

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940  
Release No. 3184 / April 4, 2011

INVESTMENT COMPANY ACT OF 1940  
Release No. 29622 / April 4, 2011

ADMINISTRATIVE PROCEEDING  
File No. 3-12978

---

In the Matter of	)	
	)	
SCOTT E. DeSANO,	)	ORDER MAKING FINDINGS AND IMPOSING
THOMAS H. BRUDERMAN,	)	REMEDIAL SANCTIONS AND A CEASE-AND-
TIMOTHY J. BURNIEIKA,	)	DESIST ORDER PURSUANT TO SECTIONS
ROBERT L. BURNS,	)	203(f) and 203(k) OF THE INVESTMENT
DAVID K. DONOVAN,	)	ADVISERS ACT OF 1940 AND SECTIONS 9(b)
EDWARD S. DRISCOLL,	)	AND 9(f) OF THE INVESTMENT COMPANY
JEFFREY D. HARRIS,	)	ACT OF 1940 AS TO THOMAS H.
CHRISTOPHER J. HORAN,	)	BRUDERMAN
STEVEN P. PASCUCCI and	)	
KIRK C. SMITH,	)	
	)	
Respondents.	)	

---

**I.**

On March 5, 2008, the Securities and Exchange Commission (“Commission”) instituted public administrative and cease-and-desist proceedings pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Scott E. DeSano, Thomas H. Bruderman (“Bruderman” or “Respondent Bruderman”), Timothy J. Burnieika, Robert L. Burns, David K. Donovan, Edward S. Driscoll, Jeffrey D. Harris, Christopher J. Horan, Steven P. Pascucci, and Kirk C. Smith.

**II.**

In response to these proceedings, Respondent Bruderman has submitted an Offer of Settlement (“Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as

to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent Bruderman consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) of the Investment Company Act of 1940 as to Thomas H. Bruderman ("Order"), as set forth below.

### III.

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

#### **Settling Respondent**

1. **Thomas H. Bruderman** ("Bruderman"), age 42, lives in Boston, Massachusetts. He was an equity trader at FMR Co., Inc. from 1998 until his resignation in December 2004. At all relevant times, he was a sector trader specializing in healthcare and pharmaceuticals stocks.

#### **Other Relevant Parties**

2. **Fidelity Management & Research Company** ("FMR") is a privately-held Massachusetts corporation registered with the Commission as an investment adviser 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 LLC, a privately held Delaware corporation. FMR is an adviser to various institutional clients and has approximately \$1.25 trillion in assets under management. FMR's institutional clients include a 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., Inc.** is a privately-held Massachusetts corporation registered with the Commission as an investment adviser pursuant to Section 203(c) of the Advisers Act, with its principal place of business in Boston, Massachusetts. FMR Co., Inc. is a wholly-owned subsidiary of FMR (collectively "Fidelity") and provides portfolio management services as a sub-adviser to certain clients of FMR, including the Fidelity Funds.<sup>2</sup>

---

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

<sup>2</sup> On March 5, 2008 and October 30, 2008, the Commission instituted related administrative and/or cease-and-desist proceedings against Fidelity, Lazard Capital Markets LLC, and certain of their employees. *See In the Matter of Fidelity Management & Research Co. and FMR Co. Inc.*, Advisers Act Release No. 2713, Admin. Proc. File No. 3-19276 (March 5, 2008); *In the Matter of Peter S. Lynch*, Company Act Release No. 28189, Admin. Proc. File No. 3-12980 (March 5, 2008); *In the Matter of Bart A. Grenier*, Advisers Act Release No. 2714, Admin. Proc. File No. 3-12977 (March 5, 2008); *In the Matter of Marc C. Beran*, Advisers Act Release No. 2716, Admin. Proc. File No. 3-12979 (March 5, 2008); *In the Matter of Lazard Capital Markets LLC*, Exchange Act Release No. 58880, Admin. Proc. File No. 3-13281 (October 30, 2008); *In the Matter of David L. Tashjian*, Exchange Act Release No. 58883, Admin. Proc. File No. 3-13284 (October 30, 2008); *In the Matter of Louis Gregory Rice*, Exchange Act Release No. 58881, Admin. Proc. File No. 3-13282 (October 30, 2008); *In the Matter of Robert A. Ward*, Exchange Act Release

## **Summary**

4. These proceedings concern Bruderman's acceptance of travel and gifts from securities brokerage firms ("brokerage firms") with which he, through Fidelity, conducted business on behalf of Fidelity's clients, including the Fidelity Funds. During the period from January 1, 2002 to October 2004 (the "Relevant Period"), Bruderman accepted a significant amount of travel and gifts from representatives of brokerage firms, including private airfare and extensive entertainment at his extravagant bachelor party in Miami, travel by private jet on numerous other trips and various expensive gifts. By accepting the travel and gifts, Bruderman willfully<sup>3</sup> violated Section 17(e)(1) of the Investment Company Act.

5. In addition, Bruderman failed to inform any manager at Fidelity that, during the Relevant Period, he received drugs from brokers doing business with Fidelity. Fidelity failed to disclose to its clients the material conflicts of interest arising from this conduct. As a result, Fidelity willfully violated Section 206(2) of the Advisers Act, and Bruderman was a cause of Fidelity's violation of Section 206(2) of the Advisers Act.

## **Background**

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

### **Bruderman Accepted Travel and Gifts from Brokerage Firms**

7. Bruderman received a significant amount of travel and gifts from representatives of brokerage firms during the Relevant Period. His bachelor party in Miami, Florida in March 2003 provides examples. Bruderman solicited certain brokers to arrange and

---

No. 58882, Admin. Proc. File No. 3-13283 (October 30, 2008); and *In the Matter of W. Daniel Williams*, Exchange Act Release No. 58884, Admin. Proc. File No. 3-13285 (October 30, 2008).

<sup>3</sup> A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

pay for events associated with it, and the brokers complied, paying for private jet travel, luxury accommodations at the Delano Hotel, a chartered yacht, golf, a limousine, expensive dinners, adult entertainment and the drug commonly referred to as “ecstasy.” In addition to events associated with his bachelor party and other wedding-related expenses, brokers paid all or part of Bruderman’s share of numerous other trips, most of which included private jet travel, lodging and entertainment. The trips were to such destinations as the Super Bowl (twice), the Caribbean, and Cabo San Lucas, Mexico. On many of the trips, brokers were not present and simply provided Bruderman and/or his fiancée (later wife) with the use of a private jet. These included trips to Puerto Rico, Florida, and his honeymoon in Los Angeles. Brokers also provided Bruderman with other gifts such as entry to a racing school, thousands of dollars worth of wine, a humidor with cigars, limousine service and numerous tickets to events that he did not attend with the broker.

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

8. As a result of the conduct described above, Bruderman 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. A violation of Section 17(e)(1) is complete upon receipt of the compensation. Bruderman was an affiliated person of Fidelity, which is an affiliated person of investment companies (the Fidelity Funds), because Fidelity advises those funds. Bruderman’s receipt of travel and gifts from representatives of brokerage firms constituted compensation in violation of Section 17(e)(1) of the Investment Company Act.

### **Bruderman’s Receipt of Drugs from Brokers**

9. On a number of occasions, representatives of brokerage firms doing business with Fidelity provided Bruderman with the drug commonly referred to as “ecstasy.” Bruderman failed to inform any Fidelity manager of that conduct.

### **Bruderman was a Cause of Fidelity’s Violations of Section 206(2) of the Advisers Act for Failing to Disclose Certain Conflicts of Interest**

10. Under Section 206 of the Advisers Act, an investment adviser has a fiduciary duty to disclose all material conflicts of interest to its advisory clients. During the Relevant Period, Fidelity failed to disclose to its clients, including the Fidelity Funds, the material conflicts of interest arising from Bruderman’s receipt of drugs from brokers. As a result, Fidelity willfully violated Section 206(2) of the Advisers Act, and Bruderman was a cause of Fidelity’s violation of Section 206(2) of the Advisers Act.

## **IV.**

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

Accordingly, pursuant to Sections 203(f) and 203(k) of the Advisers Act and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Bruderman cease and desist from committing or causing any violations and any future violations of Section 17(e)(1) of the Investment Company Act and Section 206(2) of the Advisers Act;

B. Respondent Bruderman be, and hereby is, censured; and

C. Respondent Bruderman shall, within ten days of the entry of this Order, pay disgorgement of \$205,000, prejudgment interest of \$74,218.18 and a civil money penalty in the amount of \$70,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. 3717. Payment shall be: (1) made by United States postal money order, certified check, bank cashier's check or bank money order; (2) made payable to the Securities and Exchange Commission; (3) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, VA 22312, Stop 0-3; and (4) submitted under cover letter that identifies Bruderman 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, Securities and Exchange Commission, 33 Arch St., 23<sup>rd</sup> Floor, Boston, MA 02110.

By the Commission.

Elizabeth M. Murphy  
Secretary

## Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) of the Investment Company Act of 1940 as to Thomas H. Bruderman ("Order"), on the Respondent and his legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Robert G. Mahony  
Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2557

Martin Healey, Esq.  
Boston Regional Office  
Securities and Exchange Commission  
33 Arch Street, 23rd Floor  
Boston, MA 02110

Mr. Thomas H. Bruderman  
c/o Thomas R. Kiley, Esq.  
Cosgrove, Eisenberg and Kiley, P.C.  
Suite 1820, One International Place, Fort Hill Square  
Boston, MA 02110

Thomas R. Kiley, Esq.  
Cosgrove, Eisenberg and Kiley, P.C.  
Suite 1820, One International Place, Fort Hill Square  
Boston, MA 02110  
(Counsel for Thomas H. Bruderman)