

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2005000627701

TO: Department of Enforcement, NASD

RE: **Fidelity Brokerage Services LLC** (CRD No. 7784) ("FBS");
Fidelity Distributors Corporation (CRD No. 6848) ("FDC");
Fidelity Investments Institutional Services Company, Inc. (CRD No. 17507) ("FIISC");
and
National Financial Services LLC (CRD No. 13041) ("NFS")
(each a "Respondent" and collectively, "Respondents")

Pursuant to Rule 9216 of NASD Code of Procedure, Respondents submit this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against Respondents alleging violations based on the same factual findings.

Respondents understand that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Enforcement and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondents; and
3. If accepted:
 - a. this AWC will become part of Respondents' permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against Respondents;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Respondents' disciplinary record(s);
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and

- d. Respondents may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects Respondents' testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

Respondents also understand that their experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

Fidelity Brokerage Services LLC (CRD No. 7784) ("FBS") has been a registered broker-dealer and NASD member since 1979. FBS is the introducing broker-dealer for all of Fidelity's retail customer accounts and has 138 branch offices. Its principal office is located in Boston, MA. FBS has no relevant formal disciplinary history.

Fidelity Distributors Corporation (CRD No. 6848) ("FDC") has been a registered broker-dealer and NASD member since 1975. FDC acts as the principal underwriter of the Fidelity family of registered, open-end management investment companies (Fidelity mutual funds), which are managed by an affiliate, Fidelity Management & Research Company (FMR Co.), a registered investment advisor. FDC has four branch offices and its principal office is in Boston, MA. FDC has no relevant formal disciplinary history.

Fidelity Investments Institutional Services Company, Inc. (CRD No. 17507) ("FIISC") has been a registered broker-dealer and NASD member since 1986. FIISC markets non-retirement and retirement plan products and services to financial intermediaries and retirement plan sponsors. FIISC has 30 branch offices and its principal office is in Boston, MA. FIISC has no relevant formal disciplinary history.

National Financial Services LLC (CRD No. 13041) ("NFS") has been a registered broker-dealer and NASD member since 1983. NFS is the clearing broker for FBS and numerous other introducing firms. NFS has 13 branch offices and its main office is located in Boston, MA. NFS has no relevant formal disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against Respondents;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondents specifically and voluntarily waive any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Respondents further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

II.

ACCEPTANCE AND CONSENT

- A. Respondents hereby accept and consent, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by NASD:

Summary

During 2002 through 2005 (the relevant period), Respondents violated NASD Rules by: (i) failing to assess numerous individuals' job functions prior to their registering with NASD to determine whether their job functions required or permitted registration under NASD Rules; (ii) failing to adequately track registered individuals when they changed job functions to determine whether their new job functions continued to require or permit registration under NASD Rules; (iii) maintaining registrations for approximately 1100 employees, many of whom did not conduct any activities for the brokerage firms, and none of whose duties fell within the activities of persons who were required or permitted to be registered under NASD rules; and (iv) failing to assign registered individuals to supervise certain registered individuals. In addition, while these individuals were registered with one of the four Fidelity brokerage firms, each firm failed to adequately supervise those individuals for compliance with applicable NASD rules. With respect to individuals registered at Respondent FDC, such failure included failure to supervise for compliance with FDC's ethics and conflicts of interest policies.

These violations resulted because Respondents permitted employees from every aspect of the Fidelity-wide enterprise¹ to maintain registrations if they chose to do so, and the Respondent brokerage firms did not assess or determine, on an individual basis, whether the activities of each individual seeking to maintain a registration fell within either the "permitted" or "required" categories for NASD registration. In fact, on several occasions, Respondents moved registrations from one broker-dealer to another, again, without assessing or determining whether in fact persons could or should be registered. Fidelity also permitted individuals to "park" registrations at a Fidelity broker-dealer when the individual was hired and employed by the Investment Advisor. By permitting these individuals to improperly maintain NASD registrations – most for several years or more and in at least one instance, for more than 15 years – Respondents allowed these individuals to avoid retaking the appropriate qualification examination, which is required for any individual whose registration has been terminated for more than two years.

NASD's qualification and registration requirements, including the provisions prohibiting the "parking" of registrations and requiring retesting, are intended to afford reasonable assurance to the investing public that registered persons maintain and update their knowledge about products and services available to investors, as well as applicable rules, regulations, and policies governing the investment banking and securities business. Because these improperly registered individuals were not performing functions requiring or permitting registration, they did not maintain the requisite industry expertise and competency. Thus, these individuals would have been subject to NASD's retesting requirement when and if they engaged in activities requiring or permitting registration two or more years after their registrations should have terminated.

During the relevant period, Respondents also violated NASD Rules by failing to assign a registered individual to supervise approximately 1000 registered employees. Approximately 70

¹ As used herein, the term "Fidelity" refers to FMR Corp., which is the holding company for, among other entities, the four Respondent broker-dealers named above, and FMR Co., the investment advisor to Fidelity's family of mutual funds (hereinafter, the "Investment Advisor").

of these individuals were improperly registered with FDC, which failed to adequately supervise the receipt of gifts and entertainment by certain of these individuals. At least 9 of these individuals, while improperly registered with and inadequately supervised by FDC, collectively received hundreds of thousands of dollars worth of gifts and entertainment as a result of FDC's failure to supervise this activity. These individuals who were improperly registered with FDC were employed as traders by the Investment Advisor (collectively, the "registered Investment Advisor traders").

Finally, during 2001 through 2004, Respondents' electronic communications retention system: (i) failed to capture and maintain all e-mail related to its business as such, including Outlook e-mail, Instant Messaging and outside vendor services, such as Bloomberg, (ii) failed to retain and preserve all e-mail for the required period, and (iii) failed to preserve all e-mail in a non-rewritable, non-erasable format. Respondents also failed to implement and enforce an adequate supervisory system and procedures relating to capturing, retaining, and preserving e-mail.

* * *

1. Respondents Violated NASD Registration Rules

During the relevant period, Respondents maintained active NASD registrations for approximately 1100 employees, many of whom did not conduct any activities for the Respondent brokerage firms, and none of whose duties fell within the activities of persons who were required or permitted to be registered under NASD rules. These approximately 1100 individuals represented approximately ten percent of all of Respondents' registered representatives in 2004. Many of these registrations were held for extended periods of time – most for several years or more and in at least one instance, for more than fifteen years. In certain instances, Respondents FBS and FDC permitted certain new employees, hired to work for the Investment Advisor, to "park" registration licenses at Respondents FBS and FDC that were obtained when these individuals worked at previous brokerage firms. At all times, it was clear that these individuals were not active in Respondents FBS's or FDC's investment banking or securities businesses and never functioned as registered representatives or in any other registered capacity with Respondents. These individuals who worked for the Investment Advisor were initially registered with Respondent FBS and then their registrations were moved to Respondent FDC, when none of these individuals performed any functions for either Respondent broker-dealer. These individuals' registrations were improperly held or "parked" by Respondents FBS and FDC as an accommodation to these individuals and to avoid the requirement to retake qualification exams for their various securities licenses, when and if they engaged in activities requiring or permitting registration two or more years after their registrations should have terminated.

By maintaining the registrations for individuals during a time when such individuals were not engaged in activities that required or permitted registration, Respondents allowed these individuals to "park" their licenses – effectively giving them the ability to rejoin a brokerage firm without the retesting required of those who are unregistered for two or more years. NASD's qualification and registration requirements, including the provisions prohibiting the "parking" of

registrations and requiring retesting, are intended to afford reasonable assurance to the investing public that registered persons maintain and update their knowledge about products and services available to investors, as well as applicable rules, regulations, and policies governing the investment banking and securities business. Because these improperly registered individuals were not performing functions requiring or permitting registration, they did not maintain the requisite industry expertise and competency.

NASD Rule 1031 requires that “[a]ll persons engaged or to be engaged in the investment banking or securities business of a member who are to function as representatives shall be registered as such with NASD in the category of registration appropriate to the function to be performed”² Before their registration can become effective, the person must pass an appropriate qualification examination. A person whose registration is terminated for two years or more is required to retake the Series 7 or other appropriate qualification exam.³

Rule 1031 specifically states that a firm shall not maintain a representative’s registration with the NASD if (i) the person is no longer active in the member’s investment banking or securities business, (ii) is no longer functioning as a representative, or (iii) where the sole purpose is to avoid the examination requirement.⁴ Rule 1031 also *permits*, but does not require, member firms to maintain or make application for the registration of persons who: (i) perform legal responsibilities, (ii) perform compliance responsibilities, (iii) perform internal audit responsibilities, (iv) perform back-office operations, (v) perform similar responsibilities for the member, (vi) perform administrative support functions for registered personnel, or (vii) are engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member.⁵ If a permissively registered person no longer performs any of the foregoing functions, then the member firm must promptly terminate such person’s registration.

While Rule 1031 includes both required and permitted categories of registration, it requires the firm to review the activities of those registered to ensure that registration is appropriate and consistent with the rule. Moreover, once an individual is registered with NASD, he or she is required to comply with all applicable NASD rules and must be supervised by a registered individual. Respondents’ registration violations resulted from a systemic failure to adequately supervise the registration process as described below.

² Rule 1031(a). Rule 1031(b) defines a representative as someone who is associated with a member firm and who is engaged in the investment banking or securities business for the member including the functions of supervision, solicitation or conduct of business in securities, or who is engaged in the training of persons associated with a member for any of these functions. Rule 1032 specifies the categories of representative registration.

³ Rule 1031(c).

⁴ Rule 1031(a).

⁵ *Id.*

2. Respondents Failed to Supervise the Registration Process

With respect to the approximately 1100 employees who were neither required nor permitted to be registered, Respondents maintained and renewed these individuals' registrations each year, but made no assessment of what activities these individuals would perform or how these individuals would be supervised. In addition, in certain instances, forms used in the registration process failed to state which, if any, of the employee's job functions required or permitted his or her registration. In certain instances involving NASD registration as Series 7 representatives by individuals who were employed as Investment Advisor traders, such individuals represented themselves as having registered representative responsibilities when in fact they did not.

In many instances, Respondents permitted a registrant's supervisor, who in many instances was not employed by or registered with any of the brokerage firms, to forward a list of employees to Fidelity's Registration Department for registration without any assessment of whether these individuals were conducting any activities that would permit registration under NASD Rules. With respect to registered persons who worked at the Investment Advisor, it was clear that these employees were traders for the Investment Advisor and performed no activities for the broker-dealer. These improperly registered Investment Advisor traders were also required to have their registered principals sign their initial Form U4, Uniform Application for Registration. None of their Form U4s, however, were signed by a registered principal. Rather, to the extent they were signed at all – and some were not – their Form U4s were signed by an individual in Fidelity's Registration Department, or by an unregistered manager at the Investment Advisor.

Fidelity's Registration Department did not assess whether each individual was appropriately registered under NASD rules. While all registration forms were forwarded to the Registration Department, this department functioned merely as a registration processor, and did not review registration applications or renewal requests to determine if they were appropriate. And, in numerous instances, Respondents did not retain, or could not produce, complete copies of registration forms for their registered individuals.

Fidelity's written registration policy required that at year-end each of Respondents' supervisory principals review a list of their registered persons and affirm that each such person's registration should continue. This did not occur with respect to more than half of the approximately 1100 improperly registered individuals who did not have an assigned registered supervisory principal. In those instances where the supervisory principal did not make these affirmations, Respondents continued the registrations and did not determine if, in fact, they were proper registrations. In other instances, supervisors made misleading affirmations indicating that individuals were required or permitted to be registered, when in fact, that was not the case.

3. Respondents Failed to Supervise Their Registered Individuals

Rule 3010(a)(5) requires each Respondent to assign a registered supervisor to each of its registered individuals. Prior to 2005, however, Respondents failed to assign a registered individual to supervise approximately 1000 registered employees. Approximately 70 of these individuals were registered at FDC, including the Investment Advisor traders who were improperly registered.

As a result of Respondents' failure to assign NASD registered supervisors to all registered representatives, the firms failed to adequately supervise these individuals' activities for compliance with NASD rules, including but not limited to, Rule 3030 (Outside Business Activities of an Associated Person); Rule 3040 (Private Securities Transactions of an Associated Person); Rule 3050 (Transactions for or by Associated Persons); Rule 3060 (Gifts and Gratuities); and Rule 3070 (Reporting Requirements). None of the Respondents had any mechanism, policy or procedure in place to ensure that registered persons to whom no registered supervisor was assigned complied with NASD Rules. None of the Respondents maintained registration files or employee files, or any other documentation, on registered individuals (to whom a registered supervisor was not assigned) to evidence that any steps or action was taken to ensure their compliance with NASD Rules 3030, 3040, 3050, 3060 or 3070.

4. FDC Failed to Supervise its Registered Individuals For Compliance with the Member's Ethics and Conflicts of Interests Policies

From January 2002 through October 2004, registered Investment Advisor traders received gifts and entertainment valued at hundreds of thousands of dollars in the aggregate from registered individuals employed at brokerage firms who sought business from the Investment Advisor. Examples of gifts⁶ provided by NASD registered individuals to the registered Investment Advisor traders, which cost hundreds of thousands of dollars, included: several private chartered flights, including flights provided to an NASD registered Fidelity trader and his wife for their honeymoon; tickets and lodging at expensive hotels for Wimbledon tennis tournaments; tickets to a Justin Timberlake/Christina Aguilera concert; tickets to the US Open Tennis Tournament; twenty bottles of wine, including twelve bottles of 1993 Chateau Petrus (Pomerol) wine.

Examples of entertainment provided by NASD registered individuals to the registered Investment Advisor traders included: private chartered flights to various destinations including but not limited to Palm Beach and Miami Beach, Florida, and Nantucket, Massachusetts, for overnight and weekend golf outings; a bachelor party for one of the registered Investment Advisor traders; and tickets to the 2004 Super Bowl. The golf outings included annual, multiple day golf trips at venues such as Las Vegas, Nevada; Cabo San Lucas, Mexico; and Arizona.

⁶ Gifts include travel and tickets to sporting and other events when unaccompanied by a representative of the brokerage firm.

These events included extravagant private accommodations for the registered Investment Advisor traders.

During 2002-2005, both FDC's gift policy and Fidelity's corporate-wide gift policy prohibited employees from giving or receiving gifts with a value of more than \$100 per calendar year from a current or prospective customer, supplier or vendor. Fidelity's entertainment policy prohibited employees from giving or accepting "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. An employee invited to attend such an event (whether attending with the giver or not) must either pay his or her own way, or reimburse the vendor, customer or supplier for these expenses." In addition, FDC supervisors were required to review and approve or deny gifts reported by FDC-registered persons on Fidelity's Report of Gifts and Gratuities Form. Following this review, the registered person was required to submit the gift form to Fidelity's Corporate Ethics Office.

During the relevant period, Fidelity also maintained a general policy governing professional conduct and conflicts of interest which provided that "Fidelity expects employees to have high standards of performance, integrity, productivity and professionalism." This general policy also required employees to be familiar with and adhere to the more particular standards set forth in Fidelity's gift and entertainment policies. The purpose of Fidelity's gift and entertainment policies was and is to detect and prevent actual or apparent impropriety or conflicts of interest between an employee, and Fidelity and its customers. As such, these policies address business-related conduct that is inconsistent with just and equitable principles of trade.

With respect to the registered Investment Advisor traders, FDC failed to take any action to regulate or supervise their gift and entertainment activity, or to enforce Fidelity's gift and entertainment policies, as well as its more general professional business conduct standards with respect to these individuals.

FDC failed to ensure that the registered Investment Advisor traders reimbursed for, or reported, their receipt of hundreds of thousands of dollars worth of gifts and entertainment. The registered Investment Advisor traders failed to complete and submit the FDC-required Report of Gift Form. In fact, none of the registered Investment Advisor traders submitted any gift forms or otherwise reported any gifts. FDC never communicated with Fidelity's Ethics Office regarding whether or not the registered Investment Advisor traders were actually reporting gifts and filing gift forms as required.

FDC failed to take any actions to identify or examine the nature, frequency, extent and expense of the gifts and entertainment received by the registered Investment Advisor traders to determine if the gifts and entertainment were in compliance with Fidelity's policies. FDC did not examine any of their gifts or entertainment for purposes of identifying any actual or apparent impropriety or conflicts of interest between these registered Investment Advisor traders, on the one hand, and Fidelity and its customers, on the other hand. In fact, FDC failed to identify, review or approve of any of the extensive gifts and entertainment received by these FDC-

registered individuals.

5. Respondents Violated NASD Rules and Federal Securities Laws Governing the Retention, Preservation, and Storage of Electronic Communications

NASD Conduct Rule 3110 requires members to preserve books, accounts, records, memoranda, and correspondence in a format, medium, and for the time prescribed in SEC Rule 17a-4. SEC Rule 17a-4(b)(4) requires every broker-dealer to preserve “originals of all communications received and copies of all communications sent by [such] broker-dealer (including inter-office memoranda and communications) relating to its business as such” for a period of not less than three years, the first two years in an easily accessible place. From 2001 through August 2004, Respondents did not have a system reasonably designed to, and did not in fact, capture and/or preserve all electronic communications required to be retained.

Prior to December 2002, Respondents’ Back-Up Tape Retention System Contributed to Loss of E-Mail

From January 2001 to December 2002, Respondents’ only systematic method of retaining electronic communications was to rely upon back-up tapes. Respondents’ back-up tape system suffered from a dual defect: First, Respondents’ back-up tapes only captured e-mail that existed on the server at the time the tape was created. Any e-mail that had been either deleted or otherwise removed from the server before the back-up tape was created was neither captured nor retained on the back-up tape. Second, the back-up tapes were recorded-over and reused in fairly short order. Prior to April 2002, Respondents retained daily back-up tapes for only 35 days, and retained mid-month and month-end back-up tapes for only six months. Thus, e-mail that had been initially captured on a daily back-up tape, but that was subsequently deleted or otherwise removed from the server before the mid-month or month-end back-up was created, was retained for only 35 days. And, e-mail that had been initially captured on a mid-month or month-end back-up tape, but that was subsequently deleted or otherwise removed from the server before the next back-up was created was retained for only six months, instead of the three years as required. Consequently, Respondents’ back-up tape system resulted in the systematic deletion and loss of unknown numbers of e-mails across all broker-dealer employees and registered persons of FBS, FDC, FIISC, and NFS.

Respondents Used a “Mailbox Manager” System That Automatically Deleted Certain E-Mail

In May 2001 Respondents implemented a system called “Mailbox Manager” that automatically deleted e-mail older than 60 days from employees’ “Deleted Items” and “Sent Items” folders. Although such e-mail may have been initially captured on daily, mid-month, and month-end back-up tapes, once these tapes were written-over and reused, at the intervals described above, such e-mail was deleted and could no longer be retrieved by Respondents.

Respondents knew that their automatic purging of e-mail could cause recordkeeping problems under the federal securities laws and NASD rules. For example, in a May 2001

memorandum to all Fidelity broker-dealers, employees and registered individuals, Fidelity's Corporate Compliance Group explained that the Mailbox Manager initiative required individuals to take independent action to comply with regulatory retention requirements by preventing the automatic deletion of e-mail that the firm was required to retain. The memorandum explained that individuals could comply with this obligation either by moving such e-mail to a separate Outlook folder for retention, or by printing and retaining such e-mail in hard-copy. Notwithstanding this written policy, Respondents did not take any steps to determine whether employees were in fact doing so and had no process to review the retention of such e-mail.

Respondents' Retention Systems Did Not Capture Certain "Offline" E-mail

Respondents' practice was to erase the hard drives of departed employees in order to reuse them, without taking adequate precautions to ensure that their electronic communication records, including e-mail that was removed from the Outlook Exchange server between back-up sessions, were not destroyed in the process. Consequently, Respondents' retention systems and procedures failed to ensure the retention of all electronic communications stored on former employees' personal computers.

*Respondents Did Not Retain the E-Mail
of Approximately 18% of Their Registered Individuals*

Pursuant to a written, corporate-wide policy applicable to each of the Respondents, Respondents retained e-mail of only certain registered individuals. Respondents failed to keep e-mail of approximately 1900 registered individuals— totaling approximately eighteen percent of all registered individuals at the time. This group consisted of individuals registered with a broker-dealer who Respondents determined were not doing the work of the broker-dealer, and included, for example, registered individuals employed by a Fidelity investment advisor such as the registered Investment Advisor traders.

In August 2003, Fidelity's Enterprise Compliance Group sent an e-mail to the registered Investment Advisor traders, among others, advising them that since they were registered with, but not doing the work of the broker-dealer, their firm was not retaining their e-mail for 3 years. The e-mail explained to these individuals that that on those occasions when they did engage in the business of the broker-dealer, they were individually responsible for retaining their e-mail by printing it out and retaining it in hard-copy. Respondents, however, failed to take any steps to determine whether, in fact, these individuals were printing and retaining their e-mail.

Respondents' system of not retaining e-mail for selected registered individuals was facially deficient. The long established and clear standard provides that it is the content and audience of e-mail that determines whether it must be preserved.⁷ Respondents, by not retaining e-mail for a selective group of registered individuals, failed to satisfy their obligations under the federal securities laws and NASD rules.

⁷ Exchange Act Release No. 38245 (Jan. 31, 1997); 62 FR 6469 (Feb. 12, 1997).

*After May 2002, Respondents Suffered Continuing
Back-up Tape and Journaling System Retention Deficiencies*

With respect to the registered individuals described immediately above, prior to September 2003 (with the exception of a four-month period between April and July 2002 for which daily back-up tapes were retained), Respondents retained only mid and month-end backup tapes of their e-mail, which resulted in retention loss of e-mail that was deleted or removed from the server between back-up tape sessions. In late 2002, Respondents began to implement an e-mail journaling system that was intended to capture all e-mail related to the broker-dealers' business as such. In implementing this system, however, Respondents again failed to retain e-mail for the registered individuals described immediately above. Respondents did not undertake to journal the e-mail of these registered individuals until August 2004. In addition, from 2002 through 2006, Respondents' journaling system was defective insofar as a number of the indices of journaled e-mail were incomplete and inaccurate such that Respondents could not be assured that they had retrieved and produced all e-mail that should have been retrieved and produced in response to regulatory requests for e-mail.

*Respondents Did Not Capture and Preserve All Required
Instant Messages and Bloomberg E-mail*

From 2001 to August 2003, Respondents did not capture or preserve Instant Message communications.⁸ In addition, Respondents allowed certain broker-dealer employees and registered individuals to communicate electronically via the Bloomberg system, but, until December 2004, did not retain, preserve, or store any of such Bloomberg e-mail on Respondents' server systems. While Respondents requested that Bloomberg produce such e-mail in response to NASD's regulatory requests, these e-mail records were deficient insofar as they deleted from the sender and recipient lines the names of employees who had left the employment of Respondents prior to the date of NASD's e-mail requests.

*Respondents' E-Mail Retention Deficiencies Hindered
Their Ability to Fully Comply With NASD Regulatory Requests*

In connection with NASD's investigation of prospective registration violations and gift and entertainment activities by registered individuals, NASD requested Respondents to produce all e-mail for the registered Investment Advisor traders. Based on Respondents' e-mail retention

⁸ See NASD NTM 03-33 (July 2003) ("NASD is clarifying for members their supervisory obligations and recordkeeping requirements with respect to instant messaging....Members must supervise the use of instant messaging consistent with the required supervision of e-mail messaging. Depending on the circumstances, instant messaging could be either sales literature or correspondence.... If a member is unable to establish an adequate supervisory program, the member must prohibit the use of instant messaging in customer communications.... Members that permit instant messaging must use a platform that enables the member to monitor, archive, and retrieve message traffic.").

deficiencies, as detailed above, however, Respondents could not ensure that they had produced all e-mail that they should have retained and produced for these individuals and thus, Respondents could not ensure that they had fully complied with NASD's regulatory requests.

*Respondents Did Not Preserve Electronic Communications
in a Non-rewritable, Non-erasable Format*

Broker-dealers may preserve e-mail records on "electronic storage media," which includes "any digital storage medium or system."⁹ The storage medium, however, must preserve the e-mail records exclusively in a non-rewritable and non-erasable format (e.g., "write once read many" or "WORM" format).¹⁰ During 2001 through 2004, Respondents failed to employ a WORM-compliant system for retaining electronic communications. Through December 2002, Respondents' retention system was not WORM-compliant for any categories of electronic communications for any employees. Thereafter, Respondents' retention system was not WORM-compliant for: (i) Instant Message communications until August 2003; and (ii) Bloomberg e-mail until after December 2004; and (iii) electronics communications of registered, non-employees of a broker-dealer until August 2004.

*Respondents Did Not Implement and Enforce an
Adequate Supervisory System and Procedures for
Capturing, Retaining, and Preserving Electronic Communications*

Based on the foregoing conduct, Respondents failed to establish, maintain, and enforce a supervisory system and procedures that were reasonably designed to capture, retain, and preserve originals of all electronic communications relating to its business as such, in a format, medium, and for the time periods prescribed by federal securities laws and NASD rules.

6. Violations

The conduct described above constitutes separate and distinct violations by Respondents of Section 17(a) of the Securities Exchange Act of 1934, SEC Rule 17a-4 thereunder, and NASD Conduct Rules 1031, 3010, 3110 and 2110.

B. Respondents consent to the imposition, at a maximum, of the following sanctions:

- A censure; and
- A fine in the amount of \$3,750,000, payable jointly and severally by Respondents.

⁹ Rule 17a-4(f).

¹⁰ Rule 17a-4(f)(2)(ii)(A).

In addition, Respondents shall comply with the following undertakings within the time periods specified (unless otherwise extended by NASD staff in writing upon good cause shown and upon receipt of a timely request from Respondents):

1. Audit of Current Registration System, Policies and Procedures. Promptly following notice of acceptance of this AWC, Respondents shall engage Fidelity Corporate Audit, Fidelity's internal audit department, to: (a) conduct an audit, applying reasonable auditing standards, to assess the effectiveness of each Respondent's current system, policies and procedures (written and otherwise), and related controls relating to (i) the identification and registration of individuals "required" and "permitted" to be registered under NASD rules based on the individual's activities on behalf of each Respondent, (ii) the ongoing identification of registered individuals who change job functions and the re-evaluation of those individuals' registrations, and (iii) the assignment of an appropriately registered supervisor to each registered individual; and (b) prepare a written audit report ("Current Registration Audit Report") summarizing its findings and recommendations. The Current Registration Audit Report shall describe the method and scope of the audit, and make any appropriate recommendations to improve each firm's system, policies and procedures regarding registration.
2. Delivery of Current Registration Audit Report. No later than 120 days following notice of acceptance of this AWC, Respondents shall deliver to NASD a copy of the Current Registration Audit Report.
3. Certification re: Current Registration Audit Report. No later than 60 days after the date of the Current Registration Audit Report, an officer of each Respondent shall certify in writing to NASD staff that such Respondent has implemented all recommendations set forth in the Current Registration Audit Report, or has engaged in a process that will result in the implementation of any such recommendations within 90 days of the date of such certification.
4. Semi-Annual Registration Audits for 18 Months. Respondents shall engage Fidelity Corporate Audit to: (a) conduct, for each of the next three six month periods beginning the month following the date of the certification of the Current Registration Audit Report, an audit (each, a "Semi-Annual Registration Audit") to review Respondents' implementation of the recommendations in the Current Registration Audit Report or any further recommendations made by Fidelity Corporate Audit in any of the Semi-Annual Registration Audits; and (b) prepare a written audit report ("Semi-Annual Registration Audit Report") summarizing its findings and any further recommendations. Each Semi-Annual Registration Audit Report shall describe the method and scope of the audit, and make any appropriate recommendations to improve each firm's system, policies and procedures regarding registration. Within 60 days after the end of each respective six month

period, Respondents shall deliver to NASD a copy of each Semi-Annual Registration Audit Report.

5. Certification re: Semi-Annual Registration Audits. No later than 60 days after the submission to NASD of each Semi-Annual Registration Audit Report, an officer of each Respondent shall certify in writing to NASD staff that (i) such officer has reviewed the Semi-Annual Registration Audit Report, and (ii) such Respondent has implemented all recommendations set forth therein, or has engaged in a process that will result in the implementation of any such recommendations within 90 days of the date of such certification.
6. Officer Certification Regarding Registration System and Procedures. Within 9 months of notice of acceptance of this AWC, an officer of each Respondent shall certify in writing that the firm has established a system and procedures reasonably designed to achieve compliance with NASD's registration requirements.
7. Audit of Current Electronic Recordkeeping System, Policies, and Procedures. Promptly following notice of acceptance of this AWC, Respondents shall engage Fidelity Corporate Audit, Fidelity's internal audit department, to: (a) conduct an audit, applying reasonable auditing standards, to assess the effectiveness of each Respondent's current system, policies and procedures (written and otherwise), and controls relating to: (i) identification of individuals requiring electronic communications retention, (ii) integrity of the retention and retrieval process for electronic communications (e-mail, Instant Messaging and Bloomberg e-mail), and (iii) the supervisory systems to oversee the capture, retention and preservation of electronic communications; and (b) prepare a written audit report ("E-Mail Audit Report") summarizing its findings and recommendations. The E-Mail Audit Report shall describe the method and scope of the audit, and make any appropriate recommendations to improve each firm's system, policies and procedures regarding electronic recordkeeping. Fidelity Corporate Audit may engage such consultants as it deems necessary to assist in the completion of this audit.
8. Delivery of E-Mail Audit Report. No later than 180 days following notice of acceptance of this AWC, Respondents shall deliver to NASD a copy of the E-Mail Audit Report.
9. Certification re: E-Mail Audit Report. No later than 60 days after the date of the E-Mail Audit Report, an officer of each Respondent shall certify in writing to NASD staff that such Respondent has implemented all recommendations set forth in the E-Mail Audit Report, or has engaged in a process that will result in the implementation of any such recommendations within 180 days of the date of such certification.

10. Officer Certification Regarding Electronic Recordkeeping System and Procedures. Within 12 months of notice of acceptance of this AWC, an officer of each Respondent shall certify in writing that the firm has established a system and procedures reasonably designed to achieve compliance with recordkeeping requirements related to electronic communications.

* * *

The sanctions imposed herein shall be effective on a date set by NASD staff.

III.

OTHER MATTERS

- A. Respondents understand that they may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its staff.
- B. Respondents agree to pay any monetary sanctions imposed on them upon notice that this AWC has been accepted and that such payments are due and payable and have attached an Election of Payment form showing the method by which Respondents propose to pay any fine imposed.
- C. Respondents specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

Respondents certify that they have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce us to submit it.

Date: 12/12/06

Fidelity Brokerage Services LLC (CRD No. 7784)

By: 
Name: Steven Akin
Title: President

Date: 12/12/06

Fidelity Distributors Corporation (CRD No. 6848)

By: 
Name: Steven Akin
Title: President

Date: _____

Fidelity Investments Institutional Services Company, Inc. (CRD No. 17507)

By: _____
Name: _____
Title: _____

Date: _____

National Financial Services LLC (CRD: 13041)

By: _____
Name: _____
Title: _____

Reviewed by:

David C. Boch, Esq.
Counsel for Respondents
Bingham McCutchen LLP
150 Federal Street
Boston, MA 02110-1726
617.951.8000

Respondents certify that they have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce us to submit it.

Date: _____

Fidelity Brokerage Services LLC (CRD No. 7784)

By: _____

Name: _____

Title: _____

Date: _____

Fidelity Distributors Corporation (CRD No. 6848)

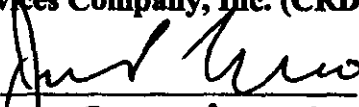
By: _____

Name: _____

Title: _____

Date: _____

Fidelity Investments Institutional Services Company, Inc. (CRD No. 17507)

By: 

Name: Joseph P. LoRusso

Title: President

Date: 12/11/06

National Financial Services LLC (CRD: 13041)

By: _____

Name: _____

Title: _____

Reviewed by:



David C. Boch, Esq.
Counsel for Respondents
Bingham McCutchen LLP
150 Federal Street
Boston, MA 02110-1726
617.951.8000

Respondents certify that they have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce us to submit it.

Date: _____

**Fidelity Brokerage Services LLC (CRD
No. 7784)**

By: _____

Name: _____

Title: _____

Date: _____

**Fidelity Distributors Corporation (CRD
No. 6848)**

By: _____

Name: _____

Title: _____

Date: _____

**Fidelity Investments Institutional
Services Company, Inc. (CRD No. 17507)**

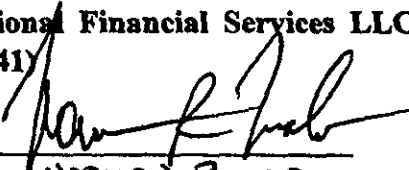
By: _____

Name: _____

Title: _____

Date: 12/12/06

**National Financial Services LLC (CRD:
13041)**

By:  _____

Name: NORMAN R. MALO

Title: CEO & PRESIDENT

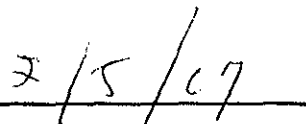
Reviewed by:

David C. Boch, Esq.
Counsel for Respondents
Bingham McCutchen LLP
150 Federal Street
Boston, MA 02110-1726
617.951.8000

Reviewed by:


Robert M. Romano, Esq.
Counsel for Respondents
Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178-0060
212.309.6000

Accepted by NASD:


Date

Signed on behalf of the
Director of ODA, by delegated authority


Katherine A. Malfa, Esq.
Vice President and Chief Counsel
NASD Department of Enforcement
Suite 800
1801 K Street, N.W.
Washington, DC 20006
Ph: 202.974.2853
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