

admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(e) 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 set forth below.

III.

On the basis of this Order and Respondents' Offer, the Commission finds¹ that:

A. **RESPONDENTS**

1. **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 limited liability company. 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").

2. **FMR Co.** 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. 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.

B. **OTHER RELEVANT PARTIES**²

3. **Scott E. DeSano**, age 47, lives in Boston, Massachusetts. He was associated with FMR Co. from 1991 to July 2005, and was its senior vice president in charge of global equity trading from 1996 until he was reassigned to an affiliate of FMR in July 2005. From at least January 2002 through October 2004, he supervised Fidelity's Boston domestic equity trading desk ("Equity Trading Desk") and other equity trading operations. In all, DeSano supervised more than

¹ The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

² The persons identified by name below are respondents in other administrative and cease-and-desist proceedings instituted today. See In the Matter of Scott E. DeSano, Thomas H. 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; In the Matter of Peter S. Lynch; In the Matter of Bart A. Grenier; and In the Matter of Marc C. Beran.

thirty equity traders.³ He reported to a senior vice president of FMR Co. (Bart Grenier). He also appeared as a representative of Fidelity in public testimony before Congress, the Commission, and other regulatory bodies.

4. **Bart A. Grenier**, age 49, lives in Boston, Massachusetts. Aside from a four-month period in 1997, Grenier was associated with FMR Co. from 1991 until June 2005. During the Relevant Period,⁴ he was a senior vice president of FMR Co. with supervisory responsibility for Fidelity's equity trading operations and several of its other business groups.

5. **Peter S. Lynch**, age 64, lives in Marblehead, Massachusetts. He has been associated with FMR and FMR Co. in various capacities since 1969, and was the portfolio manager of Fidelity's Magellan Fund from 1977 to 1990. Since retiring from Magellan, he has been the vice chairman and a director of FMR and FMR Co. He was an interested trustee of the Fidelity Funds from 1990 until February 2003, and has since served as a member of the Advisory Board of the Fidelity Funds.

6. **Marc C. Beran**, age 38, lives in Southborough, Massachusetts. He was a domestic equity trader at FMR Co. from 1997 until January 2005. During the Relevant Period, he was a sector trader specializing in energy and materials stocks.

7. **Thomas H. Bruderman**, age 39, lives in Boston, Massachusetts. He was a domestic equity trader at FMR Co. from 1998 until December 2004. During the Relevant Period, he was a sector trader specializing in healthcare and pharmaceuticals stocks.

8. **Timothy J. Burnieika**, age 38, lives in Cohasset, Massachusetts. He was a domestic equity trader at FMR Co. from 2000 until September 2005, when he was reassigned to other duties that do not involve trading. During the Relevant Period, he was a primary trader reporting to Steven Pascucci.

9. **Robert L. Burns**, age 46, lives in Brookline, Massachusetts. He was a domestic equity trader at FMR Co. from 1986 until December 2004. During the Relevant Period, he was a sector trader specializing in technology stocks and reporting to David Donovan.

10. **David K. Donovan**, age 45, lives in Marblehead, Massachusetts. He was a domestic equity trader at FMR Co. from 1992 until March 2005. During the Relevant Period, he was a sector trader specializing in technology stocks, and he was also a team leader of several sector traders, including Robert Burns, Jeffrey Harris and Kirk Smith.

³ As discussed below, the Equity Trading Desk included "primary" traders, who worked closely with certain Fidelity portfolio managers, and "sector" traders, who were responsible for trading equities in certain industries.

⁴ The term "Relevant Period" means the time period of January 1, 2002 through October 31, 2004.

11. **Edward S. Driscoll**, age 42, lives in Scituate, Massachusetts. Aside from a ten-month stint at another firm, he was a domestic equity trader at FMR Co. from 1997 until March 2005. During the Relevant Period, he was a sector trader specializing in food and beverage, household items, materials, and capital goods stocks.

12. **Jeffrey D. Harris**, age 35, lives in Charlestown, Massachusetts. He was a domestic equity trader at FMR Co. from 1998 until July 2005. During the Relevant Period, he was a sector trader specializing in technology stocks and reporting to David Donovan.

13. **Christopher J. Horan**, age 37, lives in Boston, Massachusetts. He was a domestic equity trader at FMR Co. from 1999 until September 2005, when he was reassigned to other duties that do not involve trading. During the Relevant Period, he was a sector trader specializing in insurance, capital goods, and restaurant stocks.

14. **Steven P. Pascucci**, age 41, lives in Concord, Massachusetts. He was a domestic equity trader at FMR Co. from 1997 until September 2005, when he was reassigned to other duties that do not involve trading. During the Relevant Period, he was a primary trader, and from 1998 until early 2005, he was a team leader of the other primary traders, including Timothy Burnieika.

15. **Kirk C. Smith**, age 43, lives in Walpole, Massachusetts. He was a domestic equity trader at FMR Co. from 1997 until September 2005, when he was reassigned to other duties that do not involve trading. During the Relevant Period, he was a sector trader specializing in technology stocks and reporting to David Donovan.

C. **FACTS**

Summary

16. During the period from at least January 2002 through October 2004, two Fidelity senior executives (DeSano and Grenier) and ten Fidelity equity traders (Beran, Bruderman, Burnieika, Burns, Donovan, Driscoll, Harris, Horan, Pascucci and Smith) in aggregate accepted approximately \$1.6 million worth of travel, entertainment and gifts from brokerage firms that sought and obtained orders to buy or sell securities on behalf of Fidelity's advisory clients.⁵ In addition, Lynch requested and received tickets to events from two equity traders, who obtained those tickets from brokers. Those brokerage firms each received millions of dollars in commission revenue for handling orders from Fidelity's advisory clients' accounts. DeSano and the traders in aggregate accepted from brokers dozens of expensive trips, frequently by private jet, including

⁵ A significant portion of this figure consists of the cost of private jet travel, which was calculated based on the cost to brokerage firms of chartering aircraft.

excursions to the Super Bowl, family vacations to Bermuda, Nantucket and the Caribbean, golf outings at exclusive clubs in Florida and South Carolina, weekends in Las Vegas, lodging at fine hotels, and even an extravagant, three-day bachelor party for Bruderman in Miami. Brokers also provided the Fidelity executives and traders with gifts including premium tickets to the World Series, the U.S. Open, Wimbledon, Rolling Stones concerts, and dozens of other sporting events and concerts. In addition, certain traders accepted illegal drugs from brokers and one trader's illegal gambling was facilitated by a broker.⁶

17. The ten traders allowed the receipt of travel, entertainment and gifts to influence their selection of brokers to handle transactions for Fidelity's clients. As one trader commented to another, "Word is out that order flow is for sale." In addition, certain traders routinely sent transactions to brokers who were members of their families or brokers with whom they had a romantic relationship.⁷

18. DeSano, who supervised Fidelity's equity trading operations, personally accepted travel, entertainment and gifts from brokers who sought and obtained securities transactions for Fidelity's clients. He solicited tickets from brokers for himself and to satisfy requests from his supervisor, Grenier. He accompanied certain traders on several trips by private jet paid for by brokers, including attending part of Bruderman's bachelor party in Miami, and traders told him about some of the other private jet trips and tickets they received from brokers. He also knew that certain traders directed transactions to brokers who were members of their family or with whom they had a romantic relationship. Nevertheless, DeSano failed to monitor the traders' receipt of travel, entertainment and gifts in any systematic way and failed to take reasonable steps to ensure that they were seeking best execution or complying with Fidelity's policy concerning its employees' receipt of gifts and gratuities.

19. Under Section 17(e)(1) of the Investment Company Act, affiliated persons of a registered investment company, such as Fidelity executives and traders, are prohibited from accepting "from any source any compensation (other than a regular salary or wages from such registered company) for the purchase or sale of any property" of the investment company. The objective of Section 17(e)(1) is to prevent persons affiliated with registered investment companies from having conflicts of interest impair their judgment and loyalty. A violation of Section 17(e)(1) of the Investment Company Act is complete upon receipt of the compensation. During the Relevant Period, two Fidelity executives (DeSano and Grenier) and ten Fidelity traders (Beran, Bruderman, Burnieika, Burns, Donovan, Driscoll, Harris, Horan, Pascucci and Smith) received compensation in violation of Section 17(e)(1) of the Investment Company Act in the form of

⁶ The primary recipient of drugs was Bruderman, who received ecstasy pills and marijuana from brokers on a number of occasions.

⁷ Two traders not named in this Order sent Fidelity business to brokers with whom they were having romantic relationships.

travel, entertainment and gifts paid for by brokers who sought and obtained from those traders securities transactions for Fidelity's clients. In addition, another Fidelity executive (Lynch) caused two Fidelity traders' violations of Section 17(e)(1). Fidelity failed to adopt and implement a system of controls sufficient to detect, deter, and prevent the receipt by these executives and traders of travel, entertainment and gifts paid for by brokers as described herein. As a result, Fidelity failed reasonably to supervise the executives and traders, within the meaning of Section 203(e)(6) of the Advisers Act, with a view to preventing their violations of Section 17(e)(1) of the Investment Company Act.

20. Under Section 206 of the Advisers Act, an investment adviser has a fiduciary duty to seek best execution for its clients' securities transactions – that is, to seek the most favorable terms reasonably available under the circumstances. In determining whether an adviser is seeking best execution, the key criterion is whether the adviser selects the transaction which “represents the best qualitative execution for the managed account.”⁸ During the Relevant Period, Fidelity allowed certain employees' receipt of travel, entertainment and gifts and certain employees' family or romantic relationships to enter into the selection of brokers. Accordingly, Fidelity willfully violated Section 206(2) of the Advisers Act, resulting in the substantial possibility of higher execution costs for Fidelity's advisory clients.⁹

21. 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 advisory clients the conflicts of interest arising from the receipt by certain Fidelity executives and traders of travel, entertainment and gifts from, and certain traders' family and romantic relationships with, brokers who sought and obtained securities transactions for Fidelity's clients, and failed to disclose that such travel, entertainment, gifts and relationships became additional factors in the traders' selection of brokers. Accordingly, Fidelity willfully violated Section 206(2) of the Advisers Act.

22. Under Sections 204, 206 and 207 of the Advisers Act and Rule 204-1 thereunder and Section 34(b) of the Investment Company Act, an investment adviser may not make materially false and misleading statements in public disclosure documents, such as an

⁸ Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934, Exchange Act Rel. No. 23170, 1986 SEC LEXIS 1689, at *38 (Apr. 23, 1986) (“1986 Soft Dollar Release”); *see also* Market 2000 Report: Study V, Best Execution, 1994 SEC LEXIS 136, at *42 n.65 (“Market 2000 Report”) (“[M]oney managers in fulfilling their duties of best execution . . . must evaluate periodically the performance of the broker-dealers that execute their transactions.”); *Renberg Capital Management, Inc.*, Advisers Act Rel. No. 2064, 2002 WL 31174796, *2 (Oct. 1, 2002); *Portfolio Advisory Services, LLC*, Advisers Act Rel. No. 2038, 2002 WL 1343823, *2 (June 20, 2002).

⁹ “Willfully” as used in this Order means intentionally committing the act that constitutes the violation. *See 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 that he is violating one of the Rules or Acts. *Id.*

investment adviser's Form ADV and a registered investment company's prospectus and statement of additional information ("SAI"). During the Relevant Period, Fidelity's Forms ADV and the SAIs which it prepared for the Fidelity Funds stated that Fidelity selected brokers for its clients' transactions based on an itemized list of factors but failed to include the additional significant factors considered by certain traders – their receipt of travel, entertainment and gifts from brokers and their family or romantic relationships with brokers. As a result, Fidelity willfully violated Sections 204, 206(2) and 207 of the Advisers Act and Rule 204-1 thereunder and Section 34(b) of the Investment Company Act.

23. On behalf of Fidelity, DeSano made presentations to committees of the trustees of the Fidelity Funds in which he too identified the factors that Fidelity used in selecting brokers. DeSano also told the trustees that Fidelity required brokers to compete for its brokerage business based on the quality of their trade execution. Those statements were false and misleading because DeSano failed to disclose (1) that certain Fidelity traders selected brokers for Fidelity's business based on additional significant factors of which he was aware – travel, entertainment and gifts from brokers and family or romantic relationships with brokers, and (2) that brokers competed for Fidelity's business based on those additional factors as well. As a result, Fidelity willfully violated Section 206(2) of the Advisers Act.

24. Under Section 204 of the Advisers Act and Rule 204-2 thereunder, an investment adviser is required to make and keep true, accurate and current books and records relating to its investment advisory business, including originals or copies of certain documents reflecting its communications with brokerage firms relating to the placing or execution of orders to purchase or sell securities. During the Relevant Period, Fidelity traders used an electronic messaging network supplied by Bloomberg L.P. ("Bloomberg") to communicate with brokers. Fidelity failed to make and keep true, accurate, and current originals or copies of such messages. As a result, Fidelity willfully violated Section 204 of the Advisers Act and Rules 204-2(a)(7)(iii) and 204-2(g) thereunder.

Background on Fidelity's Equity Trading Desk

25. Fidelity manages one of the largest mutual fund complexes in the United States. Fidelity equity traders buy and sell millions of shares of stock every day for the Fidelity Funds and other institutional clients. As an investment adviser, Fidelity has a fiduciary duty to seek best execution for its clients' securities transactions and to disclose to its clients all material facts concerning conflicts of interest.

26. The Fidelity Funds and certain of Fidelity's other institutional clients' accounts are managed by portfolio managers who make investment decisions on their behalf. The portfolio managers send their orders to equity traders, who are responsible for selecting brokers to handle the transactions. During the Relevant Period, the Equity Trading Desk bought and sold more than 73 billion shares of equity securities (nearly 26 billion shares per year) with a total principal of more than \$1.4 trillion (nearly \$500 billion per year). Fidelity's

equity trading generated more than \$2.3 billion in commissions (over \$800 million per year) paid to brokerage firms by Fidelity's clients, including the Fidelity Funds.

27. During the Relevant Period, FMR Co.'s equity trading operations employed nearly sixty people, including 33 traders (seven "primary" traders and 26 "sector" traders). Under DeSano's supervision, the traders had broad discretion to select brokerage firms to handle securities transactions. The primary limitation was that the traders could only select from a list of approximately 100 firms that had been formally approved by Fidelity.

**Fidelity Executives and Traders Received
Travel, Entertainment and Gifts from Brokers Seeking and Obtaining
Securities Transactions for Fidelity's Clients**

Overview

28. During the Relevant Period, two Fidelity senior executives (DeSano and Grenier) and ten Fidelity equity traders (Beran, Bruderman, Burnieika, Burns, Donovan, Driscoll, Harris, Horan, Pascucci and Smith) in aggregate accepted approximately \$1.6 million worth of travel, entertainment and gifts from brokerage firms that sought and obtained orders to buy or sell securities on behalf of Fidelity's advisory clients.¹⁰ In addition, Lynch requested and received tickets to events from two equity traders, who obtained those tickets from brokers. Brokers took DeSano and/or certain traders, sometimes in groups, on more than thirty trips to such destinations as the Super Bowl, Las Vegas, Florida, the Caribbean, and Nantucket. These excursions sometimes included travel by private jet, lodging at fancy resorts, entry to exclusive golf courses, tickets to major sporting events, limousine service, expensive dinners, other amenities such as spa services, and, for certain traders, adult entertainment and illegal drugs. Bruderman even organized, and brokers paid for, his own extravagant, three-day bachelor party in Miami, part of which DeSano attended and which cost brokers approximately \$160,000.

29. One brokerage firm seeking and obtaining Fidelity's business, Jefferies & Co., Inc. ("Jefferies"), gave one of its brokers, Kevin W. Quinn, a travel and entertainment budget of \$1.5 million per year. From that budget, Quinn entertained DeSano and several Fidelity traders, primarily by taking them on weekend excursions by private jet.¹¹ For example, Quinn organized

¹⁰ The cost to brokerage firms was approximately \$3 million, primarily because they sent one or more brokerage firm employees on entertainment trips with Fidelity employees.

¹¹ Quinn signed an employment agreement with Jefferies in May 2002 and began working in the firm's Boston office on September 3, 2002. On December 1, 2006, the Commission instituted settled administrative proceedings against Jefferies, a Jefferies senior executive, and Quinn with respect to Quinn's provision of substantial travel, entertainment and gifts to DeSano and certain Fidelity traders. See Matter of Jefferies & Co., Inc. et al., Release No. 34-54861 (Dec. 1, 2006), and Matter of Kevin W. Quinn, Release No. 34-54862 (Dec. 1, 2006).

an annual trip he called the “Fall Classic,” which included private jet travel, exclusive golf outings, lodging at expensive resorts, and other activities. During the November 2002 Fall Classic, for example, Quinn took DeSano, Bruderman and Harris by private jet to Las Vegas. Quinn provided accommodations at the Bellagio Hotel, several thousand dollars worth of golf merchandise, a private band, meals, golf, and entertainment at a nearby strip club. The group continued by private jet to Cabo San Lucas, Mexico, where Quinn provided accommodations in villas at the Esperanza Hotel, meals, more golf, and other entertainment. Jefferies paid approximately \$200,000 for the expenses incurred on this trip.

30. Brokers other than Quinn also took Fidelity traders on a variety of trips. For example, each year during the Relevant Period, various brokers took several Fidelity traders to the Super Bowl. Brokers often provided the traders with travel by private jet, lodging at expensive hotels, admission to exclusive pre-game parties, tickets to the Super Bowl, golf greens fees, limousines, and other lavish entertainment. Even when they did not provide private jets, brokers often took traders on trips to Las Vegas and on golf weekends to Florida and other warm-weather locations, usually paying for the traders’ lodging and meals and sometimes paying for other travel expenses such as commercial airfare.

31. On more than twenty other occasions, brokers made a private jet available for personal use by DeSano and/or certain traders (and at times, their families), without accompanying the Fidelity employee on the trip. Some of the private jet trips were short (such as weekend excursions to Nantucket), but others were quite long (such as flights to Florida and the Caribbean) and cost brokers up to \$50,000 or more per trip.

32. Besides the trips, brokers provided to the Fidelity employees identified herein a total of approximately 900 tickets for some of the best seats to more than 270 sporting events, concerts, and other events, none of which the broker attended with the recipient. The events included the World Series, prominent tennis tournaments (Wimbledon, the U.S. Open, and the French Open), Broadway shows, concerts by nationally-known performers (such as the Rolling Stones and Bruce Springsteen), and dozens of sporting events, including baseball, basketball, football and hockey playoff and regular season games.¹²

33. Most of the tickets were for premium or exclusive seats (such as luxury boxes or seats close to the stage, court or field). Brokers frequently provided multiple tickets to the event, so that the recipient could bring his family or friends. The tickets often cost the brokers hundreds of dollars each, and tickets to special events such as playoff games often cost them more than \$1,000 each.

34. In addition, brokers sent certain traders expensive wine (including cases that cost

¹² Most of the sporting events involved the Boston-area professional teams: the Bruins, Celtics, Patriots and Red Sox.

from \$1,000 to \$7,700 each delivered straight to their homes), and other costly items such as entry to a racing school (over \$5,000) and a humidor filled with cigars (approximately \$1,300).

The Individual Executives and Traders

35. DeSano received more than \$145,000 worth of travel, entertainment and gifts from brokers during the Relevant Period. He received the personal use of Quinn's private jet for at least two trips, and he went on at least six private jet trips with brokers, primarily Quinn. The trips by private jet included the "Fall Classic" in Las Vegas and Mexico in November 2002, Bruderman's bachelor party in Miami in March 2003, and golf trips to locations such as Sea Island, Georgia, West Palm Beach, Florida, and the Winged Foot Golf Club in Mamaroneck, New York. Brokers also gave DeSano nearly fifty tickets to more than twenty events, including several Bruins, Celtics, Patriots and Red Sox playoff games.

36. Grenier received approximately \$38,500 worth of tickets from brokers during the Relevant Period. The tickets were to approximately twenty events, including a Super Bowl ticket package worth approximately \$9,000 and premium seats to numerous Celtics and Red Sox games. On several occasions, Grenier asked DeSano to get the tickets for him, and DeSano obliged him by procuring the tickets from brokers who sought and obtained securities transactions for Fidelity.

37. Lynch was the portfolio manager of Fidelity's Magellan Fund from 1977 to 1990. During the last five years of his tenure at Magellan, Burns was one of the traders assigned to handle transactions for the Magellan Fund. During the Relevant Period, Lynch periodically asked Burns to get him tickets to concerts, theater and sporting events – often to sold-out events. Lynch knew that Burns obtained the tickets from brokers handling securities transactions for Fidelity. (On one occasion, Lynch obtained tickets to a Santana concert from Harris, who had taken his call when Burns was out.) From 1999 through October 2004, Lynch received tickets worth approximately \$15,948 that Burns or Harris had obtained from brokers, and he did not reimburse. He received 61 tickets to approximately one dozen sporting, theater and concert events, including fourteen, three-day passes to the Ryder Cup golf tournament in Brookline, Massachusetts in 1999, eleven tickets to a U2 concert, and at least six tickets to the Ryder Cup golf tournament in Michigan in 2004. In addition to Burns and Harris, at least seven other members of the Equity Trading Desk were aware during the Relevant Period that Lynch obtained tickets to events from brokers through the Equity Trading Desk. Each of those members of the Equity Trading Desk accepted gifts for themselves from brokers.

38. Beran received more than \$11,000 worth of travel, entertainment and gifts from brokers during the Relevant Period. These included tickets to out-of-town theater and local professional sporting events that the brokers did not attend. Beran and his family also went on two trips to Bermuda with a broker who paid for the family's luxury hotel accommodations, associated expenses, and for one trip, their commercial airfare.

39. Bruderman received more than \$450,000 worth of travel, entertainment and gifts from brokers during the Relevant Period.¹³ One example was his bachelor party in Miami, Florida in March 2003. Bruderman solicited certain brokers to arrange and pay for the event, and the brokers complied – at a total cost of approximately \$160,000. The festivities included private jet travel, luxury accommodations at the Breakers Hotel, a chartered yacht, golf, a limousine, and other entertainment such as expensive dinners and strip clubs. Brokers hired two women to entertain the attendees at the party and provided a bag filled with illegal drugs (ecstasy pills) to Bruderman.¹⁴ DeSano, who attended the bachelor party and flew to Miami on the private jet with Bruderman, several brokers, and the two women, believed that the women hired by the brokers were prostitutes. In addition to his bachelor party and other wedding-related expenses, brokers paid all or part of Bruderman’s share of approximately 25 other trips. Bruderman obtained private jet travel on more than twenty of those occasions. The trips included such destinations as the Super Bowl (twice), the Caribbean, and Cabo San Lucas, Mexico (on the November 2002 “Fall Classic”). On approximately ten of the trips, brokers were not present and simply provided Bruderman and/or his fiancée 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 lodging on at least fourteen occasions, airfare on commercial jets on at least six occasions, and other gifts such as entry to a racing school (over \$5,000), thousands of dollars worth of wine, a humidor with cigars (\$1,300), and limousine service. Finally, brokers gave Bruderman at least thirty tickets to at least seven events, including the U.S. Open tennis tournament and front-row seats at a Dave Matthews concert. Bruderman failed to inform DeSano or any other Fidelity manager of his receipt of illegal drugs from brokers.

40. Burnieika received more than \$55,000 worth of travel, entertainment and gifts from brokers during the Relevant Period, mostly consisting of premium tickets to professional sporting events. Indeed, brokers gave Burnieika approximately 175 tickets to more than fifty events that the brokers did not attend, including several Celtics and Red Sox playoff games, numerous other Celtics and Red Sox games, and concerts by the Rolling Stones and Bruce Springsteen.

¹³ One broker at a firm that provided Bruderman with extravagant trips and gifts expressed the firm’s attitude as, “Whatever Brudy wants, Brudy gets.”

¹⁴ Brokers sometimes offered illegal drugs to Bruderman. For example, in February 2002, a broker through whom Bruderman executed securities transactions for Fidelity clients sent him an email asking, “U want beans.” (Certain traders and brokers used slang such as “beans” and “Scooby snacks” to refer to ecstasy.) On other occasions, Bruderman solicited drugs from brokers. For example, in January 2004, he asked a broker, “Long any snacks?” The broker responded, “For the Superbowl???? I most likely will b able to take care of that.” Bruderman replied, “I would like to order 10 if you have a guy?”

All communications among DeSano, traders and brokers cited in this Order are from the email network maintained by Bloomberg for Fidelity and are quoted with their original spelling and punctuation. Brackets are used to clarify abbreviations or other terms and to indicate where names have been omitted.

Burnieika also went on ten trips with brokers to such destinations as the Super Bowl, Las Vegas, and Aspen, Colorado. Four of the trips were by private jet, while the other six trips were by commercial jet with brokers who paid for some of his lodging and other travel and entertainment expenses.

41. Burns received more than \$180,000 worth of travel, entertainment and gifts from brokers during the Relevant Period (not counting the tickets that he obtained for Lynch). Burns received more than 190 tickets to more than forty events that the brokers did not attend, plus fourteen tickets for Burns' friends to attend three events that Burns attended with brokers. Burns received at least \$140,000 of tickets and other gifts from Quinn at Jefferies, and Quinn did not attend any of the events for which he provided tickets. For example, over a three-year period, Quinn spent more than \$100,000 so that Burns could attend the Wimbledon tennis tournament. In 2002 and 2003, Quinn simply gave Burns tickets to the tournament. In 2004, he not only gave Burns tickets that cost more than \$38,000, but he also paid for Burns and his friends to stay at the Lanesborough Hotel in London, at a cost of nearly \$13,000. Quinn also had cases of expensive wine delivered to Burns' home as Christmas gifts – at a cost of more than \$5,900 in December 2002 and more than \$7,700 in December 2003.

42. Donovan received more than \$270,000 worth of travel, entertainment and gifts from brokers during the Relevant Period, mostly consisting of trips by private jet to the Super Bowl, Las Vegas, the Bahamas, Florida, and other vacations. In total, brokers paid all or most of Donovan's expenses on 24 trips, including travel by private jet to at least sixteen destinations, first-class flights on the Concorde on at least two occasions, and lodging on eighteen occasions. For example, in June 2002, one broker took Donovan to Paris for the French Open tennis tournament and paid for his lodging at the Hotel George V, and in August 2003, the same broker took Donovan and his wife to London for the Wimbledon tennis tournament and paid for their lodging in the Ritz Hotel. On six occasions, the broker did not attend but simply provided Donovan with the use of a private jet for himself and sometimes his family. In addition, brokers gave Donovan a case of wine valued at approximately \$1,000 on two separate occasions, as well as more than sixty tickets to more than twenty events.

43. Driscoll received more than \$45,000 worth of travel, entertainment and gifts from brokers during the Relevant Period. This included the exclusive use of Quinn's private jet, as well as car service, for a family vacation to DisneyWorld in Florida, at a cost to Jefferies of approximately \$25,000. Driscoll also went on four trips with brokers to the Super Bowl and Las Vegas, two of which included private jet travel and three of which included lodging. Brokers also gave Driscoll more than 55 tickets to at least sixteen events that the brokers did not attend, primarily Celtics games. In addition, one broker facilitated Driscoll's illegal gambling by delivering his bets to a bookie and even, at one point, by initially covering Driscoll's \$10,000 debt to the bookie. Driscoll failed to inform DeSano or any other Fidelity manager of his illegal gambling through a broker.

44. Harris received more than \$125,000 worth of travel, entertainment and gifts from brokers during the Relevant Period, including some or all of the costs associated with more than twenty trips. On three occasions, the brokers did not attend but simply provided Harris with the use of a private jet, such as a March 2004 trip with Horan to Turks & Caicos in the Caribbean. On eight other occasions, brokers took Harris by private jet on trips such as the “Fall Classic” in 2002 and 2003, the Super Bowl, various other golf trips, and vacations to places such as Nantucket and Florida. On nearly all the trips, brokers paid for his lodging and other expenses. In addition, brokers gave Harris more than thirty tickets to at least fourteen events, including several Patriots and Red Sox games and concerts by Santana and Fleetwood Mac.

45. Horan received more than \$120,000 worth of travel, entertainment and gifts from brokers during the Relevant Period, including some or all of his lodging and other travel expenses on at least 24 trips. Eleven of the trips were by private jet, including excursions to the Super Bowl, one “Fall Classic” sponsored by Quinn, and trips to destinations such as Las Vegas, Martha’s Vineyard, and the Pebble Beach golf course in California. On three occasions, the brokers did not attend but simply provided Horan with the use of a private jet. For example, Quinn provided a private jet for Horan and his girlfriend (as well as Harris) to return from a weekend in Florida in February 2003, and the flight cost Jefferies more than \$56,000. In addition, brokers gave Horan more than seventy tickets to at least 25 events, including Super Bowl and several Celtics and Red Sox playoff games. In addition, Horan received over twenty gifts from brokers, including a case of wine valued at \$400-\$500 and other items such as gift certificates and clothing.

46. Pascucci received more than \$50,000 worth of travel, entertainment and gifts from brokers during the Relevant Period, consisting primarily of more than 165 tickets to more than fifty events that the broker did not attend, including several Patriots and Red Sox playoff games, numerous Celtics and Red Sox regular season games, and a performance of “The Producers.” Brokers also paid for some of Pascucci’s lodging and other travel expenses on at least five trips, including one trip to Dallas involving a stay at the Four Seasons Hotel, attendance at a Dallas Cowboys football game, a meeting with Bill Parcells (then the Cowboys coach), a return flight to Boston on a broker’s private jet, and limousine service to and from the airport.

47. Smith received more than \$85,000 worth of travel, entertainment and gifts from brokers during the Relevant Period. In November 2003, Quinn provided Smith with the use of a private jet so that Smith and his wife could take a vacation in the Caribbean, and the trip cost Jefferies more than \$46,000. In addition to paying some of Smith’s lodging and other travel expenses on two other trips, brokers gave Smith more than 150 tickets to more than forty events that the broker did not attend, including several Celtics, Patriots and Red Sox playoff games, numerous other Patriots and Red Sox games, several college hockey games, and concerts by the Rolling Stones and Van Morrison.

***Violation of Section 17(e)(1)
of the Investment Company Act***

48. Under Section 17(e)(1) of the Investment Company Act, affiliated persons of a registered investment company, such as Fidelity executives and traders, are prohibited from accepting “from any source any compensation (other than a regular salary or wages from such registered company) for the purchase or sale of any property” of the investment company.

49. During the Relevant Period, two Fidelity executives (DeSano and Grenier) and ten Fidelity traders (Beran, Bruderman, Burnieika, Burns, Donovan, Driscoll, Harris, Horan, Pascucci and Smith) received compensation in violation of Section 17(e)(1) of the Investment Company Act in the form of travel, entertainment and gifts paid for by brokers who sought and obtained from the traders securities transactions for the Fidelity Funds. In addition, another Fidelity executive (Lynch) caused two Fidelity traders to receive compensation in violation of Section 17(e)(1) of the Investment Company Act.

**Fidelity Failed Reasonably to Supervise its Employees’
Receipt of Travel, Entertainment and Gifts from Brokers**

***The Executives’ and Traders’ Violations of
Fidelity’s Gifts and Gratuities Policy***

50. During the Relevant Period, Fidelity had a gifts and gratuities policy for its employees. The policy stated that it was designed to avoid “any actual or apparent conflict of interest or impropriety.”

a. The policy prohibited employees from “condition[ing] any business or other transaction on the giving or acceptance of any gift or favor,” from “accept[ing] gifts or other gratuities with a value of more than \$100 per calendar year to or from any Company or individual” doing business with Fidelity, and from “accept[ing] tickets valued at more than \$100 per calendar year if the one giving does not attend the event with the recipient.” Employees were required to submit written requests for approval to receive gifts beyond the \$100 limit.

b. The policy prohibited employees from “soliciting any gift, favor or other form of preferential treatment” and from “accept[ing] transportation (other than local ground transportation), lodging or other travel-related expenses to attend an athletic, cultural, social or entertainment event with a current or prospective vendor, customer, or supplier” unless the employee reimbursed the giver. Further, this section of the policy required “[a]n employee invited to attend such an event (whether attending with the giver or not) [to] either pay his or her own way, or reimburse the vendor, customer or supplier for these expenses.”

c. The policy permitted “[o]ccasional business entertainment (such as a meal or a recreational activity) where the giver attends the event with the recipient and the primary purpose is to discuss business or build a business relationship.”

51. The three Fidelity executives and ten traders repeatedly violated Fidelity's gifts and gratuities policy when they accepted travel, entertainment and gifts paid for by brokers who sought and obtained securities transactions from Fidelity. For example:

a. Many of the travel and entertainment events and gifts that the Fidelity employees received from brokers were worth more than \$100, yet none of the employees ever submitted a written request for approval.

b. The Fidelity employees frequently solicited brokers for tickets to a particular event. In fact, they sometimes asked for tickets so close to the date of the event that the brokers had to obtain the tickets from ticket agencies at exorbitant prices.

c. On many occasions, the traders did not reimburse the brokers for the private jets, lodging, and other travel expenses, in violation of Fidelity's gifts and gratuities policy. On some occasions, brokers refused to accept reimbursement checks from traders; and on other occasions, the broker accepted a check not intending to cash it and informed the trader the check was just for "paper trail" purposes.

DeSano's Failure to Supervise the Traders' Receipt of Travel, Entertainment and Gifts under Section 17(e)(1) of the Investment Company Act

52. As Fidelity's head of equity trading, DeSano's duties included supervision of the traders' compliance with applicable legal requirements and with Fidelity's policies and procedures, including its gifts and gratuities policy.

53. DeSano knew that some traders received travel, entertainment and gifts from brokers, in part because he accompanied them on several trips, in part because he communicated regularly with Bruderman and several other traders about trading desk matters, and in part because he made sporadic attempts to have the traders tell him about their upcoming trips with brokers. For example, each year he asked the traders about their plans for the Super Bowl.

54. DeSano took only limited and ineffective steps to police the traders' receipt of travel, entertainment and gifts from brokers. For example:

a. At one point, DeSano caused Fidelity to issue credit cards to the traders so they could pay for their own business entertainment, but the traders did not use the cards or submit expenses for approval, and he did not follow up. At another point, he suggested to senior management of Fidelity that Fidelity might consider adopting a formal policy concerning its employees' use of private jets provided by brokers and other vendors, but again he did not follow up.

b. In early May 2004 (after a weekend when brokers had taken Harris to Las Vegas and Burnieika and Horan to Florida), he announced that traders would have to notify him in advance about all trips with brokers. A month later, he announced that traders would have to pay their own way on all future events with brokers. However, he did not enforce these policies, and traders continued to go on trips without informing him in advance and without reimbursing the brokers. For example, Quinn took DeSano and Bruderman golfing on Nantucket in June 2004, providing them with hundreds of dollars worth of golf items and arranging for Bruderman to take a private jet home from Nantucket. Similarly, Quinn took DeSano, Harris and his wife, and Horan to a charity golf event on Nantucket in August 2004. Quinn provided lodging for the group at his home, and gave the Harrises and Horan the use of his private jet to return to Boston. There is no evidence that the Fidelity employees reimbursed Quinn for these trips.

c. DeSano instructed the traders to reimburse brokers for private jet travel at the rate for first-class commercial airfare to the same destination, but he did not require proof of reimbursement, and, as a result, the traders rarely made reimbursement to brokers for their trips on private jets.

55. Indeed, far from effectively supervising the traders' receipt of travel, entertainment and gifts from brokers, DeSano actually made matters worse, in several respects.

a. DeSano personally asked brokers for tickets or asked traders to ask brokers for tickets, sometimes for himself and sometimes for other senior Fidelity executives like Grenier, and he personally went on several trips paid for by brokers without reimbursing his full share of the expenses. His conduct sent the clear message that the traders could engage in similar activities, and because soliciting brokers for tickets and traveling at a broker's expense were violations of Fidelity's gifts and gratuities policy, his conduct also sent the message that the traders too could violate Fidelity's policy with impunity.

b. DeSano traveled frequently with Quinn, the most significant source of travel and gifts for the traders.¹⁵ For example, DeSano attended both the November 2002 "Fall Classic" and part of Bruderman's bachelor party in March 2003 – two visible and extravagant excursions for which brokers picked up the tab. (Jefferies paid approximately \$200,000 for the former, and several brokers including Quinn paid a total of approximately \$160,000 for the latter.)

c. DeSano also took steps to conceal his and others' participation in the 2002 "Fall Classic." In an October 2002 email to Quinn, DeSano asked, "What happens when

¹⁵ The demoralizing effect for the trading desk of DeSano's travels with Quinn is apparent from Pascucci's comment to Smith in December 2003, "How can u enforce the no nepotism rule when SCD [DeSano] is such buddies with Quinn? It is absurd the one guy gets so [much] favored treatment from the head."

I get fired for this?” Quinn responded, “SEC rule first class plane fare and we are all set.¹⁶ . . . Plus noone is allowed 2 say anything . . . Last yr never got out . . . If someone talks, we kill . . . That conversation happens first thing on the plane . . . Just a simple golf trip.” DeSano then said, “Brudy [Bruderman] will be on a trip with [his fiancée]. You [Quinn] will be trying to qualify for a tourney somewhere down south. Harris has to make something up. And what I do is no one’s G.D. business!” In a subsequent email, DeSano told Harris, “This needs to be excessively covert . . . Not even your desk can know. Make something else up.” Harris responded, “I will, but when Brudy [Bruderman] and I are out and Kevin [Quinn] is out . . . people start talking. I am going to Seattle to see [my wife’s] grandmother with her parents . . . That’s my story and I am sticking to it.” DeSano then gave Harris the cover stories for Bruderman and Quinn. Harris replied, “Sounds good.”

56. DeSano failed to monitor the traders’ receipt of travel, entertainment and gifts from brokers on any systematic basis, and he failed to take reasonable steps to enforce Fidelity’s gifts and gratuities policy or to ensure that the traders did not receive compensation from brokers for purposes of Section 17(e)(1) of the Investment Company Act. Certain traders violated Section 17(e)(1) by receiving compensation in the form of gifts, travel, and entertainment from brokers. As a result, Fidelity, through DeSano as its head of equity trading, failed reasonably to supervise the traders, within the meaning of Section 203(e)(6) of the Advisers Act, with a view to preventing their violations of Section 17(e)(1) of the Investment Company Act.

Fidelity’s Failure to Supervise its Executives’ and Traders’ Receipt of Travel, Entertainment and Gifts under Section 17(e)(1) of the Investment Company Act

57. As shown above, the practice of accepting travel, entertainment and gifts paid for by brokers was well established at Fidelity throughout the Relevant Period – not just by the ten traders named above, who handled more than 50% of Fidelity’s equity trading, but also by three senior Fidelity executives with ties to the Equity Trading Desk.

58. At least nine members of Fidelity’s Equity Trading Desk were aware that Lynch – vice chairman and a director of FMR and FMR Co., interested trustee of the Fidelity Funds and former portfolio manager – solicited tickets by calling the Equity Trading Desk, primarily Burns. All nine of those employees obtained gifts that violated Fidelity’s policy. Lynch’s conduct was the subject of comment between certain traders.

59. Likewise, Grenier and DeSano – the two senior officers with primary responsibility for equity trading – personally solicited and received tickets from brokers. In addition, DeSano personally went on numerous trips at a broker’s expense, sometimes while accompanying traders

¹⁶ There is no such SEC rule.

under his supervision.¹⁷ In a January 2004 email, Pascucci wrote to Smith, “. . . The jet stuff bothers me but the big guy [DeSano] is OK with it all the way.”

60. Despite the fact that brokers who sought and obtained securities transactions from Fidelity were providing certain executives and traders with travel, entertainment and gifts as described herein, Fidelity failed to adopt and implement procedures reasonably designed to detect and prevent its employees’ receipt of travel, entertainment and gifts that violated Fidelity’s gifts and gratuities policy and that constituted compensation for purposes of Section 17(e)(1) of the Investment Company Act.

61. Fidelity failed to supervise its employees’ compliance with the gifts and gratuities policy. Fidelity did not provide adequate training concerning the gifts and gratuities policy. In addition, Fidelity had virtually no monitoring mechanisms in place. For example, the policy required employees to submit a written request for an exception to the \$100 limit on gifts, but even though the three executives and ten traders repeatedly received travel, tickets and other gifts worth more (often much more) than \$100, none of them ever submitted such a request – a clear sign that the policy was being ignored. Nevertheless, Fidelity did not take meaningful steps to curtail the receipt of gifts and entertainment by its executives or equity traders.

62. Fidelity thus failed to monitor its employees’ receipt of travel, entertainment and gifts from brokers on any systematic basis, and it failed to take reasonable steps to ensure that its employees complied with its gifts and gratuities policy and did not receive compensation from brokers for purposes of Section 17(e)(1) of the Investment Company Act. As a result, Fidelity failed reasonably to supervise the three executives and ten traders named above, within the meaning of Section 203(e)(6) of the Advisers Act, with a view to preventing their violations of Section 17(e)(1) of the Investment Company Act.

Fidelity Failed to Seek Best Execution for its Clients’ Securities Transactions Because the Traders Allowed the Receipt of Travel, Entertainment and Gifts from Brokers, and Familial and Romantic Relationships with Brokers, to Influence Their Selection of Brokers

The Traders Sent Securities Transactions to Brokers from Whom They Received Travel, Entertainment and Gifts

63. The receipt by ten equity traders, by DeSano (the traders’ supervisor) and by Grenier (DeSano’s supervisor) of travel, entertainment and gifts from brokers who sought and obtained securities transactions from Fidelity created a material conflict of interest that influenced the traders’ selection of brokers to execute securities transactions on behalf of Fidelity’s clients. In addition, Lynch (senior officer of FMR and FMR Co. and trustee of the

¹⁷ Traders gossiped about DeSano’s frequent absences. In January 2003, for example, Pascucci commented to another trader that DeSano had been on his “129th golf junket of last year.”

Fidelity Funds) solicited and received tickets to sporting and entertainment events from two members of the Fidelity Equity Trading Desk, who in turn solicited those tickets from brokers who sought and obtained securities transactions from Fidelity, resulting in a material conflict of interest that influenced those traders' selection of brokers to execute securities transactions on behalf of Fidelity's clients.

64. In their emails to each other and to brokers, DeSano and the traders acknowledged the connection between the traders' receipt of travel, entertainment and gifts from brokers and their direction of business to brokers. For example:

a. In January 2002, Bruderman asked DeSano not to approve a certain brokerage firm that wanted to handle some of Fidelity's securities transactions: "Please do not approve him and I am not going anywhere on his or his company's dime. That is the last guy in the world I want to feel indebted to."

b. In April 2002, Pascucci asked a broker, "Pls ask the ticketmaster if the firm's single biggest customer cud have 2 tix [to an Andreas Bocelli concert]. (They are for his madre.)" Pascucci received the tickets from the broker.

c. In October 2002, Pascucci told DeSano that a broker was offering two tickets to that night's Celtics game. DeSano replied, "[Name omitted] works there. Bad guy. I wouldn't want to feel obligated."

d. Also in October 2002, a broker made the following offer to Donovan, "SANM [Sanmina-Sci Corp.] – 500 k at 2.52. 500 trades away at 2.53. Plus 2 50-yard line seats to VA Tech-BC."

e. In January 2003, Pascucci forwarded to Smith an email he received from a broker, "Like 'build it they will come,' the sell side mantra of 'plan fun trip with clients and they will come' still rings true in these parts."

f. In February 2003, Quinn told Bruderman about plans for the upcoming bachelor party and added, "If I do the plane that I might do, you better load me up when it gets busy again."

g. In March 2003, Pascucci commented to Smith that the conflicts between DeSano, Bruderman, Quinn, and others were "a WSJ [*Wall Street Journal*] article ready for the front page."

h. In March 2003, Beran declined a broker's invitation to a golf trip, saying that he was already going on two trips in the next two months. He added that, although he had heard that the site of his second trip (a private golf club in Maryland) was "great," the "only

problem is that I have to trade w/ [the brokerage firm] after I go!” Also in March 2003, Beran told another trader, “I figure I owe [the broker] 3 orders to pay for my annual . . . golf shirt.”

i. Also in March 2003, Burns had this email exchange with a broker:

Broker : . . . You must have a hankering to do a big CSCO [Cisco Systems] trade w/ me. At the very least, your prompt response will be rewarded w/ Celtic playoff seats. Thanks for caring.

Burns: No hankering here, and you can send the tickets over.

Broker : Our friendship has taken a significant step forward this AM. I could not be more pleased.

Burns: Thank you!!!!

Broker : Our friendship is boundless. Now, if you would please think of me next time a big situation appears on your desk, our friendship would be to the moon.

j. In April 2003, a broker told Burnieika, “Keep up the flow and I will get you and [another Fidelity trader] a car to the airport Fri.” Two days later, the broker took Burnieika on a golf weekend in North Carolina.

k. In April 2003, a broker told Pascucci, “Nice sales in FBF [FleetBoston Financial], thanks for the bus today, talk to you in AM. If you need any seats for Celts thurs night, I’ve got 2 courtside if you want them.”

l. In August 2003, Smith used an analogy to the team-building techniques of certain baseball teams to explain to Pascucci his theory of how brokers use their travel and entertainment budget to attract Fidelity’s business:

If you map out a strategy for “attacking FIDO [Fidelity]” to maximize commission \$\$, it seems there are 2 strategies. . . attack the generals, i.e. ingratiate yourself w/ the powerbrokers thru extensive use of the expense account (let’s call them the Yankees) who curry favor w/ THB [Bruderman], DKD [Donovan], and SCD [DeSano] . . . or recruit youth early (let’s call them the A’s) by showering the youngsters w/ service and small \$\$ perks.

m. In April 2004, the broker told Burns that he was sending Red Sox tickets and added “ANDW [Andrew Corp.] 6 figs for sale.” Burns thanked him. The broker replied,

“Thx for sending over the Sox tix or thx for sending over the ANDW INDI or thx for being such a great guy or all of the above?” Burns responded, “All of the above.”

65. Indeed, some of the emails between traders and brokers reflect a shared perception that the job of a so-called “sell side” broker includes the provision of travel and tickets, and that one advantage of being a so-called “buy side” trader is the opportunity to receive such benefits. For example:

a. In May 2002, Burnieika told a broker that he was going to two upcoming Celtics playoff games. The broker commented, “Nice to be king!” Burnieika replied, “Right side of the street when U2 concerts and Celts playoff games come around.”

b. In August 2002, Smith observed to Pascucci “. . . Golf, dinners, tickets, Super Bowl, trips. Everything is for sale.” Two days later, Smith complained to Pascucci, “It’s bad enough w/ SCD [DeSano], DKD [Donovan], and Brudy [Bruderman], but when Horan and JDH [Harris] start in on the exclusive golf dates, it’s pathetic.” Pascucci replied, “Agreed 500%.”

c. In September 2002, Bruderman sent a broker an email concerning plans for his wedding. Bruderman told the broker, “As of this morning you and [a broker at another firm] and Quinn are paying for it.” The broker replied, “Can’t wait. Send me the bill.” Later that day, Bruderman told Quinn, “Bad news. You and [another broker] have to pay for the wedding.” Quinn replied, “Creative T&E. Again.”

d. In May 2003, Pascucci asked a broker, “Who will be first guy on sell side to offer Green Monster seats?” The broker replied, “Me.” (The “Green Monster” was a new area of expensive seats for Red Sox games at Fenway Park.)

e. In September 2003, Bruderman received and forwarded to several brokers an email that parodied a beer company’s advertising campaign:

Here’s to you Mr. Institutional Sales Trader. Because you spend all day lying to people with MBA’s from Ivy League schools, even though you failed Econ 101 at the Community College. And if the stock goes up or down, you don’t care – as long as you get your nickel. Five cents a share! So crack open an ice cold Bud Light you overpaid sack of sh*t, because without you there would be a lot of buy side guys sitting in bad seats at the concert.

f. In October 2003, Bruderman complained to one broker that a broker at another firm had been unable to get him tickets to a Bare Naked Ladies concert: “Say he has

no tickets left. Gave em all to [name omitted] and his hedge fund pals. I think I am going to request a change in coverage.”

g. In May 2004, a broker asked Burns, “Are you aware of a guy who delivers Yankee tix to your desk faster than me? Seller of good size CSCO.”

h. Also in May 2004, Pascucci offered Driscoll this praise for a broker: “[Name of broker] has not had a misstep for 1 second in his [name of firm] career. Trading is first rate. Research effort is consistent and impactful, and he is 500 times the ticket broker [name omitted] from Friend St. is. The new sales trading model.”

66. As reflected by the traders’ conduct and their email communications with brokers and each other, the conflicts of interest were not merely theoretical, and the traders did in fact allow their receipt of travel, entertainment and gifts to influence their selection of brokers to handle securities transactions for Fidelity’s clients. For example:

a. In January 2002, Driscoll told another trader that he was going to the Super Bowl in New Orleans with a certain broker and added, “The good news is, the TYC [Tyco] order paid for [the broker’s] jet.” That day, Driscoll sent orders to the broker’s firm (including more than 8 million shares of Tyco stock) that generated more than \$487,000 in commissions. Driscoll’s Tyco trade did not go unnoticed on the Equity Trading Desk. Smith observed to Pascucci: “[P]oor broker selection. Superbowl trip should not affect judgment” and “7 million shares of TYC [actually, 8 million shares] buys you a seat on a private jet.”

b. Also in January 2002, Bruderman told a broker, “This BSX [Boston Scientific] order works to 1 mill. That should get us part of the way to paying for the band. How much is it so I know what I need to do to pay for it?” The broker responded that the band (Counting Crows) would cost “3 bills + love.”

c. In March 2002, Smith commented to Pascucci that Bruderman sent most of his business to Quinn and brokers at two other firms who took him on trips and asked “Who says Fido can’t be bot?” Pascucci responded, “No comment on record. Off record, THB [Bruderman] has killed the integrity of this desk.” Smith replied, “How that does not raise red flags, I do not know.”

d. In April 2002, Pascucci complained to Smith, “Here’s the truth. Image on street at all time low. We are VWAP¹⁸ robots and gift whores.”

¹⁸ VWAP is “volume weighted average price.” VWAP is one of the methods that Fidelity used to measure the execution quality of the Equity Trading Desk.

e. A broker told Burns in a May 2002 email, “For better or for worse, I am [a] liquidity provider of stocks and tickets. Please do not hesitate to knock on my door for either. My door is open to you 24 hours a day 7 days a week.” Burns took him up on the offer. Indeed, that same month, after the broker provided Burns with tickets to a Celtics playoff game, Burns sent 1.2 million shares to the broker – his first orders to the firm all year. The trades generated more than \$60,000 in commissions.

f. In June 2002, a broker offered Burnieika tickets to a Red Sox game for his parents. One hour later, Burnieika began sending orders to the broker. While Burnieika had traded the same security with that broker the prior two trading days, his total for the day exceeded 860,000 shares – his heaviest single trading day with the firm during the entire 2002-2004 period. The trades generated \$43,000 in commissions.

g. In June 2002, a broker took Donovan to Paris for the French Open tennis tournament, and Donovan’s expenses cost the broker more than \$24,000. The day he returned, Donovan sent more than 1.8 million shares to the broker. The trades generated \$90,750 in commissions.

h. In August 2002, Harris thanked a broker for their recent trip to the Red Tail resort in Toronto: “I owe you bro. Can’t thank you enough for including me in such a special trip. Place is over the top!” That day, Harris sent trades involving more than two million shares to the broker’s firm, and the trades generated \$103,000 in commissions.

i. In September 2002, several brokers from the same firm took Smith for a weekend in Illinois and Michigan that included a Notre Dame-Michigan college football game. During the two weeks after the trip (ten trading days), Smith sent nearly 19.3 million shares to the brokers (more than 1.9 million shares per day). The trades generated nearly \$456,000 in commissions.

j. In September 2002, Harris told Quinn that he might not be able to attend the upcoming “Fall Classic”. Quinn complained, “Pls don’t do this 2 me.” Harris replied, “Bro, I may have to but I will make it up with a lot of shares.”

k. In September 2002, Smith asked Pascucci, “2 guesses who is paying for BB’s [Burns] Super Saturday [U.S.] Open tickets.” Pascucci answered, “Jeff Reece [Jefferies].” Smith observed that Quinn had taken four months off after leaving another firm, and that Burns had greeted his arrival at Jefferies in September 2002 with a million-share order.

l. In September 2002, Quinn gave Burns tickets to the US Open tennis tournament. Two days before the event, Burns sent 2.1 million shares to Quinn. The next day, Burns sent another 2.8 million shares. The trades on these two days generated more than \$160,000 in commissions.

m. In November 2002, a broker told Harris, “Thx for the order. Have some B’s tix for tomorrow if interested.”

n. In November 2002, Smith complained in an email that “Brudy and Jeff [Harris] load up Jeff [Jefferies] for 2 weeks before the trip [the “Fall Classic”]. THB [Bruderman] has clearly made it known that his order flow is for sale to the highest bidder, and nobody else in the room would get away w/ that sh1t.”

o. Quinn provided a private jet to Driscoll for a family Disney World trip. In a November 2002 email, Driscoll asked Quinn, “You did not tell anyone about this, did you?” Later, Quinn responded, “By the way, I view private travel as one of the great perks of this biz and am more than willing to do it for a few guys when I can, just as long as they keep it low.” Driscoll replied, “We are on the same page.” Driscoll also rewarded Quinn for his generosity. In the two weeks (seven trading days) before the Disney World trip, Driscoll sent more than 8.9 million shares to Quinn (almost 1.3 million shares per day). The trades generated more than \$445,000 in commissions.

p. In December 2002, Driscoll thanked a broker for a holiday gift certificate. The broker replied, “No. Thx u. Wish was for more. Wud be luggin furniture if not for u.”

q. In January 2003, a broker offered Pascucci tickets to “Disney on Ice.” Pascucci asked for five tickets for his brother and his children. The broker replied, “No problem. And Steve, don’t EVER hesitate to ask for tix if u need ‘em. That’s one of the beni’s of my job. U’ve done a lot for me, I am more than happy to help you out.” On the two days after the event, Pascucci sent more than 1.1 million shares to the broker (more than 550,000 shares per day). The trades generated more than \$44,000 in commissions.

r. In January 2003, Quinn offered Burns a package with first class airfare to Wimbledon, which Burns declined. The same day, Burns sent Jefferies a total of 2.2 million shares, which generated \$70,000 in commissions, and told Quinn “I am totally committed to assisting you in your efforts.”

s. In February 2003, Smith commented to a Fidelity trader about “the obvious pattern of loading up a broker, then disappearing on a golf trip, etc. It used to be Red Sox tickets and a dinner, now it’s private jets to the Masters.”

t. In April 2003, Bruderman told a broker, “I owe you money. Paying it today w/ SGP [Schering Plough].” That day, Bruderman asked the broker to sell 100,000 shares of SGP, generating a \$5,000 commission.

u. In June 2003, Quinn told Bruderman, “You’re welcome for the Sox tix by the way.” Bruderman replied, “You’re welcome for the house in Needham [the location of Quinn’s residence].”

v. In June 2003, Smith asked a broker for tickets to a Van Morrison concert. The broker offered him two front-row seats. Smith responded. “Right on.” Two minutes later, Smith wrote “Work 250m MSFT [Microsoft] for me.”

w. Shortly after Quinn joined Jefferies, Quinn asked if Smith was upset with him. Smith replied, “Never have been. Just shocked how the red carpet has been rolled out to you. Your ‘new’ firm offers me nothing that I don’t already get from every other firm in the Top 30, so I apologize if I don’t drink the Kool-Aid.” Indeed, from September 2002 until mid-October 2003, Smith traded with Jefferies very infrequently. In mid-October 2003, however, that changed. On or about October 20, 2003, Smith began exchanging emails with Quinn about a trip to the Caribbean that Smith was planning with his wife. During the course of that exchange, Quinn offered to provide Smith with a private jet for his vacation. On the day Quinn offered to supply the jet, Smith sent more than 1.5 million shares to Jefferies. The next day, Smith sent nearly 1.4 million shares. All told, Smith traded with Quinn on sixteen of the seventeen trading days between the day Quinn offered his private jet and the day Smith left for his vacation. Smith’s heavy use of Jefferies continued after his return. Smith traded with Quinn on fourteen of the first sixteen trading days after the trip, including one day with nearly 1.2 million shares. The three days with orders totaling over 1 million shares were three of Smith’s four heaviest trading days with Jefferies during the Relevant Period, and the trades on those days generated nearly \$190,000 in commissions.

x. In December 2003, Pascucci asked a broker for courtside tickets to that night’s Celtics game. The broker offered four tickets. Pascucci told him where to deliver the tickets and added, “Thks. Buy 50K.”

y. In February 2004, brokers took several traders to see the New England Patriots play in the Super Bowl in Houston. On the day before he left, Burnieika sent more than 500,000 shares to the broker who took him – his second largest day with the firm in the entire 2002-2004 period – and the trades generated more than \$25,000 in commissions.

z. In July 2004, Quinn provided tickets and a hotel for Burns to attend the Wimbledon tennis tournament in London at a cost of over \$50,000. During the week after he returned (four trading days), Burns sent more than 7.6 million shares to Jefferies (more than 1.9 million shares per day). On one of the days, he sent 4 million shares – his second heaviest trading day with the firm in the entire 2002-2004 period. The trades on these four days generated \$255,000 in commissions.

aa. After the broker who facilitated Driscoll’s gambling changed firms in April 2004, Driscoll received the following request from the broker: “If you can find it in your

heart not to let me get shut out by the end of the day that would be greatly appreciated. Not a very good first impression. Have to go down to NY for the day tomorrow to meet all the traders.” Driscoll forwarded the broker’s message to Horan and commented, “How is it that we owe all these fuking millionaires something after we got them where they are?” Despite his griping, Driscoll began sending regular trades to the broker’s new firm two days later.

67. The decision of Harris to start sending business to Jefferies after Quinn joined the firm reflects how the receipt of travel, entertainment and gifts influenced his selection of brokerage firms.

a. In May 2002, Harris learned that Quinn was moving to Jefferies after rejecting an offer from a major brokerage firm that handled a substantial amount of Fidelity business. Harris was unhappy about Quinn’s choice and complained to Bruderman, “Between me and you, I am frustrated he put me in this situation. It compromises your position on the desk to do a lot of bus with a firm like Jeff [Jefferies]. [The other firm] is easy because you can justify it. The desk will be pissed, especially now that commission dollars are under a microscope . . .”¹⁹

b. Despite his misgivings, Harris began sending a substantial amount of business to Jefferies in September 2002 after Quinn started working there. In late November 2002, however, Harris complained to Quinn about his trade execution:

Harris: Just went out back . . . You were my 3rd broker for the month and 30th on [Fidelity’s trader performance measurement] and I was still number 3 on the desk . . . Guys wanted to know what Jeff[eries] was and why I was doing all the volume, hurting my [performance statistics] when I could have taken number 1. Reminds me of my [name of firm] numbers. [Harris named the firm where Quinn had worked before joining Jefferies.]

Quinn: Pick up [the dedicated phone line between Fidelity and Jefferies].

Harris: One of 2 things will change: 1. your volume will drop. 2. my numbers will go up.

Quinn: You’re right. It is all my fault.

¹⁹ Harris was not the only trader to worry about Quinn’s move to Jefferies. Beran observed to Pascucci, “Don’t ask THB [Bruderman] about Jeffco . . . I think he is trying to figure out how he is going to justify laying all those orders into Quinn!”

c. Nevertheless, Harris continued trading – and traveling – with Quinn. In December 2002, Quinn and another Jefferies broker took Harris for a golf weekend in South Carolina. The week he returned (three trading days), Harris sent more than 2.6 million shares to the brokers (almost 870,000 shares per day). The trades generated more than \$118,000 in commissions.

d. In two July 2003 emails, Harris again complained to Quinn about his performance. In the first, Harris “thank[ed]” Quinn “for all the crummy [trader performance statistics] for last year and this year.” In the second, Harris warned Quinn that the “[t]ech guys in back are on to you. Brudy’s [Bruderman] numbers suk with you too.”

e. Despite his complaints, Harris’s trading with Jefferies remained heavy throughout Quinn’s employment at the firm. Harris sent nearly 142 million shares to Jefferies after Quinn arrived, and the trades generated more than \$6.5 million in commissions.

68. During the Relevant Period, the ten traders each directed equity trading business generating millions of dollars in commissions to brokers from whom they received travel, entertainment and gifts. The influence of travel, entertainment and gifts on Fidelity’s order flow is particularly apparent with respect to Jefferies:

a. In the second quarter of 2002 (before Quinn’s arrival), Jefferies handled 12.9 million shares of securities for Fidelity. With this volume, Jefferies ranked 44th among the brokerage firms used by Fidelity. Jefferies’ volume rose quickly after Quinn’s arrival. In the fourth quarter of 2002 (Quinn’s first full quarter of employment), Jefferies’ ranking had risen to 12th. In the third quarter of 2004 (Quinn’s final full quarter of employment), Jefferies handled 112.9 million shares of securities, and its volume ranking was 13th.

b. The brokerage commissions that Jefferies received from Fidelity increased in a similar fashion. In the first six months of 2002, just prior to Quinn’s arrival, Jefferies received nearly \$888,000 in commissions, ranking it 42nd among the firms used by Fidelity. By contrast, in the first nine months of 2004, Jefferies received \$20.7 million in brokerage commissions from the Fidelity Funds, improving its ranking to 10th among the firms used by Fidelity. During the period of Quinn’s employment, Jefferies received over \$60 million in commissions from Fidelity’s client accounts.

c. Most of the brokerage business that Jefferies received from Fidelity came from four traders (Bruderman, Donovan, Harris and Horan), who went on most of Quinn’s golf and other excursions, and from a fifth trader (Burns), who received expensive wine and expensive tickets to sporting events such as Wimbledon and the U.S. Open. During the period of Quinn’s employment at Jefferies (September 2002 to October 2004), these five traders alone sent trades generating approximately \$39.4 million in commissions for Jefferies.

Certain Traders Sent Securities Transactions to Brokers with Whom They Had a Family or Romantic Relationship

69. During the Relevant Period, five Fidelity traders sent securities transactions to brokers with whom they had a family or romantic relationship. In each instance, the trader sent millions of shares of transactions to the broker's firm, and the trades generated millions of dollars of commissions.

a. One of Donovan's family members was a broker who covered (*i.e.*, handled transactions for) several Fidelity traders, including Donovan himself. During the Relevant Period, Donovan sent more than 678 million shares to his family member's firm, and the trades generated more than \$31 million in commissions.

b. A family member of Driscoll's was a broker who changed firms in January 2003 and thereafter covered several Fidelity traders. The family member did not cover Driscoll himself, but the family member's compensation depended in part on the firm's total commissions from Fidelity's business. Driscoll sent no trades to the new firm before his family member joined it, but from January 2003 through October 2004, he sent more than 56 million shares to the firm, and the trades generated more than \$2.7 million in commissions.

c. A family member of Pascucci's was a broker who changed firms in late December 2002 and thereafter covered several Fidelity traders, including Pascucci himself. Pascucci did little business with the new firm before his family member joined it, but from late December 2002 through October 2004, he sent more than 138 million shares to the firm, and the trades generated more than \$6.8 million in commissions.

d. In addition, two Fidelity traders not named in this Order were involved in romantic relationships with brokers to whom they sent trades generating, in aggregate, several million dollars in commissions.

e. In October 2003, Smith commented to Pascucci, "so 2 of our . . . [brokerage firms] are absolutely zero value-added on research and mkt intelligence, but loaded to the gills w/ nepotism, incestual relationships, and issues of conflict." Pascucci replied, "I cannot poke a hole in that."

Fidelity's Violation of Section 206(2) of the Advisers Act

70. As set forth above, DeSano was aware of significant conflicts of interest involving Fidelity's equity traders. He knew that some traders sent securities transactions to brokers from whom they received travel, entertainment and gifts. He also knew that some traders sent securities transactions to brokers with whom they had a family or romantic relationship. For example, he knew that one of Donovan's family members was a broker at one of the largest firms handling transactions for Fidelity. He also knew that a Fidelity

trader not named in this Order was romantically involved with a broker because the trader told him about the relationship and asked him for permission to continue sending business to the broker's firm, and he approved.

71. Section 206(2) of the Advisers Act provides that an investment adviser shall not “engage in any transactions, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.”²⁰ One aspect of an investment adviser's fiduciary duty under Section 206(2) of the Advisers Act is the duty to seek best execution for its clients' securities transactions – that is, to seek the most favorable terms reasonably available under the circumstances.

72. As set forth above, Fidelity traders allowed their receipt of travel, entertainment and gifts from brokers and their family or romantic relationships with brokers to influence their selection of brokers to handle Fidelity's securities transactions. As a result, Fidelity failed to seek best execution for its clients' securities transactions and thereby willfully violated Section 206(2) of the Advisers Act.

Fidelity Made Materially False and Misleading Public Disclosures about its Conflicts of Interest with Respect to its Selection of Brokers

Fidelity's Failure to Disclose Its Conflicts of Interest

73. Under Section 206(2) 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 receipt by certain Fidelity executives and traders of travel, entertainment and gifts from brokers (including illegal drugs for Bruderman and the facilitation of illegal gambling for Driscoll) and certain traders' family and romantic relationships with brokers seeking and obtaining securities transactions for Fidelity's clients. As a result, Fidelity willfully violated Section 206(2) of the Advisers Act.

Material Misrepresentations and Omissions in Form ADV and Statements of Additional Information

74. Section 204 of the Advisers Act and Rule 204-1 thereunder require an investment adviser annually to amend and file with the Commission its Form ADV. Section 207 of the Advisers Act prohibits any person from willfully making any untrue statement of

²⁰ A violation of Section 206(2) of the Advisers Act does not require a finding of scienter and may be established by a showing of negligence. SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 195 (1963); SEC v. Steadman, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992).

material fact or omitting to state any material fact required to be stated in any report filed with the Commission under Section 204.

75. Form ADV requires the disclosure of certain material information about the investment adviser. For an investment adviser like Fidelity with discretion to select brokers to execute its clients' securities transactions, Item 12.B of Part II of Form ADV requires a description of the factors that the adviser considers when selecting brokers.

76. Section 34(b) of the Investment Company Act prohibits any person from willfully making an untrue statement of material fact in any document filed with the Commission.

77. Fidelity provides copies of its Form ADV to the independent trustees acting on behalf of the Fidelity Funds and to other clients. As investment adviser to the Fidelity Funds, Fidelity prepares Statements of Additional Information ("SAIs") that supplement the Fidelity Funds' prospectuses and are made available to shareholders upon request.

78. During the Relevant Period, the Forms ADV and the SAIs prepared by Fidelity contained virtually identical language to the effect that Fidelity selected brokers for its clients' transactions "on the basis of professional capability and the value and quality of services." The Forms ADV and the SAIs also listed specific factors that Fidelity considered when selecting brokers, including: (a) price, size and type of transaction; (b) reasonableness of commissions; (c) speed and certainty of trade executions; (d) nature and character of the markets for the security; (e) liquidity and depth offered by a market center or market-maker; (f) reliability of the market center or broker; (g) the degree of anonymity that the broker or market center can provide; (h) the broker's execution services rendered on a continuing basis; and (i) the execution efficiency, settlement capability, and financial condition of the brokerage firm. The Forms ADV and the SAIs were materially misleading because they failed to disclose that, as set forth above, the traders' receipt of travel, entertainment and gifts (including illegal drugs for Bruderman and the facilitation of illegal gambling for Driscoll) and their family and romantic relationships were also factors in the traders' selection of brokers for Fidelity's clients' transactions, including transactions for the Fidelity Funds, and that Fidelity did not have a sufficient system of controls to detect, deter, and prevent such factors from entering into the selection of brokers. As a result, Fidelity willfully violated Sections 204 and 207 of the Advisers Act, and Rule 204-1 thereunder; and Section 34(b) of the Investment Company Act.

***Material Misrepresentations and Omissions
by DeSano to the Fidelity Funds' Trustees***

79. During the Relevant Period, DeSano made periodic presentations to the trustees of the Fidelity Funds concerning equity trading operations and the selection of brokers for the Fidelity Funds' transactions. For example:

a. On September 19, 2002, DeSano attended a meeting of the Brokerage Committee of the Fidelity Funds' trustees and presented Fidelity's annual report on equity trading and the use of brokerage commissions. DeSano's written report to the trustees stated that the "sole criterion" for broker selection was "execution capability" and that "brokers compete on [the] basis of execution quality."

b. On September 18, 2003, DeSano attended a meeting of the Shareholder Services, Brokerage and Distribution Committee of the Fidelity Funds' trustees and presented Fidelity's annual report on equity trading and the use of brokerage commissions. According to the minutes of the meeting:

Mr. DeSano provided an overview of the equity trading process, stating that FMR's approach to trading is *to focus solely on execution quality, trade with the best brokers* and closely manage the impact of the funds' trades on the market. He stated that as a result of the "broker segmentation" program implemented over five years ago, FMR now trades with a relatively small number of core brokers, which reduces information leakage and *allows the brokers to compete based on the quality of their execution.* [Emphasis added]

c. On September 16, 2004, DeSano attended a meeting of the Shareholder Services, Brokerage and Distribution Committee of the Fidelity Funds' trustees and presented Fidelity's annual report on equity trading and the use of brokerage commissions. According to the minutes of the meeting:

Mr. DeSano provided an overview of the equity trading process, stating that FMR's *highest priority in trading for the funds is execution quality.* He stated that FMR seeks to trade with the best brokers and closely manage the impact of the funds' trades on the market. He stated that as a result of broker segmentation program in place for the last six years, FMR trades with a relatively small number of core brokers, which reduces information leakage and *allows the brokers to compete based on the quality of their execution.* [Emphasis added]

80. Section 206(2) of the Advisers Act provides that an investment adviser shall not "engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." The statements by Fidelity, through DeSano, to the trustees of the Fidelity Funds were materially misleading because DeSano failed to disclose that, as set forth above, the traders' receipt of travel, entertainment and gifts and their family and romantic relationships were also factors in the selection of brokers for the Fidelity Funds' transactions, and brokers competed for Fidelity's business on the basis of travel, entertainment and gifts in

addition to execution performance. As a result, Fidelity, through DeSano, willfully violated Section 206(2) of the Advisers Act.

Fidelity Failed to Supervise Certain Employees and Officers

81. Under Section 17(e)(1) of the Investment Company Act, affiliated persons of a registered investment company are prohibited from accepting “from any source any compensation (other than a regular salary or wages from such registered company) for the purchase or sale of any property” of the investment company. During the Relevant Period, two Fidelity executives (DeSano and Grenier) and ten Fidelity traders (Beran, Bruderman, Burnieika, Burns, Donovan, Driscoll, Harris, Horan, Pascucci and Smith) each received compensation in violation of Section 17(e)(1) of the Investment Company Act in the form of travel, entertainment and gifts paid for by brokers who sought and obtained securities transactions for Fidelity’s clients. In addition, another Fidelity executive (Lynch) caused two Fidelity traders’ violations of Section 17(e)(1). Fidelity failed to adopt and implement a system of controls sufficient to detect, deter, and prevent the receipt by these executives and traders of travel, entertainment and gifts paid for by brokers as described herein. As a result, Fidelity failed reasonably to supervise the executives and traders, within the meaning of Section 203(e)(6) of the Advisers Act, with a view to preventing their violations of Section 17(e)(1) of the Investment Company Act.

Fidelity’s Failure to Make and Keep True, Accurate and Current Copies of Certain Communications Concerning the Purchase or Sale of Securities for its Clients

82. Section 204 of the Advisers Act and Rule 204-2 thereunder require an investment adviser to make and keep true, accurate and current certain books and records relating to its investment advisory business, including originals or copies of certain documents reflecting its communications with brokerage firms relating to the placing or execution of orders to purchase or sell securities.

83. During the Relevant Period, Fidelity did not maintain a complete record of all its employees’ communications with brokers regarding the placing or execution of orders to purchase or sell securities. Fidelity contracted with Bloomberg to retain copies of all communications sent through Bloomberg’s email network between Fidelity’s equity traders and the brokers who handled securities transactions for Fidelity. Those email records were incomplete and inaccurate because when retrieved they did not include the names of individual email users who had terminated their employment with either Fidelity or a brokerage firm, such that in certain messages those users’ names would not be displayed.

84. Because, as set forth above, the emails maintained by Bloomberg on Fidelity’s behalf were incomplete, Fidelity failed to make and keep true, accurate, and current originals or copies of its communications with brokers concerning the placing or execution of orders to

purchase or sell securities. As a result, Fidelity willfully violated Section 204 of the Advisers Act and Rules 204-2(a)(7)(iii) and 204-2(g) thereunder.

Fidelity's Breach of Fiduciary Duty Resulted in the Substantial Possibility of Higher Execution Costs to its Advisory Clients

85. As set forth above, Fidelity breached its fiduciary duty to its advisory clients, including the Fidelity Funds, in several respects. First, as described herein Fidelity allowed certain executives' and traders' receipt of travel, entertainment and gifts from brokers and certain traders' family or romantic relationships with brokers to influence its selection of brokers to handle its clients' transactions, resulting in the substantial possibility of higher execution costs to Fidelity's advisory clients. Second, it failed to disclose to its clients the conflict of interest arising from its executives' and traders' receipt of travel, entertainment and gifts from brokers and certain traders' family or romantic relationships with brokers. Finally, it made materially false and misleading statements in public disclosure documents and to the Fidelity Funds' trustees about the factors considered in the selection of brokers.

86. After being informed that some equity traders had accepted travel, entertainment and gifts from some brokers, the independent trustees of the Fidelity Funds retained a former federal judge, then an attorney at a prominent national law firm, to conduct an independent assessment of the adverse impact on the Fidelity Funds, if any, resulting from trades initiated by some Fidelity traders in recognition of improper travel, entertainment and gifts. The attorney was assisted by a team of economic consultants. The attorney submitted his report to the independent trustees in November 2006. (A copy of the final report is available on the SEC Web site.)²¹

87. The report to the independent trustees concluded that "Fidelity clearly breached its duty to the Fidelity Funds to ensure that its traders acted solely for the benefit of the Funds." The report found that, while "it is impossible to 'prove' statistically that the traders' receipt of TEGG [travel, entertainment, gifts and gratuities] did or did not result in excessive execution costs for the Funds, ... both logic and contemporaneous evidence suggest that there is a substantial possibility that the traders' acceptance of TEGG could have resulted in higher execution costs for the Funds." The report further noted that "the question to be answered here is not whether the Funds were in fact harmed by the traders' receipt of TEGG, but how the Trustees should respond to the traders' breach of fiduciary duty that put the Funds in harm's way."

²¹ The following categories of information have been redacted from the final report: names of certain individuals and entities not otherwise referred to in this Order, commercially sensitive and/or proprietary information; and specific citations to sources.

88. The report recommended that the independent trustees seek payment from Fidelity to the Fidelity Funds in the amount of \$40.7 million for potential harm to the Fidelity Funds in order “to ensure with reasonable confidence that the Funds do not end up being undercompensated for the improper conduct that indisputably took place.” Using the same methodology, the report recommended that a payment of approximately \$10.2 million for potential harm be made to non-Fund advisory clients of FMR LLC’s affiliates. In addition, the report recommended that Fidelity pay \$8.2 million for reimbursement of Fund expenses incurred in connection with the independent trustees’ investigation, and \$4.5 million of interest through November 30, 2006.

89. During the course of his 14-month investigation, the independent trustees monitored the work of the attorney, heard reports from him and his economic consultants and heard presentations from Fidelity and its economic consultant. After reviewing the attorney’s final report, on December 14, 2006, the independent trustees issued their report and conclusions. (A copy of the independent trustees’ report and conclusions is available on the SEC Web site.)

90. The independent trustees’ report accepted the attorney’s final report. The independent trustees’ report concluded that, “in spite of the absence of proof that the Funds experienced diminished execution quality as a result of traders’ receipt of improper TEGG, the conduct at issue was serious, is worthy of redress and, as [the attorney] concluded, any uncertainty should be resolved in favor of the Funds.” The independent trustees determined that it would be “appropriate” for Fidelity to pay the Fidelity Funds \$42 million plus interest and expenses.

91. On December 21, 2006, Fidelity’s parent company, FMR LLC, disclosed the independent trustees’ report on its public Web site and announced that Fidelity had agreed to make the payment to the Fidelity Funds requested by the independent trustees (see para. 90, above) and that it had committed to make comparable payments to institutional and other accounts that are advised by FMR LLC affiliates.

D. RESPONDENTS’ REMEDIATION

92. Fidelity took several remedial actions after the Commission staff began its investigation:

a. Fidelity disciplined approximately two dozen equity traders and other employees based on written surveys, which were requested by the Commission staff, of the traders and other employees concerning their receipt of travel, entertainment and gifts received from brokers during the Relevant Period.

b. Fidelity changed several of its policies and procedures concerning conflicts of interest. First, Fidelity adopted supplemental standards of conduct applicable to all Fidelity

employees that required management approval of all private jet travel, clarified the rules on permissible business entertainment, and required employees to report to the ethics office all business entertainment exceeding \$250 in value. Later, with input from the independent trustees and an ethics consultant retained by the independent trustees, Fidelity's parent company, FMR LLC revised its firm-wide business entertainment and workplace gifts policy. Subsequently, Fidelity also adopted a new relationship policy, requiring traders to notify their managers and the ethics office promptly if certain family members become employed in certain specified positions by any broker-dealer with which Fidelity does business.

c. Fidelity also reorganized the management of its equity trading operations. Among other changes, in February 2005, Fidelity established a new level of management oversight between the head of equity trading and the traders. Subsequently, Fidelity appointed a new manager for its equity trading operations.

d. Fidelity's parent company, FMR LLC, substantially increased its ethics office's funding for technology and personnel and hired a new management team to run the ethics office, including an employee whose sole responsibility is to manage compliance with FMR LLC's gifts and entertainment policies for Fidelity and other FMR LLC subsidiaries.

E. VIOLATIONS

93. As described above, Fidelity failed reasonably to supervise three Fidelity executives (DeSano, Grenier and Lynch) and ten Fidelity equity traders (Beran, Bruderman, Burnieika, Burns, Donovan, Driscoll, Harris, Horan, Pascucci and Smith), within the meaning of Section 203(e)(6) of the Advisers Act, with a view to preventing their committing and/or causing violations of Section 17(e)(1) of the Investment Company Act.

94. As described above, Fidelity failed to seek best execution for its clients' securities transactions by allowing its traders' receipt of travel, entertainment and gifts and the traders' family or romantic relationships to enter into their selection of brokers. Accordingly, Fidelity willfully violated Section 206(2) of the Advisers Act.

95. As described above, Fidelity willfully violated Section 206(2) of the Advisers Act, in that Fidelity failed to disclose to its clients, including the Fidelity Funds, the material conflict of interest arising from the receipt by certain Fidelity executives and traders of travel, entertainment and gifts (including illegal drugs for Bruderman and the facilitation of illegal gambling for Driscoll) from, and certain traders' family or romantic relationships with, brokers seeking and obtaining securities transactions for Fidelity's clients.

96. As described above, Fidelity willfully violated Sections 204, 206(2) and 207 of the Advisers Act and Rule 204-1 thereunder and Section 34(b) of the Investment Company Act, in that Fidelity made materially false and misleading statements and omissions in its Forms ADV and in Statements of Additional Information for the Fidelity Funds about its selection of brokers.

97. As described above, Fidelity willfully violated Section 206(2) of the Advisers Act, in that Fidelity, through DeSano, made materially false and misleading statements and omissions to the trustees of the Fidelity Funds concerning the factors considered in its selection of brokers and the bases upon which brokers competed for the Fidelity Funds' brokerage business.

98. As described above, Fidelity willfully violated Section 204 of the Advisers Act and Rules 204-2(a)(7)(iii) and 204-2(g) thereunder, in that Fidelity failed to make and keep true, accurate, and current originals or copies of certain communications with brokers concerning the placing or execution of orders to purchase or sell securities.

IV.

UNDERTAKINGS

Respondents have undertaken to:

A. Independent Compliance Consultant.

1. Within 30 days of the entry of the Order, Fidelity shall retain an Independent Compliance Consultant ("ICC") not unacceptable to the staff of the Commission and the independent trustees. The ICC's compensation and expenses shall be paid exclusively by Fidelity. Fidelity shall cause the ICC to conduct a comprehensive review of Fidelity's current policies and procedures designed to prevent and detect violations of Section 17(e)(1) of the Investment Company Act and Fidelity's securities trading with respect to the following: (i) remediation actions relating to its equity trading operations; (ii) gifts and gratuities policies and procedures; and (iii) other current policies and procedures designed to prevent undisclosed conflicts of interest. Fidelity shall cooperate fully with the ICC and comply with all of the ICC's reasonable requests for access to Fidelity's files, books, records, and personnel.

2. Fidelity shall require that, at the conclusion of the review, which in no event shall be more than 120 days after the date of entry of this Order, the ICC shall submit a Report to Fidelity, the independent trustees, and to the staff of the Commission. Fidelity shall require the ICC to address in the Report the issues described in paragraph (1) of these undertakings, and to include a description of the review performed, the conclusions reached, the ICC's recommendations for changes in or improvements to Fidelity's policies and procedures for implementing the recommended changes in or improvements to Fidelity's policies and procedures.

3. Fidelity shall adopt all recommendations contained in the Report of the ICC; provided, however, that within 150 days from the date of the entry of this Order, Fidelity shall in writing advise the ICC, the independent trustees, and the staff of the Commission of any recommendations that it considers to be unnecessary or inappropriate. With respect to any

recommendation that Fidelity considers unnecessary or inappropriate, Fidelity need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose.

4. As to any recommendation with respect to Fidelity's policies and procedures on which Fidelity and the ICC do not agree, such parties shall attempt in good faith to reach an agreement within 180 days of the date of the entry of this Order. In the event Fidelity and the ICC are unable to agree on an alternative proposal acceptable to the staff of the Commission, Fidelity will abide by the determinations of the ICC.

5. Fidelity (i) shall not have the authority to terminate the ICC, without prior written approval of the staff of the Commission; (ii) shall compensate the ICC, and persons engaged to assist the ICC, for services rendered pursuant to this Order at their reasonable and customary rates; and (iii) shall not be in and shall not have an attorney-client relationship with the ICC and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the ICC from transmitting any information, reports, or documents to the staff of the Commission.

6. Fidelity shall require the ICC to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the ICC shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Fidelity, or with any of Fidelity's present or former affiliates, directors, officers, employees, or agents acting in such capacity. The agreement will also provide that the ICC will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the ICC in performance of his/her duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Fidelity, or with any of Fidelity's present or former affiliates, directors, officers, employees, or agents acting in such capacity for the period of the engagement and for a period of two years after the engagement.

B. Certification. No later than twelve months after the date of entry of this Order, the chief compliance officer of Fidelity shall certify to the Commission in writing that Fidelity has fully adopted and complied in all material respects with the undertakings set forth in this section IV and with the recommendations of the ICC or, in the event of material non-adoption or non-compliance, shall describe such material non-adoption and non-compliance.

C. Recordkeeping. Fidelity shall preserve for a period not less than six years from the end of the fiscal year last used, the first two years in an easily accessible place, any record of Fidelity's compliance with the undertakings set forth in this section IV.

D. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates set forth above.

E Other Obligations and Requirements. Nothing in this Order shall relieve

Fidelity of any other applicable legal obligation or requirement, including any rule adopted by the Commission subsequent to this Order.

F. Payment of the penalty referenced in paragraph V.C, below, shall not reduce the amount Fidelity has committed, as set forth in paragraph 91 above, to pay to the Fidelity Funds and institutional and other accounts.

In determining whether to accept the Offer, the Commission has considered these undertakings and Fidelity's commitment to make payments to the Fidelity Funds and institutional and other accounts, as set forth in paragraph 91, above.

V.

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

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

A. Respondents FMR and FMR Co. cease and desist from committing or causing any violations and any future violations of Sections 204, 206(2) and 207 of the Advisers Act and Rules 204-1 and 204-2 thereunder and Section 34(b) of the Investment Company Act;

B. Respondents FMR and FMR Co. be, and hereby are, censured;

C. FMR (as parent of FMR Co.) shall, within 10 days of the date of entry of this Order, pay a civil money penalty in the amount of \$8 million 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 FMR 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, Division of Enforcement, U.S. Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 23rd Floor, Boston, MA 02110; and

D. Respondents shall comply with the undertakings enumerated in Section IV above.

By the Commission.

Nancy M. Morris
Secretary