

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940  
Release No. 2816 / December 11, 2008

INVESTMENT COMPANY ACT OF 1940  
Release No. 28535 / December 11, 2008

ADMINISTRATIVE PROCEEDING  
File No. 3-12978

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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 EDWARD S. DRISCOLL
CHRISTOPHER J. HORAN,	)	
STEVEN P. PASCUCCI and	)	
KIRK C. SMITH,	)	
	)	
Respondents.	)	

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**I.**

On March 5, 2008, the Securities and Exchange Commission (“Commission”) instituted public administrative and cease-and-desist proceedings pursuant to Section 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, Timothy J. Burnieika, Robert L. Burns, David K. Donovan, Edward S. Driscoll (“Driscoll” or “Respondent Driscoll”), Jeffrey D. Harris, Christopher J. Horan, Steven P. Pascucci, and Kirk C. Smith.

**II.**

In response to these proceedings, Respondent Driscoll 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 Driscoll 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 Edward S. Driscoll ("Order"), as set forth below.

### III.

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

#### **Settling Respondent**

1. **Driscoll**, age 42, lives in Scituate, Massachusetts. Aside from a ten-month stint at another firm, he was an equity trader at FMR Co., Inc. from 1997 until his resignation in March 2005. At all relevant times, he was a sector trader specializing in food and beverage, household items, materials, and capital goods 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>

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<sup>1</sup> The findings herein are made pursuant to Respondent Driscoll'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, the Commission instituted related administrative and/or cease-and-desist proceedings against Fidelity and certain of its 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).

## **Summary**

4. These proceedings concern Driscoll's acceptance of travel, gifts and tickets 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"), Driscoll accepted a significant amount of travel and gifts, including travel by private jet and numerous tickets to sporting events that he did not attend with the representatives of the brokerage firms. By accepting the travel, gifts and tickets, Driscoll willfully<sup>3</sup> violated Section 17(e)(1) of the Investment Company Act.

5. In addition Driscoll failed to disclose to any manager at Fidelity that during the Relevant Period, a broker doing business with Fidelity facilitated Driscoll's illegal gambling. 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 Driscoll was a cause of Fidelity's violation of Section 206(2) of the Advisers Act.

## **Background**

6. During the Relevant Period, Driscoll 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, Driscoll 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.

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

7. Driscoll received a significant amount of travel and gifts from representatives of brokerage firms during the Relevant Period, including the exclusive use of a broker's private jet for a family vacation to DisneyWorld in Florida. In addition, Driscoll accepted numerous tickets to events that the broker did not attend, including primarily Celtics games. Driscoll also went on several trips with brokers, including to the Super Bowl and Las Vegas, certain of which included private jet travel and lodging.

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

8. As a result of the conduct described above, Driscoll willfully violated Section 17(e)(1) of the Investment Company Act, which makes it unlawful for an affiliated person of a

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<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)).

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. Driscoll was an affiliated person of Fidelity, which is an affiliated person of investment companies (the Fidelity Funds), because Fidelity advises those funds. Driscoll's receipt of gifts and travel from representatives of brokerage firms constituted compensation in violation of Section 17(e)(1) of the Investment Company Act.

#### **Driscoll's Illegal Gambling was Facilitated by a Broker**

9. A representative of a brokerage firm doing business with Fidelity facilitated Driscoll's illegal gambling. Driscoll failed to inform any Fidelity manager of that conduct.

#### **Driscoll 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 the facilitation of Driscoll's illegal gambling by a broker. As a result, Fidelity willfully violated Section 206(2) of the Advisers Act, and Driscoll 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 Driscoll'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 Driscoll 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 Driscoll is censured; and

C. Respondent Driscoll shall pay disgorgement of \$39,000, prejudgment interest of \$13,549.33 and a civil money penalty in the amount of \$30,000 to the United States Treasury. Payment shall be made in the following installments: (1) \$52,549.33 within ten days of entry of this Order, and (2) \$30,000 within 120 days of entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717, shall be due and payable

immediately, without further application. Payments 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, VA 22312, Stop 0-3; and (D) submitted under cover letter that identifies Driscoll 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.

Florence E. Harmon  
Acting Secretary