STATE OF NEW JERSEY
BUREAU OF SECURITIES
P.O. Box 47029
Newark, New Jersey 07101
(973)504-3600

IN THE MATTER OF:	
CHRISTOPHER CHUNG; KEVIN BRUNNOCK; and WILLIAM SAVINO	**ADMINISTRATIVE COMPLAINT**
RESPONDENTS.	

Pursuant to the authority granted to the Chief of the New Jersey Bureau of Securities by the Uniform Securities Law (1997) N.J.S.A. 49:3-47 et seq. (the "Securities Law"), and based upon the Bureau Staff's investigation of the trading activities of certain individuals in purchasing, exchanging and redeeming mutual funds and/or the mutual fund sub accounts of variable annuity products, it appears that certain persons have violated the Securities Law, and therefore, this Administrative Complaint is being filed and served: to apprise those persons of the appearance of those violations; to afford them the opportunity to respond fully thereto, through counsel or on their own behalf; and to make a final determination as to whether violations have, in fact, occurred in which event it is anticipated that the sanctions provided for violations of the Securities Law,

including civil monetary penalties and revocation of registration, will be imposed.

PARTIES

1. The Bureau Chief is the principal executive of the New Jersey Bureau of Securities ("Bureau").

2. The Bureau is a state regulatory agency charged with the administration of the Securities Law.

3. Respondent Christopher Chung ("Chung") is a resident of the State of New Jersey. Chung was employed as a registered agent of UBS PaineWebber Inc. ("UBS/PaineWebber") from October 27, 2000 until January 4, 2002, and was a registered agent of Merrill Lynch Pierce Fenner & Smith Incorporated ("Merrill Lynch") from January 4, 2002 until October 3, 2003. Chung was last registered with the Bureau as an agent of Gilford Securities, Inc. located at 850 Third Avenue, New York, New York, from January 5, 2004 until December 1, 2004.

4. Respondent Kevin Brunnock ("Brunnock")is a resident of the State of New Jersey. Brunnock was employed as a registered agent of UBS/PaineWebber from December 9, 1996 until January 4, 2002, and was a registered agent of Merrill Lynch from January 4, 2002 until October 3, 2003. Brunnock was last registered with the Bureau as an agent of Gilford Securities, Inc. located at 850 Third Avenue, New York, New York, from January 5, 2004 until December 1, 2004.

5. Respondent William Savino ("Savino") is a resident of the State of New Jersey. Savino was employed as a registered agent of UBS/PaineWebber from May 2, 1997 until January 4, 2002, and was a registered agent of Merrill Lynch from January 4, 2002 until October 3, 2003. Savino was last registered with the Bureau as an agent of Gilford Securities, Inc. located at 850 Third Avenue, New York, New York, from January 5, 2004 until December 1, 2004.

6. Chung, Brunnock and Savino were collectively known as the "CBS Group" while employed at Merrill Lynch.

RELATED PARTIES

7. Millennium Partners, L.P. ("Millennium") is a limited partnership organized and existing under the laws of the State of Delaware, with its main office at 666 Fifth Avenue, New York, New York.

8. At all relevant times, Millennium was a hedge fund, which used multiple accounts, undisclosed agreements and representatives at UBS/PaineWebber and Merrill Lynch to market time mutual funds, either through brokerage accounts at UBS/PaineWebber and Merrill Lynch, directly at the funds themselves or through variable annuity or Corporate Owned Life Insurance ("COLI") products.

9. Steven Markovitz ("Markovitz"), a resident of New York State, was at all relevant times a head trader at Millennium

responsible for the trading activities of mutual funds and annuities through Chung, Brunnock and Savino and other representatives of UBS/PaineWebber and Merrill Lynch. On October 2, 2003, Markovitz plead guilty to securities fraud in the State of New York for late trading of mutual funds.

10. Merrill Lynch is a broker dealer registered with the Bureau, and organized and existing under the laws of the State of Delaware, with principal offices at Four World Financial Center, New York, New York and additional offices located throughout the State of New Jersey, among other states.

11. UBS Financial Services Inc., formerly known as UBS PaineWebber Inc., is a broker dealer registered with the Bureau, and organized and existing under the laws of the State of Delaware, with principal offices at 1285 Avenue of the Americas, New York, New York and additional offices located throughout the State of New Jersey, among other states.

BACKGROUND

12. Mutual funds are priced once a day, at 4:00 p.m. EST, at their net asset value ("NAV"). The NAV reflects the closing price of the securities that comprise a fund's portfolio, plus the value of any cash maintained for the fund, divided by the number of outstanding shares. Mutual funds are generally regarded as long-term investments. Despite this, "market timers"

attempt to frequently trade in and out of mutual funds to exploit market conditions.

13. A variable annuity is a contract between an investor and an insurance company. The investor may choose various investment options. The value of the investment will depend on the performance of the investment options underlying the annuity contract. The investment options are typically mutual funds that invest in stocks, bonds, money market instruments, or a combination thereof. Although variable annuities are typically invested in mutual fund sub accounts, which mirror the mutual funds available to retail investors, any capital gains from the variable annuity exchanges are tax-deferred until the investment is withdrawn. Many insurance companies offering variable products allow the annuitant or a Series 6 or 7 licensed broker to effect trades or exchanges from one mutual fund to another, subject to exchange restrictions. Therefore, like mutual funds, variable annuities can fall victim to market timers.

14. Market timing is an investment technique involving short-term, "in and out" trading, through purchases, exchanges or redemptions, in a mutual fund, variable annuity or any other product that has mutual funds as the underlying investment vehicle. Market timing works to the detriment of long-term shareholders in that: (a) market timing dilutes the value of the fund by allowing the timer to siphon short-term profits from the

fund, (b) market timing may add to the transactional costs of the fund because of more frequent purchases and sales, (c) the fund may realize untimely taxable capital gains, and (d) market timing may result in managers having to sell stock into a falling market. When money is not invested, but is held in cash, the fund's shareholders are deprived of being fully invested in an appreciating stock market. For this reason, mutual fund prospectuses typically state that timing is monitored, and the funds may sometimes take action to prevent such activity.

15. Mutual fund companies earn fees based on the amount of money under management or invested in their funds. In some instances, financial advisors ("FAs") such as the CBS Group, have offered to place long-term investments in order to gain the ability to market time the funds. These long-term investments, designed to obtain trading capacity, are referred to as sticky assets.

16. In order to facilitate their mutual fund trading strategies, the CBS Group engaged in a course of conduct which acted as a fraud or deceit on mutual fund companies and their long-term shareholders. This conduct included offering mutual fund companies inducements in the form of sticky assets in exchange for timing capacity, utilizing multiple accounts for the same client to split up trades and "fly under the radar" of the mutual funds and journaling fund positions between the broker

dealer and the funds and the accounts held at the funds and the broker dealer, in order to avoid fees and gain additional capacity.

FACTUAL ALLEGATIONS

17. From 2000 to 2003, the CBS Group engaged in multiple fraudulent schemes involving short-term trading of mutual funds on behalf of Millennium. These schemes benefitted Chung, Brunnock, Savino, their employers, and Millennium.

A. The Activity of the CBS Group at UBS/PaineWebber

18. In late 2000, while employed with UBS/PaineWebber, Chung was introduced to Markovitz and the type of mutual fund trading strategies that Markovitz implemented on behalf of Millennium. Shortly thereafter, Markovitz moved Millennium's money to UBS/PaineWebber for Chung to begin trading.

19. Millennium's strategies included the short-term trading of the mutual fund sub accounts inside variable annuities and COLI. Chung partnered with another UBS/PaineWebber representative, Savino, who had an expertise with insurance products.

20. Chung and Savino were joined by Brunnock in 2001. While employed with UBS/PaineWebber, Chung, Savino and Brunnock established 31 different accounts on behalf of Millennium that traded in mutual funds for Millennium's benefit. The accounts utilized two branch prefixes and were identified with a distinct

account number, a customer name, which was a variation of four different names, and one of four different broker identification numbers. These multiple account variations were established to gain timing capacity to benefit Millennium, and to engage in market timing.

21. As of October 2001, at least 672 trades were rejected by mutual funds based on the CBS Group's market timing activity in the multiple accounts.

22. Chung and Savino knew their trading activity on behalf of Millennium was found to be disruptive to the funds they traded and that many funds sought to detect and stop this activity in order to protect the interests of their long-term shareholders.

23. In order to gain trading capacity in its funds, Chung and Savino offered and entered into a sticky asset agreement with Investec Asset Management US Limited ("Investec").

24. Prior to its dealings with Chung and Savino, Investec was not fully familiar with the potential harmful and disruptive effects that short-term trading could impose on Investec's funds.

25. On August 16, 2001, Chung and Savino, as agents of UBS/PaineWebber, and representatives of Investec executed a trading agreement, which provided that Chung and Savino would place sticky assets with Investec and Investec would allow Chung and Savino to engage in short-term trading in certain Investec funds. The agreement required the sticky assets to remain

invested as long as the agreement was in place. (**Exhibit 1**) (Exhibits are submitted as an Appendix to the Complaint and are incorporated by reference.)

26. The agreement with Investec ended in mid-December 2001 at which time management at Investec urged that Investec stop dealing with Chung and Savino because the trading was causing major problems with the fund managers and shareholders of the funds.

27. The offer of sticky assets by Chung and Savino as agents of UBS/PaineWebber and in connection with their representation of Millennium, was an attempt by them to induce Investec to defer the responsibility it owed to the long-term shareholders of Investec's funds in favor of the fees earned from the relationship with Chung and Savino.

28. In approximately one year of trading on behalf of Millennium, the CBS Group placed 12,953 trades in more than 350 different mutual funds on UBS/PaineWebber's system. In at least 243 of these funds, Millennium earned total profits of $25 million. The CBS Group also placed trades in at least 31 different mutual fund sub accounts, through at least 15 different variable annuity contracts on behalf of Millennium. In at least 27 of the sub accounts, Millennium earned total profits of $4.5 million.

29. Among the 12,953 trades in mutual funds, between June 20, 2001 and November 20, 2001, the CBS Group placed 64 transactions through 22 different Millennium accounts in the Smith Barney International Fund yielding profits of more than $3.5 million. The CBS Group placed 165 transactions through 16 different accounts for the same client in the Invesco European Fund between March 22, 2001 and December 20, 2001, yielding profits of more than $1.1 million. This activity at Invesco earned the CBS Group the reputation among Invesco employees as "investment terrorists."

30. As a result of all of the trading at UBS/PaineWebber on Millennium's behalf, the CBS Group earned more than $10 million.

31. By December 2001, UBS/PaineWebber advised its market timing representatives that their existing accounts that conducted market timing and which utilized the support of the UBS/PaineWebber "Market Timing Desk" located in Jersey City, New Jersey, would be transferred out of UBS/PaineWebber by February 2002.

32. During the same period of time, the CBS Group sought employment at Merrill Lynch to continue market timing on behalf of Millennium.

33. At Merrill Lynch, the CBS Group's activities would be less visible to fund companies with which the CBS Group attempted

to trade because the CBS Group changed broker dealer affiliation, opened new trading accounts having different names and numbers, and were assigned a new rep number.

B. Market Timing at Merrill Lynch

34. Since 1999, Merrill Lynch has had a policy prohibiting market timing in accounts held at Merrill Lynch. (**EXHIBIT 2**)

35. Notwithstanding Merrill Lynch's market timing policy, from January 2002 until September 2003, the CBS Group, as agents of Merrill Lynch, engaged in the short-term trading of mutual funds on behalf of Millennium, which posed a risk of harm to long-term shareholders of the funds in which the CBS Group traded.

36. The CBS Group and their Client Associates ("CAs") engaged in a myriad of deceptive practices designed to effectuate short-term trading of mutual funds and variable annuity products from the time they became employed at Merrill Lynch in January 2002, until Chung, Brunnock and Savino were terminated from employment on October 3, 2003, the day after Markovitz plead guilty to securities fraud for the late trading of mutual funds.

1. The CBS Group Deceived Merrill Lynch

37. On or about October 2001, while at UBS/PaineWebber, most of Millennium's multiple accounts were frozen at numerous funds, causing the CBS Group increased difficulty in trading Millennium's 31 accounts. The CBS Group and Markovitz both

recognized that UBS/PaineWebber was exiting the market timing business. In order to continue trading on behalf of Millennium, the CBS Group would have to seek employment at another firm.

38. In November 2001, Savino called Daniel Boland ("Boland"), the Resident Manager ("RM") at Merrill Lynch's Fort Lee, New Jersey branch office, one of three branch offices within the Paramus Complex of Merrill Lynch. On the call, Savino represented that: (a) the CBS Group had a large client base and book of business that it wanted to bring to Merrill Lynch from UBS/PaineWebber; (b) the CBS Group collectively were $10 million producers; and (c) Savino and Chung were the #9 and #7 producing FAs, respectively, at UBS/PaineWebber.

39. After this call, Boland immediately contacted Curtis Brown ("Brown"), the Managing Director of the Paramus Complex, and Brown's supervisor, Andrew Williams ("Williams"), the Regional Managing Director. Soon thereafter, Brown and Boland arranged for a dinner meeting with the CBS Group to learn more about the CBS Group's business.

40. At the meeting, the CBS Group presented a "pitch book" which described the type of business it conducted and contained representations that the CBS Group had 900 clients and a "diversified clientele and business." It did not disclose any reference to market timing. (**EXHIBIT 3**)

41. During recruitment by Merrill Lynch, the CBS Group identified its business as strategic or tactical asset allocation, but made no mention of market timing.

42. During the entire relationship with Merrill Lynch, the CBS Group failed to disclose and otherwise concealed from Merrill Lynch: (a) that while at UBS/PaineWebber, hundreds of trades were rejected for "market timing," (b) documents the CBS Group had created that clearly identified the nature of its business, including a mutual fund matrix identifying the funds where it had "timing money," a "timing deal," a "trading agreement," a "deal involving ... sticky and moving assets" or "4-5 round turns per month," and contacts at the funds (**EXHIBIT 4**); and (c) a document, titled "UBS and Millennium," that the CBS Group had created that categorized its business "timing" and "non-timing." (**EXHIBIT 5**)

43. By mid-December 2001, the CBS Group and Merrill Lynch had agreed on compensation terms.

44. On December 26, 2001, Millennium liquidated its 31 UBS/PaineWebber accounts and transferred them to Merrill Lynch.

45. When the CBS Group moved to Merrill Lynch, the names of the 31 accounts were changed to make its activity less detectable to the fund companies.

46. During its transition from UBS/PaineWebber to Merrill Lynch, the CBS Group made a $5 million purchase in the John

Hancock Funds on December 31, 2001 (while employed at UBS/PaineWebber), and redeemed the position on January 7, 2002, after the position was held for five business days (while employed at Merrill Lynch). At the time of its purchase, Savino misrepresented to the John Hancock Funds that this was a long-term investment. (**EXHIBIT 6**) Merrill Lynch was not aware of the CBS Group's participation in these transactions.

2. Trading Strategy and Revenues at Merrill Lynch

47. The CBS Group utilized more than 60 accounts at Merrill Lynch for the purpose of trading mutual funds on behalf of Millennium. Additionally, the CBS Group traded in at least another 30 variable annuity contracts for Millennium, 19 of which were set up at Merrill Lynch. The CBS Group utilized the multiple accounts and contracts to frequently trade and obtain trading capacity for Millennium.

48. The CBS Group placed a total of 9,274 trades through Merrill Lynch's system, directly with the mutual funds or annuity companies, 6,104 of which were mutual fund trades and 3,170 of which were in the mutual fund sub accounts of variable annuities, all on behalf of Millenium.

49. After 21 months of mutual fund trading strategies, the CBS Group, as agents of Merrill Lynch, brought gross revenues of nearly $12 million to Merrill Lynch.

3. The First Quarter of 2002

50. The CBS Group became employed by Merrill Lynch on January 4, 2002. The CBS Group placed its first trades for Millennium through Merrill Lynch on January 10, 2002, using Merrill Lynch's house account identification number. The CBS Group placed trades using its own broker identification number beginning on January 14, 2002. Between January 10, 2002 and April 26, 2002, the CBS Group placed over 3,700 mutual fund trades on behalf of Millennium.

51. On January 24, 2002, counsel for Financial Data Services, Inc. ("FDS"), Merrill Lynch's transfer agent in Jacksonville, Florida, notified Merrill Lynch that the John Hancock Funds were rejecting a trade by the CBS Group because the CBS Group, while at UBS/PaineWebber, had been identified by the John Hancock Funds as a market timer. John Hancock Funds had advised the CBS Group at that time that John Hancock Funds would no longer accept business from them.

52. Millennium's transactions were placed in a Merrill Lynch Unlimited Advantage ("MLUA") platform, a wrap account for which Merrill Lynch charged a fee based upon a percentage of the assets managed for the client. The FAs were paid part of the fee paid to Merrill Lynch.

53. The MLUA agreement stated that MLUA was not to be used

for day trading or other extreme trading activity, including excessive trading based on market timing.

54. February 2002 was Millennium's most active month of short-term mutual fund trading at Merrill Lynch. The CBS Group placed 1,803 trades on behalf of Millennium, many of which were held for less than five business days.

55. By mid-February 2002, the CBS Group's short-term trading had ignited issues with Compliance and the Private Client Group at Merrill Lynch. Williams and Brown met with the CBS Group and Markovitz to better understand the trading activity.

56. At the meeting, the CBS Group assured Williams, Brown and Compliance that the CBS Group had trading arrangements with a number of mutual fund companies.

57. Following the meeting with the CBS Group and Markovitz, and in response to a mutual fund's market timing notification, Williams sent an email to the CBS Group complaining about the email threads that caused the mutual fund and compliance department to become concerned about the impact on the overall selling agreement. Williams requested a matrix of the CBS Group's trading arrangements with the mutual funds.

58. The CBS Group did not provide Williams with the matrix he requested, although the CBS Group had created a similar matrix while employed at UBS/PaineWebber. (**EXHIBIT 4**)

59. Williams sent a follow up request for the matrix two weeks after his first request, but was ignored. The CBS Group affirmed verbally that such trading arrangements existed with the mutual funds, but did not produce the documentation requested by Williams, which evidenced such arrangements.

60. Throughout the balance of February 2002, Merrill Lynch was contacted by nine mutual fund companies who alerted it to market timing by the CBS Group in several Millennium accounts, rejections of trades and bans on future market timing transactions.

61. In March 2002, Millennium placed an additional 458 trades through the CBS Group on Merrill Lynch's systems using various accounts.

62. The CBS Group's splitting up of the trades between accounts enabled Millennium to gain capacity. The reduced size of each transaction made it less likely that a mutual fund would detect or stop the activity.

63. On April 26, 2002, Merrill Lynch's Office of General Counsel ("OGC") sent an email to Compliance, the District, the Paramus Complex, the branch and the CBS Group, which stated that per National Sales Manager Daniel Sontag and Compliance, the CBS Group must cease any and all market timing activity and exchanges of mutual funds, and that it could accept only liquidating orders from Millennium Partners. (**EXHIBIT 7**)

64. The business activity generated from the CBS Group's market timing activity was a significant reason why the Paramus Complex was ranked #1 in the country in the first quarter of 2002 at Merrill Lynch.

4. The CBS Group's "Arrangements" With Mutual Funds

65. The CBS Group sought exceptions from Merrill Lynch's market timing policy where the CBS Group claimed they had specific arrangements with the mutual fund companies to allow the CBS Group to engage in short-term trading. Merrill Lynch spent most of May 2002 examining whether exceptions to Merrill Lynch's market timing policy could be made for the CBS Group.

66. At the end of May 2002, Merrill Lynch decided not to make any exceptions to Merrill Lynch's market timing policy or the terms of its dealer agreements with the mutual funds.

67. Notwithstanding this decision, Chung and Savino entered and sought to enter into market timing agreements with various funds while employed by Merrill Lynch. Chung and Savino used sticky assets and other forms of compensation in entering, and attempting to enter, these arrangements as a *quid pro quo* to induce the funds to give the CBS Group trading capacity.

(a) Investec

68. In February 2002, the CBS Group advised its supervisors in the Paramus Complex about the agreement the CBS Group had with Investec while employed at UBS/PaineWebber, and the CBS Group

proposed to enter into another agreement with Investec while the CBS Group was employed by Merrill Lynch.

69. The agreement executed by the CBS Group at UBS/PaineWebber with Investec specifically permitted Chung and Savino to trade 5% of any nine Investec funds, and make 2.6 round-trips per month in each fund. The agreement provided that the CBS Group would invest sticky assets in one of Investec's bond funds in an amount equivalent to the CBS Group's investment of market timing money in Investec funds. The sticky asset was required to remain invested as long as the agreement was in place. (**EXHIBIT 1**)

70. In March 2002, the CBS Group shared with Brown, a draft of the "Trading Agreement" that it sought to establish between Merrill Lynch and Investec. (**EXHIBIT 8**)

71. The terms of this agreement were similar to those of the executed UBS/PaineWebber agreement, except that the total trading capacity sought by the CBS Group at Investec was $70 million and the total "Sticky Investment" offered to Investec was $42 million. The agreement also stipulated that redemptions out of the funds would be switched into the U.S. Money Fund and all interest would be retained by Investec Asset Management.

72. In June 2002, Savino emailed Markovitz, with a subject line that read "CHUNGMAN Investec Trading Agreement," referring to a draft of an Investec agreement with Millennium. Savino

wrote in the email that he "negotiated them down to 50/50 (sticky vs. trading)." (**EXHIBIT 9**)

73. The CBS Group, as agents of Merrill Lynch, became involved in negotiating an unlawful arrangement for a Merrill Lynch client.

74. Investec did not enter into the agreement with Merrill Lynch or the CBS Group.

(b) Mainstay

75. The CBS Group entered into a market timing agreement with an external wholesaler of the Mainstay Funds in February 2002. This market timing arrangement in Mainstay's High Yield Fund allowed the CBS Group trading capacity of $5 million and 12 round trips per year in the Mainstay Funds. (**Exhibit 10**)

76. The 12 round trips exceeded that permitted by Mainstay's prospectus, which limited trading to four exchanges per year.

77. The Mainstay High Yield Fund was the fund that the CBS Group traded in most frequently on behalf of Millennium. The CBS Group made a total of 151 trades both at Merrill Lynch and directly with the fund, which yielded a profit for Millennium of almost $2 million.

(c) Invesco

78. Starting in June 2002 and ending in May 2003, the CBS Group entered into a "special situation" timing arrangement with

the Invesco funds through Invesco's external wholesaler and market timing police. The agreement with Invesco allowed the CBS Group three to four round trips per month in Invesco funds, and trading capacity of $2 million, in exchange for sticky assets of $1 million. These sticky assets were funded through a Merrill Lynch account set up for this specific purpose.

79. In March 2002, the CBS Group expressed an interest through an external wholesaler of Invesco for a "2 to 1" sticky assets arrangement. Invesco was initially hesitant to take this business because of the CBS Group's prior trading activity at UBS/PaineWebber, where Invesco referred to the CBS Group as "investment terrorists." Invesco's views changed soon thereafter, when the CBS Group offered Invesco a $60 million sticky asset investment in its European Fund. If placed, the sticky asset would have generated substantial fees to Invesco.

80. Throughout April 2002, conversations and negotiations between Invesco's external wholesaler, the market timing police and the CBS Group took place to determine what type of business the CBS Group was doing, and how to set up the various investments. In a telephone conversation between Invesco and Chung, Invesco asked Chung how much money the CBS Group would be trading. Chung responded that "CBS is extremely flexible, because 10 funds with $500,000 (of capacity) in each, is still $5 million to them." Chung explained that the CBS Group wanted to

make it worth Invesco's while to give the CBS Group exclusivity, that the CBS Group could do that by supporting the external wholesaler with long-term assets placed in Invesco funds and provide total assets of another $30-$50 million if Invesco wanted them. Chung requested that Invesco characterize the CBS Group's activity as "trend following asset allocation," if Invesco communicated with Merrill Lynch. Throughout April and May 2002, Invesco and the CBS Group could not agree on the funds acceptable for the CBS Group's trading.

81. In mid-June 2002, Chung and Savino discussed with Invesco's market timing police how the CBS Group's trading model and activity worked. Chung explained that the CBS Group had four piles of money totaling several billion dollars of which several hundred million dollars was high velocity money (money for short-term trading activity), which the CBS Group liked to trade four to five round trips per month. Chung also explained that the CBS Group had low velocity money (sticky assets), which Chung described as "the gold money on the Street that everyone wants" and that the CBS Group had it to use in exchange for giving the CBS Group "the privilege of moving money." Savino explained that the CBS Group wanted the long-term sticky assets to be placed at Invesco through a Merrill Lynch account, and to place the trades directly through the client, Millennium.

82. Invesco requested a written proposal from Chung and Savino explaining the CBS Group's business, its trading model and activity.

83. In early July 2002, the CBS Group responded to Invesco's request with a memo outlining its trading. After reviewing it, Invesco asked the CBS Group to revise the memo because it did not address the sticky assets investment. The CBS Group complied with the request. (**EXHIBIT 11**)

84. In early September 2002, Invesco approved the arrangement with the CBS Group at Merrill Lynch and allowed the CBS Group to do as many as three to four round trips per month in Invesco funds, although the prospectuses restricted trading to four exchanges out of a fund per year.

85. The CBS Group requested that the terms of the agreement with Invesco be through a verbal communication only. Following that instruction, Invesco's market timing police and external wholesaler discussed the agreement terms in a telephone call, including the number of round trips the CBS Group could make and the $2 million in timing capacity that would be allowed the CBS Group in exchange for a $650,000 sticky assets investment.

86. The CBS Group surprised Invesco by placing a $1 million sticky assets investment with Invesco rather than $650,000, and explained that if it could get capacity in Invesco's offshore

fund, the CBS Group would be willing to place $50 million in sticky assets with Invesco's offshore fund.

87. The CBS Group began short-term trading in the Invesco European Fund through Merrill Lynch's books on September 6, 2002, and exchanged out of that position four days later. The CBS Group's next purchase in the European Fund was on October 8, 2002, which was exchanged out six days later, yielding a profit of more than $240,000. The CBS Group's final purchase through Merrill Lynch's system in the European Fund was on October 23, 2002. The next day, the CBS Group exchanged out of that fund with a $52,000 profit. The CBS Group transferred this position out of Merrill Lynch and placed all future trades directly at Invesco, bypassing Merrill Lynch.

88. Millennium's profit in the European fund from trading by the CBS Group, both at Merrill Lynch and away from Merrill Lynch directly at Invesco, totaled $1.5 million.

89. The fraudulent scheme by the CBS Group that induced Invesco to give the CBS Group more trading capacity, exceeded Invesco's prospectus limitations and worked to the detriment of Invesco funds' long-term shareholders.

5. "Denetworking"

90. Prior to June 2002, the CBS Group who were recruited as $10 million producers, had more than 90% of their business in

short-term trading, which was no longer permitted at Merrill Lynch.

91. Brown suggested a way in which Millennium could still trade mutual funds through the CBS Group without violating Merrill Lynch's policy. Brown's intention was to have the trading activity taken away from Merrill Lynch and placed directly at the fund so the fund could decide whether or not to allow the activity. Brown suggested that the CBS Group could make the initial purchase of the mutual funds for Millennium with Merrill Lynch as the broker of record, but if any further trading activity was to take place, the mutual fund positions would be transferred to the mutual fund, and subsequently traded at the fund only by representatives of Millennium, and not through Merrill Lynch. This style of trading was referred to by the CBS Group and Millennium as "denetworking."

92. The CBS Group continued market timing in September and October 2002 on the Merrill Lynch system.

93. In November 2002, Merrill Lynch received an email from FDS alerting them that the CBS Group had been market timing Invesco, Wells Fargo, and AIM funds. The funds were concerned by this activity and in most cases, wanted it to cease. (**EXHIBIT 12**)

94. Brown met with the CBS Group about the market timing issues to instruct it on what it could and could not do in this

denetworking phase of trading. The CBS Group was told that it needed to take itself off as broker of record and had to stay at "arms length" from the trading activity at the funds, but could still service the accounts in an administrative role.

95. Nevertheless, the CBS Group continued to receive instructions from Markovitz and to execute trades directly at mutual funds on behalf of Millennium. (**EXHIBIT 13**)

96. In December 2002, the CBS Group sent correspondence to certain, but not all, mutual funds to remove Merrill Lynch as broker of record. (**EXHIBIT 14**)

97. While still employed by Merrill Lynch, and shortly after the CBS Group removed Merrill Lynch as broker of record, the CBS Group sent correspondence to various funds on Millennium letterhead, signed by Millennium and stamped with a Merrill Lynch Signature Guarantee Medallion. The correspondence authorized the CBS Group and one of its unregistered CAs to place trades and obtain account information for Millennium at the funds. (**EXHIBIT 15**)

98. Merrill Lynch had not approved the sending of this correspondence, as was required. Boland confronted Brunnock and the unregistered CA to tell them that such correspondence was not permitted. Boland also reported the problem to the management team of the Paramus Complex.

99. At the beginning of January 2003, eight new Millennium accounts were opened and utilized by the CBS Group for the trading of mutual funds.

100. The new accounts were opened in contravention of Merrill Lynch's market timing policy.

101. In February 2003, the CBS Group opened three additional accounts for Millennium to further facilitate the trading of mutual funds.

102. On February 27, 2003, FDS alerted Merrill Lynch that Putnam had rejected four purchases made on the same day, each for $1.9 million, that had been placed by the CBS Group in four separate, recently opened Millennium accounts.

103. Following this alert, Brown, similar to his instruction in December, again informed the CBS Group that it could not be broker of record on any Millennium accounts that were traded directly at the funds and away from Merrill Lynch.

104. At this time, Chung and Savino remained two of the largest producers at Merrill Lynch.

105. The CBS Group established for Millennium another four accounts in March 2003 and seven accounts in April 2003 at Merrill Lynch.

106. Soon after these new accounts were opened, Delaware Funds, a mutual fund company, alerted Merrill Lynch that the CBS Group was market timing directly at its fund via one of the new

Millennium accounts. The Delaware Funds notified FDS that it was rejecting the trade.

107. At the end of April 2003, the CBS Group was still trading on behalf of Millennium directly at the funds. Brown was shown a copy of the letter of authorization that the CBS Group sent to the Lord Abbett fund complex giving the CBS Group and CAs authority to place trades on behalf of Millennium. The letter was an unapproved communication from Merrill Lynch with an unauthorized use of Merrill Lynch's Signature Guarantee Medallion. (**EXHIBIT 16**)

108. Merrill Lynch again instructed the CBS Group that it could not engage in this activity. Brown sent a letter to the fund to remove the CBS Group and the CAs from having authority to trade on behalf of Millennium. (**EXHIBIT 17**)

109. In or about the beginning of May 2003, the Merrill Lynch Compliance Department was alerted by Lord Abbett and Goldman Sachs that the funds had tape recordings of the CBS Group's unregistered CAs placing trades on behalf of Millennium and misrepresenting themselves as Millennium employees.

110. The Merrill Lynch Compliance Department conducted its yearly audit at the Merrill Lynch Fort Lee branch office from May 6 through May 9, 2003. It discovered additional letters of authorization on Millennium letterhead, most of which were dated in March 2003, that gave the CBS Group and the CAs trading

authority and the ability to obtain account information for Millennium for at least twelve different Millennium accounts with at least twelve different mutual fund companies. (**EXHIBIT 18**)

111. At or about the same time, the Merrill Lynch Compliance Department discovered that the CBS Group was in possession of Millennium account information, including account numbers and passwords for Millennium accounts held directly at the mutual fund companies. (**EXHIBIT 19**) Daily email from the CBS Group to Millennium included activity reports and updates of balances for the accounts held directly at the mutual fund companies.

112. In response to the Compliance Department's audit discoveries of suspicious activities, Merrill Lynch opened an internal investigation into the actions of the CBS Group.

113. In or about August 2003, Merrill Lynch sent correspondence to the various funds removing the CBS Group and its CAs from having trading authority over Millennium accounts.

114. The CBS Group was able to escape detection from Merrill Lynch and remained broker of record at some of the funds.

115. The CBS Group knew that Merrill Lynch transmitted sell transactions in an omnibus, non-transparent platform. Where an account had been denetworked and the CBS Group was still listed as broker of record, it was able to engage in a scheme to gain capacity by journaling or transferring a position back into

Merrill Lynch so the sale of the position could be hidden in Merrill Lynch's omnibus account and avoid detection from the mutual fund company.

116. In a conversation, Savino stressed to Markovitz that if there were any problems at a fund with a denetworked account, "then bring it back in, change accounts, and denetwork again. No one said we can't do that."

6. The CBS Group's Avoidance of Contingent Deferred Sales Charges

117. FAs and broker dealers are compensated by mutual fund companies for the sale of fund shares to clients. For example, the purchase of Class A Shares of a fund would generally incur a front load (fee) which the client would pay. The sales charge would be used to compensate the FA. Many fund companies waive the front end sales charge generally imposed on Class A shares when the purchase of mutual fund shares is above $1 million. However, per the prospectus, the investor incurs the contingent deferred sales charge ("CDSC") owed back to the fund company if the fund shares are redeemed within a specific time period, usually within one year or 18 months. Either way, the broker dealer is entitled to receive an up front commission, or "finder's fee," on the purchase of such Class A Shares.

118. Merrill Lynch's MLUA platform was a wrap account that was structured in such a manner that FAs did not receive an up front commission on purchases of mutual funds, while allowing FAs

to sell the funds without the client being assessed a CDSC, as long as they were held for the requisite period of time.

119. The CBS Group engaged in a scheme that allowed it to get paid an up front percentage on the initial purchase, and to avoid the CDSC fee for its client by liquidating the account in less than the required hold period.

120. In several instances, the CBS Group purchased front-loaded A shares in retail accounts (non MLUA), from which they received a full commission. These accounts were then: (1) denetworked to the fund company, and journaled back into a Merrill Lynch MLUA wrap account, whereby the accounts were liquidated prior to the prescribed hold period, and avoided the CDSC fee; or (2) journaled directly into a MLUA wrap account and sold without incurring the CDSC fee. This allowed the CBS Group to get paid an up front percentage on the initial purchase, and allowed it to avoid the CDSC for its client by liquidating in less than the required hold period.

121. In early April 2003, FDS was contacted by various fund companies that claimed Merrill Lynch owed the funds the CDSC as a consequence of the CBS Group selling the funds in less than the year or 18 month hold time as required by the funds' prospectuses.

122. The CBS Group's scheme to avoid the CDSC fees at the various funds included, but was not limited to, the following examples: (**EXHIBIT 20**)

(a) On March 14, 2002, 1,788,491 shares ($23 million) were purchased by the CBS Group in a retail account at Dreyfus, in which an up front commission was paid. On August 6, 2002, the shares were transferred into a MLUA (wrap) account. On October 11, 2002, the shares were sold from the MLUA account, CDSC free. The fund had a one year hold, therefore, the assessed 1% CDSC fee of $230,000 should have been charged;

(b) On November 12, 2002, 216,138 shares ($1.6 million) were purchased in a retail account in the Hartford funds, with an up front commission to the CBS Group of $15,000. The shares were then transferred out (denetworked) on November 22, 2002 and transferred back in on November 25, 2002. Also, on November 12, 2002, 216,138 shares ($1.6 million) were purchased by the CBS Group in a retail account for the same Hartford fund, with the same up front commission of $15,000 to the CBS Group. On December 12, 2002, the shares from both of the accounts were transferred to a MLUA account and liquidated on January 17, 2003 without paying the CDSC fee. The fund had an 18 month hold period for commissionable shares purchased at the NAV; and

(c) On February 6, 2003, 184,824 shares ($2 million) were purchased by the CBS Group in a retail account in the PIMCO

funds, with a commission of $9,500 to the CBS Group. Then, on March 18, 2003, the shares were transferred to a MLUA account. The account was liquidated on March 20, 2003 without paying the CDSC fee. This fund had an 18 month hold period for commissionable shares purchased at the NAV.

123. In total, Merrill Lynch was contacted by five different fund companies that sought $604,652.32 in CDSC fees that were avoided by the CBS Group. The CBS Group purchased the shares in a retail account, which yielded up-front commissions to the CBS Group of at least $230,000, and transferred the shares into a MLUA account where the shares could be sold without assessment of a CDSC fee.

124. Where Merrill Lynch discovered that Millennium avoided CDSC fees, Merrill Lynch debited Millennium's accounts and reimbursed the mutual funds for those fees.

125. In a conversation regarding the type of business conducted by the CBS Group, Markovitz explained to another Merrill Lynch FA that the CBS Group journaled for tax purposes and to avoid the need for Millennium to pay fees.

126. In a separate conversation that followed a meeting that Markovitz had with Merrill Lynch in late August 2003, Markovitz told Chung of Merrill Lynch's knowledge of the avoidance of fees and the potential of it ruining the overall relationship.

127. Because the CBS Group realized that Merrill Lynch discovered, was aware of and forbade their scheme, the CBS Group devised and engaged in yet another scheme to avoid fees for Millennium. In a telephone conversation between Chung ("CC"), Savino ("WS") and Markovitz ("SM"), Chung and Savino explained how they would implement their new fee avoidance scheme by changing the trait of the retail account they purchased to MLUA, rather than journaling the retail account into a MLUA account:

CC: This is a gray area in which we haven't done this before. Which is we bought a bunch of stuff in A accounts, then MLUA the accounts, then we are selling them in the same accounts, so there is no journaling or anything like that. So, we are not doing something that they told us not to do. But, you probably won't get hit initially, but some day you might get hit.

SM: We, um, normally we journal, right?

CC: Absolutely, this is a new tricky-dicky area.

SM: This is a new tricky because they told you not to journal?

CC: Yeah, so we bought them in the A accounts and we are actually selling them in the A accounts, but we have them in the MLUA subsequent to that (Laughter).... If it works, then later on down the road, we'll f*****g MLUA the B accounts... If this does in fact work....

WS: We can just f*****g buy A shares, then MLUA the accounts... [CC & WS laughing] and not even journal anything. So, don't think we're not deviant mother******s and we don't want to explore that for you. Alright? Don't think we're not trying to be creative....

WS: See, what we try to do is...because they are always so nebulous about what their rules and regulations are... is. We abide by them. We figure something out. We still f*****g do it! Ok?... It's like....You know if the broad sorta pushes your hand away, but she's moaning? You still try, right?...

SM: Let me try Chris.

CC: Deviancy at its best, may I help you? ... We haven't got hit with fees....

SM: I'm with you. The fund companies, haven't got hit, but mainly Merrill compliance has made us pay.

CC: Right. Exactly....This is a whole new area of creativity germinating in my brain. The golden rule is really you are not allowed to journal and sell... Basically what we'd do is roll an A and B account into one account, then bring it into an A account because it is the same tax ID. That was our plan ... after they said don't journal. But the better plan is you buy in,

you buy in an account, instead of rolling the B accounts into the A accounts, you actually MLUA the B accounts in the middle and then sell them the same actual format you bought them in....

SM: There is no way and there's no way you would (pause) like knock on the door - knock on compliance door and say 'hey I'm doing this, is it ok?'

CC: No f*****g way....

7. "Double Denetworking"

128. In the last few months of the CBS Group's employment at Merrill Lynch, Merrill Lynch required the CBS Group to be completely at arms length from the trading of mutual funds on behalf of Millennium. The CBS Group was no longer allowed to buy the positions at Merrill Lynch and transfer them to the fund company. The only activity the CBS Group was allowed to do for Millennium was to obtain account information and keep spreadsheets for the purpose of reconciling trades.

129. At a few funds, the CBS Group did not limit its activity to the reconciling of trades. The CBS Group continued to place trades for Millennium directly at the funds, and journaled the positions back into Merrill Lynch for the purpose of selling the position through Merrill Lynch's omnibus platform. This activity, where the CBS Group was not broker of record, but

was still servicing the accounts, was effectively "double denetworking."

130. The CBS Group devised a new scheme to place trades at the funds on a double denetworked basis, despite Merrill Lynch instructions not to engage in such activity.

131. The double denetworked transactions, where the CBS Group could not place the trades at the fund, became a very difficult obstacle for Millennium. Markovitz grew very frustrated with denetworking because he and his staff at Millennium could not handle the trading of more than $100 million dollars in so many funds. In one instance, Markovitz's staff tried to place trades at certain fund companies, but were told the accounts were frozen.

132. Chung's response to Markovitz, in a conversation on August 6, 2003, was that the CBS Group would do the trading and take responsibility for the execution of those trades. Chung switched to a cell phone during this conversation because he feared that Merrill Lynch was taping the CBS Group's phone calls.

133. In a conversation regarding Markovitz's concerns over not being able to execute trading in the many funds by Millennium, Chung and Savino told Markovitz that he would not have to do the trades because one of the CBS Group's CAs would come in to Millennium to do the trading. Chung and Savino stated:

> We are going to start having someone come in tomorrow .... We keep things alive longer - maybe two, three trades longer. That's the difference between actually doing a good job and not doing a good job. Now I'm going to have [unregistered CA] come in [to Millennium's office] tomorrow - everyday, and deal with this thing because once she is there, everything becomes much easier because that is what she does - we do. I am going to have her come in starting tomorrow with car service, ok? We have lived very successfully denetworked when [unregistered CA] is doing the trades because we squish trades through on a constant basis. We squish them through. That means she is on the phone until 4:45 with the manager's manager's manager and screams and cries bloody murder and steal and beg and whatever and we get the trades through. Not on this - never does - never does - never does this type of s**t happen on our Merrill phone only on cell phone. So, she is coming in tomorrow. It - it is a needed thing, and she'll take care of the agita.

134. The CBS Group's unregistered CA went to Millennium and engaged in the trading. Soon thereafter, Merrill Lynch terminated the employment of the CBS Group and its CAs.

8. Market Timing in Variable Annuities and COLI

135. The CBS Group's business on behalf of Millennium allowed them to do the same type of short-term trading in variable annuity and COLI contracts, which hold mutual funds as the underlying investment. Merrill Lynch was unaware of the extent of the CBS Group's market timing in the sub accounts of mutual funds of variable annuities.

136. Through the CBS Group, Millennium established 19 annuity contracts at Merrill Lynch, and utilized at least another 11 contracts that were established elsewhere. All 30 of these

contracts gave the CBS Group trading authority, and were traded by the CBS Group.

137. The contracts were held with the client at the annuity company, and each contract holder could place its own trades within each contract, but this did not happen. Each contract instead gave the CBS Group, as agents of Merrill Lynch, trading authority.

138. All trading instructions in the annuity contracts were communicated from Markovitz to the agents of Merrill Lynch, and the CBS Group placed the trades.

139. Millennium's annuity contracts at Merrill Lynch named principals and employees of Millennium as annuitants to satisfy the natural person requirement, but the economic reality and purpose of these multiple contracts was to establish vehicles to gain trading capacity. The CBS Group utilized the contracts in a manner similar to the way they used the mutual fund trading accounts to break up trades and "fly under the radar" of the annuity companies.

140. By the end of February 2002, the CBS Group established 14 variable annuity contracts for Millennium at Merrill Lynch. Eleven of the 14 contracts were part of a COLI contract with a $20 million premium.

141. In early February 2002, FDS sent out notices regarding the CBS Group's market timing at multiple mutual fund companies

in multiple accounts. At the same time, Merrill Lynch OGC and Merrill Lynch Compliance became aware that the CBS Group was "doing the same trading in annuities as well." (**EXHIBIT 21**)

142. On March 5, 2002, the CBS Group sent a memo to Brown entitled "Equitable issue" explaining the CBS Group's relationship with Equitable. (**EXHIBIT 22**) The CBS Group explained how they had established variable annuity and COLI contracts with Equitable and conducted short-term trading in such products while they were at UBS/PaineWebber, and that Millennium was engaged in "disruptive activity" by holding for less than 5 days; that as long as the client "behaved (stuck to 5 day hold rule), there would be no issues with money movement in COLI contracts." The CBS Group referenced two additional letters that had been sent to the client that indicated "disruptive activity," which forced Equitable to limit the execution of account transfers to regular mail and to limit the frequency of trades, and ultimately caused the closure of all Equitable contracts.

143. Equitable's view of the true nature of these transactions was discussed in an internal Equitable email dated October 5, 2001, where it was noted that the multiple Millennium contracts, as traded by its agent Chung, were questionable as to compliance with Equitable's prospectus. (**EXHIBIT 23**)

(a) Ohio National

144. At or about the beginning of 2002, Merrill Lynch did not have a selling agreement with Ohio National and did not offer its variable annuity contracts.

145. The CBS Group had held and traded sub accounts of mutual funds in Ohio National contracts for Millennium at UBS/PaineWebber. When the CBS Group became employed at Merrill Lynch, the CBS Group wanted to continue its relationship with Ohio National.

146. Because the CBS Group could open multiple variable annuity contracts for Millennium, totaling between $12 and $20 million, Merrill Lynch's Insurance Group made an exception to allow the CBS Group's business and entered into a limited selling agreement with Ohio National.

147. The CBS Group were the only Merrill Lynch FAs permitted to purchase Ohio National variable annuity contracts. (**EXHIBIT 24**)

148. In the first half of 2002, while employed at Merrill Lynch, the CBS Group market timed in the sub accounts of mutual funds in the three new Ohio National contracts and, even prior to the selling agreement, in the sub accounts of mutual funds in four preexisting Ohio National contracts that were utilized by the CBS Group at UBS/PaineWebber.

149. On September 3, 2002, the CBS Group opened four additional variable annuity contracts at Ohio National, each with a $5 million premium. The new contracts gave the CBS Group, as agents of Merrill Lynch, access to trade in the sub accounts of mutual funds in the eleven Ohio National variable annuity contracts. The seven Ohio National annuity contracts that were opened at Merrill Lynch each had a $5 million premium, for a total of $35 million, and yielded a total of $1.35 million in gross revenues for Merrill Lynch. (**EXHIBIT 25**)

150. Following the establishment of the four new contracts, Ohio National created a spreadsheet that showed seven of the individual Millennium employees' policies that Savino traded, and the "trading trends" in the sub accounts of these contracts for the month of September 2002. (**EXHIBIT 26**)

151. In September 2002, there was a total of 32 market timing trades by the CBS Group that ranged between $1 million and $5.6 million. For the year 2003, the CBS Group placed more than 200 trades in the sub accounts of mutual funds in Ohio National variable annuities. (**EXHIBIT 27**)

152. The frequent trading by the CBS Group in the sub accounts of mutual funds that comprised the Ohio National contracts violated Merrill Lynch's market timing policy and was conducted by the CBS Group at a time when it was supposed to have ceased all market timing activity.

(b) Phoenix Life Insurance Company

153. At Merrill Lynch, the CBS Group opened a COLI contract with Phoenix Life Insurance Company ("Phoenix") that had a $20 million premium and yielded gross revenues of $2.3 million for Merrill Lynch. (**EXHIBIT 25**)

154. The COLI was comprised of eleven individual premiums for policies that were taken out on Millennium employees. The CBS Group frequently traded in each of the individual eleven contracts they set up at Merrill Lynch and the CBS Group also traded in four preexisting Phoenix variable annuity contracts that were utilized by the CBS Group at UBS/PaineWebber.

155. On February 14, 2002, Phoenix sent a letter to Savino rather than to Millennium or to the individuals who were insured, which stated that the "company has recently become concerned as to market timing or 'excessive trading' within sub accounts in its variable products in general and the Phoenix Corporate Edge (COLI) in particular." This letter also included the relevant prospectus language that excessive trading could be detrimental to contract holders, and that Phoenix reserved the right to temporarily or permanently terminate exchange privileges or reject any specific order from anyone whose transactions seem to follow a timing pattern, including those with more than one exchange out of a sub account within any thirty day period. (**EXHIBIT 28**)

156. Merrill Lynch did not see the February 14, 2002 communication from Phoenix.

157. In an internal email communication at Phoenix dated March 11, 2002, with a subject line that stated: "Savino - Market Timing," Phoenix made an exception to its prospectus language, which it had sent to Savino only a month earlier. (**EXHIBIT 29**)

158. The CBS Group's short-term trading on behalf of Millennium in the Phoenix variable annuity and COLI products was continuous through the CBS Group's employment at Merrill Lynch.

159. The trading in variable annuities, which Phoenix attributed to Savino rather than the individuals insured, was the type of trading which violated Merrill Lynch's market timing policy. This trading was conducted by the CBS Group at a time when it was supposed to have ceased all market timing activity.

COUNT I

EMPLOYING A DEVICE, SCHEME OR ARTIFICE TO DEFRAUD IN CONNECTION WITH THE OFFER, SALE OR PURCHASE OF SECURITIES N.J.S.A. 49:3-52(a)

MAKING MATERIALLY FALSE AND MISLEADING STATEMENTS AND OMITTING MATERIAL FACTS NECESSARY TO MAKE STATEMENTS MADE NOT MISLEADING N.J.S.A. 49:3-52(b) (AGAINST Respondents CHUNG AND SAVINO)

160. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

161. Respondents Chung and Savino, acting in concert with each other, made material misrepresentations and employed a scheme to defraud mutual fund and annuity companies and their investors.

162. From approximately December 2000 until January 2002, Chung and Savino, while acting as agents of UBS/PaineWebber made material misrepresentations to mutual fund and annuity companies about the nature of certain trades entered on behalf of Millennium, established and traded multiple accounts for Millennium and used multiple registered representative designations in an attempt to conceal the true nature of their market timing activities from the fund and annuity companies with which they traded.

163. By employing devices to avoid detection of their activities at the various funds and annuity companies with which they traded while at UBS/PaineWebber, Chung and Savino made

material misrepresentations of fact and engaged in a course of conduct which acted as a fraud or deceit on the mutual fund and annuity companies with which they traded and their long-term shareholders, in violation of N.J.S.A. 49:3-52(a) and N.J.S.A. 49:3-52(b).

164. Each and every act in furtherance of this conduct by Respondents Chung and Savino is a separate and distinct violation of N.J.S.A. 49:3-52(a) and N.J.S.A. 49:3-52(b), and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1, and suspension or revocation of said Respondents' registrations with the Bureau pursuant to N.J.S.A. 49:3-58.

COUNT II

EMPLOYING A DEVICE, SCHEME OR ARTIFICE TO DEFRAUD IN CONNECTION WITH THE OFFER, SALE OR PURCHASE OF SECURITIES N.J.S.A. 49:3-52(a) (AGAINST Respondents CHUNG AND SAVINO)

165. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

166. Respondents Chung and Savino, acting in concert with each other, employed a scheme to defraud mutual fund companies and their investors.

167. By their offer of a *quid pro quo* of sticky assets in exchange for trading capacity at Investec while at UBS/PaineWebber, Chung and Savino engaged in a course of conduct

which acted as a fraud or deceit on Investec and the long-term shareholders of the funds in which Chung and Savino traded, all in violation of N.J.S.A. 49:3-52(a).

168. Each and every act in furtherance of this conduct by Respondents Chung and Savino is a separate and distinct violation of N.J.S.A. 49:3-52(a), and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1, and suspension or revocation of said Respondents' registrations with the Bureau pursuant to N.J.S.A. 49:3-58.

COUNT III

EMPLOYING A DEVICE, SCHEME OR ARTIFICE TO DEFRAUD IN CONNECTION WITH THE OFFER, SALE OR PURCHASE OF SECURITIES N.J.S.A. 49:3-52(a)

MAKING MATERIALLY FALSE AND MISLEADING STATEMENTS AND OMITTING MATERIAL FACTS NECESSARY TO MAKE STATEMENTS MADE NOT MISLEADING N.J.S.A. 49:3-52(b) (AGAINST Respondents CHUNG, BRUNNOCK AND SAVINO)

169. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

170. Respondents Chung, Brunnock and Savino, acting in concert with each other, made material misrepresentations and employed a scheme to defraud Merrill Lynch, the mutual fund companies and their investors.

171. In connection with their recruitment and during the entire period of employment with Merrill Lynch, Respondents

Chung, Brunnock and Savino individually, and with others, and for the purpose of continuing their market timing activities, misled and otherwise concealed the full scope and nature of their trading activities from Merrill Lynch. The scheme included:

(a) failing to disclose and otherwise concealing during the recruitment process that Chung, Brunnock and Savino had received hundreds of trade rejection notices for their market timing activities at UBS/PaineWebber and that UBS/PaineWebber intended to leave the market timing business by February 2002;

(b) misrepresenting to Merrill Lynch that Chung, Brunnock and Savino had over 900 clients and a diverse product and trading strategy when, in fact, they almost exclusively traded mutual funds on behalf of one client;

(c) failing to disclose to and concealing from Merrill Lynch the documents created by Chung, Brunnock and/or Savino which were in their possession and described the scope and true nature of their activities including a mutual fund matrix detailing market timing relationships and a document entitled "UBS and Millennium" which described in detail the scope of their timing activities on behalf of Millennium and UBS/PaineWebber; and

(d) failing to disclose to and concealing from Merrill Lynch various trading and journaling activities implemented by

the CBS Group to gain additional trading capacity at mutual fund companies and to avoid the payment of fees due to the funds.

172. Respondents Chung, Brunnock and Savino's aforementioned conduct was designed to enable them to gain access to a new broker dealer, Merrill Lynch, whose mutual fund trading platform would make Chung, Brunnock and Savino's trading activities less visible to mutual funds.

173. By their conduct, Respondents Chung, Brunnock and Savino engaged in a course of conduct which acted as a fraud and deceit on Merrill Lynch, the mutual fund companies and their long-term shareholders in violation of N.J.S.A. 49:3-52(a).

174. Each and every act in furtherance of this conduct by Respondents Chung, Brunnock and Savino is a separate and distinct violation of N.J.S.A. 49:3-52(a) and 52(b) and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1, and suspension or revocation of said Respondents' registrations with the Bureau pursuant to N.J.S.A. 49:3-58.

COUNT IV

ENGAGING IN ANY ACT, PRACTICE, OR COURSE OF BUSINESS WHICH OPERATES OR WOULD OPERATE AS A FRAUD OR DECEIT UPON ANY PERSON
N.J.S.A. 49:3-52(c)
(AGAINST Respondents CHUNG, BRUNNOCK AND SAVINO)

175. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

176. Respondents Chung, Brunnock and Savino, acting in concert with each other, engaged in a course of conduct which acted as a fraud or deceit on the mutual fund companies with which they traded or attempted to trade.

177. Upon becoming employed by Merrill Lynch, Respondents Chung, Brunnock and Savino opened multiple accounts for Millennium in different names from those traded by them for the same client at UBS/PaineWebber. Each such account was funded by and traded for the benefit of one client, Millennium, although each appeared to have separate identities.

178. Respondents Chung, Brunnock and Savino also knew that by having a new broker dealer affiliation which traded through a house account and, for which, at least some activity, there was no transparency, and by receiving new registered representative identification numbers, their activity would appear less recognizable to fund companies who sought to control their activity.

179. By opening multiple accounts for Millennium at Merrill Lynch, each with a different name and account number, and by trading the same mutual funds with the multiple accounts, Respondents CBS Group engaged in a course of conduct in which they attempted to conceal and did conceal the true nature and scope of their identity from the mutual fund companies.

180. The aforementioned conduct of Chung, Brunnock and Savino was part of a plan of deception designed to gain trading capacity at fund companies who sought to protect the interests of their long-term shareholders by controlling the trading activity and, therefore, constitutes a course of conduct which acted as a fraud or deceit on the mutual fund companies in which Chung, Brunnock and Savino traded and attempted to trade in violation of N.J.S.A. 49:3-52(c).

181. Each and every act in furtherance of this conduct by Respondents Chung, Brunnock and Savino is a separate and distinct violation of N.J.S.A. 49:3-52(c) and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1, and suspension or revocation of said Respondents' registrations with the Bureau pursuant to N.J.S.A. 49:3-58.

COUNT V

EMPLOYING A DEVICE, SCHEME OR ARTIFICE TO DEFRAUD IN CONNECTION WITH THE OFFER, SALE OR PURCHASE OF SECURITIES
N.J.S.A. 49:3-52(a)

ENGAGING IN ANY ACT, PRACTICE, OR COURSE OF BUSINESS WHICH OPERATES OR WOULD OPERATE AS A FRAUD OR DECEIT UPON ANY PERSON
N.J.S.A. 49:3-52(c)
(AGAINST Respondents CHUNG, BRUNNOCK AND SAVINO)

182. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

183. Respondents Chung, Brunnock and Savino, acting in concert with each other, employed a scheme to defraud and/or engaged in a course of conduct which acted as a fraud or deceit, on the mutual fund companies in which Chung, Brunnock and Savino attempted to trade.

184. While employed by Merrill Lynch, Chung, Brunnock and Savino offered and entered into sticky asset arrangements with mutual fund companies in order to gain trading capacity in those funds. The offer of sticky assets by Chung, Brunnock and Savino, as agents of Merrill Lynch, and in connection with their representation of Millennium, was an attempt by them to induce these mutual fund companies to defer the responsibility owed to the long-term shareholders of the funds in favor of the fees earned from the relationship with Chung, Brunnock and Savino.

185. The Invesco market timing police identified Chung and Savino as market timers and rejected trades from Chung and Savino while employed at UBS/PaineWebber.

186. After becoming employed by Merrill Lynch, Respondents Chung, Brunnock and Savino sought to gain the ability to trade the Invesco funds on behalf of Millennium. In furtherance of that goal these Respondents offered sticky assets in an attempt to induce, and did in fact induce, Invesco to allow Millennium to market time the Invesco funds, contrary to the stated and implied trading limitations set forth in the funds' prospectus and

contrary to Invesco's duty to protect these funds from the potential harm imposed by frequent trading of the funds.

187. Respondents Chung, Brunnock, and Savino's agreements and offers of agreements to place long-term sticky assets at mutual funds, including Invesco, in exchange for short-term trading capacity was an attempt by them to induce the fund companies to favor their interests and that of Millennium over the interests of long-term shareholders.

188. Each and every attempt by Respondents Chung, Brunnock and Savino to gain trading capacity through undisclosed offers and arrangements constitutes a separate and distinct course of conduct which acted as a fraud or deceit on the mutual fund companies and a scheme to defraud in violation of N.J.S.A. 49:3-52(a) and N.J.S.A. 49:3-52(c).

189. Each and every act in furtherance of this conduct by Respondents Chung, Brunnock and Savino is a separate and distinct violation of N.J.S.A. 49:3-52(a) and N.J.S.A. 49:3-52(c) and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1, and suspension or revocation of said Respondents' registrations with the Bureau pursuant to N.J.S.A. 49:3-58.

COUNT VI

ENGAGING IN ANY ACT, PRACTICE, OR COURSE OF BUSINESS WHICH OPERATES OR WOULD OPERATE AS A FRAUD OR DECEIT UPON ANY PERSON
N.J.S.A. 49:3-52(c)
(AGAINST Respondents CHUNG, BRUNNOCK AND SAVINO)

190. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

191. Respondents Chung, Brunnock and Savino, acting in concert with each other, engaged in a course of conduct that operated as a fraud or deceit on the mutual fund companies with which Chung, Brunnock and Savino traded and the companies' long-term shareholders.

192. During the course of their employment by Merrill Lynch, Respondents Chung, Brunnock and Savino employed trading and journaling strategies for the Millennium accounts in order to gain trading capacity at mutual fund companies and to avoid CDSC fees related to the early redemptions of investments in those funds. This conduct was another method of deception.

193. During the denetworking phase, Respondents Chung, Brunnock and Savino purchased initial positions in mutual funds in Millennium accounts at Merrill Lynch, initially traded the positions in those accounts, moved the positions to the funds where they were traded directly with the funds, and finally moved the positions back to Merrill Lynch into different accounts where Chung, Brunnock and Savino could obtain additional trading

capacity without detection or where they could be redeemed through Merrill Lynch's omnibus platform allowing them to avoid CDSC fees.

194. Respondents Chung, Brunnock and Savino also journaled positions between Millennium accounts, including journals between retail and the MLUA wrap accounts at Merrill Lynch, with the intention of concealing the true nature of the trading activity from the mutual fund companies with which they traded and to avoid substantial fees associated with the trading activity.

195. By their aforementioned conduct, Respondents Chung, Brunnock and Savino engaged in a course of conduct which acted as a fraud or deceit on the mutual fund companies with which they traded and their long-term shareholders in violation of N.J.S.A. 49:3-52(c).

196. Each and every attempt by Respondents Chung, Brunnock and Savino to gain trading capacity through undisclosed offers and arrangements constitutes a separate and distinct course of conduct which acted as a fraud or deceit on the mutual fund companies and a scheme to defraud in violation of N.J.S.A. 49:3-52(c).

197. Each and every act in furtherance of this conduct by Respondents Chung, Brunnock and Savino is a separate and distinct violation of N.J.S.A. 49:3-52(c) and is cause for the imposition of a civil monetary penalty for each separate violation pursuant

to N.J.S.A. 49:3-70.1, and suspension or revocation of said Respondents' registrations with the Bureau pursuant to N.J.S.A. 49:3-58.

COUNT VII

ENGAGING IN ANY ACT, PRACTICE, OR COURSE OF BUSINESS WHICH OPERATES OR WOULD OPERATE AS A FRAUD OR DECEIT UPON ANY PERSON
N.J.S.A. 49:3-52(c)
(AGAINST Respondents CHUNG, BRUNNOCK AND SAVINO)

198. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

199. Respondents Chung, Brunnock and Savino, acting in concert with each other, engaged in a course of conduct that operated as a fraud or deceit on the annuity companies whose products Chung, Brunnock and Savino traded.

200. During the period of their association with Merrill Lynch, Chung, Brunnock and Savino purchased and traded in numerous variable annuity contracts on behalf of Millennium. While at Merrill Lynch, Chung, Brunnock and Savino also traded in various Millennium variable annuity contracts that predated their employment at Merrill Lynch. The annuity contracts were established for the specific purpose of gaining access to trading capacity in the mutual fund sub accounts of these contracts.

201. The annuity contracts were funded by and traded for the benefit of Millennium, although they were carried in the names of nominees. Respondents Chung, Brunnock and Savino used

the multiple accounts held in the name of different nominees to disguise the true nature of their trading of the mutual fund sub accounts of these contracts.

202. By breaking up transactions among various annuity contracts held in the names of nominees, but all in reality traded for one client, Respondents Chung, Brunnock and Savino concealed the true scope and nature of their activity from the annuity companies whose products they traded, which acted as a fraud or deceit in violation of N.J.S.A. 49:3-52(c).

203. Each and every act in furtherance of this conduct by Respondents Chung, Brunnock and Savino is a separate and distinct violation of N.J.S.A. 49:3-52(c) and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1, and suspension or revocation of said Respondents' registrations with the Bureau pursuant to N.J.S.A. 49:3-58.

DEMAND FOR RELIEF

WHEREFORE, the Bureau Chief proposes to enter an order:

(A) Finding that the persons identified have engaged in the acts and practices described in this Complaint;

(B) Concluding that such acts and practices constitute violations of the Securities Law;

(C) Assessing Respondents' civil monetary penalties for each incident of violating the Securities Law in accordance with N.J.S.A. 49:3-70.1;

(D) Suspending and/or revoking Respondents' registrations with the Bureau;

(E) Granting any additional relief necessary or proper to prevent further violations and to accomplish the purposes of the Securities Law.

NOTICES

Please be aware that the attached notices are an integral part of this Complaint.

By: Elizabeth J. Mackay
Elizabeth J. Mackay, Acting Bureau Chief
For Franklin L. Widmann, Bureau Chief
New Jersey Bureau of Securities

Date: 3/15/05

NOTICE OF RIGHT TO HEARING

Pursuant to the Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq., this matter will be set down for a hearing with respect to the allegations concerning any respondent if a written request for such a hearing is filed with the Bureau within ten (10) days after such respondent receives this Complaint which will be deemed received upon completion of service by United States Postal Service first class mail.

A request for a hearing must be accompanied by a written response which addresses specifically each of the facts set forth in the Complaint which forms a basis for the order the Bureau Chief proposes to enter. A general denial will be treated as though no hearing had been requested.

At any hearing regarding this matter, an individual respondent may appear on his or her own behalf or be represented by an attorney. A corporation must be represented by an attorney unless a non-attorney represents the corporation in accordance with R. 1:21-1(e) and N.J.A.C. 1:1-5.4.

If no hearing is requested, the order the Bureau Chief proposes to enter will be entered as a Final Order which will be effective when entered. If a hearing is requested, the Bureau Chief will enter a final order in accordance with the findings made at the hearing, which order will be effective when entered.

NOTICE OF OTHER ENFORCEMENT REMEDIES

Respondents are advised that the Uniform Securities Law provides several enforcement remedies, which are available to be exercised by the Bureau Chief, either alone or in combination. These remedies include, in addition to the remedies proposed in this Complaint, the right to seek and obtain injunctive and ancillary relief in a civil enforcement action pursuant to N.J.S.A. 49:3-69, and the right to seek and obtain civil penalties in an administrative or civil action pursuant to N.J.S.A. 49:3-70.1.

Respondents are further advised that the entry of a final order granting some or all of the remedies of the order the Bureau Chief proposes to enter does not preclude the Bureau Chief from seeking and obtaining other enforcement remedies against some or all respondents, as the Bureau Chief may determine, in connection with the claims made against them in this action.