

MEMO# 21494

August 16, 2007

Insurance Company Settles with SEC over Late Trading

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TO: SEC RULES MEMBERS No. 110-07
VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 13-07
CLOSED-END INVESTMENT COMPANY MEMBERS No. 53-07
SMALL FUNDS MEMBERS No. 74-07 RE: INSURANCE COMPANY SETTLES WITH SEC OVER LATE TRADING

The Securities and Exchange Commission settled an administrative proceeding against an insurance company and its senior vice-president in charge of sales of the company's private placement variable insurance products (also a registered representative) ("Respondents") for failing to prevent late trading of underlying mutual funds that were offered through the insurance company's private placement variable universal life insurance policies.* The Respondents neither admitted nor denied the findings.

The Order found that from January 2002 through November 2002, the Respondents granted one client exclusive late trading privileges in the mutual funds underlying the insurance company's private placement variable universal life insurance policies that the client had purchased for approximately \$20 million in premiums. Specifically, the Order found that the vice-president in charge of sales entered into a written agreement through which the client placed 79 trade requests that were submitted, confirmed and/or canceled after 4pm ET. Several employees at the insurance company became aware of the late trading activity and spoke to the vice-president about halting it. The Order found, however, that the employees failed to take adequate steps to investigate the activity and ensure that the late trading ceased. In fact, the Order stated that, in response to queries from the employees, the vice-president modified the manner in which late trades were requested under the agreement to maintain the client's ability to enter such trades. The Order concluded that the late trading diluted the value of the underlying mutual funds by approximately \$3.3 million.

Based on the alleged conduct, the SEC found that the insurance company violated Section 17(a)(2) and 17(a)(3) of the Securities Act of 1933 and aided and abetted violations of Rule 22c-1 of the Investment Company Act of 1940. The insurance company was ordered to

cease and desist from violating the securities laws, pay \$1 in disgorgement, and pay \$3.3 million in civil penalties. The insurance company also agreed to certain undertakings, including retaining an independent consultant. The SEC found that the vice-president in charge of sales violated Sections 17(a)(1) and 17(a)(3) of the Securities Act of 1933, Section 10(b) of the Exchange Act of 1934 and Rule 10b-5 thereunder, and Rule 22c-1 under the Investment Company Act of 1940. He was ordered to cease and desist from violating the securities laws, pay \$100,000 in disgorgement, pay \$13,137.49 in prejudgment interest, and pay \$50,000 in civil penalties. The vice-president also agreed to a broker-dealer, investment adviser and investment company bar, with the right to reapply after three years.

Heather L. Traeger
Assistant Counsel

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