

MEMO# 22307

March 10, 2008

Fund Advisers, Executives, and Employees Settle SEC Charges Relating to Broker Gifts

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TO: COMPLIANCE MEMBERS No. 8-08
EQUITY MARKETS ADVISORY COMMITTEE No. 11-08
SEC RULES MEMBERS No. 22-08
SMALL FUNDS MEMBERS No. 13-08 RE: FUND ADVISERS, EXECUTIVES, AND EMPLOYEES
SETTLE SEC CHARGES RELATING TO BROKER GIFTS

The Securities and Exchange Commission has settled administrative enforcement actions against two affiliated registered investment advisers and three employees (including two executives) (together, the “Respondents”). [\[1\]](#) The Orders found that the Respondents improperly accepted travel, entertainment, and other gifts paid for by outside brokerage firms doing business or seeking to do business with the advisers. The Respondents neither admitted nor denied the findings.

According to the Orders, the SEC found that during the period from at least January 2002 to October 2004, the Respondents accepted approximately \$1.6 million worth of travel, entertainment, and gifts from brokerage firms that sought and obtained orders to buy and sell securities on behalf of the advisers’ clients, including the mutual funds they managed (“Funds”). Those brokerage firms each received millions of dollars in commission revenue for handling orders for these clients.

Based on the alleged conduct, the SEC found that the Respondents willfully violated Section

17(e)(1) of the Investment Company Act of 1940, which prohibits affiliated persons of a registered investment company 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” to or for the investment company.

The SEC also found that the investment adviser Respondents willfully violated (i) Section 203(e) of the Investment Advisers Act of 1940 for failing to supervise the executives and traders that had accepted the gifts, with a view toward preventing their violations of Section 17(e)(1); (ii) Section 206(2) of the Advisers Act for failing to seek best execution for their clients’ securities transactions; (iii) Section 206(2) for failing to disclose to their clients, including the Funds, the material conflict of interest arising from the receipt by certain executives and traders of gifts from brokers seeking and obtaining securities transactions for the advisers’ clients; (iv) Sections 204, 206(2), and 207 of the Advisers Act, Rule 204-1 thereunder, and Section 34(b) of the Investment Company Act for making false or misleading statements and omissions in their Form ADVs and in Statements of Additional Information for the Funds about their selection of brokers; (v) Section 206(2) of the Advisers Act for making materially false and misleading statements and omissions to the Funds’ trustees concerning the factors considered in their selection of brokers and the bases upon which brokers competed for the Funds’ brokerage business; and (vi) Section 204 of the Advisers Act and Rules 204-2(a)(7)(iii) and 204-2(g) thereunder, for failing 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.

The SEC Order against the adviser Respondents requires the advisers to pay an \$8 million penalty, which takes into account the advisers’ separate agreements with their Funds’ trustees and institutional and other clients to make additional payments. The advisers also were censured, ordered to cease and desist from further violations, and required to hire an independent compliance consultant to conduct a comprehensive review of their policies and procedures concerning equity trading operations, conflicts, and gifts.

The individual Respondents were found liable for various amounts of disgorgement and interest totaling approximately \$59,000. In addition, one individual Respondent was ordered to pay a civil penalty of \$10,000 and another individual Respondent was ordered to pay a civil penalty of \$25,000.

Jane G. Heinrichs
Associate Counsel

[\[1\]](#) See *In the Matter of Fidelity Management & Research Company and FMR Co., Inc.*, SEC Release Nos. IA-2713 and IC- 28185, Admin. Proc. File No. 3-12976 (March 5, 2008); *In the Matter of Marc C. Beran*, SEC Release Nos. IA-2716 and IC- 28188, Admin. Proc. File No. 3-12979 (March 5, 2008); *In the Matter of Bart A. Grenier*, SEC Release Nos. IA-2714 and IC-28186, Admin. Proc. File No. 3-12977 (March 5, 2008); and *In the Matter of Peter S. Lynch*, SEC Release No. IC-28189, Admin. Proc. File No. 3-12980 (March 5, 2008) (together

“Orders”). The Orders and related materials are available on the SEC’s website at <http://sec.gov/news/press/2008/2008-32.htm>. Similar SEC charges remain pending against one executive and nine current or former equity traders. 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*, SEC Release Nos. IA-2715 and IC-28187, Admin. Proc. File No. 3-12978 (March 5, 2008) and Admin. Proc. File No. 3-12978A (March 6, 2008).

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