

ATTORNEY GENERAL OF THE STATE OF NEW YORK
INVESTOR PROTECTION BUREAU

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IN THE MATTER OF :
 :
RITCHIE CAPITAL MANAGEMENT, L.L.C. and :
RITCHIE MULTI-STRATEGY GLOBAL :
TRADING, LTD. :
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**ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW 63(15)**

WHEREAS, in October 2003, pursuant to Article 23-A of the General Business Law (the “Martin Act”), the Office of the Attorney General of the State of New York (the “Attorney General”), commenced an investigation into the practices, procedures and conduct of Ritchie Capital Management, L.L.C. and Ritchie Multi-Strategy Global Trading, Ltd. and subsidiaries and affiliates (“Ritchie Capital”), concerning Ritchie Capital’s placing of mutual fund trade orders after the close of the financial markets, known as “late trading” (the “Investigation”);

WHEREAS, the Investigation was conducted in cooperation with a parallel investigation of Ritchie Capital by the U.S. Securities and Exchange Commission (“SEC”);

WHEREAS, in the course of the Investigation, numerous witnesses were deposed and/or interviewed and extensive documentary evidence was reviewed;

WHEREAS, Ritchie Capital cooperated in the Investigation by producing documentary evidence and witnesses and identifying evidence relevant to the Investigation;

WHEREAS, Ritchie Capital has voluntarily adopted certain remedial measures and taken other steps designed to reduce the chances that the conduct described herein will be repeated in the future;

WHEREAS, as set forth in the findings of fact (“Findings”) below, the Investigation

revealed that certain practices engaged in by Ritchie Capital violated the Martin Act, section 349 of the General Business Law and Executive Law 63(12);

WHEREAS, Ritchie Capital has advised the Attorney General of its desire to resolve the Investigation; and

WHEREAS, the Attorney General finds the following sanctions appropriate and in the public interest and Ritchie Capital agrees to the sanctions provided herein;

NOW THEREFORE, the Attorney General, based upon the Investigation, makes the following Findings:

FINDINGS

I. Relevant Entities

1. Ritchie Capital Management, L.L.C. is a hedge fund investment adviser organized and existing under the laws of the State of Delaware, with its principal place of business located in Lisle, Illinois. Ritchie Multi-Strategy Global Trading, Ltd. is a master feeder fund organized and existing under the laws of the Cayman Islands. At all times relevant hereto, Ritchie Capital maintained an office in New York.

II. Summary

2. As early as 2001, in concert with certain broker-dealers and other intermediaries, Ritchie Capital engaged in an illegal practice known as "late trading."

3. Late trading allowed market timers to make investment decisions based on material information released after the 4:00 p.m. EST close of the U.S. financial markets, yet still purchase mutual fund shares at their pre-closing price. This enabled timers to make investment

decisions hours after the close of the financial markets based on material information that was not available to law abiding investors who made their investment decisions prior to 4:00 p.m. EST.

4. Ritchie Capital employed a complicated model to analyze post-closing information and predict how the market would react on the next trading day. Depending on the signal generated by the model, Ritchie Capital would either buy or sell shares of mutual funds invested in stocks projected to move during the next trading day.

5. Ritchie Capital's reliance on post-closing information is demonstrated in a January 18, 2002 telephone conversation between Mike Mauriello, a Ritchie Capital employee, and a broker just before the 4:00 p.m. close of the market:

[W]e really ... can't even make a call until after ... the stock market closes. ... So unless the market rallies ... between ... 4:00 and 4:15, we're not doing anything... So if after 4:00 it looks like market goes down, I can probably tell you pretty quick we aren't doing anything.

6. In other words, late trading allowed Ritchie Capital to wait and see if the post-closing tally of the day's final trades indicated an upswing in the market that Ritchie Capital could exploit. Law-abiding investors, on the other hand, had to make their decisions before the markets closed.

7. Ritchie Capital also reviewed material post-closing information, including earnings releases, news and political events in guiding its late trading strategy.

8. Ritchie Capital participated in a scheme to conceal its illicit late trading activities. As part of this scheme, Ritchie Capital submitted mutual fund trade sheets to complicit

broker-dealers before the 4:00 p.m. EST trade cut-off. These trade sheets typically set forth various combinations of trades Ritchie Capital may want to initiate that day, including countervailing orders to buy and sell shares of the same mutual funds within the same Ritchie Capital accounts. The brokers time stamped these trade sheets and placed them aside until later. Following the 4:00 p.m. close of the market, Ritchie Capital would analyze post-closing information and call its brokers to confirm, cancel or modify the orders listed on the trade sheets depending on the signal generated by its late trading model. The brokers would then simply “throw out” the trade sheets that Ritchie Capital did not want and execute the confirmed orders. This scheme allowed Ritchie Capital and its broker-dealers to paper their files with orders that facially appeared to be appropriately made before 4:00 p.m. when, in fact, Ritchie Capital sometimes had up to three hours after the close of the market to decide which trades to execute.

9. Between 2001 and 2003, Ritchie Capital late traded in more than 100 different mutual funds including, AIM, Janus, Strong and Putnam through several broker-dealers, including Bear Stearns Companies Inc., (“Bear Stearns”), Trautman Wasserman & Co., (“Trautman Wasserman”) and CIBC Oppenheimer, Inc., (“CIBC”).

10. Between 2001 and 2003, Ritchie Capital’s late trading activities diluted the investments of long-term investors by approximately \$30 million and generated significant profits for Ritchie Capital.

III. Background on Late Trading in The Mutual Fund Industry

11. The price at which shares of a mutual fund are bought and sold is referred to as the net asset value or “NAV.” Many mutual funds’ NAVs are calculated as of the closing time of the New York Stock Exchange, which is usually 4:00 p.m. EST. Orders to buy, sell or exchange mutual fund shares placed with those mutual funds, or a broker-dealer or other intermediary at or before the closing time are priced at that day’s NAV. “Late trading” refers to a market timer placing – and a mutual fund, broker-dealer or other intermediary accepting – orders after the close of the market and yet still receiving same-day pricing.

12. Late trading allowed timers to consider material information released after the 4:00 p.m. EST close of the market, such as corporate earnings announcements, significant press releases and other events affecting the financial markets, in making trading decisions. Such material information can be predictive of the probable direction of – or determinative of actual – mutual fund share prices and, therefore, can play an important role in the market timer’s decision-making process on whether to purchase or sell a mutual fund and/or engage in related “hedging” transactions. And such post-4:00 p.m. information is not available to law abiding investors who must place their mutual fund orders prior to the mutual fund’s deadline to receive that day’s price.

13. Late trading was possible because, unlike the near instantaneous transmission of stock orders for execution, broker-dealers and other intermediaries could (and often did) transmit mutual fund orders to fund companies for execution after 4:00 p.m. Fund companies would then tally the orders and calculate the NAV *as of* the 4:00 p.m. close of the market. This calculation

often did not occur until 5:30 p.m. or later. To prevent late trading, fund companies would generally require that the broker-dealer or other intermediary make an express or implied representation to the mutual fund that the order being transmitted was placed by the mutual fund shareholder at or before the close of the market and, therefore, was entitled to that day's pricing.

14. To earn substantial fees, certain broker-dealers and other intermediaries abused this system. They gave hedge funds the ability to place orders after 4:00 p.m. (including, in some cases, to place orders after the time at which NAVs were actually *calculated*) by transmitting those orders with legitimate orders to be processed using that day's price. In so doing, these broker-dealers and other intermediaries breached their representations to mutual funds and engaged in false pretenses in connection with the sale of securities under the Martin Act.

IV. Late Trading

15. Ritchie Capital is a hedge fund investment adviser founded by Thane Ritchie in 1997. Investments in Ritchie Capital are offered privately and are not open to the public at large. Investing through Ritchie Capital requires a minimum investment of \$1 million, an amount well beyond the means of ordinary investors who purchase mutual funds and variable annuities for savings and retirement. Instead, Ritchie Capital investors included institutions and wealthy individuals who paid Ritchie Capital a fee for its investment management services.

16. At its prime, Ritchie Capital managed approximately \$3 billion of private assets and earned gross annual revenues in excess of \$400 million.

17. As early as 2001, in concert with certain broker-dealers and other intermediaries,

Ritchie Capital illicitly placed trades after the 4:00 p.m. close of the market.

A. Late Trading Through Trautman Wasserman

18. In December 2000, Ritchie Capital opened accounts with Trautman Wasserman to engage in “later trading.” Initially, Ritchie Capital traded after the close of the markets in support of its international arbitrage strategy. Ritchie Capital’s international arbitrage strategy was designed to take advantage of stale prices of international mutual funds and late trading provided Ritchie Capital with a wider window to gather material information and make its trading decisions.

19. Late trading also created a pricing inefficiency, similar to the one Ritchie Capital exploited in trading international mutual funds, that Ritchie Capital could exploit to market time domestic mutual funds. On August 7, 2002, Tom Demaio and Christian discussed how late trading offered an arbitrage opportunity in domestic mutual funds similar to international mutual funds:

Christian: I mean, obviously it’s not international, so it doesn’t have, you know, that pure R play that the international has. But, I think, you know, with the ability to input the orders when you can, you know, you still have that same sort of edge. It’s not exact, but

Demaiio: Right

20. Ritchie Capital used the advantage offered by late trading to time domestic mutual funds starting in 2001.

21. Ritchie Capital’s domestic late trading model was premised on the theory that post-closing movement in the S&P 500 futures index suggested how the market would perform

on the following trading day. Depending on the signal generated by the model, Ritchie Capital would either buy or sell mutual funds invested in stocks that Ritchie Capital's model projected would move during the next trading day.

22. For example, on September 17, 2001, at 5:15 p.m. EST, Mauriello told Christian that Ritchie Capital was "possibly looking at doing some domestic purchases and/or exchanges . . . but we're a couple of bucks away in the S&P futures."

23. Ritchie Capital also reviewed material post-closing information, including earnings releases, overall market movement, movement of a particular stock and news and political events in guiding its late trading strategy.

24. Ritchie Capital's reliance on post-closing information is demonstrated by a statement Mauriello made to Christian during a January 18, 2002 telephone conversation:

[W]e really . . . can't even make a call until after . . . the stock market closes. . . . So unless the market rallies . . . between . . . 4:00 and 4:15, we're not doing anything . . . So if after 4:00 it looks like market goes down, I can probably tell you pretty quick we aren't doing anything.

25. Ritchie Capital constantly reviewed post-closing information in making its trading decisions. On March 14, 2002, at 5:38 p.m. EST, Mauriello told Christian "Yeah, it doesn't look like we'll be doing anything. It's an outside chance, but I mean the market has got to move a decent amount in these after hours here." Again on November 14, 2002, in response to a comment that Dell was trading down after the market closed, Mauriello told another Trautman Wasserman employee "Yeah I know. It's getting – it's probably getting close . . . how late could you cancel them? Another, like, five minutes maybe?"

26. On June 25, 2002, WorldCom announced that it was restating nearly \$4 billion in profits that had been inflated through inappropriate accounting entries. After hours futures trading suggested that the market would react badly to the news the following day and late trading allowed Ritchie Capital to liquidate its equity holdings and lock in its profits in case of a downturn. The following morning, Mauriello and Christian discussed WorldCom and Christian confirmed for Mauriello that Trautman Wasserman was able to process all of Ritchie Capital's trades and liquidate its equity holdings after the close of the market:

Mauriello: You know, that WorldCom news must have broke just like 10 minutes after I left.

Christian: Oh, I couldn't believe it when I saw that. I mean, the futures were just getting pounded. So we called up Warren [Demaio] on his cell phone.

Mauriello: I appreciate that.

Christian: Yeah, no problem, Mike. But I'll send you the report for what did go through. All the MFS's went through and the rest of the stuff went through.

Mauriello: Great.

27. By moving its investments from equity mutual funds to "pretty much in cash," Ritchie Capital eliminated any risk that its investments would lose with any market downturn caused by the WorldCom news.

28. Another benefit Ritchie Capital garnered from late trading was the ability to learn how mutual funds reset their NAVs after the close of the market and still trade the funds at the closing price. This allowed Ritchie Capital, for example, to purchase shares of a mutual fund that's NAV went up after the close at the pre-closing price and lock in a quick profit.

29. For example, on November 13, 2001 at 5:26 p.m. EST, Christian wrote to Mauriello:

Here are tonights [sic] closing prices on the domestic positions:
JAMRX - up 38 cents or 1.90% - \$20.37
APGAX - up 57 cents or 2.88% - \$20.34
CABDX - up 7 cents or 1.95% - \$3.66
MIGFX - up 28 cents or 2.25% - \$12.73

I will let you know once I get the price for Alger - ALGAX.

30. Mauriello called Christian seven minutes later with Ritchie Capital's trading instructions:

Mauriello: We want to do the second and third [trade sheets].

Christian: Number 2 and number 3.

Mauriello: Right. Both in the 25 account going into CA[B]DX and going into MIGFX.

31. In this situation, late trading allowed Ritchie Capital to purchase Alliance Bernstein Growth and Income and MFS Massachusetts Investors Growth at the pre-closing prices, knowing that value its investment was guaranteed to increase.

32. Ritchie Capital and Trautman Wasserman entered into a scheme to conceal Ritchie Capital's late trading activities. This scheme required Ritchie Capital to submit its mutual fund trade sheets to Trautman Wasserman before the 4:00 p.m. EST trade cut-off. These trade sheets included nearly every conceivable variation of trades Ritchie Capital may want to initiate that day, depending on the information available after the close of the market. Trautman Wasserman employees time stamped Ritchie Capital's trade sheets during the trading day and placed them aside until later. Following the 4:00 p.m. close of the market, depending on the

signal generated by its model, Ritchie Capital brokers called Trautman Wasserman and confirmed, cancelled or modified the orders listed on the trade sheets. Trautman Wasserman then executed any trades Ritchie Capital wanted to initiate and simply threw out the rest of the trade sheets.

33. For example, on October 3, 2002, at 5:06 p.m. EST, Mauriello called Ivan Zdanov to confirm which trade sheets Trautman Wasserman should execute on behalf of Ritchie Capital:

Mauriello: All right, lets see. First, I think you want to throw out the first three pages at least.

Zdanov: Okay. One, two, three. All right.

Mauriello: What's the fourth page? What's sort of the title?

Zdanov: Let's see. White Fence International in.

Mauriello: You can throw that one out.

Zdanov: Okay. Next one, Zurich Domestic in.

Mauriello: Just throw that one out.

Zdanov: White Fence Domestic in.

Mauriello: Throw that one out.

Zdanov: All right. Zurich Domestic out.

Mauriello: All right, that's the only one you need.

34. On October 25, 2002, at 3:26 p.m. EST, Mauriello emailed eight trade sheets to Trautman Wasserman. Each trade sheet was labeled to identify the trading entity and how Ritchie Capital wanted to deploy the capital invested in its accounts. For example, on the first trade sheet, titled "ZURICH INT'L 'IN,'" Ritchie Capital directed its investments from money

market funds into international mutual funds in the event that post-closing information projected an upswing in the foreign stock markets. The third trade sheet, titled "ZURICH INT'L 'OUT,'" on the other hand, liquidated Ritchie Capital's investments in international mutual funds in the event that post-closing information suggested a downturn in the foreign markets. The "ZURICH INT'L 'IN'" trade sheet set out the following instructions:

ZURICH INT'L "IN"

PLEASE EXECUTE THE FOLLOWING UNSOLICITED MF EXCHANGES FOR OUR ACCOUNT AS FOLLOWS:
(SUBJECT TO VERBAL CONFIRMATION)

ACCOUNT#	EXCHANGE FROM SYMBOL (SELL)	EXCHANGE TO SYMBOL (BUY)	SHARES/\$AMOUNT
797-70100-11	IMIXX	IIGRX	FULL
797-70104-17	MRGIX	MRISX	FULL
797-70100-11	Cash	JWGRX	\$8,000,000

The "ZURICH INT'L 'OUT'" trade sheet set out the following instructions:

ZURICH INT'L "OUT"

PLEASE EXECUTE THE FOLLOWING UNSOLICITED MF EXCHANGES FOR OUR ACCOUNT AS FOLLOWS:
(SUBJECT TO VERBAL CONFIRMATION)

ACCOUNT#	EXCHANGE FROM SYMBOL (SELL)	EXCHANGE TO SYMBOL (BUY)	SHARES/\$AMOUNT
797-70100-11	IIGRX	IMIXX	\$5,000,000
797-70100-11	JWGRX	JMIXX	\$10,000,000
797-70006-16	AGGCX	AIMXX	FULL

797-70010-12	AGGCX	AIMXX	FULL
797-70100-11	SEITX	TPRXX	FULL
797-70103-18	SEITX	TPRXX	FULL

35. Nearly an hour after Ritchie Capital submitted its trade sheets, at 4:19 p.m. EST, Mauriello called Ivan Zdanov at Trautman Wasserman to confirm which trades Ritchie Capital wanted to execute:

Mauriello: I wanted to let you know what we're doing today. . .
. We're doing . . . [the] first two pages.

Zdanov: All right.

Mauriello: You can pitch everything else.

Zdanov: All right.

36. In other words, Mauriello instructed Trautman Wasserman to implement the trades listed on Ritchie Capital's first two trade sheets, both of which moved Ritchie Capital assets into international mutual funds, and to throw the other sheets in the trash.

37. If Ritchie Capital did not want to implement any trades, a Ritchie Capital employee would simply call Trautman Wasserman and tell them "we're not doing anything tonight."

38. When Ritchie Capital was uncertain what trading strategy to employ, it would simply "put in an amount of zero just in case, you know, something changed" and Ritchie Capital wanted to execute a trade. Essentially, Ritchie Capital put a placeholder in its trade sheets that could be modified after the close of trading to suit Ritchie Capital's needs.

39. At other times, Ritchie Capital would simply instruct Trautman Wasserman to

alter its trade sheets to suit Ritchie Capital's post-closing trading strategy. On June 25, 2002, Mauriello instructed Christian to alter the trade sheets Ritchie Capital previously submitted, stating "[t]hen on page three . . . we just want to do the second and third [trades]. And only 30 million of the Janus."

40. On September 28, 2001, Christian confirmed to Mauriello how this scheme allowed Trautman Wasserman to paper its files and foster the appearance that Ritchie Capital's trades were placed before the 4:00 p.m. est trade deadline, stating:

Christian: -- just so you, Warren, and Thane all know, everything we do is compliant. I mean, everything's time stamped. Everything's done the way it should be done. It's just, hey, you know, if you don't want the order, you don't want the order. I tear up the sheet. There's nothing illegal about that. It's time stamped. We're all set, you know?

41. Although Christian facetiously claimed that Trautman Wasserman was legally processing Ritchie Capital's trade sheets, both Ritchie Capital and Trautman Wasserman knew what they were doing was illegal. This fact was underscored in October, 2002, when Ritchie Capital accidentally faxed its late trading sheets to another broker. Concerned that the broker would blow the whistle on Ritchie Capital's late trading practices, Tom Demaio and Wilson discussed how to handle the situation and concluded that in "terms of what happened there's nothing anybody can do about it except try to get those guys to swear to secrecy."

B. Ritchie Capital Cleared Late Trades Through Other Broker-Dealers

42. Between 2001 and 2003, Ritchie Capital placed thousands of late trades through other broker-dealers, including CIBC, Bear Stearns and Prudential. Although Ritchie Capital used different ruses to late trade through these entities, it garnered the same ability to trade based

on information released after the close of the market.

43. Ritchie Capital utilized a scheme similar to the one it employed with Trautman Wasserman to conceal the late trades it placed through CIBC. Ritchie Capital sent trade sheets to CIBC that listed various trades may want to initiate that day, depending on the information available after the close of the market. Following the close of the financial market, Ritchie Capital brokers called CIBC brokers and confirmed, cancelled or modified the orders listed on the trade sheets. CIBC then executed any trades Ritchie Capital wanted to initiate and trashed the rest of the trade sheets.

44. For example, on August 22, 2001 at 4:26 p.m. EST, Mauriello called Dogan Baruh, a CIBC broker and, referring to trade sheets Ritchie Capital submitted that day, asked “[a]ny chance we can go in on that stuff or is it too late?” Baruh responded “[y]eah, I’m going to have to take it out of the garbage, but yeah.”

45. Ritchie Capital utilized a completely different ruse to conceal late trades submitted through Bear Stearns. Ritchie Capital submitted its late trades through Bear Stearns’ Mutual Fund Routing System (“MFRS”), an electronic system broker-dealers used to bundle trade orders received before the close of the market and submit those trades to mutual funds after the close of the markets. Between 2001 and 2003, Ritchie Capital used Bear Stearns’ MFRS to submit thousands of mutual fund trades between 4:00 p.m. and 5:51 p.m. EST.

C. Ritchie Capital Made Significant Profits from Late Trading

46. Between 2001 and 2003, Ritchie Capital late traded in more than 100 different mutual funds including, AIM, Janus, Strong and Putnam through several broker-dealers,

including Bear Stearns Companies Inc., (“Bear Stearns”), Trautman Wasserman & Co., (“Trautman Wasserman”) and CIBC Oppenheimer, Inc., (“CIBC”). Between 2001 and 2003, Ritchie Capital’s deceptive and illegal activities generated approximately \$30 million in profits for Ritchie Capital.

V. Violations

47. The foregoing acts and practices of Ritchie Capital violated the Martin Act, Article 23-A of the General Business Law.

48. The foregoing acts and practices of Ritchie Capital violated § 349 of the General Business Law.

49. The foregoing acts and practices of Ritchie Capital violated § 63(12) of the Executive Law.

AGREEMENT

IT NOW APPEARING THAT Ritchie Capital desires to settle and resolve the Investigation without admitting or denying the Attorney General’s Findings, which Findings are not binding on any other person or entity in this or any other proceeding, the Attorney General and Ritchie Capital hereby enter into this Assurance of Discontinuance (“Assurance”), pursuant to Executive Law § 63(15), and agree as follows:

I. Affirmative Relief

A. Disgorgement and Restitution

1. Ritchie Capital shall pay THIRTY MILLION DOLLARS (\$30,000,000) in disgorgement and restitution, SEVEN MILLION FOUR HUNDRED FORTY ONE

THOUSAND NINE HUNDRED SIXTY SIX DOLLARS and EIGHTY-TWO CENTS (\$7,441,966.82) in interest, and TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000) as a penalty, which shall be remitted and administered in accordance with the Order Instituting Administrative and Cease-And-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order in the *Matter of Ritchie Capital Management, LLC, et al.* to be issued by the U.S. Securities and Exchange Commission on or near the date hereof (the "SEC Order").

2. The provisions in the SEC Order relating to the payment, administration and distribution of the payments referred to in this section are incorporated herein by reference, and such terms are agreed to as part of this Assurance by Ritchie Capital. Amounts ordered to be paid as civil money penalties pursuant to this Assurance (*i.e.*, pursuant to the incorporated terms of the SEC Order) shall be treated as penalties paid to the government for all purposes, including tax purposes.

3. Ritchie Capital agrees that it shall not, collectively or individually, seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, payment made pursuant to any insurance policy, with regard to any or all of the amounts payable pursuant to this Assurance.

B. Incorporation of Undertakings in the SEC Order

1. As part of this Assurance, Ritchie Capital agrees to the terms of and shall comply with the sanctions and undertakings in the SEC Order.

C. SEC Order not a Condition Precedent

1. Ritchie Capital agrees and acknowledges that the execution of the SEC Order is not a condition precedent to Ritchie Capital's obligation to satisfy the terms of this Assurance. In the event that the SEC Order is not executed, or if the SEC Order requires Ritchie Capital to pay less than the \$37,441,966.82 in disgorgement, restitution and interest and \$2,500,000 in penalty agreed to in section I.A.1 herein, Ritchie Capital agrees that the \$39,941,966.82 in disgorgement, restitution, penalty, interest, or the difference between that amount and any lesser amount agreed to with the SEC, shall be remitted and administered as follows:

- (a) Within 30 days of the date of this Assurance, Ritchie Capital shall pay \$37,441,966.82 in disgorgement, restitution and interest and \$2,500,000 in penalty, or the difference between that amount and any lesser amount agreed to with the SEC, into a fund (the "Fund") that shall be invested in a designated money market fund subject to the prior approval of the Attorney General.
- (b) Within 30 days of the date of this Assurance, Ritchie Capital will retain an independent consultant acceptable to the Attorney General (the "Distribution Consultant") to develop a plan for the distribution of the Fund and any interest and earnings thereon (the "Distribution Plan"). The Distribution Consultant's compensation and expenses shall be borne exclusively by Ritchie Capital. Ritchie Capital shall cooperate fully with the Distribution Consultant and shall provide the Distribution Consultant with access to its files, books, records, and personnel as reasonably requested for the review.

- (c) Within 90 days of the execution of the Assurance, Ritchie Capital shall require that the Distribution Consultant develop a Distribution Plan for the distribution of all of the disgorgement, restitution and penalty to be paid by Ritchie Capital pursuant to this Assurance, and any interest or earnings thereon, according to a methodology developed in consultation with Ritchie Capital and acceptable to the Attorney General. The Distribution Plan shall distribute fairly and proportionately to the affected mutual funds the total disgorgement and civil penalty described in section I.A.1 above. In developing the Distribution Plan, Ritchie Capital and/or the Distribution Consultant shall consult with the adviser for each affected mutual fund, or any successor fund. Ritchie Capital and/or the Distribution Consultant shall provide the adviser with (a) a copy of the Assurance, (b) the proposed amount of disgorgement to be paid to the affected mutual fund, and (c) a description of the methodology used to calculate that amount.
- (d) Within 120 days of the execution of the Assurance, Ritchie Capital shall provide a copy of the Distribution Plan to the Attorney General. The Distribution Plan shall be binding unless, within 30 days after receipt of the Distribution Plan, Ritchie Capital or the Attorney General submit to the Distribution Consultant a written objection, with reasons therefor, as to any determination or calculation in the Distribution Plan. With respect to any such objection, the parties shall attempt in good faith to reach an agreement within 30 days. In the event that Ritchie Capital and the New York Attorney General are unable to agree on an alternative determination or calculation, the Distribution Plan shall be binding. Following final resolution of the Distribution Plan, Ritchie Capital shall take all necessary and appropriate steps to implement the final Distribution Plan in an expeditious manner.
- (e) No later than 180 days from the finalization of the Distribution Plan, Ritchie Capital shall certify in writing to the New York Attorney General that the Distribution Plan has been implemented and completed.
- (f) Nothing in any agreement between Ritchie Capital and the Distribution Consultant shall be inconsistent with the terms of this Assurance, nor shall any such agreement relieve Ritchie Capital of any obligation under this Assurance, unless any such agreement has been approved by the New York Attorney General in accordance with Paragraph I.C.1.(d) above. The New York Attorney General shall have the right to object and strike any term of the agreement(s) between Ritchie Capital and the Distribution Consultant should the Attorney General find that the term is inconsistent with this Assurance.
- (g) Ritchie Capital shall bear the costs of administering and implementing the final Distribution Plan. In no event shall any of the Fund, or any investment income,

revenue, or proceeds earned thereon, be used by any person or entity to compensate or pay the costs incurred by the Distribution Consultant.

D. Other Relief

1. Ritchie Capital admits the jurisdiction of the Attorney General. Ritchie Capital will cease and desist from engaging in any acts in violation of the Martin Act, General Business Law § 349 and/or Executive Law § 63(12) and will comply with the Martin Act, General Business Law § 349 and Executive Law § 63(12).

2. Evidence of a violation of this Assurance by Ritchie Capital shall constitute prima facie proof of violation of the Martin Act, General Business Law § 349 and Executive Law § 63(12) in any civil action or proceeding hereafter commenced by the Attorney General against Ritchie Capital.

II. Other Provisions

A. Scope Of This Assurance

1. This Assurance concludes the Investigation brought by the Attorney General and any action the Attorney General could commence against Ritchie Capital or any of its current affiliates arising from or relating to the subject matter of the Investigation; provided however, that nothing contained in this Assurance shall be construed to cover claims of any type by any other state agency or any claims that may be brought by the Attorney General to enforce Ritchie Capital's obligations arising from or relating to the provisions contained in this Assurance. This Assurance shall not prejudice, waive or affect any claims, rights or remedies of the Attorney General with respect to any person, other than Ritchie Capital or any of its current affiliates of which claims, rights, and remedies are expressly reserved.

2. If Ritchie Capital does not make the payment as provided in section I.A. (or alternatively I.C.) of this Assurance (*i.e.*, pursuant to the SEC Order), or Ritchie Capital defaults

on any obligation under this Assurance, the Attorney General may terminate this Assurance, at his sole discretion, upon 10 days written notice to Ritchie Capital and Ritchie Capital agrees that any statute of limitations or other time related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event of such termination, Ritchie Capital expressly agrees and acknowledge that this Assurance shall in no way bar or otherwise preclude the Attorney General from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Assurance, against Ritchie Capital, or from using in any way any statements, documents or other materials produced or provided by Ritchie Capital prior to or after the date of this Assurance, including, without limitation, such statements, documents or other materials, if any, provided for purposes of settlement negotiations, except as may otherwise be provided in a written agreement with the Attorney General.

3. Except in an action by the Attorney General to enforce the obligations of Ritchie Capital in this Assurance or in the event of termination of this Assurance by the Attorney General as provided in section II.A.2 above, neither this Assurance nor any acts performed or documents executed in furtherance of this Assurance: (a) may be deemed or used as an admission of, or evidence of, the validity of any alleged wrongdoing, liability or lack of wrongdoing or liability; or (b) may be deemed or used as an admission of or evidence of any such alleged fault or omission of Ritchie Capital in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. This Assurance shall not confer any rights upon persons

or entities who are not a party to this Assurance. Nothing herein shall be construed to prohibit the use of any e-mails or other documents of Ritchie Capital or of others.

B. Cooperation

1. Ritchie Capital shall cooperate fully and promptly with the Attorney General and shall use its best efforts to ensure that all the current and former officers, directors, trustees, agents, members, partners and employees of Ritchie Capital (and of any of Ritchie Capital's parent companies, subsidiaries or affiliates) cooperate fully and promptly with the Attorney General in any pending or subsequently initiated investigation, litigation or other proceeding relating to "market timing," "late trading" and/or the subject matter of the Assurance, and such cooperation shall include, without limitation:

- (a) production, voluntarily and without service of subpoena, upon the request of the Attorney General, of all documents or other tangible evidence requested by the Attorney General and any compilations or summaries of information or data that the Attorney General requests that Ritchie Capital (or the Ritchie Capital's parent companies, subsidiaries or affiliates) prepare, except to the extent such production would require the disclosure of information protected by the attorney-client and/or work product privileges;
- (b) without the necessity of a subpoena, having the current (and making all reasonable efforts to cause the former) officers, directors, trustees, agents, members, partners and employees of Ritchie Capital (and of any of the Ritchie Capital's parent companies, subsidiaries or affiliates) attend any Proceedings (as hereinafter defined) in New York State or elsewhere at which the presence of any such persons is requested by the Attorney General and having such current (and making all reasonable efforts to cause the former) officers, directors, trustees, agents, members, partners and employees answer any and all inquiries that may be put by the Attorney General to any of them at any proceedings or otherwise; "Proceedings" include, but are not limited to, any meetings, interviews, depositions, hearings, trials, grand jury proceedings or other proceedings;

- (c) fully, fairly and truthfully disclosing all information and producing all records and other evidence in its possession, custody or control (or the possession, custody or control of the Ritchie Capitals parent companies, subsidiaries or affiliates) relevant to all inquiries made by the Attorney General concerning the subject matter of the Assurance, except to the extent such inquiries call for the disclosure of information protected by the attorney-client and/or work product privileges; and
- (d) making outside counsel reasonably available to provide comprehensive presentations concerning any internal investigation relating to all matters in the Assurance and to answer questions, except to the extent such presentations or questions call for the disclosure of information protected by the attorney-client and/or work product privileges.

2. All communications relating to cooperation pursuant to this Assurance may be made to Ritchie Capital as follows:

Law Offices of Thomas P. Puccio
230 Park Avenue
Suite 301
New York, New York 10169

3. In the event Ritchie Capital fails to comply with this section of the Assurance, the Attorney General shall be entitled to specific performance in addition to any other remedies in the Assurance or otherwise.

D. Miscellaneous Provisions

1. This Assurance and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

2. No failure or delay by the Attorney General in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided herein shall be cumulative.

3. Ritchie Capital consents to the jurisdiction of the Attorney General in any proceeding or action to enforce this Assurance.

4. Ritchie Capital enters into this Assurance voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Attorney General or any member, officer, employee, agent or representative of the Attorney General to induce Ritchie Capital to enter into this Assurance.

5. Ritchie Capital agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Assurance or creating the impression that this Assurance is without factual basis. Nothing in this paragraph affects the Ritchie Capital's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Attorney General is not a party.

6. This Assurance may be changed, amended or modified only by a writing signed by all parties hereto.

7. This Assurance constitutes the entire agreement between the Attorney General and Ritchie Capital and supersedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of this Assurance.

9. If any provision of this Assurance is found to be unenforceable, such finding shall not effect the enforceability of the remaining provisions hereof.

10. This Assurance shall be binding upon Ritchie Capital and its successors, heirs and assigns.

11. This Assurance shall be effective and binding only when this Assurance is signed by all parties. This Assurance may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one instrument.

WHEREFORE, the following signatures are affixed hereto on the dates set forth below.

ANDREW M. CUOMO,
Attorney General of the State of New York

By: *Michael Berlin*

Michael Berlin

Deputy Attorney General for Economic Justice
Investor Protection Bureau
120 Broadway
23rd Floor
New York, New York 10271
(212) 416-8085

Dated: February 05, 2008

RITCHIE MULTI-STRATEGY
GLOBAL TRADING, LTD.

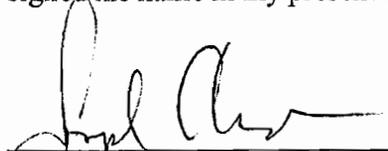
By: Ritchie Capital Management, L.L.C.,
its Investment Manager

By: 
Name: Thane Ritchie
Title: Chief Executive Officer

ACKNOWLEDGMENT

STATE OF NEW YORK)
 :SS.
COUNTY OF NEW YORK)

On this 4th day of February, 2008, before me personally came Thane Ritchie, known to me, who, being sworn by me, did depose and say that he is the Chief Executive Officer of Ritchie Capital Management, L.L.C., the entity described in the foregoing Assurance, and is duly authorized by Ritchie Multi-Strategy Global Trading, Ltd. to execute the same, and that he signed his name in my presence by like authorization.


Notary Public
My commission expires: 11/17/2009

JOSEPH A. MEDINA
Notary Public, State of New York
No. 01ME5088461
Qualified in New York County
Commission Expires Nov. 17, 2008

Assurance of Discontinuance

Reviewed By:
Thomas P. Puccio

Law Offices of Thomas P. Puccio
230 Park Avenue
Suite 301
New York, New York 10169
Attorneys for Ritchie Multi-Strategy Global Trading, Ltd.

Dated: February 4, 2008

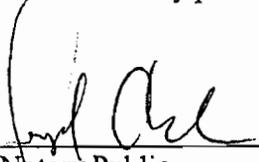
RITCHIE CAPITAL MANAGEMENT, L.L.C.

By: 
Name: Thane Ritchie
Title: Chief Executive Officer

ACKNOWLEDGMENT

STATE OF NEW YORK)
 :SS.
COUNTY OF NEW YORK)

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Notary Public
My commission expires: 1/17/2009

JOSEPH A. MEDINA
Notary Public, State of New York
No. 01ME5088461
Qualified in New York County
Commission Expires Nov. 17, 2009

Assurance of Discontinuance
Reviewed By:
Thos P. Puccio

Law Offices of Thomas P. Puccio
230 Park Avenue
Suite 301
New York, New York 10169
Attorneys for Ritchie Capital Management, L.L.C.

Dated: February 4, 2008