

AGREEMENT

PRUDENTIAL EQUITY GROUP, LLC (“PEG”), formerly known as Prudential Securities, Incorporated (“PSI”), a wholly owned subsidiary of Prudential Financial, Inc. (“Prudential”), by its undersigned attorneys, pursuant to authority granted by the Board of Directors of PEG and Prudential and the United States Attorney for the District of Massachusetts (the “USAO”), enter into this Agreement (the “Agreement”).

WHEREAS, since November 2003, the USAO has been conducting a criminal investigation into allegations that PEG employees were engaged in deceptive trading in mutual fund shares in violation of federal criminal law, including the following: (a) Title 15, United States Code, Sections 78j(b) and 78ff(a), Title 17, Code of Federal Regulations, Section 240.10b-5; (b) Title 15, United States Code, Sections 78o(c)(1)(A) and 78ff(a), Title 17 Code of Federal Regulations, Section 240.15c(1)-2; (c) Title 18, United States Code, Section 1341; (d) Title 18, United States Code, Section 1343; and (e) Title 18, United States Code, Section 2;

WHEREAS, the U.S. Securities and Exchange Commission (“SEC”), the National Association of Securities Dealers (“NASD”), the New York Stock Exchange (“NYSE”), the Secretary of the Commonwealth of Massachusetts (the “Secretary”), the State of New York Attorney General’s Office (“NYAG”), and the New Jersey Bureau of Securities (“NJBS”) (collectively the “Securities Regulators”) have also conducted investigations of PEG into matters related to the deceptive trading in mutual funds, and those investigations of PEG are now concluded in accordance with the terms of this Agreement;

WHEREAS, the USAO investigation of PEG has established, without limitation, the following:

- a. From at least 1999 through June 2003, when PSI transferred its domestic retail broker-dealer assets to Wachovia Securities, LLC (“Wachovia”), certain brokers employed by PSI (the “Timer Brokers”) engaged in deceptive and fraudulent trading in shares of mutual funds. Following the asset transfer, the Timer Brokers continued their fraudulent conduct from July 2003 until approximately September 2003, when their employment was terminated;
- b. While at PSI and at Wachovia, the Timer Brokers defrauded mutual fund companies (i.e., organizations that manage mutual funds) and mutual funds by employing various deceptive and fraudulent acts and practices to execute prohibited “market timing” trades on behalf of certain PSI clients. From January 2001 through June 2003, the Timer Brokers generated in excess of \$50 million in gross commissions and fees for PEG. From July 2003 through

September 2003, the Timer Brokers generated in excess of \$7 million in gross commissions and fees for Wachovia; and

- c. PSI had supervisory responsibility for the Timer Brokers from at least January 1999 through June 2003. During the period of time the Timer Brokers were employed at Wachovia, from July 2003 through September 2003, former PSI supervisors retained supervisory responsibility for the Timer Brokers;

WHEREAS, the USAO has filed criminal charges against a number of former employees of PSI, and PEG acknowledges and accepts responsibility for the conduct of those former employees.

WHEREAS the USAO has informed Prudential and PEG that the USAO has determined that there is a sufficient basis to seek an indictment of PEG for, without limitation, violations of Title 15, United States Code, Sections 78j(b) and 78ff(a), and Title 17, Code of Federal Regulations, Section 240.10b-5;

WHEREAS, the USAO has determined that an indictment of PEG may cause undue harm to innocent individuals, including current employees of PEG and employees and shareholders of affiliated entities who had no involvement in the criminal conduct under investigation; and

WHEREAS, PEG's parent company, Prudential, by and through its Board of Directors, has undertaken certain remedial actions to ensure better control and compliance over PEG and other Prudential affiliated entities and has agreed to continue those efforts by separate letter agreement with the USAO dated _____, 2006;

NOW, THEREFORE, the USAO and PEG agree as follows:

1. This Agreement shall be in effect for 60 months from the date of its execution.
2. PEG admits to and accepts responsibility for its conduct and the conduct of the Timer Brokers as described in this Agreement and the Statement of Facts incorporated herein and attached hereto as Exhibit A and agrees that certain PEG employees engaged in conduct that was unlawful and fraudulent. PEG also admits to and accepts responsibility for all conduct described in the Statement of Facts. PEG agrees that the Statement of Facts is accurate and further agrees not to contradict the facts stated therein.
3. PEG agrees that, if it violates any terms of this Agreement, the USAO may file the attached criminal Information (the "Information") in the United States District Court for the District of Massachusetts charging PEG with securities fraud, in violation of Title 15, United States Code, Sections 78j and 78ff(a), Title 17, Code of Federal Regulations, Section 240.10b-5. A copy of the Information is attached hereto as Exhibit B. As is set forth elsewhere in this agreement, PEG waives any rights it may have to proceed by way

of indictment and it waives any and all rights it may have under any applicable statutes of limitations or other legal, equitable or constitutional limitations that may limit the period of time during which the USAO may seek an indictment or other charging document (such as a complaint or information) for the offenses covered by the Information.

4. PEG does not endorse, ratify, or condone illegal conduct and, as set forth below, has taken steps to prevent such conduct from occurring in the future.
5. During the term of this Agreement, PEG agrees to cooperate fully with the USAO and with any other agency designated by the USAO regarding any matter about which PEG has knowledge. Pursuant to this paragraph, PEG agrees that cooperation includes but is not limited to the following:
 - a. Completely and truthfully disclosing all information with respect to the activities of PEG and its affiliates, and its present and former officers, agents, and employees, concerning all matters that may be inquired into by the USAO;
 - b. Assembling, organizing and providing on request by the USAO all documents, records, or other evidence in PEG's possession, custody or control;
 - c. Not asserting, in relation to any request of the USAO, a claim of privilege (such as attorney-client privilege) or immunity from disclosure (such as work product) as to any documents or information requested by the USAO related to the conduct described in the Statement of Facts that pre-date September 4, 2003 and, as to any documents, information or testimony that are dated or post-date September 4, 2003, not asserting the attorney-client privilege or other immunity from disclosure as to any documents or information that primarily contain factual information, analyses or compilations of factual information related to the investigations of the USAO and the Securities Regulators. PEG may assert the attorney client-privilege or immunity from disclosure as to documents, information and testimony that are dated or post-date October 1, 2003 for documents or information relating to legal or settlement advice provided to PEG. In making any production to the USAO of the foregoing documents or information, PEG neither expressly nor implicitly waives its right to assert any privilege or immunity from disclosure with respect to the produced documents or information (or any subject-matter covered by such documents, information, or testimony) as to anyone not a party to this Agreement;

- d. Using its best efforts to identify witnesses who, to PEG's knowledge, possess material information regarding the matters covered by this Agreement;
 - e. Using its best efforts to make available for interviews, or for testimony, present or former PEG officers, directors, and employees as requested by the USAO;
 - f. Providing testimony and other information deemed necessary by the USAO or the court to establish the original location, authenticity, or other evidentiary foundation to admit into evidence documents in any criminal or other proceeding as requested by the USAO;
 - g. Complying with any agreements between PEG and the SEC or any other governmental agency as long as such agreements remain in effect; and
 - h. Maintaining PEG as a lawfully organized and adequately capitalized corporate entity for purposes of this Agreement during the time this Agreement is in effect.
6. PEG further agrees that it will not, through present or future attorneys, board of directors, agents, affiliates, parent, officers or employees, make any public statement or filing, including, without limitation, statements or filings in litigation in which the USAO (or the U.S. Department of Justice by and through the USAO) or the Securities Regulators is a party, contradicting any statement set forth in the Information or in the Statement of Facts. Any such contradictory public statement by PEG, its present or future attorneys, board of directors, agents, affiliates, parent, officers or employees shall constitute a material breach of this Agreement, and PEG thereafter would be subject to prosecution on the Information attached to this Agreement. The decision of whether any public statement by any such person contradicting a statement contained in the Information or Statement of Facts will be imputed to PEG for the purpose of determining whether PEG has breached this Agreement shall be at the sole reasonable discretion of the USAO. Upon the USAO's reaching a determination that such a contradictory statement has been made by PEG, the USAO shall so notify PEG. PEG may avoid a breach of this Agreement by publicly repudiating such statement within forty-eight hours after notification by the USAO. This paragraph is not intended to apply to any statement made by any individual in the course of any criminal, regulatory, or civil matter initiated by the USAO or Securities Regulators against such individual, unless such individual is speaking on behalf of PEG. Consistent with PEG's obligation not to contradict any statement set forth in the Information or the Statement of Facts, PEG may take good faith positions in litigation involving any private party.

7. In light of PEG's remedial actions to date and its willingness to (a) acknowledge responsibility for its behavior, (b) cooperate with the USAO and other governmental regulatory agencies, and (c) demonstrate its future good conduct and full compliance with the securities laws, the USAO agrees that if PEG is in full compliance with all of its obligations under this Agreement, the USAO, will not prosecute PEG on the attached Information or on the matters described in the Statement of Facts.
8. Upon execution of this Agreement, PEG shall pay \$600,000,000, with the following payments to be credited against the \$600,000,000:

\$270,000,000 paid to the Fair Fund administered by the SEC pursuant to an offer of settlement reached between the Securities Regulators and PEG; and

\$5,000,000 paid to the Secretary of the Commonwealth of Massachusetts as a monetary penalty.

The balance, \$325,000,000, shall be paid as a monetary penalty allocated as follows: \$300,000,000 to the United States Treasury and \$25,000,000 to the United States Postal Inspection Service Consumer Fraud Fund.

The payments set forth above are material terms of this Agreement. Failure to make payment upon execution of this Agreement or within 48 hours of execution of this Agreement renders all remaining terms of this Agreement null and void.

9. The parties further agree that should the USAO, in its sole reasonable discretion, determine that PEG (a) has given deliberately false, incomplete, or misleading information under this Agreement, (b) has committed any federal crimes subsequent to the date of this Agreement, or (c) has otherwise committed a willful and knowing material breach of any provision of this Agreement (these three circumstances, (a), (b) and (c) are collectively referred to herein as "Breach"), PEG shall, in the USAO's sole reasonable discretion, thereafter be subject to prosecution(s) for any federal criminal violation, including, without limitation, the Information. Moreover, with respect to any prosecutions relating to deceptive mutual fund market timing transactions that are not time-barred as of the date of this Agreement by the applicable statute of limitations (or any other legal, equitable or constitutional basis upon which a prosecution may be time-barred), PEG agrees that the applicable statute of limitations period (or any other legal, equitable or constitutional basis for barring prosecution based on the passage of time), shall be tolled for a period of time equal to the term of this Agreement. PEG's agreement to toll any applicable statute of limitation (or of any legal, equitable or constitutional basis for barring prosecution based on the passage of time) for the period of time covered by this Agreement means that the time period covered by this Agreement shall not be included in the computation of any time periods for purposes of determining whether any applicable statute of limitation (or of any legal, equitable or constitutional basis for barring prosecution based on the passage of time) bars prosecution of PEG relating to

deceptive mutual fund market timing transactions, including, without limitation the charges set forth in the Information and the conduct set forth in the Statement of Facts. PEG's agreement herein tolling the statute of limitations (and any other legal, equitable or constitutional basis for barring prosecution based on the passage of time) is knowing and voluntary and in express reliance on the advice of counsel.

10. PEG agrees that in the event that the USAO, in its sole reasonable discretion, determines that PEG has committed a Breach: (a) PEG will not contest the filing of the Information nor the admissibility into evidence of the Statement of Facts as a binding admission of PEG; (b) PEG will not contradict the contents of the Information or the Statement of Facts; (c) all statements made by or on behalf of PEG and any employee (current or former), or any testimony given by PEG and any employee (current or former) before a grand jury, the United States Congress, the SEC, or elsewhere, and any leads derived from such statements and testimony, shall be admissible in evidence against PEG if proffered by the USAO in any and all criminal proceedings brought by the USAO against PEG; (d) PEG shall not assert any claim under the U.S. Constitution, the rules of evidence, common law or any other legal or equitable principle, that statements made by or on behalf of PEG prior to or subsequent to this Agreement, or any leads therefrom, should be suppressed; (e) PEG shall not assert that the conduct set forth in the Statement of Facts fails to provide a sufficient factual or legal basis to support the charge set forth in the Information; and (f) PEG will agree that the conduct set forth in this Agreement, including the conduct set forth in the Statement of Facts, violates federal criminal law, including, without limitation, Title 15, United States Code, Sections 78j(b) and 78ff(a), and Title 17, Code of Federal Regulations, Section 240.10b-5, and that the conduct of the Timer Brokers violates these provisions and is chargeable to PSI (and PEG as successor to PSI).
11. The decision whether conduct and statements of any individual will be imputed to PEG for the purpose of determining whether PEG has committed a Breach shall be in the sole reasonable discretion of the USAO.
12. Should the USAO determine that PEG has committed a Breach, the USAO shall provide written notice to PEG of the alleged breach and provide PEG with a two-week period in which to make a presentation to the USAO to demonstrate (a) that no Breach has occurred, (b) that the Breach is not a willful and knowing material breach, or (c) that the Breach has been cured. The parties hereto expressly understand and agree that should PEG fail to make a presentation to the USAO within a two-week period, it shall be conclusively presumed, at the USAO's option, that PEG has committed a Breach. In the event of a Breach that results in a prosecution of PEG, such prosecution may be premised upon any information provided by or on behalf of PEG to the USAO at any time, unless otherwise agreed when the information was provided.
13. PEG agrees that the consequences for a Breach as set forth in this Agreement, including, without limitation, those set forth in paragraph 10 of this Agreement, are remedies to which the USAO is entitled in the event of a Breach and shall survive in the event of a

Breach. PEG further agrees that the USAO's remedies for a Breach are not limited to those set forth in this Agreement. PEG further agrees that in the event of a Breach, PEG shall nevertheless be bound by its waivers of any legal, equitable or constitutional rights set forth in this Agreement, including, without limitation, its waivers in paragraphs 3, 9 and 15 of this Agreement, and those provisions shall survive even in the event of a Breach.

14. PEG agrees that if it sells or merges all or substantially all of its business operations as they exist as of the date of this Agreement to or into a single purchaser or group of affiliated purchasers during the term of this Agreement, it shall include in any contract for sale or merger a provision binding the purchaser/successor to the obligations described in this Agreement.
15. PEG shall expressly waive any rights it may have to a speedy trial pursuant to the Fifth or Sixth Amendments of the United States Constitution, Title 18, United States Code, Section 3161, Federal Rule of Criminal Procedure 48(b), any applicable local rule of the United States District Court for the District of Massachusetts, or any other applicable legal or equitable principle.
16. It is understood that this Agreement is binding on PEG and the USAO, but specifically does not bind any other federal agencies, or any state or local law enforcement or licensing authorities, although the USAO will bring the cooperation of PEG and its compliance with its other obligations under this Agreement to the attention of state and local law enforcement or licensing authorities, if requested by PEG or its attorneys.
17. Nothing in this Agreement restricts in any way the ability of the USAO from proceeding against any individual or entity not a party to this Agreement.
18. This Agreement expires five years from the date of its execution; provided, however, that if on such date, any investigation, prosecution or proceeding relating to the subject matters is then ongoing and is being conducted by the USAO, the SEC or any other federal or state enforcement or regulatory agency with which PEG has been directed by the USAO to cooperate pursuant this Agreement, then this Agreement shall not expire until such investigation, prosecution or proceeding is concluded. Between 30 and 60 days before the expiration of the 60 month period of this Agreement, PEG shall submit to the USAO a written certification that it is in compliance with this Agreement.
19. PEG and the USAO agree that this Agreement, including Exhibits A and B and the letter agreement with Prudential referenced herein, shall be made available to the public.
20. PEG hereby warrants and represents that the Board of Directors of PEG has duly authorized, in a specific resolution, the execution and delivery of this Agreement by PEG, and that the person signing the Agreement has authority to bind PEG.
21. This Agreement may not be modified except in writing signed by all the parties.

22. This Agreement may be executed in counterparts.
23. PEG agrees that should a dispute between PEG and the USAO arise as to the meaning of any of the provisions of this Agreement, any ambiguities as to the terms of this Agreement shall be construed in the favor of the USAO.

PRUDENTIAL EQUITY GROUP, LLC

-----icer
Prudential Financial, Inc.
on behalf of Prudential Equity
Group, LLC

General Counsel
Prudential Financial, Inc.
on behalf of Prudential Equity
Group, LLC
Date:

MICHAEL J. SULLIVAN

District of Massachusetts

First Assistant, U.S. Attorney
District of Massachusetts

Diane C. Freniere
Section Chief
District of Massachusetts

Michael J. Pineault
Chief, Economic Crimes
District of Massachusetts

Assistant U.S. Attorney

Date:



Transcript of Deputy Attorney General Paul J. McNulty at Press Conference Regarding Prudential Equity Group Securities Fraud Allegations

Washington, D.C.

DEPUTY ATTORNEY GENERAL McNULTY: Good afternoon. The crackdown on corporate fraud continues. Today we are announcing a major victory in our continuing efforts to combat corporate fraud, and this time it is directed at fraudulent trading in mutual funds.

Joining me in this afternoon's announcement are Michael Sullivan, the United States Attorney for Massachusetts, Peter Zegarac, who is the Inspector in Charge of the Boston Office at the United States Postal Inspection Service, and Linda Thomsen, Director of the Division of Enforcement of the Securities and Exchange Commission, and Susan Merrill, Chief of Enforcement of the New York Stock Exchange.

Today we are announcing that Prudential Equity Group, a broker-dealer subsidiary of Prudential Financial, Inc., has entered a deferred prosecution agreement with the Department of Justice. They have admitted to criminal wrongdoing in connection with deceptive market timing trading in mutual funds and have agreed to pay \$600 million in fines, restitution and penalties. This is the largest resolution of a market timing case to date.

Prudential Equity has also agreed to comply with a number of conditions, including the cooperation with the Department of Justice in its ongoing investigation of abusive and fraudulent trading in mutual fund shares.

Assuming they fully comply with the terms of the agreement, which will last for five years, the Department will not prosecute Prudential Equity for securities fraud.

The Department has also entered a separate compliance agreement with Prudential Equity's parent company, Prudential Financial. Under this agreement, Prudential Financial will also cooperate with our ongoing investigation and will maintain policies and procedures relating to the integrity of the compliance functions across its affiliated entities.

The compliance agreement requires Prudential to make periodic reports to the Prudential Board of Directors' Audit Committee as to the appropriateness and effectiveness of the compliance plan. These reports will also go to the U.S. Attorney in Massachusetts, along with a certification that the reports include all material information bearing on the effectiveness of the compliance plan.

Today's announcement is a victory for law enforcement agencies committed to stopping abusive mutual fund practices. But more importantly, it's a victory for investors in mutual funds. And I have more to say about that in a moment.

Not only does this agreement hold accountable corporate executives, but through it, we ensure that millions of dollars will be available to compensate innocent investors harmed by the fraudulent practices.

A significant portion of Prudential Equity's payment, \$270 million, will be paid into the SEC's Fair Fund to compensate victims of the fraudulent conduct.

This settlement also requires payment of substantial criminal penalty, \$300 million, to be paid directly to the United States Treasury, and \$25 million to be paid to the Postal Inspection Services Consumer Fraud Fund.

Finally, the company will pay a \$5 million civil penalty to the Secretary of the Commonwealth of Massachusetts.

Let me explain briefly how this fraud worked and give some details of the scheme that was used in this case. From 1999 through June of 2003, a number of brokers at Prudential Securities -- that's Prudential Equity's predecessor

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entity -- committed securities fraud by engaging in prohibited market timing trades on behalf of their clients. Now market timing trades is basically taking advantage of time zone trading and fluctuations on the share values between the late afternoon calculations of net share value by mutual funds, doing so in very large number, very large way, buying and dumping these shares.

These brokers defeated safeguards designed to protect against such illegal market timing trades by using false accounts and false identities to give the impression that the trades were coming from many different unrelated brokers representing many different clients. One group of brokers in Boston repeatedly used these deceptive practices to circumvent mutual fund restrictions.

Efforts by the mutual funds to stop this practice were foiled. Many of the affected funds screened for market timing trades by broker identification number, also known as the FA number, and customer account numbers.

When irregularities were found, these fund companies complained to Prudential Securities that the Boston-based brokers had violated trading limitations. Some mutual funds even announced steps they had taken to preclude the Boston brokers from further trading, while others asked Prudential Securities to block further trades by the group in the fund.

Now to circumvent these efforts, the brokers used at least 14 FA numbers and 183 customer accounts for what were, in reality, only 7 clients. And by using these deceptive practices, the brokers were able to create the impression that the trading originated from many brokers and represented many different customers.

In fact, what appeared to be thousands of separate transactions submitted by many brokers for many unrelated customers was actually a systematic pattern of market timing by a small number of brokers on behalf of their hedge fund clients. At least two dozen brokers throughout the Prudential Securities system were involved in deceptive mutual fund market timing.

From 2001 through 2003, these brokers generated in excess of \$50 million in commissions and in excess of \$100 million in profits for their hedge fund clients. Some of these brokers were among the highest fee producers for the company.

Prudential Equity Group admits that on multiple occasions, the brokers' deceptive conduct came to the attention of senior management at Prudential Securities, who failed to stop the activity. Prudential Securities' repeated unambiguous and clear requests from mutual fund companies informing it that the market trading timing from Prudential brokers must be stopped.

Despite these communications, Prudential Securities continued to issue brokers additional accounts and FA numbers and failed to institute controls to stop these deceptive practices and protect mutual funds. The company also failed to impose any discipline upon any of the brokers even where certain senior managers were actually aware of the brokers' deceptive conduct.

To date, three individuals associated with the fraudulent trading at Prudential Equity Group's Boston, Massachusetts branch office -- Martin Druffner, Skifter Arjo and Robert Shannon -- have pled guilty to wire and securities fraud charges. Our investigation continues of other individuals and entities for fraudulent trading in mutual funds.

With today's announcement, the small investor logs in another victory in our fight against corporate fraud.

Mutual fund investing has become a necessity for many Americans. More and more Americans rely on mutual funds as a primary investment. Mutual fund investments can substitute for pension plans and standard bank accounts. Mutual fund shares now represent a large portion of the life savings of the average American.

Unfortunately, there are some in the securities business, predators motivated solely by greed, who continually find new schemes to exploit our financial markets and to line their pockets with illegal profits. When uncovered, their criminal conduct erodes trust, breeds cynicism and casts doubts on the public's ability to choose safe investment vehicles for its hard-earned dollars.

This resolution goes a long way in restoring the public's trust. It could not have been accomplished without the hard work of our nation's prosecutors and law enforcement agencies.

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The Justice Department thanks the United States Postal Inspection Service, the Securities and Exchange Commission, the Secretary of the Commonwealth of Massachusetts Securities Division, and other civil regulators for their help in reaching this resolution, including the New York Stock Exchange.

This team put forth an extraordinary effort, and will continue to do so to root out abusive and fraudulent trading practices in the mutual fund industry.

I am pleased now to recognize the United States Attorney for the District of Massachusetts, Michael Sullivan, for a brief statement. Michael?

U.S. ATTORNEY SULLIVAN: Thank you. Thank you, Mr. McNulty. It's a pleasure for me to be here. Let me begin by just thanking and recognizing the Deputy Attorney General in the Department of Justice for their leadership in the effort to combat corporate fraud.

I'd also like to acknowledge the extraordinary commitment and hard work of the agents, investigators and prosecutors assigned to this investigation, the United States Postal Inspection Services, the Securities and Exchange Commission, and the United States Attorney's Office.

Our investigation into abusive trading in mutual funds is ongoing. We will continue to aggressively investigate, and if appropriate, prosecute individuals and entities involved in deceptive and fraudulent conduct in the mutual fund marketplace.

The conduct at issue here was particularly troublesome, because it was the conduct that undermined the integrity and utility of the automated standardized mutual fund trading system, a system that was created to bring greater efficiency for the trading of mutual funds. Indeed, by 2003, some funds had withdrawn from the system because of the abusive trading which these brokers were engaged. This prosecution is, at least in part, of our restoring confidence in the way that mutual funds are bought and sold.

The conduct in this case not only undermined the integrity of the automated mutual fund trading system, but it ultimately came at the expense of the majority of mutual fund investors who followed the rules and used mutual funds as they were intended to be used; as long-term investment vehicles.

The deceptive conduct here allowed brokers and their hedge fund clients to reap millions of dollars in commissions and trading profits while harming the investment return of the average, long-term mutual fund shareholders.

The repeated and deceptive conduct in an industry which has become for many Americans the place where they invest most of their retirement savings, is what made this case a priority for the Department of Justice and one that justified a commitment of the extensive criminal investigative resources used.

The Department and U.S. Attorney's Offices around the country are committed to vigorously investigating, and if appropriate, prosecuting individuals and entities that threaten the integrity of the mutual fund marketplace.

Though we were faced with many important challenges, addressing corporate fraud and white collar crime continues to be a top priority. And I am hopeful that today's agreement with Prudential will send a clear message to corporate American that the Department of Justice aggressively investigates and prosecutes those who jeopardize the integrity of our nation's financial systems.

Thank you.

DEPUTY ATTORNEY GENERAL McNULTY: Thank you, Mike. This is by far not the first time and certainly won't be the last time that I have the privilege of sharing the stage with Linda Thomsen, who directs enforcement at the Securities and Exchange Commission.

The partnership between the Department of Justice and the Securities and Exchange Commission has never been stronger. And I appreciate once again Linda being here to represent the SEC and its role in this case. Linda?

DIRECTOR THOMSEN: Thank you, Paul. Thank you, and good afternoon. Today's actions reflect the latest step in a sustained effort at the federal, state and self-regulatory levels to address harm to mutual fund investors. The

actions just described by the Deputy Attorney General and the United States Attorney for the District of Massachusetts reflect the seriousness of the misconduct here.

In addition to these actions, the Massachusetts Securities Division, the NASD, the New Jersey Bureau of Securities, the New York Attorney General, the New York Stock Exchange, and the Securities and Exchange Commission, have initiated proceedings relating to the illegal behavior by Prudential Securities Inc. and its registered representatives.

I'd like to commend all of the individuals at the Department of Justice, especially those in the District of Massachusetts, at the United States Postal Service, and those in the state offices in Massachusetts, New Jersey and New York, at the NASD and the New York Stock Exchange, and of course my colleagues at the SEC, for all of the diligence and hard work today's actions reflect.

Today the Securities and Exchange Commission has filed two actions. The first is a settled administrative action against Prudential in connection with the active and aggressive acts of deception by its brokers. These practices were designed to hide the brokers' identities and the identities of their hedge fund customers to place market timing trades in mutual funds when those mutual funds were attempting to block market timing, which was harming their investors.

Mutual fund companies sent more than a thousand letters and e-mails to Prudential, many of them notifying the company that its representatives were using deceptive trading practices, and asking Prudential to stop the activity. High level officers of Prudential were aware of the complaints, but the company failed to take action to stop the fraud.

As a result of this settled action, \$270 million will be distributed to harmed mutual funds and their shareholders.

Today's second SEC action is an unsettled civil action against four former brokers of Prudential, whom we allege engaged in this fraud; Frederick O'Meally, Brian Corbett, Michael Silver, and Jason Ginder. I should note that previously, in November of 2003, we filed suit against six other individuals, five other former Prudential brokers and their branch manager, for similar activity.

In today's action against the individual brokers, we allege that each of the defendants engaged in an array of deceptive conduct, all designed to allow hedge fund customers to engage in market timing in mutual funds when those funds were actively attempting to prevent harm to their investors by halting such trading.

Among other things, we allege that the defendants used more than 750 different customer accounts to process transactions, using dozens, and in one instance hundreds, of different account numbers for the same customer. In this action, which has been filed in federal court in New York, we seek the full panoply of available remedies, including injunctions, disgorgement and penalties.

As I mentioned at the outset, today's actions are part of a sustained effort by many in law enforcement to address mutual fund abuse. To date, the SEC has brought dozens of actions and collected over \$3 billion for distribution to harmed funds and investors. Many, many dedicated individuals have contributed to this effort.

Today's SEC actions are the result of the work of an intrepid team in our Boston office; David Bergers, John Dugan, Beth Lehman, Stuart Feldman, Frank Huntington, Maureen Harrington, and Cara Ramos.

And I thank you very much.

DEPUTY ATTORNEY GENERAL McNULTY: Thank you, Linda. I also think a significant component of this case is the role of the United States Postal Inspection Service. We have a lot of discussion about the resources of the FBI in the area of white collar crime post-9/11, and I think this case illustrates how part of the answer to that demand upon the FBI are the other agencies that are more than ready to step up and invest enormous resources. And the Postal Inspectors did just that.

This is a huge case. The commitment they made to it and the resources they put out to make it possible are really extraordinary, and it should send a message to the entire enforcement community that a key partner in this effort has been and will continue to be the Postal Inspector. So I'm glad that Peter Zegarac is here to say a brief word. Peter?

INSPECTOR ZEGARAC: Thank you, Mr. McNulty. My name is Peter Zegarac, and I am the Postal Inspector in

charge of our Boston Division. The United States Postal Inspection Service is very proud of its long history of protecting the American consumer from fraudulent and deceptive practices through the use of the United States mail. This significant settlement is the culmination of more than two years of dedicated Postal Inspectors conducting more than 100 interviews and reviewing millions of electronic and physical documents to protect the American public and the integrity of the United States mail.

We wish to recognize the outstanding cooperative efforts of all of our regulatory and law enforcement partners, and especially those of the United States Attorney's Office for the District of Massachusetts.

DEPUTY ATTORNEY GENERAL McNULTY: And again, thank you, Susan, for the New York Stock Exchange role in this case. I'm happy to answer any questions you might have. Yes?

QUESTION: I have a question, a two-part question regarding part of the settlements. First, I notice there is a waiver involved in the -- attorney-client privilege waiver. And secondly, this line that Prudential is to make best efforts to make available for interviews its employees and former employees.

In light of Judge Kaplan's recent ruling on KPMG, I'm just wondering if you could speak to your decision or the U.S. Attorney on implementing this and whether you have concerns about how a court would view this in light of Judge Kaplan's ruling. And as a second part to that, whether you've given Prudential any guidance on how to get their employees to cooperate, and whether attorney fees played a part in that.

DEPUTY ATTORNEY GENERAL McNULTY: Okay. Well, you've referenced the judge's -- in the Southern District of New York's ruling about the issue of attorney's fees. And this agreement addresses the question of attorney-client waiver.

The waiving of attorney-client privileged information is a standard piece of the settlements that the Department of Justice has reached in the past. And as you know, there are many agreements that we've reached in our effort to combat corporate fraud.

This agreement contains a provision of a similar nature. However, I'd note that in this waiver provision, there are some distinctions made. And it represents the kind of distinctions that the Department of Justice has been prepared and has made and is willing to continue to make as we try to work these out on a case-by-case basis.

Here we have an agreement that makes a distinction between providing information that the company has that preceded the date on which the discovery and the discontinuance of -- I shouldn't say discovery, necessarily, but the discontinuance of the practices.

It doesn't include information that the company received after that date from attorneys that might involve strategic planning or other defense-related things, things that to go what might be seen as more of a core of attorney-client communications.

So this agreement represents an effort to try to make some distinctions in the area of the waiver, not that we have to always make those distinctions, because there may be circumstances where that's not appropriate. But certainly it requires a waiver where that information is a part of the overall cooperation environment.

And that's the key here. There is every reason for Prudential to be cooperative. This is an agreement involving a different corporate structure really from then until now, which by the way, is why this deferred prosecution agreement is being reached as opposed to a criminal prosecution, because there are some real differences in terms of structure from past to present.

And, therefore, with that cooperation in mind and their willingness to work with the government to get to the bottom of it, to figure out what occurred, providing information that's relevant to our investigation is expected and is consistent with cooperating. So it has a waiver provision of that sort, of that nature.

As to providing the cooperation or providing access to individuals, that, too, is a common piece of a corporate fraud settlement, to provide information, to provide access. This doesn't address, at least I'll -- to the best of my knowledge; I'll check with Mike -- the issue of fees. This just deals with access. And so that, too, is different from the issue going on in the Southern District of New York case.

Yes?

QUESTION: Why did the settlement take three years to reach?

DEPUTY ATTORNEY GENERAL McNULTY: Well, in terms of the settlement reached in three years, I think what we're dealing with is a process that follows a common pattern of beginning with an investigation that involves individuals and their conduct. This case involves multiple jurisdictions and multiple investigations of conduct, and as those things go, they build step-by-step from individuals to the larger interests.

I mentioned a moment ago the evolving nature of the corporate structure. You have Prudential Financial, Wachovia entered into a joint venture to create PEG, this Prudential Equity Group, which was the -- basically the legacy of Prudential, of PSI. And that adds a layer of complexity to the settlement and discussions as to how the agreement is going to affect these other entities.

But I'd say that this one moved along in pretty much the standard pace, because of the movement from individuals, their prosecutions. Remember, here we have three individuals who have already been convicted, and I think two have been sentenced. One awaits sentencing. Is that? Two await sentencing. So I see it as basically following a typical timeline as you work your way towards a deferred prosecution agreement.

Yes?

QUESTION: I think you at one point mentioned there were as many as two dozen people involved in Prudential alone. Doing the math between civil and criminal charges, ten people have been charged so far. What about the other 14?

DEPUTY ATTORNEY GENERAL McNULTY: Well, there is an ongoing investigation. I think that's probably the simplest way to put that, rather than try to sort out who is in what category, let's just say that the criminal investigation will continue.

QUESTION: Have all the investigations and the lawsuits put an end to this practice on a widespread scale?

DEPUTY ATTORNEY GENERAL McNULTY: At least as it relates to PEG and its practices. But -- and so this represents a global settlement with regard to these brokers and this corporate entity. Does your question go to the larger?

QUESTION: The industry as a whole.

DEPUTY ATTORNEY GENERAL McNULTY: I think that the SEC would say that they have multiple investigations in the area. Do you want to speak to any of that?

MS. THOMSEN: As I said earlier, we've already brought dozens of cases. Our number is I think nearing or around 90 or so. We have had many recoveries, and there are still some matters in the hopper, but on an ongoing basis, I think the industry has noticed what we're doing. I don't think the industry wants to be in a position where its investors don't have confidence in the industry. So my hope and expectation is that we will see far fewer of this kind of -- far less of this kind of conduct on a going forward basis.

DEPUTY ATTORNEY GENERAL McNULTY: This case reveals how the mutual fund -- mutual funds themselves are working very hard at trying to protect themselves from this kind of more predatory activity, and despite those efforts, were being foiled and frustrated. So it reveals a lot of that policing effort that they do themselves.

Yes?

QUESTION: I don't see this in the paper, or maybe I skipped over it, but let me go over it, because I want to make sure I have it right. One of you all said that this activity generated more than \$50 million in commissions for Prudential and more than \$100 million in profits for the hedge fund clients. Is that right?

DEPUTY ATTORNEY GENERAL McNULTY: Yeah. Right. I said that in my statement. And we have, yeah, 50 million in commissions, in excess of 50 million in commissions, and in excess of 100 million in profits for their hedge

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fund clients.

QUESTION: Okay. I just wanted to make sure I had that right. And also the -- this being the largest resolution of a market timing case, is that in dollar terms? You're referring to the \$600 million figure there?

DEPUTY ATTORNEY GENERAL McNULTY: I am. Mike?

MR. SULLIVAN: Six hundred and fifty-seven million dollar settlement earlier.

DEPUTY ATTORNEY GENERAL McNULTY: There was a case out of New York that involved two companies, and the combined, or the sum of the two equals more. So this is the largest single company payment.

Yes?

QUESTION: Yes. You mentioned periodic reporting. And I'm sorry, could you list again who is reporting and who they're reporting to?

DEPUTY ATTORNEY GENERAL McNULTY: Okay. Do you want to take a crack at that, Mike?

MR. SULLIVAN: Sure.

DEPUTY ATTORNEY GENERAL McNULTY: All right.

MR. SULLIVAN: I'll be very brief. I think it's actually laid out in the compliance memo with Prudential. But, yes, the agreement is that counsel for Prudential is going to be reporting on a regular basis to the board at Prudential, and then reporting to the U.S. Attorney's Office concerning ongoing compliance efforts.

QUESTION: I'm just curious about how you came to this dollar amount. One of the things that some people might say is notable here is that late trading wasn't involved, which is sort of another egregious element.

DEPUTY ATTORNEY GENERAL McNULTY: Well, that's certainly been a matter given careful consideration, and I think it was the opinion of the enforcement agencies involved in this case that this was the conduct that fit all of the facts and the law in the area.

The SEC has its own way of trying to calculate the loss in the context of an investigation like this and came to that amount. The criminal penalty is something that is the sort of result of an extensive negotiation and so forth. But I think the SEC's figure here connects with its best efforts to calculate actual losses. Does that?

Okay, yes.

QUESTION: Of the seven clients you mentioned aware of what was going on here, are they facing penalties?

DEPUTY ATTORNEY GENERAL McNULTY: I think I'll not answer that question directly, because there is an ongoing investigation. I'll stop there. Thank you.

QUESTION: You talked a little bit about the company's changing corporate structure as one reason you decided not to bring charges against them. Any other reasons for entering into this deferred prosecution?

DEPUTY ATTORNEY GENERAL McNULTY: Well, there are a lot of factors that go into a decision to have a deferred prosecution agreement, and I've touched on a few of them in terms of the cooperation generally speaking, the nature of the company leadership or structure in relation to where the conduct has occurred. That would be the issue of the restructuring that has taken place here.

The compliance efforts that were made at different times preceding what would be the need or requirement to do it under the agreement. I think that's a factor. General knowledge of senior officials of a company to the specific information, although that is not necessarily something that's going to spare a company of a prosecution versus a deferred agreement, because that knowledge is imputed to the leadership if it's occurring in certain ways.

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But I think it's a variety of factors, as I've mentioned here, that create a solid case for a deferred prosecution agreement as opposed to the prosecution of the company itself. We look at those on a case-by-case basis, and one of the issues that affects the question of waiver is that the companies have to realize that they face the real possibility of prosecution, and those companies have to do things to demonstrate their good will when it comes to an agreement to not prosecute.

QUESTION: A question.

DEPUTY ATTORNEY GENERAL McNULTY: Yes?

QUESTION: Maybe this is in the release, but what's the timeframe for the deferred prosecution? At what point did Prudential say, okay, whatever lingering cloud is there is off of us?

DEPUTY ATTORNEY GENERAL McNULTY: Five years.

QUESTION: Five years?

DEPUTY ATTORNEY GENERAL McNULTY: Yes. Thank you all very much.

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