

MEMO# 23406

April 20, 2009

SEC Settles Enforcement Action Against Adviser Relating to Market Timing in Variable Annuity Sub-Accounts

[23406]

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TO: COMPLIANCE MEMBERS No. 18-09

SEC RULES MEMBERS No. 45-09

SMALL FUNDS MEMBERS No. 28-09

VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 7-09 RE: SEC SETTLES
ENFORCEMENT ACTION AGAINST ADVISER RELATING TO MARKET TIMING IN VARIABLE
ANNUITY SUB-ACCOUNTS

The Securities and Exchange Commission has settled an administrative enforcement action against a registered investment adviser with respect to charges relating to market timing in funds that served as funding vehicles (sub-accounts) for variable annuities. [\[1\]](#) The respondent, which served as investment adviser to the funds, consented to the order without admitting or denying the Commission's findings.

The Commission found that from January 2000 to September 2003, the respondent and its wholesalers accommodated market timing in certain sub-accounts pursuant to excessive trading guidelines that classified sub-accounts as "restricted" or "available." The Commission also found that, during this period, the respondent received credible complaints from sub-advisers that market timing was having a detrimental effect on the performance of the sub-accounts that they advised.

The Commission found that the respondent willfully violated Section 206(2) of the Investment Advisers Act of 1940, which prohibits an investment adviser from engaging in transactions, practices, or courses of business that operate or would operate as a fraud or deceit upon clients or prospective clients. More specifically, the Commission found that:

Despite internal discussions about the potential adverse impact of market timing on subaccount performance, and the adequacy of its own policies and procedures with respect to market timing, [respondent] negligently failed to consider, investigate or analyze sub-adviser complaints that market timing was having adverse effects on the...sub-accounts. In doing so, [respondent] negligently failed to inform the [fund's] Board of Trustees of material information concerning market timing and its potential effects. As a result, the [fund's] Board of Trustees had insufficient information regarding the potential causes of the sub-advisers' investment results in certain of the [fund's] sub-accounts, and [respondent's] implementation of its own market-timing policies and procedures. In addition, the [fund's] Board lacked adequate information to consider whether the sub-accounts had adequate policies and procedures in place with respect to market timing.

As a result of the settlement, the respondent was ordered to cease and desist from violations of Section 206(2) of the Advisers Act, was censured, and was ordered to pay disgorgement of \$34 million and a civil money penalty of \$34 million. The respondent also agreed to several undertakings, including full cooperation in further proceedings and an agreement to undergo a compliance review by a third party.

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endnotes

[1] See In the Matter of American Skandia Investment Services, Inc., SEC Release No. IA-2867 and Admin. Proc. File No. 3-13446 (April 17, 2009), avail. at <http://www.sec.gov/litigation/admin/2009/ia-2867.pdf>.