UNITED STATES OF AMERICA
Before The
SECURITIES AND EXCHANGE COMMISSION
April 12, 2005

ADMINISTRATIVE PROCEEDING
File No. 3-11893

In the Matter of	:	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTIONS 15(b), 21C AND 11(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 11b-1 THEREUNDER
David A. Finnerty,	:	
Donald R. Foley II,	:	
Scott G. Hunt,	:	
Thomas J. Murphy, Jr.,	:	
Kevin M. Fee,	:	
Frank A. Delaney IV,	:	
Freddy DeBoer,	:	
Todd J. Christie,	:	
James V. Parolisi,	:	
Robert W. Luckow,	:	
Patrick E. Murphy,	:	
Robert A. Johnson, Jr.,	:	
Patrick J. McGagh, Jr.,	:	
Joseph Bongiorno,	:	
Michael J. Hayward,	:	
Richard P. Volpe,	:	
Michael F. Stern,	:	
Warren E. Turk,	:	
Gerard T. Hayes, and	:	
Robert A. Scavone, Jr.	:	
	:	
Respondents.	:	
	:	

I.

The Securities and Exchange Commission (the "Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), and Sections 15(b), 21C and 11(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 11b-1 thereunder, against David A. Finnerty ("Finnerty"), Donald R. Foley II ("Foley"), Scott G. Hunt ("Hunt"), Thomas J. Murphy, Jr. ("T. Murphy"), Kevin M. Fee ("Fee"), Frank A. Delaney IV ("Delaney"), Freddy DeBoer ("DeBoer"), Todd J. Christie ("Christie"), James V. Parolisi ("Parolisi"), Robert W. Luckow ("Luckow"), Patrick E. Murphy ("P. Murphy"), Robert A. Johnson, Jr. ("Johnson"), Patrick J. McGagh, Jr. ("McGagh"), Joseph Bongiorno ("Bongiorno"), Michael J. Hayward ("Hayward"), Richard P. Volpe ("Volpe"), Michael F. Stern ("Stern"), Warren E. Turk ("Turk"), Gerard T. Hayes ("Hayes") and Robert A. Scavone, Jr. ("Scavone") (collectively, the "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

A. NATURE OF PROCEEDING

This proceeding concerns fraudulent and other improper trading by various individuals who are, or were formerly, registered specialists on the New York Stock Exchange ("NYSE"). Specifically, the Respondents violated their fundamental obligation to serve public customer orders over the proprietary interests of the firms with whom they were employed. In their role as specialists, the Respondents had a general duty to match executable public customer or "agency" buy and sell orders and not to fill customer orders through trades from their firm's own account when those customer orders could be matched with other customer orders. Through various forms of improper conduct, these specialists violated this obligation by filling orders through proprietary trades rather than through other customer orders, thereby causing customer losses in the millions of dollars from at least 1999 through June 30, 2003 (the "Relevant Period").

B. RESPONDENTS

1. Finnerty, age 38, resides in Weehawken, New Jersey. Finnerty acted as a specialist at Fleet Specialist, Inc. (now known as Banc of America Specialist, Inc.) ("Fleet")[1] from at least January 1, 1999 to approximately April 2003.

[1] During the Relevant Period, Fleet, as well as several of the other specialist firms referenced herein, acquired or merged with other specialist firms. Accordingly, as used herein, references to a particular specialist firm include that firm and its predecessor entities.

2. Foley, age 44, resides in Darien, Connecticut. Foley acted as a specialist at Fleet from at least January 1, 1999 to approximately March 2004.

3. Hunt, age 36, resides in Campbell Hall, New York. Hunt acted as a specialist at Fleet from approximately May 1999 to approximately March 2004.

4. T. Murphy, age 41, resides in Rockville Center, New York. T. Murphy acted as a specialist at Fleet from at least January 1, 1999 to approximately March 2004.

5. Fee, age 37, resides in Ridgewood, New Jersey. Fee acted as a specialist at Bear Wagner Specialists LLC ("Bear Wagner") from approximately March 2000 to approximately November 2004, and is currently employed as a managing director at Bear Wagner, working at Bear Wagner's proprietary trading desk.

6. Delaney, age 42, resides in Bay Head, New Jersey. Delaney acted as a specialist at Bear Wagner from approximately March 2000 to approximately June 2004, and is currently employed as a managing director at Bear Wagner, working at Bear Wagner's proprietary trading desk.

7. DeBoer, age 43, formerly of Southport, Connecticut, is believed to reside currently in the Netherlands. DeBoer acted as a specialist at LaBranche & Co. LLC ("LaBranche") from at least January 1, 1999 to approximately July 2004.

8. Christie, age 40, resides in Morris Township, New Jersey. Christie acted as a specialist at Spear, Leeds & Kellogg Specialists LLC ("Spear Leeds") from at least January 1, 1999, to approximately March 2003. Christie was a Spear Leeds Chief Executive Officer during the Relevant Period.

9. Parolisi, age 42, resides in Massapequa, New York. Parolisi acted as a specialist at Spear Leeds from at least January 1, 1999 to September 2003.

10. Luckow, age 57, resides in Wyckoff, New Jersey. Luckow acted as a specialist at Spear Leeds from at least January 1, 1999 to December 2000. Luckow was a Spear Leeds co-Chief Executive Officer during the Relevant Period.

11. P. Murphy, age 45, resides in Monmouth Beach, New Jersey. P. Murphy acted as a specialist at Spear Leeds from at least January 2000 to approximately March 2003.

12. Johnson, age 40, resides in Freehold, New Jersey. Johnson acted as a specialist at Spear Leeds from at least January 1, 1999 to approximately October 2003.

13. McGagh, age 39, resides in Little Silver, New Jersey. McGagh acted as a specialist at Van der Moolen Specialists USA, LLC ("Van der Moolen") from at least January 1,

1999 to approximately March 2004. McGagh served on Van der Moolen's management committee during the Relevant Period.

14. Bongiorno, age 50, resides in Brooklyn, New York. Bongiorno acted as a specialist at Van der Moolen from at least January 1, 1999 to approximately March 2004. Bongiorno served on Van der Moolen's management committee during the Relevant Period.

15. Hayward, age 51, resides in Ramsey, New Jersey. Hayward acted as a specialist at Van der Moolen from at least January 1, 1999 to approximately March 2004. Hayward served on Van der Moolen's management committee during the Relevant Period.

16. Volpe, age 45, resides in Port Washington, New York. Volpe acted as a specialist at Van der Moolen from at least January 1, 1999 to approximately November 2004.

17. Stern, age 54, resides in New Canaan, Connecticut. Stern acted as a specialist at Van der Moolen from at least January 1, 1999 to approximately March 2004. Stern served on Van der Moolen's management committee during the Relevant Period.

18. Turk, age 36, resides in New York, New York. Turk acted as a specialist at Van der Moolen from at least January 1, 1999 to approximately November 2004.

19. Hayes, age 44, resides in Easton, Connecticut. Hayes acted as a specialist at Van der Moolen from at least January 1, 1999 to approximately November 2004.

20. Scavone, age 45, resides in Franklin Lakes, New Jersey. Scavone acted as a specialist at Van der Moolen from at least January 1, 1999 to approximately November 2004.

C. OTHER RELEVANT ENTITIES

1. Fleet, now known as Banc of America Specialist, Inc., is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, and is a NYSE member organization that acts as the registered specialist for approximately 431 NYSE-listed common stocks and funds.

2. LaBranche is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, and is a NYSE member organization that acts as the registered specialist for approximately 585 NYSE-listed common stocks and funds.

3. Bear Wagner is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, and is a NYSE member organization that acts as the registered specialist for approximately 365 NYSE-listed common stocks and funds.

4. Van der Moolen is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, and is a NYSE member organization that acts as the registered specialist for approximately 384 NYSE-listed common stocks and funds

5. Spear Leeds is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, and is a NYSE member organization that acts as the registered specialist for approximately 560 NYSE-listed common stocks and funds.

D. THE OBLIGATIONS AND ROLE OF SPECIALISTS

1. From their trading posts on the exchange floor, specialists stand at the center of the NYSE's auction market system, where public buy and sell orders meet to be matched and executed against each other at the best possible price. As gatekeepers to the functioning of a fair and orderly market in stocks assigned to them, specialists are entrusted with two primary duties: performing their "negative obligation" to execute customer orders with minimal dealer intervention at the most advantageous price, while fulfilling their "affirmative obligation" to offset imbalances in price, and supply and demand.

2. To fulfill these duties, specialists must participate as both broker, absenting themselves from the market to pair executable customer orders against each other, and as dealer, trading for the specialists' dealer accounts when needed to facilitate price continuity and fill customer orders when there are no available contra parties to those orders.

3. Given their access to advance knowledge of movements in price and market demand, specialists – whether acting as brokers or dealers – are restricted to holding the public's interests above their own and, as such, are prohibited from trading for their dealers' accounts ahead of pre-existing customer buy or sell orders that are executable against each other. Accordingly, when public buy and sell orders arrive to specialists from both sides of the market – either ferried in by computer through the NYSE's Super Designated Order Turnaround System ("DOT")[2] to an electronic display book (the "Display Book")[3], or by floor brokers gathered in

[2] The DOT system is the NYSE's primary order processing system, supporting equity trading on the trading floor and providing the NYSE with the current status of any equity order. Customers can transmit orders through NYSE member organizations electronically to the floor through the DOT system.

[3] The Display Book is an electronic workstation provided by the NYSE to the specialist firm for use by its specialists at their post panels, operated by means of a customized keyboard containing function, letter, number and arrow keys. The Display Book allows specialists to, among other things, receive and process orders, disseminate trade and quote information, report trade executions, research order and executions status, manage positions and view profit and loss in the dealer account.

front of the specialists' trading posts – specialists are required not to intervene in the orders and must match them against each other.

E. THE VIOLATIVE TRADING PRACTICES

1. Since at least January 1999, the Respondents systematically breached their duty to refrain from dealing for their firm accounts while in the possession of executable buy and sell customer orders. Instead, the Respondents effected improper proprietary trades at the expense of public orders in the manner described below.

2. Through the Display Book, the specialist reports trade executions electronically, and can view all the incoming DOT market and limit orders on both sides of the market. Executable buy and sell customer orders can appear on the Display Book at the same time.[4] In such instances, the specialist should simply "pair off" or cross the buy and sell orders before trading for his firm's proprietary account. Through their improper trading, the Respondents failed to "pair off" or cross these buy and sell orders with each other. Sometimes, the Respondents did this by effecting proprietary trades with orders that arrived electronically through the DOT system to the Display Book. At other times, the Respondents effected improper proprietary trades with orders that came in from the crowd. In either case, the disadvantaged order was a DOT order visible on the Display Book that the Respondent should have paired with the other order, instead of filling that other order through a proprietary trade.

3. The Respondents engaged in at least two forms of improper trading, referred to herein as: (i) interpositioning and (ii) trading ahead (collectively the "Violative Trading" or "Violative Trades").

Interpositioning

4. Interpositioning involves a two-step process that allows the specialist to generate a profit for the specialist firm from the spread between two opposite trades. Interpositioning can take various forms. In one form, the specialist purchases stock for the specialist firm's proprietary account from the customer sell order, and then fills the customer buy order by selling from the specialist firm's proprietary account at a higher price – thus locking in a riskless profit for the specialist firm's proprietary account. For example, if market orders are present on both sides of the market, and a stock is bid for $25.00 (purchase price) and offered at $25.01 (sale price), the specialist is obligated to pair the market orders at $25.00 or $25.01. If, instead, the specialist interpositions himself by buying from the sellers at $25.00, and then selling to buyers at $25.01 and capturing the one-cent spread, the specialist violates the rules

[4] During the trading day, the specialist can cause the Display Book to be "frozen" in a particular security. During the time that the Display Book is frozen, no new DOT orders in that security can be viewed on the Display Book's display screen, although they continue to queue. When the Display Book is "unfrozen," DOT orders that queued during the freeze are displayed and viewable on the Display Book's display screen.

against trading ahead of otherwise executable agency orders. A second form of interpositioning involves the specialist selling stock into the customer buy order, and then filling the customer sell order by buying for the specialist firm's proprietary account at a lower price – again, locking in a riskless profit for the specialist firm's proprietary account. In both forms of interpositioning, the specialist participates on both sides of the trade, thereby capturing the spread between the purchase and sale prices, disadvantaging at least one of the parties to the transaction. In several instances the interpositioning violations reflect particularly egregious behavior, with specialists not only disadvantaging both a buy and a sell order, but also moving the price up or down from the last sale price to further advantage the specialist firm's proprietary account.

Trading Ahead

5. Trading ahead involves a practice whereby the specialist fills one agency order through a proprietary trade for the specialist firm's proprietary account – and thereby improperly "steps in front" of, or "trades ahead" of, the other agency order – simply to allow the specialist firm to take advantage of market conditions promptly. Unlike interpositioning, the practice of "trading ahead" does not necessarily involve a second specialist trade for the specialist firm's proprietary account into the opposite, disadvantaged agency order. For example, in a declining market, a specialist may "trade ahead" by filling a market buy order by selling stock from the specialist firm's proprietary account in front of an agency market sell order. In so doing, the specialist would lock in a higher price for the proprietary trade, then fill the agency sell order *after* the proprietary trade, and thereby force the agency market sell order to accept a slightly lower price as the price of the stock fell.

F. ATTITUDE TOWARD AGENCY ORDERS

1. In the course of engaging in the Violative Trading, several of the Respondents made derogatory comments concerning the agency orders such as "f--k the DOTs" and "screw the DOTs." These comments were made during periods when these Respondents were executing trades for the specialist firm's proprietary account ahead of agency orders, thereby disadvantaging such agency DOT orders.

G. THE RESPONDENTS' VIOLATIVE TRADING

1. During the Relevant Period, Finnerty acted as a specialist in PE Biosystems (from approximately November 1999 to approximately September 2000), Applera Corp. – Celera Genomics Group (from approximately November 1999 to approximately February 2002), and General Electric ("GE") (from approximately September 2000 to approximately April 11, 2003). During the Relevant Period, in these securities, Finnerty knowingly or recklessly engaged in over 25,850 instances of interpositioning, locking in a riskless profit of over $4,360,000 for his firm's proprietary account at the expense of customer orders, and over 15,380 instances of trading ahead, causing over $5,010,000 in customer harm. As one example of Finnerty's thousands of instances of interpositioning, on October 21, 2002, at 10:17:06, Finnerty's Display Book showed, among other things, that at a price of $26.42, there

were orders to buy 15,900 GE shares and orders to sell 7,600 shares. Accordingly, at this price, orders for 7,600 shares of GE were matchable and should have been paired off before Finnerty traded for Fleet's proprietary account. Rather than pairing off these orders, Finnerty interpositioned between them. First, at 10:17:08 he purchased 7,500 shares for the specialist firm's proprietary account at a price of $26.42. Next, Finnerty raised the price to $26.46 and at 10:17:15, he sold 8,600 shares from the specialist firm's proprietary account. As a result, Finnerty disadvantaged various customer orders and locked in a riskless profit for Fleet.

2. During the Relevant Period, Foley acted as a specialist in Chase Manhattan Bank (from approximately January 1999 to approximately December 2000) and, after the merger between Chase Manhattan Bank and JP Morgan Chase ("JPM"), a specialist in JP Morgan Chase (from approximately January 2001 through June 2003). During the Relevant Period, in these securities, Foley knowingly or recklessly engaged in over 3,710 instances of interpositioning, locking in a riskless profit of over $310,000 for his firm's proprietary account at the expense of customer orders, and over 8,910 instances of trading ahead, causing over $1,800,000 in customer harm. As one example of Foley's thousands of instances of interpositioning, on November 1, 2002, at 10:05:26, Foley's Display Book showed, among other things, that at a price of $20.67, there were orders to buy 5,400 shares of JPM and orders to sell 2,100 shares. Accordingly, at this price, orders for 2,100 shares were matchable and should have been paired off before Foley traded for Fleet's proprietary account. Rather than pairing off these orders, Foley interpositioned between them. First, at 10:05:27 he bought 2,100 shares for the specialist firm's proprietary account at a price of $20.67. Next, Foley raised the price to $20.71 and at 10:05:31 sold 2,600 shares from the specialist firm's proprietary account. As a result, Foley disadvantaged various customer orders and locked in a riskless profit for Fleet.

3. During the Relevant Period, Hunt acted as a specialist in Goldman Sachs ("GS") (from approximately August 1999 through June 2003) and Cardinal Health, Inc. (from approximately August 1999 through June 2003). During the Relevant Period, in this security, Hunt knowingly or recklessly engaged in over 1,910 instances of interpositioning, locking in a riskless profit of over $150,000 for his firm's proprietary account at the expense of customer orders, and over 6,120 instances of trading ahead, causing over $940,000 in customer harm. As one example of Hunt's over 1,910 instances of interpositioning, on November 7, 2002, at 3:54:16, Hunt's Display Book showed, among other things, that at a price of $73.87, there were orders to buy 700 GS shares and orders to sell 800 shares. Accordingly, at this price, orders for 700 shares of GS were matchable and should have been paired off before Hunt traded for Fleet's proprietary account. Rather than pairing off these orders, Hunt interpositioned between them. First, at 3:54:19 he sold 700 shares from the specialist firm's proprietary account at a price of $73.87. Next, Hunt lowered the price to $73.82 and at 3:54:21, he purchased 700 shares for the specialist firm's proprietary account. As a result, Hunt disadvantaged various customer orders and locked in a riskless profit for Fleet.

4. During the Relevant Period, T. Murphy acted as a specialist in Electronic Data Systems (from approximately October 2000 to approximately January 2001) and Johnson & Johnson ("JNJ") (from approximately February 2001 through June 2003). During the Relevant

Period, in these securities, T. Murphy knowingly or recklessly engaged in over 3,160 instances of interpositioning, locking in a riskless profit of over $140,000 for his firm's proprietary account at the expense of customer orders, and over 6,560 instances of trading ahead, causing over $590,000 in customer harm. As one example of T. Murphy's thousands of instances of interpositioning, on November 5, 2002, at 2:07:02, T. Murphy's Display Book showed, among other things, that at a price of $59.42, there was an order to buy 1,300 shares of JNJ and orders to sell 3,400 shares. Accordingly, at this price, orders for 1,300 shares were matchable and should have been paired off before T. Murphy traded for Fleet's proprietary account. Rather than pairing off these orders, T. Murphy interpositioned between them. First, at 2:07:02 he bought 3,400 shares for the specialist firm's proprietary account at a price of $59.42. Next, T. Murphy raised the price to $59.46 and at 2:07:05 sold 800 shares from the specialist firm's proprietary account. As a result, T. Murphy disadvantaged a customer order and locked in a riskless profit for Fleet.

5. During the Relevant Period, Fee acted as a specialist in Texas Instruments, Inc. ("TXN") (from approximately March 2000 through June 2003). During the Relevant Period, in these securities, Fee knowingly or recklessly engaged in over 1,150 instances of interpositioning, locking in a riskless profit of over $170,000 for his firm's proprietary account at the expense of customer orders, and over 1,310 instances of trading ahead, causing over $740,000 in customer harm. As one example of Fee's over 1,100 instances of interpositioning, on October 29, 2002, at 11:09:32, Fee's Display Book showed, among other things, that at a price of $14.90, there was an order to buy 12,400 shares of TXN and orders to sell 1,900 shares. Accordingly, at that price, orders for 1,900 shares were matchable and should have been paired off before Fee traded for Bear Wagner's proprietary account. Rather than pairing off these orders, Fee interpositioned between them. First, at 11:09:33, he bought 1,900 shares for the specialist firm's proprietary account at a price of $14.90. Next, Fee raised the price to $14.98 and at 11:09:45 sold 5,000 shares from the specialist firm's proprietary account. As a result, Fee disadvantaged a customer order and locked in a riskless profit for Bear Wagner.

6. During the Relevant Period, Delaney acted as a specialist in Bank One (on April 4, 2000 and from approximately November 2000 through approximately May 2001) and Merrill Lynch & Co., Inc. ("MER") (from approximately June 2001 through June 2003). During the Relevant Period, in these securities, Delaney knowingly or recklessly engaged in over 2,030 instances of interpositioning, locking in a riskless profit of over $180,000 for his firm's proprietary account at the expense of customer orders, and over 1,510 instances of trading ahead, causing over $390,000 in customer harm. As one example of Delaney's thousands of instances of interpositioning, on November 4, 2002, at 11:24:01, Delaney's Display Book showed, among other things, that at a price of $39.85, there was an order to buy 800 shares of MER and orders to sell 2,700 shares. Accordingly, at this price, orders for 800 shares were matchable and should have been paired off before Delaney traded for Bear Wagner's proprietary account. Rather than pairing off these orders, Delaney interpositioned between them. First, at 11:24:02 he sold 800 shares from the specialist firm's proprietary account at a price of $39.85. Next, Delaney lowered the price to $39.76 and at 11:24:05 bought 1,300 shares for the specialist firm's proprietary

account. As a result, Delaney disadvantaged various customer orders and locked in a riskless profit for Bear Wagner.

7. During the Relevant Period, DeBoer acted as a specialist in Nokia ("NOK") (from approximately March 2000 through June 2003), Lehman Brothers Holdings Inc. (from approximately September 2000 through approximately April 2001), and Celestica Inc. (from approximately April 2001 through approximately October 2001). During the Relevant Period, in these securities, DeBoer knowingly or recklessly engaged in over 7,710 instances of interpositioning, locking in a riskless profit of over $770,000 for his firm's proprietary account at the expense of customer orders, and over 11,620 instances of trading ahead, causing over $3,280,000 in customer harm. As one example of DeBoer's thousands of instances of interpositioning, on October 23, 2002, at 2:32:45, DeBoer's Display Book showed, among other things, that at a price of $16.39, there were orders to buy 3,500 NOK shares and orders to sell 7,000 shares. Accordingly, at this price, orders for 3,500 shares of NOK were matchable and should have been paired off before DeBoer traded for LaBranche's proprietary account. Rather than pairing off these orders, DeBoer interpositioned between them. First, at 2:32:47 he sold 3,500 shares from the specialist firm's proprietary account at a price of $16.39. Next, DeBoer lowered the price to $16.35 and at 2:32:53, he bought 3600 shares for the specialist firm's proprietary account. As a result, DeBoer disadvantaged various customer orders and locked in a riskless profit for LaBranche.

8. During the Relevant Period, Christie acted as a specialist in International Business Machines Corp. (from approximately January 1999 to approximately March 1999), AOL Time Warner ("AOL") (from approximately April 1999 to approximately May 2001, excluding July and August 2000), and American International Group, Inc. (in July and August 2000, and from approximately March 2002 to approximately March 2003). During the Relevant Period, in these securities, Christie knowingly or recklessly engaged in over 1,060 instances of interpositioning, locking in a riskless profit of over $1,590,000 for his firm's proprietary account at the expense of customer orders, and over 610 instances of trading ahead causing over $1,420,000 in customer harm. As one example of Christie's over 1,060 instances of interpositioning, on June 12, 2000, at 3:57:26, Christie's Display Book showed, among other things, that at a price of $52 10/16ths, there were orders to buy 10,800 AOL shares and orders to sell 24,100 shares. Accordingly, at this price, orders for 10,800 shares of AOL were matchable and should have been paired off before Christie traded for Spear Leeds' proprietary account. Rather than pairing off these orders, Christie interpositioned between them. First, at 3:57:26 he sold 10,800 shares from the specialist firm's proprietary account at a price of $52 10/16ths. Next, Christie lowered the price to $52 9/16ths and at 3:57:32, he purchased 9,200 shares for the specialist firm's proprietary account. As a result, Christie disadvantaged various customer orders and locked in a riskless profit for Spear Leeds.

9. During the Relevant Period, Parolisi acted as a specialist in Teradyne, Inc. ("TER") (from approximately January 1999 to approximately November 2002), Amdocs Ltd. (from approximately January 1999 to approximately March 2000), and Boston Scientific Corporation (from approximately August 2002 through June 2003). During the Relevant Period,

in these securities, Parolisi knowingly or recklessly engaged in over 3,330 instances of interpositioning, locking in a riskless profit of over $240,000 for his firm's proprietary account at the expense of customer orders, and over 16,120 instances of trading ahead causing over $2,160,000 in customer harm. As one example of Parolisi's thousands of instances of interpositioning, on September 7, 2001, at 9:47:57, Parolisi's Display Book showed, among other things, that at a price of $29.30, there were orders to sell 700 TER shares and an order to buy 1,000 shares. Accordingly, at this price, orders for 700 shares of TER were matchable and should have been paired off before Parolisi traded for Spear Leeds' proprietary account. Rather than pairing off these orders, Parolisi interpositioned between them. First, at 9:47:57 he purchased 700 shares for the specialist firm's proprietary account at a price of $29.30. Next, Parolisi raised the price to $29.47 and at 9:47:59, he sold 1,000 shares from the specialist firm's proprietary account. As a result, Parolisi disadvantaged a customer order and locked in a riskless profit for Spear Leeds.

10. During the Relevant Period, Luckow acted as a specialist in American International Group, Inc. ("AIG") (from approximately January 1999 to approximately December 2000) and Safeway Inc. (from approximately January 1999 to approximately June 2000). During the Relevant Period, in these securities, Luckow knowingly or recklessly engaged in over 3,570 instances of interpositioning, locking in a riskless profit of over $350,000 for his firm's proprietary account at the expense of customer orders, and over 3,980 instances of trading ahead, causing over $680,000 in customer harm. As one example of Luckow's thousands of instances of interpositioning, on April 17, 2000, at 9:50:40, Luckow's Display Book showed, among other things, that at a price of $106, there was an order to sell 1,500 American International Group, Inc. ("AIG") shares and orders to buy 2,400 shares. Accordingly, at this price, orders for 1,500 shares of AIG were matchable and should have been paired off before Luckow traded for Spear Leeds' proprietary account. Rather than pairing off these orders, Luckow interpositioned between them. First, at 9:50:40 he purchased 1,500 shares for the specialist firm's proprietary account at a price of $106. Next, Luckow raised the price to $106 3/16ths and at 9:50:47, he sold 2,200 shares from the specialist firm's proprietary account. As a result, Luckow disadvantaged various customer orders and locked in a riskless profit for Spear Leeds.

11. During the Relevant Period, P. Murphy acted as a specialist in Micron Technology, Inc. ("MU") (from approximately January 2000 to approximately January 2003). During the Relevant Period, in this security, P. Murphy knowingly or recklessly engaged in over 800 instances of interpositioning, locking in a riskless profit of over $140,000 for his firm's proprietary account at the expense of customer orders, and over 2,030 instances of trading ahead causing over $870,000 in customer harm. As one example of P. Murphy's over 800 instances of interpositioning, on March 1, 2000, at 3:24:43, P. Murphy's Display Book showed, among other things, that at a price of $105 12/16ths, there were orders to buy 2,600 MU shares and orders to sell 1,500 shares. Accordingly, at this price, orders for 1,500 shares of MU were matchable and should have been paired off before P. Murphy traded for Spear Leeds' proprietary account. Rather than pairing off these orders, P. Murphy interpositioned between them. First at 3:24:43 he sold 2,600 shares from the specialist firm's proprietary account at a price of $105 12/16ths.

Next, P. Murphy lowered the price to $105 8/16ths and at 3:24:45, he purchased 1500 shares for the specialist firm's proprietary account. As a result, P. Murphy disadvantaged various customer orders and locked in a riskless profit for Spear Leeds.

12. During the Relevant Period, Johnson acted as a specialist in Verizon Communications, Inc. ("VZ"), formerly Bell Atlantic (from approximately January 1999 to approximately May 2003). During the Relevant Period, in this security, Johnson knowingly or recklessly engaged in over 6,390 instances of interpositioning, locking in a riskless profit of over $350,000 for his firm's proprietary account at the expense of customer orders, and over 4,740 instances of trading ahead causing over $380,000 in customer harm. As one example of Johnson's thousands of instances of interpositioning, on December 16, 2002, at 9:41:23, Johnson's Display Book showed, among other things, that at a price of $38.85, there were orders to sell 1,700 VZ shares and orders to buy 2,200 shares. Accordingly, at this price, orders for 1,700 shares of VZ were matchable and should have been paired off before Johnson traded for Spear Leeds' proprietary account. Rather than pairing off these orders, Johnson interpositioned between them. First at 9:41:23 he purchased 1,700 shares for the specialist firm's proprietary account at a price of $38.85. Next, Johnson raised the price to $38.95 and at 9:41:26, he sold 2,200 shares from the specialist firm's proprietary account. As a result, Johnson disadvantaged various customer orders and locked in a riskless profit for Spear Leeds.

13. During the Relevant Period, McGagh acted as a specialist in Nortel Networks Corp. (from approximately January 1999 to approximately January 2001) and Pfizer Inc. ("PFE") (from approximately May 2001 to approximately April 2003, with absences from that panel in February 2002 and March 2002). During the Relevant Period, in these securities, McGagh knowingly or recklessly engaged in over 21,290 instances of interpositioning, locking in a riskless profit of over $3,430,000 for his firm's proprietary account at the expense of customer orders, and over 4,200 instances of trading ahead, causing over $1,240,000 in customer harm. As one example of McGagh's thousands of instances of interpositioning, on November 29, 2002, at 12:56:30, McGagh's Display Book showed, among other things, that at a price of $31.56, there were orders to buy 4,300 PFE shares and orders to sell 5,700 shares. Accordingly, at this price, orders for 4,300 shares of PFE were matchable and should have been paired off before McGagh traded for Van der Moolen's proprietary account. Rather than pairing off these orders, McGagh interpositioned between them. First, at 12:56:31, he sold 4,300 shares from the specialist firm's proprietary account at a price of $31.56. Next, McGagh lowered the price to $31.53 and at 12:56:32, he purchased 3,700 shares for the specialist firm's proprietary account. As a result, McGagh disadvantaged various customer orders and locked in a riskless profit for Van der Moolen.

14. During the Relevant Period, Bongiorno acted as a specialist in Hewlett-Packard Co. ("HPQ") (from approximately January 1999 through June 2003). During the Relevant Period, in this security, Bongiorno knowingly or recklessly engaged in over 15,620 instances of interpositioning, locking in a riskless profit of over $1,380,000 for his firm's proprietary account at the expense of customer orders, and over 8,630 instances of trading ahead, causing over $1,360,000 in customer harm. As one example of Bongiorno's thousands of

instances of interpositioning, on November 20, 2002, at 9:34:32, Bongiorno's Display Book showed, among other things, that at a price of $16.47, there were orders to buy 15,100 HPQ shares and orders to sell 5,100 shares. Accordingly, at this price, orders for 5,100 shares of HPQ were matchable and should have been paired off before Bongiorno traded for Van der Moolen's proprietary account. Rather than pairing off these orders, Bongiorno interpositioned between them. First, at 9:34:36 he purchased 5,100 shares for the specialist firm's proprietary account at a price of $16.47. Next, Bongiorno raised the price to $16.54 and at 9:34:38, he sold 14,500 shares from the specialist firm's proprietary account. As a result, Bongiorno disadvantaged various customer orders and locked in a riskless profit for Van der Moolen.

15. During the Relevant Period, Hayward acted as a specialist in SPX Corp. (from January 1999 to July 1999, from March 2001 to May 2001, and from November 2001 to February 2002), Time Warner Inc. (from approximately August 1999 to approximately January 2001), and Apache Corp. ("APA") (from approximately March 2002 to approximately June 2003). During the Relevant Period, in these securities, Hayward knowingly or recklessly engaged in over 5,210 instances of interpositioning, locking in a riskless profit of over $690,000 for his firm's proprietary account at the expense of customer orders, and over 5,000 instances of trading ahead, causing over $1,190,000 in customer harm. As one example of Hayward's thousands of instances of interpositioning on November 13, 2002, at 2:27:23, Hayward's Display Book showed, among other things, that at a price of $49.52, there were orders to buy 2,900 APA shares and orders to sell 2,000 shares. Accordingly, at this price, orders for 2,000 shares of APA were matchable and should have been paired off before Hayward traded for Van der Moolen's proprietary account. Rather than pairing off these orders, Hayward interpositioned between them. First, at 2:27:24, he purchased 2,000 shares for the specialist firm's proprietary account at a price of $49.52. Next, Hayward raised the price to $49.68 and at 2:27:28, he sold 1,400 shares from the specialist firm's proprietary account. As a result, Hayward disadvantaged various customer orders and locked in a riskless profit for Van der Moolen.

16. During the Relevant Period, Volpe acted as a specialist in Eli Lilly and Co. (from approximately January 2000 to approximately April 2000), Pfizer, Inc. (from approximately June 2000 to approximately January 2001), and The Walt Disney Co. ("DIS") (from approximately June 2001 through June 2003). During the Relevant Period, in these securities, Volpe knowingly or recklessly engaged in over 13,730 instances of interpositioning, locking in a riskless profit of over $790,000 for his firm's proprietary account at the expense of customer orders, and over 5,270 instances of trading ahead, causing over $600,000 in customer harm. As one example of Volpe's thousands of instances of interpositioning, on November 26, 2002, at 10:59:28, Volpe's Display Book showed, among other things, that at a price of $19.30, there was an order to buy 4,200 DIS shares and orders to sell 4,500 shares. Accordingly, at this price, orders for 4,200 shares of DIS were matchable and should have been paired off before Volpe traded for Van der Moolen's proprietary account. Rather than pairing off these orders, Volpe interpositioned between them. First, at 10:59:32, he sold 3,900 shares from the specialist firm's proprietary account at a price of $19.30. Next, Volpe lowered the price to $19.25 and at 10:59:34, he purchased 3,300 shares for the specialist firm's proprietary account. As a result, Volpe disadvantaged various customer orders and locked in a riskless profit for Van der Moolen.

17. During the Relevant Period, Stern acted as a specialist in Abercrombie & Fitch Co. (from approximately January 1999 to approximately September 1999), Pfizer, Inc. (from approximately November 1999 to approximately May 2000), SPX Corp. (from approximately November 2000 to approximately January 2001), Eli Lilly and Co. (from approximately October 2000 to approximately July 2001), Kohl's Corp. (from approximately September 2001 to approximately September 2002), and Duke Energy Corp. ("DUK") (from approximately October 2002 to approximately April 2003). During the Relevant Period, in these securities, Stern knowingly or recklessly engaged in over 3,980 instances of interpositioning, locking in a riskless profit of over $400,000 for his firm's proprietary account at the expense of customer orders, and over 5,250 instances of trading ahead, causing over $630,000 in customer harm. As one example of Stern's thousands of instances of interpositioning, on October 3, 2002, at 3:57:47, Stern's Display Book showed, among other things, that at a price of $19.44, there were orders to buy 6,600 DUK shares and orders to sell 2,000 shares. Accordingly, at this price, orders for 2,000 shares of DUK were matchable and should have been paired off before Stern traded for Van der Moolen's proprietary account. Rather than pairing off these orders, Stern interpositioned between them. First, at 3:57:48, he sold 6,600 shares from the specialist firm's proprietary account at a price of $19.44. Next, Stern lowered the price to $19.35 and at 3:57:55, he purchased 2,600 shares for the specialist firm's proprietary account. As a result, Stern disadvantaged various customer orders and locked in a riskless profit for Van der Moolen.

18. During the Relevant Period, Turk acted as a specialist in Pfizer, Inc. (from approximately January 1999 to approximately October 1999), Abercrombie & Fitch Co. (from approximately October 1999 to approximately July 2000), and Cypress Semiconductor Corp. ("CY") (from approximately April 2000 to approximately May 2003). During the Relevant Period, in these securities, Turk knowingly or recklessly engaged in over 780 instances of interpositioning, locking in a riskless profit of over $90,000 for his firm's proprietary account at the expense of customer orders, and over 4,390 instances of trading ahead, causing over $940,000 in customer harm. As one example of Turk's hundreds of instances of interpositioning, on October 1, 2002, at 3:52:22, Turk's Display Book showed, among other things, that at a price of $6.47, there were orders to buy 10,700 CY shares and orders to sell 28,200 shares. Accordingly, at this price, orders for 10,700 shares of CY were matchable and should have been paired off before Turk traded for Van der Moolen's proprietary account. Rather than pairing off these orders, Turk interpositioned between them. First, at 3:52:26, he sold 5,700 shares from the specialist firm's proprietary account at a price of $6.47. Next, at 3:52:29, Turk lowered the price to $6.46 and properly paired off 2,800 shares of customer orders. Then, Turk further lowered the price to $6.30 and at 3:52:43, he purchased 25,300 shares for the specialist firm's proprietary account. As a result, Turk disadvantaged various customer orders and locked in a riskless profit for Van der Moolen.

19. During the Relevant Period, Hayes acted as a specialist in International Paper Co. (from approximately January 1999 to approximately June 2000, and from approximately April 2001 to approximately May 2003), and The Walt Disney Co. (from approximately August 2000 to approximately February 2001). During the Relevant Period, in

these securities, Hayes knowingly or recklessly engaged in over 2,280 instances of interpositioning, locking in a riskless profit of over $150,000 for his firm's proprietary account at the expense of customer orders, and over 5,710 instances of trading ahead, causing over $570,000 in customer harm. As one example of Hayes' thousands of instances of interpositioning, on October 23, 2002, at 2:25:50, Hayes's Display Book showed, among other things, that at a price of $37.49, there were orders to buy 1,500 IP shares and orders to sell 3,700 shares. Accordingly, at this price, orders for 1,500 shares of IP were matchable and should have been paired off before Hayes traded for Van der Moolen's proprietary account. Rather than pairing off these orders, Hayes interpositioned between them. First, at 2:25:53, he sold 1,500 shares from the specialist firm's proprietary account at a price of $37.49. Next, Hayes lowered the price to $37.46 and at 2:25:56, he purchased 1,600 shares for the specialist firm's proprietary account. As a result, Hayes disadvantaged various customer orders and locked in a riskless profit for Van der Moolen.

20. During the Relevant Period, Scavone acted as a specialist in Eli Lilly and Co. ("LLY") (from approximately August 2001 to approximately June 2003). During the Relevant Period, in these securities, Scavone knowingly or recklessly engaged in over 3,710 instances of interpositioning, locking in a riskless profit of over $197,000 for his firm's proprietary account at the expense of customer orders, and over 4,540 instances of trading ahead, causing over $330,000 in customer harm. As one example of Scavone's thousands of instances of interpositioning, on November 25, 2002, at 1:14:30, Scavone's Display Book showed, among other things, that at a price of $66.88, there were orders to buy 3,300 LLY shares and orders to sell 1,200 shares. Accordingly, at this price, orders for 1,200 shares of LLY were matchable and should have been paired off before Scavone traded for Van der Moolen's proprietary account. Rather than pairing off these orders, Scavone interpositioned between them. First, at 1:14:31, he purchased 1,200 shares for the specialist firm's proprietary account at a price of $66.88. Next, Scavone raised the price to $66.93 and at 1:14:35, he sold 2,500 shares from the specialist firm's proprietary account. As a result, Scavone disadvantaged various customer orders and locked in a riskless profit for Van der Moolen.

H. VIOLATIONS

1. As a result of the conduct described above, Finnerty willfully violated Section 17(a) of the Securities Act and Sections 10(b) and 11(b) of the Exchange Act, and Rules 10b-5 and 11b-1 thereunder. As a result of the conduct described above, Finnerty also violated Rules 104, 92, 123B, and 401 of the Rules of the NYSE. Consequently, the Commission may by order impose appropriate remedial sanctions pursuant to Section 11(b) and Rule 11b-1 of the Exchange Act.

2. As a result of the conduct described above, Foley willfully violated Section 17(a) of the Securities Act and Sections 10(b) and 11(b) of the Exchange Act, and Rules 10b-5 and 11b-1 thereunder. As a result of the conduct described above, Foley also violated Rules 104, 92, 123B, and 401 of the Rules of the NYSE. Consequently, the Commission may by order impose appropriate remedial sanctions pursuant to Section 11(b) and Rule 11b-1 of the Exchange Act.

3. As a result of the conduct described above, Hunt willfully violated Section 17(a) of the Securities Act and Sections 10(b) and 11(b) of the Exchange Act, and Rules 10b-5 and 11b-1 thereunder. As a result of the conduct described above, Hunt also violated Rules 104, 92, 123B, and 401 of the Rules of the NYSE. Consequently, the Commission may by order impose appropriate remedial sanctions pursuant to Section 11(b) and Rule 11b-1 of the Exchange Act.

4. As a result of the conduct described above, T. Murphy willfully violated Section 17(a) of the Securities Act and Sections 10(b) and 11(b) of the Exchange Act, and Rules 10b-5 and 11b-1 thereunder. As a result of the conduct described above, T. Murphy also violated Rules 104, 92, 123B, and 401 of the Rules of the NYSE. Consequently, the Commission may by order impose appropriate remedial sanctions pursuant to Section 11(b) and Rule 11b-1 of the Exchange Act.

5. As a result of the conduct described above, Fee willfully violated Section 17(a) of the Securities Act and Sections 10(b) and 11(b) of the Exchange Act, and Rules 10b-5 and 11b-1 thereunder. As a result of the conduct described above, Delaney also violated Rules 104, 92, 123B, and 401 of the Rules of the NYSE. Consequently, the Commission may by order impose appropriate remedial sanctions pursuant to Section 11(b) and Rule 11b-1 of the Exchange Act.

6. As a result of the conduct described above, Delaney willfully violated Section 17(a) of the Securities Act and Sections 10(b) and 11(b) of the Exchange Act, and Rules 10b-5 and 11b-1 thereunder. As a result of the conduct described above, Delaney also violated Rules 104, 92, 123B, and 401 of the Rules of the NYSE. Consequently, the Commission may by order impose appropriate remedial sanctions pursuant to Section 11(b) and Rule 11b-1 of the Exchange Act.

7. As a result of the conduct described above, DeBoer willfully violated Section 17(a) of the Securities Act and Sections 10(b) and 11(b) of the Exchange Act, and Rules 10b-5 and 11b-1 thereunder. As a result of the conduct described above, DeBoer also violated Rules 104, 92, 123B, and 401 of the Rules of the NYSE. Consequently, the Commission may by order impose appropriate remedial sanctions pursuant to Section 11(b) and Rule 11b-1 of the Exchange Act.

8. As a result of the conduct described above, Christie willfully violated Section 17(a) of the Securities Act and Sections 10(b) and 11(b) of the Exchange Act, and Rules 10b-5 and 11b-1 thereunder. As a result of the conduct described above, Christie also violated Rules 104, 92, 123B, and 401 of the Rules of the NYSE. Consequently, the Commission may by order impose appropriate remedial sanctions pursuant to Section 11(b) and Rule 11b-1 of the Exchange Act.

9. As a result of the conduct described above, Parolisi willfully violated Section 17(a) of the Securities Act and Sections 10(b) and 11(b) of the Exchange Act, and Rules 10b-5 and 11b-1 thereunder. As a result of the conduct described above, Parolisi also violated Rules 104, 92, 123B, and 401 of the Rules of the NYSE. Consequently, the Commission may by order impose appropriate remedial sanctions pursuant to Section 11(b) and Rule 11b-1 of the Exchange Act.

10. As a result of the conduct described above, Luckow willfully violated Section 17(a) of the Securities Act and Sections 10(b) and 11(b) of the Exchange Act, and Rules 10b-5 and 11b-1 thereunder. As a result of the conduct described above, Luckow also violated Rules 104, 92, 123B, and 401 of the Rules of the NYSE. Consequently, the Commission may by order impose appropriate remedial sanctions pursuant to Section 11(b) and Rule 11b-1 of the Exchange Act.

11. As a result of the conduct described above, P. Murphy willfully violated Section 17(a) of the Securities Act and Sections 10(b) and 11(b) of the Exchange Act, and Rules 10b-5 and 11b-1 thereunder. As a result of the conduct described above, P. Murphy also violated Rules 104, 92, 123B, and 401 of the Rules of the NYSE. Consequently, the Commission may by order impose appropriate remedial sanctions pursuant to Section 11(b) and Rule 11b-1 of the Exchange Act.

12. As a result of the conduct described above, Johnson willfully violated Section 17(a) of the Securities Act and Sections 10(b) and 11(b) of the Exchange Act, and Rules 10b-5 and 11b-1 thereunder. As a result of the conduct described above, Johnson also violated Rules 104, 92, 123B, and 401 of the Rules of the NYSE. Consequently, the Commission may by order impose appropriate remedial sanctions pursuant to Section 11(b) and Rule 11b-1 of the Exchange Act.

13. As a result of the conduct described above, McGagh willfully violated Section 17(a) of the Securities Act and Sections 10(b) and 11(b) of the Exchange Act, and Rules 10b-5 and 11b-1 thereunder. As a result of the conduct described above, McGagh also violated Rules 104, 92, 123B, and 401 of the Rules of the NYSE. Consequently, the Commission may by order impose appropriate remedial sanctions pursuant to Section 11(b) and Rule 11b-1 of the Exchange Act.

14. As a result of the conduct described above, Bongiorno willfully violated Section 17(a) of the Securities Act and Sections 10(b) and 11(b) of the Exchange Act, and Rules 10b-5 and 11b-1 thereunder. As a result of the conduct described above, Bongiorno also violated Rules 104, 92, 123B, and 401 of the Rules of the NYSE. Consequently, the Commission may by order impose appropriate remedial sanctions pursuant to Section 11(b) and Rule 11b-1 of the Exchange Act.

15. As a result of the conduct described above, Hayward willfully violated Section 17(a) of the Securities Act and Sections 10(b) and 11(b) of the Exchange Act, and Rules

10b-5 and 11b-1 thereunder. As a result of the conduct described above, Hayward also violated Rules 104, 92, 123B, and 401 of the Rules of the NYSE. Consequently, the Commission may by order impose appropriate remedial sanctions pursuant to Section 11(b) and Rule 11b-1 of the Exchange Act.

16. As a result of the conduct described above, Volpe willfully violated Section 17(a) of the Securities Act and Sections 10(b) and 11(b) of the Exchange Act, and Rules 10b-5 and 11b-1 thereunder. As a result of the conduct described above, Volpe also violated Rules 104, 92, 123B, and 401 of the Rules of the NYSE. Consequently, the Commission may by order impose appropriate remedial sanctions pursuant to Section 11(b) and Rule 11b-1 of the Exchange Act.

17. As a result of the conduct described above, Stern willfully violated Section 17(a) of the Securities Act and Sections 10(b) and 11(b) of the Exchange Act, and Rules 10b-5 and 11b-1 thereunder. As a result of the conduct described above, Stern also violated Rules 104, 92, 123B, and 401 of the Rules of the NYSE. Consequently, the Commission may by order impose appropriate remedial sanctions pursuant to Section 11(b) and Rule 11b-1 of the Exchange Act.

18. As a result of the conduct described above, Turk willfully violated Section 17(a) of the Securities Act and Sections 10(b) and 11(b) of the Exchange Act, and Rules 10b-5 and 11b-1 thereunder. As a result of the conduct described above, Turk also violated Rules 104, 92, 123B, and 401 of the Rules of the NYSE. Consequently, the Commission may by order impose appropriate remedial sanctions pursuant to Section 11(b) and Rule 11b-1 of the Exchange Act.

19. As a result of the conduct described above, Hayes willfully violated Section 17(a) of the Securities Act and Sections 10(b) and 11(b) of the Exchange Act, and Rules 10b-5 and 11b-1 thereunder. As a result of the conduct described above, Hayes also violated Rules 104, 92, 123B, and 401 of the Rules of the NYSE. Consequently, the Commission may by order impose appropriate remedial sanctions pursuant to Section 11(b) and Rule 11b-1 of the Exchange Act.

20. As a result of the conduct described above, Scavone willfully violated Section 17(a) of the Securities Act and Sections 10(b) and 11(b) of the Exchange Act, and Rules 10b-5 and 11b-1 thereunder. As a result of the conduct described above, Scavone also violated Rules 104, 92, 123B, and 401 of the Rules of the NYSE. Consequently, the Commission may by order impose appropriate remedial sanctions pursuant to Section 11(b) and Rule 11b-1 of the Exchange Act.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Sections 15(b) and 11(b) of the Exchange Act and Rule 11b-1 thereunder, including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act; and

C. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act and Sections 10(b) and 11(b) of the Exchange Act, and Rules 10b-5 and 11b-1 thereunder, and whether Respondents should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act and Section 21C(e) of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the issues set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS HEREBY FURTHER ORDERED that Respondents shall file Answers to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file answers, or fail to appear at a hearing after being duly notified, they may be deemed in default and the proceeding may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a) and 201.220(f), 221(f) and 201.310.

This Order shall be served upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice, 17 C.F.R. § 201.360(a)(2).

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule-making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Jonathan G. Katz
Secretary