

25. Respondents also executed agreements with various mutual fund families to enable the Entities to process trades in their mutual funds through the NSCC. Typically called "Networking Agreements," these agreements outlined the terms and conditions under which the Entities would submit trades in the particular mutual fund family's funds via NSCC's Fund/SERV platform. Typically these agreements specified that the Entities would only submit trades received before 4:00 p.m. ET for that day's NAV, and each Respondent signed at least one agreement that so specified. For example, an agreement signed on February 18, 2003 by Irwin on behalf of UPS with one mutual fund family, stated:

Service Provider [UPS] certifies that all instructions delivered to Fund Agent shall have been received by the Service Provider from the Client-shareholder by the close of trading (currently 4:00 pm New York time) on the New York Stock Exchange (the 'Close of Trading') on [sic] before such Business day and that any Instructions received by it after the Close of Trading on any given Business Day will be transmitted to Fund Agent on or after the next Business Day.

26. Other agreements were less specific, but incorporated by reference the terms of the NSCC's Standard Networking Agreement. The NSCC's Standard Networking Agreement specified that:

The Firm shall conduct each of the foregoing activities in a businesslike and competent manner, and in compliance with (a) all applicable laws, rules and regulations, including NSCC rules and procedures relating to NETWORKING, and if the Firm is a member of the National Association of Securities Dealers, Inc.

(“NASD”), the NASD Rules of Fair Practice; (b) the then-current prospectuses and statements of additional information of the Funds; and (c) any provision relating to NETWORKING in any agreement between the Firm and the Underwriter that would affect the Firm’s duties and obligations pursuant to this Agreement.

27. The Respondents made no attempts to comply with applicable laws, rules and regulations (including Investment Company Act Rule 22c-1) and failed to comply with the mutual fund prospectuses (which Respondents were contractually required to comply with), which required that orders be received by clients prior to 4:00 p.m. ET in order to receive that day’s NAV.

28. In early 2003, Byck and Irwin began asking the clients if they wanted to process trades through the Entities. By April 2, 2003, Respondents’ hedge fund clients had committed \$87 million for late trading through the Entities.

29. The Respondents charged a premium to late trade via the Entities. Although the wrap fees that UPS and NPP charged varied according to the client (as did fees charged by the Advisers), Respondents charged an annual wrap fee of approximately 250 basis points of assets under management for processing through the Entities, twice the approximate 125 basis point wrap fee that LP Advisors and Freedom Capital charged for trades placed through brokers-dealers. In the case of one client, Respondents charged an annual wrap fee of 400 basis points.

30. Between March 5 and April 16, 2003, UPS and NPP processed 63 separate purchases of mutual fund shares on behalf of the Advisers’ hedge fund clients, where hedge fund clients were given the ability to confirm or cancel orders after 4:00 p.m. ET. The 63 late trades totaled over \$264 million of mutual fund share purchases. All of these trades were short-term, market timing trades, and no position was held longer than six days. These positions were sold out via 50 late trades totaling over \$268 million, the last of which took place on April 16, 2003. The total profit to the hedge fund clients exceeded \$4 million.

31. With respect to all these trades, final trading decisions were not made until 3:00 a.m. ET the next day. In each instance, Irwin, Price, Cole or Sumner received a tentative “order” from the hedge fund client prior to 4:00 p.m. ET. To place the tentative “order,” the clients called the offices of LP Advisors/Freedom Capital in Florida – not the cell telephone numbers that Byck had obtained for each Entity and which had been given to the NSCC. At approximately 1:00 a.m. ET, one or more of Respondents would travel to a separate office in Wellington, Florida and stay there until 3:00 a.m. Clients had two options: (i) call at approximately 3:00 a.m. ET and confirm or cancel their preliminary orders, or (ii) Respondents would submit the preliminary orders if clients did not call to cancel by 3:00 a.m.

32. In early April 2003, two of the hedge fund clients told Byck that they had been advised by counsel that the trading through UPS and NPP might be illegal. Shortly thereafter, Respondents shut down the Entities.

33. Respondents collectively received approximately \$307,000 in wrap fees from clients for whom they processed late trades through JB Oxford, and approximately \$290,000 in wrap fees from late trades processed through the UPS and NPP.

34. UPS and NPP were not third-party administrators to retirement or other benefit plans. Despite the fact that Respondents were utilizing UPS and NPP to participate substantially in the order-taking and order-routing process, including by receiving trade orders directly from hedge fund clients and processing these orders through NSCC, Respondents did not register UPS and NPP as brokers or dealers with the Commission.

Violations

35. As a result of the conduct described above, Respondents willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase, offer, or sale of securities.

36. As a result of the conduct described above, Respondents willfully aided and abetted and caused UPS's and NPP's violations of Section 15(a)(1) of the Exchange Act, which provides that "[i]t shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b) of this section."

37. As a result of the conduct described above, Respondents willfully aided and abetted and caused UPS's and NPP's violations of Rule 22c-1 promulgated under Section 22(c) of the Investment Company Act, which provides that "[n]o registered investment company issuing any redeemable security, no person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and no principal underwriter of, or dealer in any such security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security."

Cooperation

38. In determining to accept the Offers, the Commission considered the cooperation afforded by Respondents to the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, Section 203(f) of the Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondents shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and from committing or causing any violations and future violations of Section 15(a) of the Exchange Act and Rule 22c-1 promulgated under Section 22(c) of the Investment Company Act.

B. Respondents Byck, Irwin, Price, Sumner and Cole be, and hereby are, barred from association with any broker, dealer, or investment adviser, and are prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter, with the right to reapply for association after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission;

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

C. Respondent David Byck shall, within 30 days of the entry of this Order, pay disgorgement of \$121,576.34 and prejudgment interest of \$21,754.16 in the total amount of \$143,330.50 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies David Byck 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 Gerald Gross, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, New York, New York 10281-1022.

D. Respondent William Cole shall, within 30 days of the entry of this Order, pay disgorgement of \$31,649.50 and prejudgment interest of \$5,613.86 in the total amount of \$37,263.36 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies William Cole 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 Gerald Gross, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, New York, New York 10281-1022.

E. Respondent Jay Sumner shall, within 30 days of the entry of this Order, pay disgorgement of \$31,649.50 and prejudgment interest of \$5,613.86 in the total amount of \$37,263.36 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies Jay Sumner 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 Gerald Gross, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, New York, New York 10281-1022.

F. Respondent Charles Irwin shall, within 30 days of the entry of this Order, pay disgorgement of \$51,637.97 and prejudgment interest of \$9,200.71 in the total amount of \$60,838.68 to the United States Treasury, but that payment of \$22,838.68 is waived based upon Respondent Irwin's sworn representations in his Statements of Financial Condition dated May 1, 2006 and August 31, 2006, and other documents submitted to the Commission. Therefore, within 30 days of this Order, Respondent Irwin shall pay disgorgement of \$38,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies Charles Irwin 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 Gerald Gross, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, New York, New York 10281-1022.

G. Respondent Michael Price shall, within 30 days of the entry of this Order, pay

disgorgement of \$51,637.97 and prejudgment interest of \$9,200.71 in the total amount of \$60,838.68, but that payment of \$22,838.68 is waived based upon Respondent Price's sworn representations in his Statements of Financial Condition dated June 12, 2006 and August 7, 2006, and other documents submitted to the Commission. Therefore, within 30 days of the entry of this Order, Respondent Price shall pay disgorgement of \$38,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies Michael Price 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 Gerald Gross, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, New York, New York 10281-1022.

H. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondents Irwin and/or Price provided accurate and complete financial information at the time such representations were made; (2) seek an order directing Irwin's and/or Price's payment of disgorgement and pre-judgment interest; and (3) seek an order directing payment of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Irwin and/or Price was fraudulent, misleading, inaccurate, or incomplete in any material respect. Irwin and/or Price may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement and interest should not be ordered; (3) contest the amount of disgorgement and interest to be ordered; (4) assert that payment of a penalty should not be ordered; (5) contest the imposition of the maximum penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Nancy M. Morris
Secretary