STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT

IN THE MATTER OF: **Deutsche Asset Management, Inc., (CRD #105006)** **and** **Deutsche Investment Management Americas, Inc. (CRD #104518).**	)	**File Number: 04 00062**

CONSENT ORDER

TO THE RESPONDENTS: Deutsche Asset Management, Inc.
(CRD #105006)
345 Park Avenue
New York, New York, 10154

Deutsche Investment Management Americas, Inc.
(CRD #104518)
345 Park Avenue
New York, New York, 10154

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Morgan, Lewis & Bockius LLP
77 West Wacker Drive
Chicago, Illinois 60601

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WHEREAS, Respondents Deutsche Asset Management, Inc. and Deutsche Investment Management Americas, Inc. (the "Respondents") on the 28th day of December, 2006, executed a

certain Stipulation to Enter Consent Order ("Stipulation"), which hereby is incorporated by reference herein.

WHEREAS, by means of the Stipulation, and solely for the purpose of this administrative proceeding, which shall not be binding on any person or entity outside this proceeding, Respondents consent to the entry of this Consent Order ("Consent Order") and the findings and conclusions therein.

WHEREAS, by means of the Stipulation, the Respondents acknowledge, while neither admitting nor denying the allegations, that the following allegations contained in the Notice of Hearing shall be adopted as the Secretary of State's Findings of Fact:

JURISDICTION

1. The Illinois Securities Department (the "Department") is a division of the Office of the Secretary of State, with jurisdiction over matters relating to securities as provided for by the Illinois Securities Law of 1953 (815 ILCS 5/1 *et seq.*) (the "Act"). The Act authorizes the Department, *inter alia*, to regulate the offer and sales of securities, the registration or exemption from registration of those securities, and those individuals and business entities offering and/or selling securities.
2. The Department has the authority to conduct administrative proceedings to enforce the provisions of the Act and all Rules promulgated thereunder. Specifically, Respondents have locations in the State of Illinois, Respondents' actions occurred in the State of Illinois, and investors affected by the actions of Respondents were and are residents of the State of Illinois.

INTRODUCTION

NATURE OF THE CASE

3. The Illinois Securities Department has obtained evidence of illegal trading arrangements that resulted in losses and harm to long-term mutual fund investors. The mutual funds included in Respondents' family were managed in a manner that provided certain individuals and companies the ability to generate trading profits through market timing.
4. From at least January 2000 until March 2003, Respondents permitted certain persons and entities to engage in market timing in mutual funds where Respondents were also investment advisers. This permitted market timing violated Respondents' fiduciary duties to the funds and was allowed in return for income to Respondents by way of substantial fees and other benefits. In prospectuses and other public communications, Respondents stated they discouraged these practices.
5. As described later herein, Respondents permitted certain customers to engage in market timing in exchange for fees and other relationships beneficial to Respondents. Ordinary long-term investors, e.g., retirees, families saving for college tuition, and other "buy and hold" investors, were harmed when Respondents allowed these preferred customers to improperly exploit profit by short-term in-and-out trading of mutual funds ("market timing").
6. In one instance, a special relationship was known and permitted at the highest levels of Respondent DAMI's management. Individuals and entities, other than Respondents, were permitted to engage in market timing and thereby received profits from such trading.
7. In public statements, Respondents indicated they would take measures to limit market timing if they became aware of such activity. Notwithstanding such pronouncements, Respondents intentionally allowed market timing by select entities and individuals.

8. In permitting such market timing, Respondents breached their fiduciary duties to shareholders, permitted select customers to profit at the expense of other investors, and caused costs to be incurred by some of its investors who received no benefits from such costs.
9. In failing to disclose their activities in their prospectuses and other filings and by publishing such documents to the general public, Respondents violated the Illinois Securities Law.
10. In filing misleading documents that led investors to believe that Respondents opposed and discouraged market timing in their mutual funds, when in fact Respondents permitted certain individuals and entities to market time, Respondents violated the Illinois Securities Law.

BACKGROUND - MUTUAL FUNDS

11. A mutual fund is an investment vehicle designed to permit thousands of investors to pool their resources in a fund that, in turn, invests in a large number of securities selected by a professional investment adviser. Each investor has the benefit of that professional advice, shares proportionately in the fund's investment returns (including income paid on the securities and any capital gains or losses caused by sales of securities the fund holds), net of fees and other operating expenses. Historically, an investment in a mutual fund was viewed as an economical way for an investor of modest means to obtain the same quality of professional advice and diversification of investments as a wealthy individual or institution.[1]
12. At all times relevant, each of the Respondents' mutual funds were in the form of a corporation or a Massachusetts business trust; all public investors in each such fund were shareholders in that corporation. The officers and directors of each such corporation thus were fiduciaries relative to the funds and were under a duty to act as fiduciaries with respect

[1] See http://www.ici.org/funds/abt/ref_97_mforgan-operat.html.

to matters affecting the fund. The shareholders had the right to believe that Respondents and all of Respondents' officers, employees and managers would act as fiduciaries with regard to actions affecting the funds.

13. Most funds would accept an initial purchase on the part of an investor in an amount as low as $1,000.00, and any size investment was thereafter possible. Respondents' principals, or professionals retained by Respondents, prepared and filed the various prospectuses and statutorily required reports with appropriate governmental agencies, both State and Federal, which had jurisdiction as to each such Fund. Through one of its several entities, Respondents also maintained the books and records of each fund, including transfers of fund shares through purchases by outside investors or sale, by way of redemption for those shares.

14. Respondents also provided investment advice to the funds. The manager of each fund was actually an employee of Respondents.

BACKGROUND – MUTUAL FUND MARKET TIMING

15. Buying and selling (including exchanging or redeeming) of mutual fund shares is fundamentally different than buying or selling stocks or bonds in a market such as the New York Stock exchange or NASDAQ. In transactions on the aforementioned exchanges, the price of a stock may change at any time and several times throughout a day. If the market as a whole moves generally, either up or down, many of the individual stocks tend to move along with it. To say that the market is "up" is merely a shorthand way of saying that the prices for many of the stocks in that market are up, that the price of more stocks in general has increased.

16. Mutual funds differ in two important ways. First, the price is a reflection of the single price attributed to each of the stocks making up the fund at the close of the New York Stock

Exchange (the "NYSE") as of the preceding trading day. This price, for buying or for selling, will not change until the close of the current day. While the overall market or underlying stocks may have substantial changes in their individual values over the course of a trading day, the mutual funds holding them do not reflect those changes and will not reflect them until the close of *that* trading day. Second, unlike the stock of a publicly held company, the typical mutual fund has only one buyer to which an individual shareholder can sell its shares to, and only one seller of its shares. That lone buyer and lone seller is the mutual fund itself. Such a typical mutual fund is always "open for business," on the terms set forth above; there is always a market in the shares of a mutual fund and the price is always known. At any time, a typical fund will sell shares of itself to the public at the Net Asset Value (the "NAV") calculated on the preceding close of business of the NYSE, or buy back shares from the public at the same NAV. This practice is widespread throughout the mutual fund industry and adequately meets the needs of long-term investors. This same practice, however, does create certain inefficiencies in pricing.

17. Market timing refers to the practice of short term, in-and-out, buying and selling of mutual fund shares in order to exploit the inefficiencies in mutual fund pricing. Market timing is intended to exploit market inefficiencies when the price of the mutual fund shares does not reflect the current market value of the stocks held by that mutual fund. A typical market timed investment can be as short as a day and seldom is longer than a week. Market timing has a detrimental effect on long-term shareholders for whom mutual funds are designed, such as retirees and other buy and hold investors. When a market timer buys mutual fund shares at the stale NAV, it realizes a profit when it sells those shares the next trading day or thereafter. That profit dilutes the value of shares held by long-term investors.

18. For example, studies performed by Respondents' own portfolio managers suggested some international mutual funds suffered as much as 2% to 5% in their performance annually due to market timing.[2] This detrimental effect was a result of the dilution in value of mutual fund shares to the extent that a timer is permitted to buy and sell shares rapidly and repeatedly to take advantage of arbitrage opportunities as well as the other costs involved.

19. Other damages to long-term investors result from their investments being in a mutual fund which permits market timing. The rapid trading resulting from market timing generates trading commissions and other costs, which all investors have to absorb, but only the market timer reaps the benefits. In addition, portfolio managers may keep larger percentages of the fund in cash, instead of buying the type of investments they would prefer, as a way of handling potentially large movements of cash on a daily basis.

20. Consequently, mutual fund managers often maintain policies and procedures to detect and prevent timing, such as imposing early redemption fees or exercising discretion to cancel timers' purchases.

21. Regular filings with the SEC, including Statements of Supplemental Information and Prospectuses, were necessary to keep all of the funds available for sale to the public. Respondents made these filings on behalf of the individual funds.

22. Contrary to its representations to regulators and the public, Respondents allowed certain market timing activity at the expense of other investors.

RESPONDENTS' CORPORATE HISTORY

23. Respondent Deutsche Asset Management, Inc. (CRD # 105006) ("Respondent DAMI" or "DAMI") is a Delaware corporation with a current business address of 345 Park Avenue, New York, New York, 10154.

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[2] See DB 003856.

24. Respondent Deutsche Investment Management, Americas, Inc. (CRD #104518) ("Respondent DIMA" or "DIMA") is a Delaware corporation with a current business address of 345 Park Avenue, New York, New York, 10154.

25. The investment activities of Respondents, as addressed herein, occur through either Respondent DAMI or Respondent DIMA.

Respondent DAMI

26. Respondent DAMI was formed in the early 1990s, and in 1995 was given full responsibility for all of the Deutsche Bank's institutional asset management activities.

27. Respondent DAMI "has undertaken to bear all liabilities and expenses incurred by the Scudder funds [sic] in connection with ... regulatory actions that may be filed ... regarding ... market timing ..."[3]

28. Allegations elsewhere in this Consent Order as to Maillot Jaune relate to a corporate predecessor of DAMI.

Respondent DIMA

29. DIMA is the present name of a corporate entity with antecedents going back several decades.[4]

30. Zurich acquired Kemper Investments in 1996, which was then operating numerous mutual funds. In 1997, Zurich acquired a majority interest in Scudder, Stevens and Clark, Inc., and formed Scudder Kemper Investments, Inc., as part of the Zurich Group (a provider of insurance, reinsurance, asset management and life and non-life insurance products). The

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[3] See http://www.icdfunds.com/prospectus/Scudder_Money_Market_Series-Fund_403-Prosp(10-04).pdf.

[4] Respondent DIMA's various names included, but were not limited to, Deutsche Asset Management, DWS Scudder Investor Services, Scudder Financial Services, Inc., Scudder Investments, Scudder Kemper Investments, Inc., Scudder Private Investment Counsel, Scudder, Stevens & Clark, Inc., and Zurich Scudder Investments, Inc.

name was changed effective January 3, 2001, to Scudder Kemper Investments, Inc. ("SKI"). Deutsche Bank then acquired SKI in April 2002.

31. In February 2006, the US mutual fund part of its business was rebranded to DWS Scudder.

32. Allegations elsewhere in this Consent Order as to Millennium Management, LLC, Peconic Capital, Four Seasons, Cooper/Yellen, Gustafson-Baxter, Tactical Asset Management, Inc., Chung/Savino, Chris Venuti, and Thomas Lange relate to a corporate predecessor of DIMA.

ALLEGATIONS

FALSE STATEMENTS IN PROSPECTUS

33. Respondents' principals, or professionals retained by Respondents, prepared and filed the various prospectuses and reports with various governmental agencies, both State and Federal, which had jurisdiction as to each fund. The relationships between Respondents and each fund were disclosed in the various required filings made by Respondents on behalf of each fund and in the various prospectuses made available to the public. Those disclosures included the fact that Respondents were advisers to the various funds, that they earned fees for providing those services, and that the amount of those fees were related to the size of the various funds – the larger the asset base, the greater the amount of fees payable to Respondents.

34. For example, in 2000, Scudder Funds' prospectuses reserved the right to reject any purchases and exchanges for any reason, including when there appeared to be a pattern of market timing.

35. For example, the October 1, 2000, prospectus for the Scudder Development Fund contained the following language:

> Exchanges are a shareholder privilege, not a right; we may reject any exchange order, particularly when there appears to be a pattern of "market timing" or other

frequent purchases and sales. We may also reject or limit purchase orders, for these or other reasons.

36. Those prospectuses and other reports failed to disclose Respondents' conduct permitting market timing by selected customers.

MUTUAL FUND MARKET TIMING

GENERAL ALLEGATIONS

37. During the relevant time period, and for some period of time prior to the relevant period, Respondents were aware of a trading practice known as market timing. Respondents also knew that permitting such a practice by a single favored investor or group of favored investors was of no benefit whatsoever to all the other shareholders in the fund being timed, and in fact was harmful to the interest of those shareholders in several different ways.

38. During the relevant time period, and for some period of time prior to the relevant period, Respondents permitted certain favored clients to engage in market timing in one or more of its funds. The persons or entities that Respondents permitted to time one or more of its funds included the following:

   a. One of Respondents' clients was selected because they were active brokers in bringing business of other kinds to Respondents (which business would have little, if any benefit to the fund being timed).

   b. One of Respondents' clients was permitted to engage in market timing because its family member had been an active member of a predecessor of Respondents'.

   c. One entity that provided other assets to be controlled by Respondents, and on which Respondents could earn fees as a result, was permitted to market time certain funds.

39. All of these various persons had Respondents' consent to time several of the funds under Respondents' management. Respondents monitored the activities of these timers.

40. Respondents were aware that many purchases made in various funds occurred only because the purchaser intended to market time the purchase involved, i.e., buy and then sell for short-term profit. Respondents were also aware that market timing activity of this sort would cause long-term adverse consequences for the fund(s) being timed.

SPECIAL RELATIONSHIPS

41. During the course of the investigation, ten special market timing relationships were identified. In these relationships, Respondents DAMI and DIMA granted the privilege to market time Respondents' funds beyond the restrictions present in the prospectuses.

- *Respondent DAMI and Maillot Jaune Capital, LLC*

42. Ross Charles Youngman (CRD #4332719) ("Youngman") was a high-ranking employee of DAMI for over ten years. Youngman worked for Respondent DAMI both nationally and internationally.[5] Youngman's most recent position with Respondent DAMI was CEO of Australia. Prior to that position, Youngman worked in the United States as head of DAMI's US Mutual Funds business. Youngman played a key role in the Zurich Scudder Investments acquisition and integration.

43. Maillot Jaune Capital, LLC ("Maillot Jaune") is a hedge fund. Maillot Jaune's investment adviser is Gage Capital, LLC.[6]

44. On or about June 30, 2000, Respondent DAMI, by and through one of its predecessors,[7] entered into a "special relationship" with Maillot Jaune. This relationship allowed Maillot Jaune to market time certain of Respondent DAMI's mutual funds.

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[5] Source: http://www.deutsche-bank.de/presse/en/index.html?contentOverload=http://www.deutsche-bank.de/presse/en/releases_801.shtml

[6] Both Maillot Jaune and Gage Capital, LLC operate out of the same business address.

[7] Legacy: Deutsche

45. Specifically, Youngman granted a "special dispensation" to Michael Hoffman, the CIO of Maillot Jaune. At a minimum, this dispensation allowed Maillot Jaune to market time the IEF class I mutual fund.[8]

46. Respondent DAMI benefited from this relationship because, among other things, Respondent earned advisory fees from the deposit of assets into the mutual funds.

47. Specifically, Respondent DAMI benefited from this relationship because Maillot Jaune was authorized to place between $22,500,000.00 and $30,000,000.00 of "sticky assets" in certain of Respondent's mutual funds.[9]

48. In addition, Maillot Jaune benefited from this relationship because they were allowed to market time the mutual fund at the expense of the long-term shareholders.

49. Maillot Jaune was allowed to time $2,500,000.00 to $7,500,000.00 in the IEF class I mutual fund.[10]

50. The mutual fund prospectus gave no indication there was a special relationship between Respondent DAMI and Maillot Jaune.

51. The frequent trading arrangement was contrary to the prospectuses governing the mutual funds in which the market timing was permitted.

52. Maillot Jaune reaped the benefits of this "special dispensation" on multiple occasions.

53. For example, on April 5, 2001, Maillot Jaune placed a purchase through NSCC for $14,000,000.00, which was *initially* blocked.[11] Five days later, Larry Romaneck ("Romaneck"), a mutual fund wholesaler whose title was Director of Respondent DAMI,[12] made a phone call and authorized the trade pursuant to the signed agreement, a.k.a., the

[8] See DB 066956 – 066957.
[9] See DB 066957.
[10] See DB 066957.
[11] See DB 197225.
[12] See DB 197225 – 197226.

"special dispensation."[13] This phone call triggered other calls with the ultimate result being the removal of the stop purchase from the Maillot Jaune account and the acceptance of the $14,000,000.00 trade.[14]

54. On Thursday, June 27, 2002, at 1:44 p.m., a DAMI employee coordinating with the transfer agency sent an e-mail to Anthony Rini of Bear Sterns with the subject of "Market Timer – Bear Sterns." The e-mail stated,

> I have taken over the market timing responsibilities from [another DAMI employee] and have come across account 102-22352-10 that has been timing the International Select Equity Fund again.
>
> I am placing a stop purchase/timer on this account. Please notify this individual that he is not allowed to purchase any of our mutual funds. (Emphasis added.) Your assistance in this matter is greatly appreciated ...[15]

55. At 5:13 p.m. of the very same day, just a little over three and a half hours after sending the initial e-mail, a DAMI employee coordinating with the transfer agency sent another e-mail to Anthony Rini. In this subsequent e-mail she stated,

> I didn't realize who the shareholder was on this account. Please allow this client to continue trading in the Deutsche Asset Management Funds. (Emphasis added.) I have spoken to Michael Hoffman [CIO of Maillot Jaune] and explained that he can continue to trade.
>
> Sorry for the inconvenience.[16]

56. Instead of apologizing to the deceived mutual fund investors, Respondent DAMI was apologizing to the timers for inconveniencing them.

57. As a DIMA employee in product management noted in his e-mail to a DAMI employee coordinating with the transfer agency on October 23, 2002, "The policy of letting this one rep

[13] See DB 197225.
[14] See DB 197225.
[15] See DB 004090.
[16] See DB 004090.

market time our funds is terribly inconsistent with our general market timing policy …"[17] (Emphasis added.)

58. Despite recognizing the terrible inconsistency with the general market timing policy, Maillot Jaune kept market timing the funds.
59. On January 9, 2003, a DIMA employee in product management stated, "Allowing Mr. Hoffman the opportunity to continue market timing our funds is inconsistent with our commitment to long-term investors of the funds as well as in contrast to commitments we have made to the fund's board that we are doing everything we can to limit market timing."[18]
60. Respondent DAMI permitted Maillot Jaune to continue market timing the funds until March 2003, notwithstanding the statement of the DIMA employee in product management.
61. On or about May 12, 2004, Youngman was "permitted to resign his position" with Respondent DAMI. His resignation came about as a result of a "past relationship with an investment advisory firm that traded frequently in a small number of mutual funds, inconsistent with these funds' registration statement policies."[19]
62. Long-term shareholders were misled for the benefit of both Respondent DAMI and Maillot Jaune.

- *Respondent DIMA and Millennium Management, LLC*

63. "Millennium Management, LLC, is a Delaware limited liability company that is the managing partner of Millennium Partners, LP, and the general partner of Millennium USA, LP, the domestic feeder fund of Millennium Partners. Millennium Management also acts as

[17] See DB 003837.
[18] See DB 003856.
[19] See CRD system report for Ross Charles Youngman (CRD #4332719).

the unregistered investment adviser (under an exemption from registration) to Millennium Partners and Millennium USA. ... [collectively referred to as "Millennium"]"[20]

64. Steven B. Markovitz (CRD #2250307) ("Markovitz") was a trader with Millennium from 1999 to 2003. On October 2, 2003, the U.S. Securities and Exchange Commission entered an Order against Markovitz barring him from association with any investment adviser and prohibiting him from acting as an employee, etc., for any registered investment company.[21]
65. During the relevant time period, Respondent DIMA, by and through one of its predecessors,[22] entered into a "special relationship" with Millennium. This relationship allowed Millennium to market time certain of Respondent DIMA's mutual funds.
66. Respondent DIMA benefited from this relationship because, among other things, Respondent earned advisory fees from the deposit of assets into the mutual funds.
67. In addition, Millennium benefited from this relationship because they were allowed to market time the mutual fund at the expense of the long-term shareholders.
68. The mutual fund prospectus gave no indication there was a special relationship between Respondent DIMA and Millennium.
69. The frequent trading arrangement was contrary to the prospectuses governing the mutual funds in which the market timing was permitted.
70. Long-term shareholders were misled for the benefit of both Respondent DIMA and Millennium.

- *Respondent DIMA and Peconic Capital, LLC*

71. George S. Johnston was the president of Scudder, Stevens and Clark, a predecessor to Respondent DIMA.

[20] See http://sec.gov/litigation/admin/33-8639.pdf.
[21] See http://sec.gov/litigation/admin/33-8298.htm. Markovitz engaged in late trading of mutual fund shares.
[22] Legacy: Scudder

72. Scott Johnston is George S. Johnston's son. Scott Johnston is also the advisor of Peconic Capital, LLC, a.k.a., Peconic Offshore Account, a.k.a., Agawam Fund (collectively referred to as "Peconic").

73. After George S. Johnston was no longer associated with Respondent DIMA, Respondent DIMA, by and through one of its predecessors,[23] entered into a "special relationship" with Peconic. This relationship allowed Peconic to market time certain of Respondent DIMA's mutual funds.

74. Peconic was given permission to market time six different mutual funds; it utilized at least seven different account numbers to time the funds.[24]

75. The permission to market time the mutual funds was granted by four out of the six mutual funds' portfolio managers.[25]

76. Respondent DIMA benefited from this relationship because, among other things, Respondent earned advisory fees from the deposit of assets into the mutual funds.

77. Per Respondent DIMA's e-mail, Peconic was allowed to time $11,000,000.00 in Development, $700,000.00 in Global Discovery, and $500,000.00 in Global.[26]

78. Peconic benefited from this relationship because they were allowed to market time the mutual fund at the expense of the long-term shareholders.

79. The mutual fund prospectus gave no indication there was a special relationship between Respondent DIMA and Peconic.

80. The frequent trading arrangement was contrary to the prospectuses governing the mutual funds in which the market timing was permitted.

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[23] Legacy: Scudder

[24] Permission to time was granted in "Global, Development, Global Discovery, and Emerging Markets Income." See DB 144704.

[25] See DB 144703.

[26] See DB 144791.

81. In October 2000, employees of Respondent DIMA were beginning to question the mutual fund market timing trades placed by Peconic.[27]

82. This questioning was raised again, a year later, in December 2001, and was resolved in January 2002.[28]

83. As a DIMA employee in product management acknowledged,

> The problem is that to allow one client [Peconic] to market time one of our funds, while we block other clients every day is preferential treatment ... Also if this client is profitable in his timing (and I assume he is because he keeps doing it) those profits are coming from somewhere. I assume it is either the fund's other shareholders or us, the advisor, both of which are undesirable.[29] (Emphasis added.)

84. Finally, on January 23, 2002, a decision was made by Respondent DIMA to place a "Stop Purchase" on Peconic's account.[30]

85. This only happened *after* determining that "the legacy [with the "son of former Scudder big wig"] probably isn't so critical these days."[31]

86. Long-term shareholders were misled for the benefit of both Respondent DIMA and Peconic.

- *Respondent DIMA and Four Seasons*

87. During the relevant time period, Respondent DIMA, by and through one of its predecessors,[32] entered into a "special relationship" with Four Seasons. This relationship allowed Four Seasons to market time certain of Respondent DIMA's mutual funds.

88. The mutual fund prospectus gave no indication there was a special relationship between Respondent DIMA and Four Seasons.

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[27] See DB 144703.
[28] See DB 143087.
[29] See DB 172760.
[30] See DB 143087.
[31] See DB 143067.
[32] Legacy: Scudder

89. The frequent trading arrangement was contrary to the prospectuses governing the mutual funds in which the market timing was permitted.

90. Long-term shareholders were misled for the benefit of both Respondent DIMA and Four Seasons.

- *Respondent DIMA and Robert Cooper / Michael Yellen*

91. Robert P. Cooper ("Cooper") (CRD #862071) was a registered representative with J.C. Bradford from April 1992 to August 2000. He was then at UBS PaineWebber, Inc. from August 2000 to March 2002.

92. Michael D. Yellen ("Yellen") (CRD #1764544) was a registered representative with J.C. Bradford from January 1993 to August 2000. He was then at UBS PaineWebber, Inc. from August 2000 to February 2002.

93. Robert P. Cooper and Michael D. Yellen (collectively "Cooper/Yellen") worked together and traded through J.C. Bradford[33] - a fact which gains importance as we move forward in time.

94. On or about the Fall of 1997, Respondent DIMA, by and through one of its predecessors,[34] entered into a "special relationship" with Cooper/Yellen. This relationship allowed Cooper/Yellen to market time certain of Respondent DIMA's mutual funds.

95. Respondent DIMA benefited from this relationship because, among other things, Respondent earned advisory fees from the deposit of assets into the mutual funds.

96. In addition, Cooper/Yellen benefited from this relationship because they were allowed to market time the mutual fund at the expense of the long-term shareholders.

97. In September of 1998, Cooper/Yellen had approximately $23,000,000.00 with Kemper.[35]

98. On January 26, 2001, Peter Jacobs ("Jacobs") allowed Cooper/Yellen to market time

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[33] J.C. Bradford had a market timing exception. See DB 044823.

[34] Legacy: Kemper

[35] See DB 004173. This money was viewed as "Bradford monies."

$1,3000,000.00 in the Growth Fund since it was "modest activity."[36]

99. The reasoning for allowing the Cooper/Yellen exception "was to build the relationship with J.C. Bradford."[37]

100. Given that Cooper/Yellen was not with J.C. Bradford at the time, Jacobs stated,

> "Now that they're [Cooper/Yellen are] at PW [Paine Webber], there is no reason to continue this <u>legally-questionable, time consuming exception</u> ... we need to avoid another <u>grand scheme of exceptions</u> like we've provided them in the past."[38] (Emphasis added.)

101. Notwithstanding Jacobs' statement, Cooper/Yellen continued to time the mutual funds.

102. On October 31, 2001, Cooper/Yellen placed most of its $3,000,000.00 limit into Growth and Income.[39]

103. The onslaught of Cooper/Yellen market timing continued well into January 2002.

104. On March 4, 2002, a DIMA employee at the transfer agent expressed his serious concerns regarding the Cooper/Yellen relationship to a DIMA employee in product management. Cooper/Yellen had five (5) exchanges totaling $1,775,000.00 in the Dynamic Growth Fund Class A.[40] The DIMA employee at the transfer agent questioned the favoritism shown to Cooper/Yellen and the detriment to long-term shareholders.[41]

105. A DIMA employee in product management responded later that day. She told a DIMA employee at the transfer agent that Cooper/Yellen were ending their trading activity soon, "Until then, please honor there [sic] transactions."[42]

106. Cooper/Yellen was identified on an Exception Report as being permitted to market time pursuant to a Wholesaler's request.[43]

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[36] See DB 155053.
[37] See DB 155053.
[38] See DB 155053.
[39] See DB 154703.
[40] See DB 164931.
[41] See DB 164931.
[42] See DB 164931.

107. The mutual fund prospectus gave no indication there was a special relationship between Respondent DIMA and Cooper/Yellen.

108. The frequent trading arrangement was contrary to the prospectuses governing the mutual funds in which the market timing was permitted.

109. Long-term shareholders were misled for the benefit of both Respondent DIMA and Cooper/Yellen.

- *Respondent DIMA and Gustafson Baxter Financial Services, Inc.*

110. Beginning in the early 1990s, Respondent DIMA, by and through the Timing Department of Scudder Investment Services Company, entered into telephone exchange agreements also known as Timing Service Agreements ("TSA agreements") with certain registered investment advisers ("RIAs"). The TSA agreements allowed those RIAs to make "list moves," which were changes to investments in multiple customer accounts simultaneously, rather than making investment changes one account at a time.

111. Although the TSA agreements required the approved RIAs to comply with the funds' prospectuses, an RIA entered into a "special relationship" with Respondent DIMA that permitted them to market time certain funds.

112. Gustafson, Baxter Financial Services, Inc. ("Gustafson Baxter") (CRD #110289) is a registered investment adviser under the Investment Company Act of 1940, with a last known address of 3934 N. Hampton Drive, Powell, OH, 43065.[44] Respondent DIMA entered into a TSA agreement with Gustafson Baxter.

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[43] See DB 028390.

[44] Gustafson Baxter has notice filed with the State of Illinois since January 22, 2001.

113. On or about April 2000, Respondent DIMA, by and through one of its predecessors,[45] entered into a "special relationship" with Gustafson Baxter. This relationship allowed Gustafson Baxter to market time certain of Respondent DIMA's mutual funds.

114. Specifically, on April 26, 2000, Peter Jacobs sent an e-mail with the subject heading of "Timer Exception" to a group of DIMA employees.[46]

115. The "Timer Exception" e-mail authorized a timing exception "*inside the 15-Day Hold* for Gustafson, Baxter."[47] Gustafson Baxter was authorized to use the Kemper Technology Fund and the Kemper Growth Fund for "total moves of up to $1.6 million in less than 15 days."[48]

116. Furthermore, for the years 2001 and 2002, neither the prospectus for the Kemper Technology Fund nor the prospectus for the Kemper Growth Fund gave the slightest indication of the exception granted to Gustafson Baxter.

117. Gustafson Baxter's undisclosed timing exception continued. In 2002, Gustafson Baxter moved a total of $987,691.72 in 8 moves between the Technology Fund and Cash Reserves.[49]

118. Finally, on December 13, 2002, a DIMA employee at the transfer agent sent an e-mail to Scott Baxter of Gustafson Baxter informing him of "the 15 day hold imposed upon all exchanges regardless of dollar amount."[50] Over two and a half years had passed since granting the market timing exception.

119. Respondent DIMA benefited from this relationship because, among other things, Respondent earned advisory fees from the deposit of assets into the mutual funds.

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[45] Legacy: Kemper
[46] See DB 29157.
[47] See DB 29157. Emphasis added.
[48] See DB 29157.
[49] See DB 29871.
[50] See DB 29142.

120. In addition, Gustafson Baxter benefited from this relationship because they were allowed to market time the mutual fund at the expense of the long-term shareholders.

121. The mutual fund prospectus gave no indication there was a special relationship between Respondent DIMA and Gustafson Baxter.

122. The frequent trading arrangement was contrary to the prospectuses governing the mutual funds in which the market timing was permitted.

123. Long-term shareholders were misled for the benefit of both Respondent DIMA and Gustafson Baxter.

- *Respondent DIMA and Tactical Asset Management*

124. Beginning in the early 1990s, Respondent DIMA, by and through the Timing Department of Scudder Investment Services Company, entered into telephone exchange agreements also known as Timing Service Agreements ("TSA agreements") with certain registered investment advisers ("RIAs"). The TSA agreements allowed those RIAs to make "list moves," which were changes to investments in multiple customer accounts simultaneously, rather than making investment changes one account at a time.

125. Although the TSA agreements required the approved RIAs to comply with the funds' prospectuses, another RIA entered into a "special relationship" with Respondent DIMA that permitted them to market time certain funds.

126. Tactical Allocation Services, LLC[51] ("Tactical") (CRD #107070) is a registered investment adviser under the Investment Company Act of 1940, with a last known address of 4909 Pearl East Circle, Suite 300, Boulder, CO 80301. Respondent DIMA entered into a TSA agreement with Tactical.

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[51] Also known as "Tactical Asset Management."

127. Respondent DIMA, by and through one of its predecessors,[52] entered into a "special relationship" with Tactical. This relationship allowed Tactical to market time certain of Respondent DIMA's mutual funds.

128. Respondent DIMA benefited from this relationship because, among other things, Respondent earned advisory fees from the deposit of assets into the mutual funds.

129. In addition, Tactical benefited from this relationship because they were allowed to market time the mutual fund at the expense of the long-term shareholders.

130. The mutual fund prospectus gave no indication there was a special relationship between Respondent DIMA and Tactical.

131. The frequent trading arrangement was contrary to the prospectuses governing the mutual funds in which the market timing was permitted.

132. Long-term shareholders were misled for the benefit of both Respondent DIMA and Tactical.

- *Respondent DIMA and Christopher Chung / William Savino*

133. Christopher D. Chung ("Chung") (CRD #2132475) was a registered representative with Merrill Lynch, Pierce, Fenner & Smith, Inc. from January 2002 to October 2003, and a registered representative with UBS Financial Services, Inc. from October 2000 to January 2002.[53]

134. William B. Savino ("Savino") (CRD #721027) was a registered representative with Merrill Lynch, Pierce, Fenner & Smith, Inc. from January 2002 to October 2003, and a registered representative with UBS Financial Services, Inc. from May 1997 to January

[52] Legacy: Kemper
[53] Chung's registration was revoked by the State of New Jersey, as of December 1, 2004, for mutual fund market timing.

2002.[54]

135. On or about May 2001, Respondent DIMA, by and through one of its predecessors,[55] entered into a "special relationship" with Christopher D. Chung and William B. Savino (collectively "Chung/Savino"). This relationship allowed Chung/Savino to market time certain of Respondent DIMA's mutual funds.

136. An e-mail discussing the exception stated, "There are two brokers at Paine Weber in NJ who are being allowed to Time – Their names are Bill Savino and Chris Chung. Don't place any stops on their accounts."[56] (Emphasis added.)

137. Respondent DIMA benefited from this relationship because, among other things, Respondent earned advisory fees from the deposit of assets into the mutual funds.

138. In addition, Chung/Savino benefited from this relationship because they were allowed to market time the mutual fund at the expense of the long-term shareholders.

139. The mutual fund prospectus gave no indication there was a special relationship between Respondent DIMA and Chung/Savino.

140. The frequent trading arrangement was contrary to the prospectuses governing the mutual funds in which the market timing was permitted.

141. Long-term shareholders were misled for the benefit of both Respondent DIMA and Chung/Savino.

- *Respondent DIMA and Christopher Venuti*

142. Christopher Venuti ("Venuti") (CRD #2156243) is currently a registered representative. Venuti was with Bear, Stearns & Co., Inc. from November 1996 through March 2000.

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[54] Savino's registration was revoked by the State of New Jersey, as of December 1, 2004, for mutual fund market timing.
[55] Legacy: Kemper
[56] See DB 234332.

143. On or about November 1998, Respondent DIMA, by and through one of its predecessors, entered into a "special relationship" with Venuti. This relationship allowed Venuti to market time certain of Respondent DIMA's mutual funds.

144. Respondent DIMA benefited from this relationship because, among other things, Respondent earned advisory fees from the deposit of assets into the mutual funds.

145. In addition, Venuti benefited from this relationship because he was allowed to market time the mutual fund at the expense of the long-term shareholders.

146. During a period beginning on November 15, 1998 and ending less than 20 trading days later, over 150 trades exceeding $400,000.00 in value were executed on behalf of Venuti.

147. This activity continued into 1999 with DIMA executing trades for Venuti. Venuti was advised that DIMA had a 15-day hold policy in place, but he was also advised through telephone conversations that this policy would continue to be waived on his transactions.

148. Venuti's market timing was permitted, even though DIMA had controls in place where trades in excess of given amounts were continually reviewed for evidence of market timing and the permitted trades exceeded those threshold amounts by several hundred thousand dollars.

149. The mutual fund prospectus gave no indication there was a special relationship between Respondent DIMA and Venuti.

150. The frequent trading arrangement was contrary to the prospectuses governing the mutual funds in which the market timing was permitted.

151. Long-term shareholders were misled for the benefit of both Respondent DIMA and Venuti and his customers.

- *Respondent DIMA and Thomas Lange*

152. During the relevant time period, Respondent DIMA, by and through one of its predecessors,[57] entered into a "special relationship" with Thomas Lange ("Lange"). This relationship allowed Lange to market time certain of Respondent DIMA's mutual funds.

153. The mutual fund prospectus gave no indication there was a special relationship between Respondent DIMA and Lange.

154. The frequent trading arrangement was contrary to the prospectuses governing the mutual funds in which the market timing was permitted.

155. Long-term shareholders were misled for the benefit of both Respondent DIMA and Lange.

OTHER TIMING ACTIVITY

156. In addition to the foregoing special relationships, Respondents failed to prevent other market timing. Certain funds, and thereby their shareholder investors, suffered more extensive harm than others. Respondents knew or should have known about such market timing.

157. The costs and expenses of the other timing activity was spread across the fund being timed as a whole, even though the only benefit for a timed purchase was to the individual market timer.

158. Respondents maintained monthly reports detailing the other timing activity. These reports were available internally, but not to the investing public.

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[57] Legacy: Kemper

WHEREAS, by means of the Stipulation, the Respondents acknowledge, without admitting nor denying them, that the following conclusions of law shall be adopted by the Secretary of State:

VIOLATIONS OF ILLINOIS LAW

1. Section 12.A of the Act states, *inter alia*, that it shall be a violation of the Act for any person to offer or sell any security except in accordance with the provisions of this Act.
2. Section 12.E(1) of the Act provides, *inter alia*, that it shall be a violation of the Act, to make, or cause to be made, in any application, report or document filed under this Act or any rule or regulation made by the Secretary of State pursuant to this Act, any statement which was false or misleading with respect to any material fact.
3. Section 12.F of the Act states, *inter alia*, that it shall be a violation of the Act for any person to engage in any transaction, practice or course of business in connection with the sale or purchase of securities which works or tends to work a fraud or deceit upon the purchaser or seller thereof.
4. Section 12.G of the Act states, *inter alia*, that it shall be a violation of the Act for any person to obtain money or property through the sale of securities by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.
5. Section 12.H of the Act states, *inter alia*, that it shall be a violation of the Act for any person to sign or circulate any statement, prospectus, or other paper or document required by any provision of this Act or pertaining to any security knowing or having reasonable grounds to know any material representation therein contained to be false or untrue.

6. Section 12.J(1) of the Act provides, *inter alia*, that it shall be a violation of the Act, when acting as an investment adviser, investment adviser representative, or federal covered investment adviser, by any means or instrumentality, directly or indirectly to employ any device, scheme or artifice to defraud any client or prospective client.
7. Section 12.J(2) of the Act provides, *inter alia*, that it shall be a violation of the Act, when acting as an investment adviser, investment adviser representative, or federal covered investment adviser, by any means or instrumentality, directly or indirectly to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.
8. By virtue of the foregoing, Respondents DAMI and DIMA, or one of their predecessors, violated Sections 12.A, 12.E(1), 12.F, 12.G, 12.H, 12.J(1), and 12.J(2) of the Act.

WHEREAS, the Secretary of State, by and through his duly authorized representative, has determined that the matter related to the aforesaid formal hearing may be dismissed without further proceedings.

NOW THEREFORE IT SHALL BE AND IS HEREBY ORDERED THAT:

1. Respondents shall make a payment to the Illinois Securities Department Audit and Enforcement Fund in the amount of two million dollars ($2,000,000.00), within ten (10) days of entry of this Consent Order.
2. Respondents shall make a payment to the Illinois Securities Department Investors Education Fund in the total amount of four million dollars ($4,000,000.00).

a. Respondents shall make the first payment to the Illinois Securities Department Investors Education Fund in the amount of one million dollars ($1,000,000.00) within ten (10) days of execution of this Consent Order.

b. Respondents shall make the second payment to the Illinois Securities Department Investors Education Fund in the amount of one million dollars ($1,000,000.00) on December 3, 2007.

c. Respondents shall make the third payment to the Illinois Securities Department Investors Education Fund in the amount of one million dollars ($1,000,000.00) on December 1, 2008.

d. Respondents shall make the fourth and final payment to the Illinois Securities Department Investors Education Fund in the amount of one million dollars ($1,000,000.00) on December 1, 2009.

3. Respondents shall comply with the plan for restitution as specified in Paragraph A of the agreement attached to the New York Attorney General's Assurance of Discontinuance Pursuant to Executive Law Section 63(15).

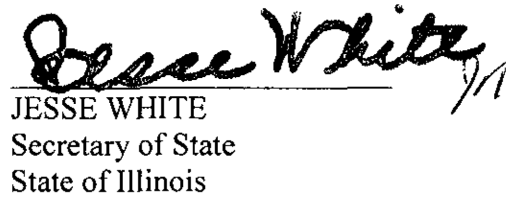
4. Respondents shall comply with the Illinois Securities Law of 1953 (815 ILCS 5/1 *et seq.*) in connection with the practices referred to in this Consent Order.

5. This Consent Order concludes the investigation by the Illinois Securities Department and any other action that the Illinois Securities Department could commence under the Illinois Securities Law of 1953, as amended, [815 ILCS 5/1 *et seq.*] on behalf of the State of Illinois as it relates to Respondents DAMI and DIMA, relating to the mutual fund matters described herein.

6. This Consent Order is not intended by the Illinois Securities Department to subject any Covered Person to any disqualifications under the laws of any state, the District of Columbia or Puerto Rico (collectively, "State"), including, without limitation, any disqualifications from relying upon the State registration exemptions or State safe harbor provisions. "Covered Person" means Respondents DAMI and DIMA, or any of their officers, directors, affiliates, current or former employees, or other persons that would otherwise be disqualified as a result of the Consent Order.
7. The SEC's Orders, the New York Attorney General's Assurance of Discontinuance Pursuant to Executive Law Section 63(15), and the NYSE Stipulation and Consent, all announced on December 21, 2006 in related proceedings, and this Consent Order (collectively, the "Orders"), are not intended to disqualify any Covered Person from any business that they are otherwise qualified, licensed or permitted to perform under the applicable law of Illinois and any disqualifications from relying on this state's registration exemptions or safe harbor provisions that arise from the Orders are hereby waived.

8. The formal hearing scheduled on this matter is hereby dismissed without further proceedings.

DATED: This 28th day of December 2006.



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