

**FINRA
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

JEFFREY L. DOERR (CRD No. 1282618),

DAVID M. CORN (CRD No. 1732548),

AND

DARREL L. TROST (CRD No. 855013),

RESPONDENTS.

**DISCIPLINARY PROCEEDING
No. EAF0401050001**

**HEARING OFFICER:
ANDREW H. PERKINS**

ORDER ACCEPTING OFFER OF SETTLEMENT

Date: December 31, 2007

INTRODUCTION

Disciplinary Proceeding No. EAF0401050001 was filed on February 15, 2007, by the Department of Enforcement of the Financial Industry Regulatory Authority ("FINRA")¹ ("Complainant"). Respondents Jeffrey L. Doerr, David M. Corn, and Darrel L. Trost ("Respondents") submitted an Offer of Settlement ("Offer") to Complainant on December 26, 2007. Pursuant to NASD Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC"), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to NASD Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

¹ As of July 30, 2007, NASD consolidated with the member firm regulation functions of NYSE and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA).

Under the terms of the Offer, each Respondent has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of each Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Jeffrey L. Doerr (CRD No. 1282618) first became registered with FINRA (f/k/a National Association of Securities Dealers, or NASD) as a General Securities Representative in July 1984. Doerr was registered as a General Securities Representative (Series 7) at two member firms before he became registered as a General Securities Representative at Prudential Securities, Inc., and he was registered with Prudential from January 2000 to July 2003, when his registration was transferred to Wachovia Securities, LLC in connection with a joint venture between Prudential's and Wachovia's retail brokerage businesses.² Doerr remained registered as a General Securities Representative at Wachovia through August 2007. Doerr is not currently registered or associated with any FINRA member firm. However, FINRA retains jurisdiction over Doerr pursuant to Article V, Section 4 of its By-Laws. During all relevant times, Doerr maintained insurance licenses with Utah and Virginia.

² On July 1, 2003, the retail brokerage business of Prudential Securities Inc. and that of Wachovia Securities, LLC were combined through a joint venture between Prudential Financial Inc. and Wachovia Corporation. Following the consummation of the joint venture, the branches, the branch managers, the regional supervisors, and other groups all were transferred to Wachovia. Unless otherwise noted, Doerr, Corn, and Trost's employer during the entire relevant period will be referred to as "Prudential" or "the firm."

David M. Corn (CRD No. 1732548) first became registered with FINRA as a General Securities Representative in September 1987. Corn was registered at two member firms before he became registered as a General Securities Representative at Prudential, and was registered with Prudential from February 2000 to July 2003, when his registration was transferred to Wachovia in connection with the joint venture between Prudential's and Wachovia's retail brokerage businesses. Corn remained registered as a General Securities Representative at Wachovia through June 2007. Corn is not currently registered or associated with any FINRA member firm. However, FINRA retains jurisdiction over Corn pursuant to Article V, Section 4 of its By-Laws. During all relevant times, Corn maintained insurance licenses with Utah and Virginia.

Doerr and Corn were partners at two member firms before becoming associated with Prudential. At all times relevant to this complaint, Doerr and Corn shared a joint representative number and maintained a partnership at Prudential in which they split their commissions and fees.

Darrel L. Trost (CRD No. 855013) was registered with FINRA as a General Securities Representative, a General Securities Principal (Series 24), a Municipal Securities Principal (Series 53), and an Options Principal (Series 4). Trost was registered in those capacities when he became registered at Prudential in July 1992, and maintained those licenses until his registration was transferred to Wachovia in July 2003 in connection with the joint venture between Prudential's and Wachovia's retail brokerage businesses. In July 2005, Trost became registered as a General Securities Sales Supervisor (Series 8). Trost continues to be registered in those capacities at Wachovia. Between 1998 and July 2003, Trost was the branch office manager of Prudential's Salt Lake City branch office and he served as branch office manager of Wachovia's

Salt Lake City branch office from July 2003 until July 2007. At all times relevant to this complaint, Trost supervised Doerr and Corn.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

Doerr and Corn met Paul Saunders in the 1980s, while each was employed at the same member firm. In 2000, Saunders formed a hedge fund with the specific purpose of market timing mutual funds and variable annuities. From October 2001 to September 2003 (the "relevant period"), Doerr and Corn facilitated Saunders' deceptive and successful practices to evade efforts by insurance companies to restrict or prevent Saunders from improperly market timing variable annuities offered by them.

A. Market Timing Mutual Funds and Variable Annuity Sub-Accounts

A mutual fund's share price typically does not fluctuate throughout the trading day, but the prices of the securities held by the fund do. The ever-changing portfolio security prices are aggregated into a single daily fund price known as the net asset value (NAV), which is generally fixed by a fund based on the closing price of its underlying securities as of the close of the major stock markets in the United States at 4:00 p.m. Eastern Time.

"Market timing" is the short-term, rapid trading in mutual fund shares (or through variable annuities) to exploit inefficiencies in mutual fund pricing that allow market timers the opportunity to engage in arbitrage based upon market information not reflected in that day's NAV — for example, when the fund has in its portfolio particular holdings, such as foreign or thinly-traded securities, which are priced on a basis that does not include the most updated information possible. To capitalize on the inefficiencies, market timers typically buy and sell

shares in mutual funds (directly or through variable annuities) on a short-term, round-trip basis, realizing quick gains and then retreating to their previous market position.

The rapid and substantial transfers that come from market timing are anathema to fund managers because the market timer's profit from quickly cashing out of a fund portfolio comes at the expense of the long-term investors in the fund. While not *per se* illegal, market timing can harm mutual fund shareholders in several ways. For example, market timing may dilute the value of long-term shareholders' interests in a mutual fund if the fund calculates its NAV using closing prices of its portfolio securities that are stale. Market timing also may cause a fund to manage its portfolio in a disadvantageous manner, by maintaining a larger percentage of its assets in cash or liquidating certain portfolio securities prematurely to meet higher levels of redemptions due to market timing. Additionally, a mutual fund may incur increased brokerage and trading costs, as well as tax liabilities, related to the frequent purchases and redemptions associated with market timing.

Accordingly, the potential for market timing to harm the interests of mutual fund investors led many mutual funds and insurance companies to adopt policies intended to limit the number of purchases, redemptions, or exchanges investors were permitted to make. Funds and insurance companies informed investors through their prospectuses or Statements of Additional Information that market timing and excessive trading were discouraged or prohibited, and attempted to identify and block the trading practices of market timers. The exact policies implemented vary from fund to fund.

Variable annuities provide investors the opportunity to invest in mutual fund "sub-accounts." Investors in variable annuities allocate invested funds among a variety of sub-accounts, and then instruct the insurance company to transfer funds from one sub-account to

another. The insurance company, in turn, initiates purchases and redemptions of mutual fund shares once per day on an "omnibus" basis for numerous clients. Sub-accounts of variable annuities generally offer a level of customer anonymity not available to market timers dealing directly with mutual funds because mutual fund companies cannot easily determine the identities of individual investors who have requested transfers of funds among a variable annuity's sub-accounts.

Certain variable annuity products that Saunders market-timed through Prudential stated in their prospectuses or Statements of Additional Information that they restricted or discouraged market timing. For example, the prospectuses filed by Insurance Companies H, M, and P stated, respectively:

- "This Contract is not designed to serve as a vehicle for frequent trading in response to short-term fluctuations in the stock market. Any individual or legal entity that intends to engage in international arbitrage, utilize market timing practices or make frequent transfers to take advantage of inefficiencies in Fund pricing should not purchase this Contract."
- "The Contracts are not designed for professional market timing organizations or other entities using programmed and frequent transfers. If you wish to employ such strategies, you should not purchase a Contract."
- "The Contract is not designed to serve as a vehicle for frequent trading in response to short-term fluctuations in the market.... Accordingly, organizations or individuals that use market-timing investment strategies and make frequent transfers should not purchase the Contract."

Given the deleterious effect of market timing, mutual funds and insurance companies attempt to detect and prevent the practice. As in the present case, once an account reaches a certain level of trading (as determined by an insurance company or mutual fund), the insurance company or fund often sends a letter or e-mail, or makes a telephone call, to broker-dealers blocking or restricting an account, client, or broker from further market timing ("restriction notices"). Because of the efforts of insurance companies and mutual funds to police and prevent

market timers from engaging in disruptive trading, a market timer like Saunders could consistently and profitably market time by deceiving insurance companies and mutual funds about the owner of the market-timing entity.

These variable annuity providers (Insurance Companies H, M, and P) placed specific limits on the number of transactions that could be effected in a particular period of time. For example, certain prospectuses for variable annuities sold by Insurance Company H stated:

We will send you a letter after your 10th Sub-Account transfer to remind you of our Sub-Account transfer policy. After your 20th transfer, or after any time we determine that you are engaging in a pattern of abusive transfers, we will send you a letter to notify you that your transfer privileges have been restricted or terminated under our policy until your next Contract Anniversary.

Insurance Company M limited investors to 12 transfers in any account year. Insurance Company P limited investors in variable annuities to 25 transfers each calendar year. Doerr and Corn knew, and Trost knew or should have known, of the restrictions Insurance Companies H, M, and P placed on market timing through their review of prospectuses or other sources of information.

**B. Doerr and Corn Opened Accounts for Saunders,
with Trost's Approval, to Engage in Deceptive Market Timing**

In mid-2000, Saunders discussed with Doerr and Corn his interest in opening accounts to market time variable annuity sub-accounts. Around this time, Doerr and Corn understood that market timing might have a disruptive effect on mutual funds and variable annuities and were aware that insurance companies restricted market timing. To enhance his ability to market time without detection, Saunders created a hedge fund and multiple limited partnerships that shared the same limited partners, general partner, beneficial owners and trading manager as the hedge fund. Although the limited partnerships outwardly appeared to be separate entities, each with a different name and tax identification number, they shared common ownership and received

funding from a common source.

Between 2000 and 2003, Doerr and Corn opened 20 brokerage accounts for the limited partnerships at Saunders' direction to facilitate and participate in Saunders' market-timing scheme. Twelve of these accounts market timed variable annuities sold by Insurance Companies H, M, and P. Saunders used Prudential's fee-based accounts, the PruAdvisor program, to trade mutual funds and as a conduit to transfer assets between variable annuity contracts that had been restricted and other contracts in order to continue market timing, even though Prudential prohibited market timing through these accounts. Trost, or a Prudential employee acting under his direct supervision, approved the opening of each account when Trost knew or should have known (or was reckless in not knowing) that they were opened to market time. Doerr and Corn earned commissions on deposits made by Saunders in each variable annuity.

While Saunders was engaging in market timing at Prudential, Doerr and Corn each knew or should have known (or was reckless in not knowing) that:

- Each limited partnership had common ownership;
- Each limited partnership was funded from a common source of funds;
- Each limited partnership had the same general partner;
- Each limited partnership shared a common investment strategy — market timing;
- Saunders controlled each limited partnership;
- Saunders directed the trading for each limited partnership; and
- Each limited partnership was established to expand Saunders' ability to market-time.

To assist Saunders' market-timing activities, Doerr researched the number of trades permitted by insurance companies in an effort to find additional opportunities for market timing. Doerr contacted insurance companies to identify funds through which Saunders could engage in

market timing. Based on his research of the practices of numerous insurance companies, Doerr recommended certain variable annuities for market timing.

C. Doerr and Corn Bought Variable Annuity Contracts for Limited Partnerships Controlled by Saunders, Knowing Saunders Would Market Time Through the Annuities, and Doerr, Corn, and Trost Received Numerous Communications from Insurance Companies Blocking, Rejecting, or Limiting Saunders' Market-Timing Transactions

In late 2000, Doerr and Corn began executing market-timing transactions at the direction of Saunders and others on his instructions by opening and trading in multiple variable annuity contracts with several insurance companies. As a result of the market-timing transactions, insurance companies attempted to restrict or reject Saunders' market-timing activity. Doerr, Corn, and Trost were aware of these restrictions and rejections through numerous restriction letters from insurance companies seeking to restrict or prevent future market timing by Saunders. Numerous written communications, either letters or e-mails, were sent to Doerr and Corn, and Trost reviewed many such communications. Insurance Companies H and P notified Doerr and Corn telephonically of restrictions or rejections.

In restricting or rejecting Saunders' market-timing transactions, insurance companies put Doerr and Corn on notice that market timing may harm fund shareholders, that the insurance companies or fund managers discouraged market timing, and that the companies were restricting the account, client, or broker from engaging in future market-timing activities. Trost, who reviewed restriction letters relating to Saunders' market timing through Doerr and Corn, knew that insurance companies discouraged or restricted market timing. He was aware that Prudential prohibited market timing in the PruAdvisor program, and that Saunders, through his Prudential accounts, was market timing in this program.

During the relevant period, Prudential's Compliance Department asked Trost to provide

information about any market-timing activity in the accounts opened by Saunders, the relationships between the limited partnerships, and the relationship between the hedge fund and an investment advisory firm controlled by Saunders.

On or about April 9, 2002, Trost forwarded to Doerr a request from the Compliance Department for the identity of investors in certain limited partnerships created by Saunders, and added:

Jeff, take a look at this and let's talk about the answers to these questions. I've tried to keep these guys off the radar screen of compliance but it looks like we just better deal with it. Thanks[.]

Doerr responded in part to the Compliance Department's request by stating that the limited partnerships were set up for tax and liability purposes. Trost did not understand Doerr's response, but did not seek further explanation from Doerr or others. Furthermore, despite receiving restriction notices from insurance companies about Saunders' market-timing activities, Trost did not oversee trading of variable annuity sub-accounts through the limited partnership contracts opened by Saunders, or restrict those limited partnerships from engaging in further market-timing activities.

D. Doerr and Corn Assisted Saunders in Evading Insurance Company Restrictions

Doerr and Corn assisted Saunders in employing several deceptive strategies, either alone or in tandem, to circumvent insurance company restrictions and continue market timing beyond variable annuity limits. For example, after being restricted, Saunders, through Doerr and Corn, bought new variable annuity contracts for other limited partnerships, bought new contracts with different annuitants (all of whom were employees of entities controlled by Saunders), traded in related accounts simultaneously, or bought contracts in smaller dollar amounts to avoid insurance company detection. Doerr and Corn also assisted Saunders to evade insurance company

restrictions by utilizing four separate broker identification numbers ("production numbers") — two individual and two joint numbers — to purchase variable annuity contracts. A broker production number is a number, letters, or combination of both that identifies a representative to a product provider. Through these devices, between October 2001 and September 2003, Doerr and Corn enabled Saunders to effect approximately 900 exchanges that violated insurance company restrictions or limitations. Saunders reaped approximately \$5.2 million in profits. Doerr and Corn each netted approximately \$45,000 in commissions from this activity, and stood to make more had the improper activities not been halted.

To assist in this deceptive scheme, Doerr, Corn, or their assistants acting at their direction, enabled Saunders to transfer money from variable annuity contracts that had been restricted to other limited partnership accounts so that other limited partnerships could purchase contracts to continue market-timing activities. Doerr, Corn, or their assistants acting at their direction, submitted variable annuity applications on behalf of Saunders and effected most variable annuity market-timing trades.

Doerr and Corn assisted Saunders under circumstances in which they each knew or should have known (or were reckless in not knowing) that Saunders was trying to evade restrictions on market timing through variable annuity contracts.

1. Doerr and Corn Assisted Saunders to Evade Insurance Company Restrictions by Opening New Contracts in the Name of Other Limited Partnerships

After insurance companies restricted one of the limited partnerships' trading accounts, Saunders, through Doerr and Corn, repeatedly closed the restricted account, submitted an application in the name of another limited partnership funded by proceeds from the restricted account, and commenced market-timing trades in the same variable annuities or other variable

annuities offered by the same insurance company. This maneuver was designed to evade the practice by certain insurance companies of identifying market timers by comparing information on current contracts with information on accounts that had been restricted due to market timing.

For example, in September 2002, Saunders market timed through three Insurance Company M variable annuity contracts opened in the name of three limited partnerships with the same beneficial owners — LP CE, LP JA, and LP MU. To assist this deception, Doerr and Corn used a different production number to open each contract. After each account engaged in market-timing trades, Insurance Company M, on or about September 25, 2002, issued restriction notices for each account to either Doerr or Corn, as well as directly to the accountholder. In response, Saunders surrendered the three contracts with Insurance Company M and, through Doerr, Corn, or their assistants acting at their direction, indirectly transferred the proceeds refunded by Insurance Company M to the Prudential accounts of other limited partnerships. Doerr, Corn, or their assistants acting at their direction, at Saunders' instruction, transferred approximately \$690,000 from each of two surrendered contracts — LP CE and LP JA — through other accounts and into the accounts opened by Doerr and Corn for two other LPs — LP EV and LP CY. Doerr, Corn, or their assistants acting at their direction, at Saunders' instruction, also transferred \$890,000 from the third surrendered contract — LP MU — through other accounts and into an account opened by Doerr and Corn for LP WA. LP EV, LP CY, and LP WA had the same beneficial owners as LP CE, LP JA, and LP MU.

On or about October 2, 2002, Saunders, through Doerr and Corn, opened four variable annuity contracts with Insurance Company M in the name of four other LPs — LP EV, LP CY, LP WA, and LP GE — with deposits between \$10,000 and \$12,000. Doerr and Corn used their joint production number to open two of the contracts, and each used his individual production

number to open a contract. Two days later, Saunders added between approximately \$690,000 and \$710,000 to each contract. Saunders funded the LP EV and LP CY contracts with proceeds from the LP CE and LP JA contracts, respectively, that Insurance Company M restricted on or about September 25, 2002. Saunders, through Doerr's and Corn's assistants acting at their direction, made two market-timing trades in the variable annuities through each contract until Insurance Company M issued restriction notices for each contract on or about October 10, 2002.

Saunders then surrendered all four contracts. Through Doerr, Corn, or their assistants acting at their direction, Saunders transferred proceeds from the surrendered LP CY contract to an account opened through Doerr and Corn for yet another limited partnership — LP BA — and transferred proceeds from the surrendered LP EV contract to an account opened through Doerr and Corn for LP AS. Using these proceeds from the surrendered contracts, he bought two annuities with Insurance Company M on or about October 24, 2002, one in the name of LP BA and the other in the name of LP AS. At or about the same time, he purchased a third annuity with Insurance Company M in the name of LP DU. Doerr and Corn again used a different production number to open each contract. Saunders, through Doerr's and Corn's assistants acting at their direction, market timed through each contract until Insurance Company M restricted each one on or about November 5, 2002. LP DU, LP BA, and LP AS had the same beneficial owners as the other limited partnerships used by Saunders.

2. Doerr and Corn Assisted Saunders in Using Different Annuitants to Evade Insurance Company Restrictions

After insurance companies restricted Saunders from trading in a variable annuity through one limited partnership, he often opened additional contracts in the same variable annuity in the name of the same limited partnership, but switched the name of the annuitant. On other

occasions, Saunders, through Doerr and Corn, opened two contracts in the same variable annuity in the name of the same limited partnership, but listed different annuitants. He market timed through one contract until the insurance company restricted it. He then market timed through the other contract until it, too, was restricted. This strategy was designed to ensure that he did not exceed a specific dollar limit for each annuitant, which would trigger additional review by certain insurance companies. This strategy allowed Saunders, with the assistance of Doerr and Corn, to evade detection and continue market timing despite efforts by the insurance company to limit or block that trading practice.

Doerr and Corn each knew or should have known (or were reckless in not knowing) that the annuitants listed on the contracts Saunders bought were employees of entities he controlled. Saunders used multiple annuitants to increase his market-timing capacity. He used the annuitants as nominees to hide the identity of the true investor.

For example, on or about November 13, 2002, Saunders opened two variable annuity contracts through Doerr and Corn in the same Insurance Company H variable annuity. One contract, in the name of LP AS, listed as the annuitant [REDACTED], and the other contract, in the name of LP BA, listed as the annuitant [REDACTED]. Both annuitants were employees of an entity that Saunders controlled. Saunders made two deposits totaling \$1,945,000 in one contract and two deposits totaling \$1,583,000 in the other. Corn and the assistants acting on his instructions effected multiple exchanges in the variable annuity through each contract until Insurance Company H restricted the trading in each account. On or about January 8, 2003, Saunders surrendered both contracts and transferred the proceeds into the Prudential brokerage accounts opened in the names of LP AS and LP BA.

At or about the same time, Saunders, through Doerr and Corn, deposited almost \$2

million into each of two contracts that he purchased through Doerr and Corn in the same Insurance Company H variable annuity on or about September 19, 2002. Saunders purchased these two contracts in the name of the same limited partnerships – LP AS and LP BA. But each contract listed a different annuitant. The LP AS contract listed as the annuitant [REDACTED], an employee of an entity Saunders controlled, and the LP BA contract listed as the annuitant Saunders. Through Doerr and Corn, Saunders again market-timed in both variable annuity accounts until Insurance Company H restricted each one.

3. Doerr and Corn Assisted Saunders to Evade Insurance Company Restrictions by Trading in Related Accounts Simultaneously

On several occasions, Doerr and Corn opened multiple contracts for more than one limited partnership at about the same time in the same variable annuity. This deceptive strategy allowed Saunders to engage in exponentially more market timing than if he had just opened one contract for the beneficial owner.

For example, Doerr and Corn opened six variable annuity contracts for Saunders with Insurance Company H, listing six limited partnerships as owners. On or about March 28, 2002, Saunders purchased three of the six contracts — in the names of LP EV, LP WA, and LP CY — in the Insurance Company H DA variable annuity. Approximately two weeks later, he purchased the other three contracts — in the names of LP CE, LP JA, and LP MU — in the Insurance Company H LA variable annuity. He listed a different annuitant on each of the six contracts; each annuitant worked for Saunders. All the limited partnerships had the same, common beneficial owners. Through Doerr, Corn, and their assistants acting at their direction, Saunders market timed all six accounts until the insurance company restricted each one.

After each contract had been restricted, Doerr and Corn opened six more contracts for Saunders in the name of the same six limited partnerships in the same two Insurance Company H variable annuities. Saunders listed a different annuitant on all but one contract. This time, however, Doerr and Corn purchased contracts in the names of LP EV, LP WA, and LP CY in the Insurance Company H LA variable annuity. They also bought contracts in the names of LP CE, LP JA, and LP MU in the Insurance Company H DA variable annuity. Saunders market timed through each account until again being restricted.

Insurance Company H restricted three of the six contracts on or about August 8, 2002. Saunders, through Doerr, Corn, or their assistants acting at their direction, liquidated the three contracts on or about August 16, 2002. On or about the same day, Doerr and Corn opened another six contracts for Saunders, who listed six new limited partnerships as owners — LP AS, LP BA, LP MA, LP DU, LP GE, and LP RA — that had the same beneficial owners as LP EV, LP WA, LP CY, LP CE, LP JA, and LP MU. Saunders funded the LP AS contract in part with proceeds from one of the three contracts that Insurance Company H restricted on or about August 8, 2002. He also funded one or more of the LP MA, LP GE, and LP RA contracts in part with proceeds from another of the three contracts restricted by Insurance Company H on or about August 8, 2002. Doerr and Corn opened four contracts in the Insurance Company H DA variable annuity, and two in the Insurance Company H LA variable annuity. A different annuitant was listed on each contract. Saunders market timed through each account until being restricted.

4. Doerr and Corn Assisted Saunders by Purchasing Contracts in Relatively Small Dollar Amounts to Circumvent Insurance Company Restrictions

Certain insurance companies refused some of the variable annuity applications Doerr and Corn submitted for Saunders, citing concerns about market timing with large dollar amounts. To

circumvent such restrictions, Doerr and Corn submitted applications for Saunders in much smaller dollar amounts than the amounts accompanying the applications that the insurance companies refused. Once the insurance company accepted the applications, Doerr, Corn, or their assistants acting on their instructions transferred monies totaling up to almost 200 times the account-opening balance into the variable annuity accounts to allow Saunders to market-time on a grander scale. Doerr and Corn compounded this deceptive strategy by using different production numbers to enhance Saunders' ability to evade insurance company restrictions.

Doerr and Corn repeatedly employed this strategy for Saunders with Insurance Company P. In October 2001, Doerr and Corn opened four variable annuity contracts for Saunders with Insurance Company P in the name of four limited partnerships – LP CE, LP CY, LP JA, and LP MU. Doerr and Corn opened two of the contracts under their joint production number, one under Doerr's number, and one under Corn's number. Saunders market-timed through each of the contracts until May 2002, when the insurance company restricted each contract for using the 25 allotted trades in calendar year 2002. Insurance Company P notified Doerr and Corn via a telephone call of the restrictions. These trades, totaling approximately 156, exceeded the limits in Insurance Company P's variable annuity prospectus.

In late July 2002, Doerr and Corn submitted for Saunders three variable annuity contracts to Insurance Company P in the name of three other limited partnerships – LP AS, LP BA, and LP DU. For each contract, Doerr and Corn used a production number — ■■■ — assigned to Doerr, Corn, and another registered representative. Doerr and Corn, at Saunders' direction, deposited between \$870,000 and \$890,000 in each contract. Insurance Company P rejected all three contracts in part because of the large initial purchases. Insurance Company P informed Doerr via a telephone call of its decision not to accept the three contracts.

Approximately one month later, Doerr and Corn submitted new variable annuity applications to Insurance Company P for the same three limited partnerships. Doerr and Corn submitted two of the contracts using the [REDACTED] production number, and the third using Corn's number. These contracts were funded with substantially less money — \$40,000, \$250,000, and \$300,000 — to open each contract. Insurance Company P accepted two of the three applications. It rejected the third, submitted under the [REDACTED] production number, based upon previous market timing. Shortly thereafter, Doerr and Corn submitted another variable annuity application — funded with \$46,000 — to Insurance Company P in the name of another limited partnership, LP MU, and using Doerr's production number. This time, Insurance Company P accepted the application.

After the applications were accepted, Doerr and Corn transferred between \$428,000 and \$706,000 into each account. Although one contract was opened under the [REDACTED] production number, the second under Doerr's number, and the third under Corn's number, all commissions from sub-payments into the contracts were allocated to Doerr and Corn jointly. Saunders, through Doerr, Corn, and their assistants acting at their direction, proceeded to market-time through the accounts in 2002 and 2003, and made a total of approximately 108 exchanges in the three accounts, in the aggregate well beyond the prospectus limits.

Likewise, Doerr and Corn employed a similar strategy with Insurance Company H. Saunders, through Doerr and Corn, purchased two variable annuity contracts in the same Insurance Company H variable annuity on or about September 19, 2002. Each contract — one in the name of LP AS and the other in the name of LP BA — was funded with a \$10,000 deposit.

Several months later, Insurance Company H restricted two other contracts that Saunders opened through Doerr and Corn in the same Insurance Company H variable annuity. These two

restricted contracts — one in the name of LP AS and the other in the name of LP BA — were funded with between \$1.5 million and \$2 million. On or about January 8, 2003, Saunders surrendered both contracts and transferred the proceeds into the brokerage accounts opened in the names of LP AS and LP BA. At or about the same time, Saunders deposited \$1,996,500 into the LP BA contract, and \$1,977,000 into the LP AS contract, each opened on or about September 19, 2002 with a \$10,000 deposit. Saunders, through Doerr and assistants acting at their direction, proceeded to market-time through each account until Insurance Company H restricted each one.

E. Trost Failed to Adequately Supervise Doerr and Corn

As the manager of the Salt Lake City branch office during the relevant period, Trost was Doerr's and Corn's supervisor. He received an override on revenue generated by the branch office. Trost knew or should have known (or was reckless in not knowing) that Doerr and Corn received numerous restriction letters seeking to halt their client's market-timing activities. Trost, in fact, received restriction letters from certain mutual fund companies that were directed to him personally. Trost also knew or should have known (or was reckless in not knowing) that Prudential prohibited market timing in the PruAdvisor program, and was aware that Saunders was market timing through PruAdvisor accounts. Trost also knew or should have known (or was reckless in not knowing) that Saunders opened numerous accounts for limited partnerships that shared common ownership. Trost knew or should have known (or was reckless in not knowing) that Saunders transferred assets between the limited partnership accounts.

Much of Doerr's and Corn's activity in servicing the accounts opened by Saunders to engage in market timing was done with Trost's knowledge and approval, even though he knew or should have known (or was reckless in not knowing) that the PruAdvisor program expressly

prohibited market timing. Prudential's Compliance Department communicated this prohibition through an e-mail to Trost, dated October 3, 2002, that said:

In July of 1999 you were informed that aggressive trading, more commonly known as market timing, is not allowed in the PruChoice Program. . . . Please note, this prohibition also applies to the Target & PruAdvisor Programs.

That e-mail continued:

Branch managers who allow FAs [Financial Advisors] to circumvent the [no-market-timing] policy (*ie.* [sic], open same account with new FA # and/or open a new account for the same client once account is closed, due to violation, to facilitate these trades) will also be subject to disciplinary actions.

Trost forwarded this e-mail to Doerr and Corn on or about October 4, 2002.

Trost failed to respond adequately to a request by Prudential's Compliance Department to determine the identity of the investors in the limited partnerships. Doerr responded in part to the request by stating that the limited partnerships were set up for tax and liability purposes. Trost did not understand Doerr's response and did not ask Doerr or others for an explanation. Trost also failed to respond adequately to a request by Prudential's Compliance Department to determine why the limited partnerships were holding annuities, and determine the identities of the holders of the annuities. At Trost's request, Doerr responded in part that the limited partnerships were investment partnerships that employed asset allocation techniques. Trost did not understand Doerr's response.

Trost also failed to respond adequately to a request by Prudential's Compliance Department when confronted with questions arising from a "large account review" of certain limited partnerships. Specifically, Trost told the Compliance Department that multiple accounts were being used by Saunders because the accounts used different investment strategies. Trost made that representation to the Compliance Department even though he knew that the accounts were frequently trading mutual funds.

F. Wachovia Forbids Doerr and Corn from Facilitating Saunders' Market Timing through Variable Annuities; Doerr and Corn End Their Relationship with Entities Controlled by Saunders

In August 2003 — less than two months after the consummation of the joint venture between Prudential and Wachovia — Wachovia prohibited Doerr and Corn from purchasing annuities on behalf of limited liability corporations. A Wachovia official informed Doerr and Corn of this restriction through an e-mail, dated August 18, 2003, that said:

Home office view — this type of trading is not going to be allowed. These investors have not shown they can live within the trading restrictions of a mutual fund, annuity or consulting...products.... Annuities are designed for long-term retirement savings and this money is clearly not that. The investors don't care about tax deferral or other annuity features. This could be a problem with regulators....

... This activity causes too much of a concern on many levels and we will be unable to approve.

The Wachovia official, through an e-mail to Doerr and Corn, dated August 20, 2003, reiterated the firm's position:

Jeff and Dave, I received your voice mail from yesterday and I want to make our decision on this group and this type of business very clear. It doesn't matter if we could run the trade or not. This client, and ones like them, are not approved for sales into annuities. An annuity is not a suitable investment for an LLC, annuities are long-term retirement savings vehicles, and this client, and other [sic] like them, are doing these trades for one reason, to get access to the international funds so they can trade them. This client has been engaging in this activity for over 3 years and has been kicked out of 30-40 mutual funds and all the annuities on the Pru platform. We are not going to allow this activity to continue.

Corn forwarded both e-mails to Trost on or about August 20, 2003.

After receiving these e-mails, Doerr and Corn did not buy any variable annuity contracts on behalf of Saunders. They terminated their relationship with entities controlled by Saunders in September 2003. By October 2003, all of Saunders' accounts with Wachovia were closed.

G. Respondents Failed to Timely Update their Forms U-4 to Reflect Receipt of Wells Notifications

On or about February 2, 2005, then-NASD staff delivered a Wells notification orally, which was confirmed in writing, to Doerr, Corn, and Trost, through their counsel. The Wells notification put each individual on notice that he was the subject of an investigation by the Department (which culminated in the filing of this complaint), and that the Department had made a preliminary determination to recommend that formal action be brought against him.

NASD By-Laws, Article V, Section 2(c) required that:

Every application for registration filed with the NASD shall be kept current at all times by supplementary amendments via electronic process or such other process as the NASD may prescribe to the original application. Such amendment to the application shall be filed with the NASD not later than 30 days after learning of the facts or circumstances giving rise to the amendment.

The Wells notification triggered an obligation of Doerr, Corn, and Trost to each update his Uniform Application for Securities Industry Registration or Transfer (Form U-4) to reflect that he was the subject of an investigation that could result in a “yes” answer to any part of question 14G of the Form U-4. Doerr, Corn, and Trost each was required to update his Form U-4 to reflect his Wells notification by March 4, 2005 — 30 days after February 2, 2005. Counsel to Doerr, Corn and Trost notified a senior lawyer in Wachovia’s Legal Department of the Wells notice on February 3, 2005 and February 7, 2005. Counsel met in person with senior members of Wachovia’s Legal Department on February 16, 2007 about the Wells notice, but Respondents did not notify the firm’s Compliance Registration Department, as required by firm procedures. Doerr, Corn, and Trost each failed to timely update his Form U-4, and only did so on or about October 12, 2005 — over seven months after they were required to have done so, and after having been prompted by NASD staff.

Based on the foregoing:

1. Doerr and Corn, in the conduct of their business, failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of NASD Rule 2110, by actively assisting Saunders' improper attempt to disguise his market-timing activity from insurance companies, continue market timing through variable annuities, and thereby successfully evade attempts by insurance companies to block the trading activity. Such conduct was unfair to insurance companies and investors in the variable annuities through which Saunders market-timed.

2. Trost failed to supervise adequately the activities of Doerr and Corn with a view to preventing their violation of NASD Rules and violated NASD Rules 3010(a) and 2110.

3. Doerr, Corn, and Trost violated NASD By-Laws, Article V, Section 2(c) and NASD Rule 2110 by failing to timely update their Forms U-4 to reflect receipt of Wells notifications.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter each Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that:

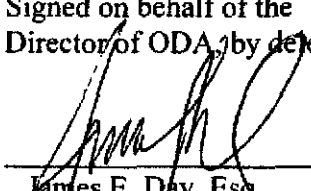
- A. **Jeffrey L. Doerr** and **David M. Corn** each be suspended from acting in any and all capacities with any member firm for five (5) months; and each pay a fine in the amount of \$70,000, which includes the disgorgement of commissions received of \$45,000. The fine shall be due and payable either immediately upon re-association with a member firm following the five-month suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.
- B. **Darrel L. Trost** be suspended from acting in a principal capacity with any member firm for two (2) months; and pay a fine in the amount of \$25,000. The fine shall be due and payable upon notice that this Offer has been accepted and that such payments are due and payable.

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

SO ORDERED.

FINRA

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



James E. Day, Esq.
Chief Counsel