



findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent Beran consents 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 203(f) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) of the Investment Company Act of 1940 as to Marc C. Beran ("Order"), as set forth below.

### III.

On the basis of this Order and Respondent Beran's Offer, the Commission finds<sup>1</sup> that:

#### **Respondent**

1. **Beran**, age 38, is a resident of Southborough, Massachusetts. At all relevant times, Beran was employed as a sector trader on the equity trading desk of FMR Co., Inc. ("FMR Co.") located in Boston, Massachusetts. Beran was associated with FMR Co. from in or about May 1998 until December 2004.

#### **Relevant Parties**

2. **Fidelity Management & Research Company** ("FMR") is registered with the Commission as an investment adviser (File No. 801-7884) pursuant to Section 203(c) of the Advisers Act, with its principal place of business in Boston, Massachusetts. FMR is a wholly owned subsidiary of FMR Corp., which utilizes the trade name "Fidelity Investments." FMR is an adviser to various institutional clients and has approximately \$1.25 trillion in assets under management. FMR's institutional clients include the group of approximately 350 registered investment companies marketed under the "Fidelity Investments" trade name and managed by FMR and its affiliates (hereafter "the Fidelity Funds").

3. **FMR Co.** is registered with the Commission as an investment adviser (File No. 801-3447) pursuant to Section 203(c) of the Advisers Act, with its principal place of business in Boston, Massachusetts. FMR Co. is a wholly owned subsidiary of FMR, and provides portfolio management services as a sub-adviser to certain clients of FMR, including the Fidelity Funds.

#### **Summary**

4. This proceeding concerns Beran's acceptance of gifts and travel from securities brokerage firms ("brokerage firms") with which he, through FMR Co., conducted business on behalf of the Fidelity Funds. During the period from January 1, 2002 to October 2004 (the "Relevant Period"), Beran accepted approximately over \$11,000 worth of travel and tickets to theater and sporting events, which were given to him by at least five representatives of brokerage

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<sup>1</sup> The findings herein are made pursuant to Respondent Beran's Offer and are not binding on any other person or entity in this or any other proceeding.

firms. By accepting those tickets, Beran willfully<sup>2</sup> violated Section 17(e)(1) of the Investment Company Act.

### **Background**

5. During the Relevant Period, Beran worked as a sector trader on FMR Co.'s equity trading desk, and was an affiliated person of FMR Co., which is an affiliated person of investment companies (the Fidelity Funds). Fidelity's advisory clients (including the Fidelity Funds) gave FMR Co. authority to select brokerage firms to execute securities transactions in their managed accounts. Portfolio managers initiated securities trades by contacting FMR Co.'s equity trading desk with orders to purchase or sell securities for client accounts under their management. As an FMR Co. trader, Beran was responsible for, among other things, selecting brokerage firm(s) from a list of brokerage firms approved by FMR Co. to execute securities transactions to fulfill the portfolio managers' orders.

### **Beran Accepted Gifts and Travel from Brokers**

6. During the Relevant Period, Respondent Beran obtained over \$11,000 in gifts and travel from representatives of five of the brokerage firms with whom he, through FMR Co., conducted business on behalf of the Fidelity Funds. These included tickets to out-of-town theater and local professional sporting events that the representatives of the brokerage firms did not attend. Beran also accepted two trips to Bermuda in which a representative of a brokerage firm, who accompanied Beran, paid for Beran and his family's luxury hotel accommodations, associated expenses, and for one trip, their commercial airfare.

7. Beran also engaged in email communications concerning certain gifts. In an email exchange with a broker who had invited him on a golf trip, Beran declined, stating "Thx [name of broker] but somehow I got roped into 2 trips in the next two months . . . one is fishing in Boca (I have never fished) 2<sup>nd</sup> is Caves Valley which [a certain individual] said is great only problem is that I have to trade w/ [the brokerage firm] after I go!" In an email exchange with another Fidelity trader, Beran says that "I figure I owe the broker 3 orders to pay for my annual . . . golf shirt."

### **Beran Violated Section 17(e)(1) of the Investment Company Act**

8. As a result of the conduct described above, Beran willfully violated Section 17(e)(1) of the Investment Company Act, which 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. Beran was an affiliated person of FMR Co., which is an affiliated person of investment

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<sup>2</sup> "Willfully" as used in this Order means intentionally committing the act which constitutes the violation, *Cf. Wonsover v. SEC*, 205 F. 3d 408, 414 (D.C. Cir. 2000); *Tager v. SEC*, 344 F. 2d 5, 8 (2d Cir. 1965). There is no requirement that the actor also be aware he is violating one of the Rules or Acts.

companies (the Fidelity Funds), because FMR Co. advises those funds. Beran's receipt of gifts and travel from brokers constituted compensation in violation of Section 17(e)(1) of the Investment Company Act.

### **Undertakings**

9. In connection with this proceeding and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Respondent Beran (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by or on behalf of the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Respondent Beran's attorney in this proceeding as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Respondent Beran's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Respondent Beran in any United States District Court for purposes of enforcing any such subpoena.

10. In determining whether to accept the Offer, the Commission considered these undertakings.

### **IV.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Beran's Offer.

Accordingly, pursuant to 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. Respondent Beran be, and hereby is, censured;
- B. Respondent Beran cease and desist from committing or causing any violations and any future violations of Section 17(e)(1) of the Investment Company Act;
- C. IT IS FURTHER ORDERED that Respondent Beran shall, within ten (10) days of the entry of this Order, pay disgorgement of \$11,508.44 and prejudgment interest of \$1,584.48 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. 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, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Respondent Beran 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, U.S. Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 23<sup>rd</sup> Floor, Boston, MA 02110-1410;

D. IT IS FURTHER ORDERED THAT Respondent Beran shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$10,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. 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, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Respondent Beran 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, U.S. Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, Boston, MA 02110-1410.

By the Commission.

Nancy M. Morris  
Secretary