UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT of 1940
Release No. 1889 / August 3, 2000

ADMINISTRATIVE PROCEEDING
File No. 3-10261

In the Matter of DAWSON-SAMBERG CAPITAL MANAGEMENT, INC. Now Known As DAWSON-GIAMMALVA CAPITAL MANAGEMENT, INC. and JUDITH A. MACK, Respondent.

ORDER INSTITUTING PUBLIC PROCEEDINGS PURSUANT TO SECTIONS 203(e), 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, IMPOSING REMEDIAL SANCTIONS AND ISSUING CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public cease and desist and administrative proceedings be instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Dawson-Samberg Capital Management, Inc. ("Dawson-Samberg"), now known as Dawson-Giammalva Capital Management, Inc. ("Dawson-Giammalva" or "Registrant")(File No. 801-15852), a registered investment adviser, and Sections 203(f) and 203(k) of the Advisers Act against Judith A. Mack ("Mack").

II.

In anticipation of the institution of these proceedings, Dawson-Giammalva and Mack have submitted Offers of Settlement ("Offers") that the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission or in which the Commission is a party, and without admitting or denying any of the findings contained herein except as to the jurisdiction of the Commission over them and over the subject matter of this proceeding, which are admitted, Dawson-Giammalva and Mack consent to the issuance of this Order Instituting Public Proceedings Pursuant to Sections 203(e), 203(f) and203(k) of the Investment Advisers Act of 1940, Making Findings, Imposing Remedial Sanctions and Issuing Cease-and-Desist Order ("Order"), the entry of the findings and the imposition of the remedial sanctions and the cease-and-desist Order set forth below.

Accordingly, IT IS ORDERED that proceedings pursuant to Sections 203(e), 203(f) and 203(k) of the Advisers Act be, and hereby are, instituted.

III.

On the basis of this Order and the Offers of Settlement submitted by Dawson-Giammalva and Mack, the Commission makes the following findings:

A. Respondents

1. Dawson-Samberg, now known as Dawson-Giammalva (hereinafter referred to in this section as "Dawson-Samberg"), of Southport, Connecticut, a registered investment adviser since March 20, 1981 (File no. 801-15852), presently manages approximately $1 billion in client assets. At relevant times, the firm offered both individual portfolio management services and investments in certain hedge fund limited partnerships and maintained as much as $2.2 billion in assets under management.1 On January 3, 2000, Dawson-Samberg effected a name change to Dawson-

Giammalva Capital Management, Inc. Dawson-Giammalva is named as a respondent solely on that basis. The newly-named principal of Dawson-Giammalva, Anthony Giammalva, was not associated with the Registrant at the time of the conduct discussed in this Order and none of the findings concern his conduct.

2. Mack is the Treasurer of Dawson-Giammalva and, at relevant times, was responsible for administering Dawson-Samberg's soft dollar program. In addition, Mack handled other administrative matters and caused to be filed with the Commission Dawson-Samberg's Form ADV amendments and annual reports on Forms ADV-S with the Commission.2

B. Summary

Between at least 1994 and November 1996, Dawson-Samberg used soft dollar credits improperly to pay for certain undisclosed expenses, including personal travel, other non-research related travel, marketing and other non-research administrative expenses.3 From 1990 to 1996, Dawson-Samberg's assets under management grew from approximately $350 million to $2.2 billion. As assets under management increased, the firm increased its soft dollar arrangements. However, the firm's efforts to ensure proper disclosure of its use of soft dollars did not keep pace with the growth of its soft dollar relationships. Although Dawson-Samberg has disclosed to its clients since its inception in 1981 that it used soft dollars to pay for research and a number of products and services which are enumerated in its Form ADV, Dawson-Samberg violated the provisions discussed in this Order because it failed to disclose its use of soft dollar credits to pay for certain expenses discussed herein. In addition, Dawson-Samberg failed to supervise Mack, its Treasurer, who was responsible for administering Dawson-Samberg's soft dollar program.

C. Dawson-Samberg Willfully Violated and Mack Willfully Aided and Abetted Violations of Section 206(2) of the Advisers Act

From its inception, Dawson-Samberg disclosed its policy to use soft dollar credits to pay for both research and non-research-related products and services. Accordingly, Dawson-Samberg relied on its disclosure, contained in its Form ADV filings and its client agreements, in determining whether non-research products and services outside the safe harbor of Section 28(e) of the Securities Exchange Act of 1934 ("Exchange Act") could properly be paid using soft dollar credits.4 In accordance with this determination, Dawson-Samberg filed Forms ADV on April 3, 1995 and April 1, 1996 disclosing, in response to Item 13 of Part II, that the firm received an economic benefit from non-clients, and provided additional narrative disclosure listing categories of additional products and services that the Registrant may obtain utilizing soft dollar credits.5 These included, among others, telephone lines, news and quotation equipment, electronic office equipment, account record-keeping and clerical services, financial publications, economic consulting services and office space and facilities. The Forms ADV and client agreements, however, did not disclose Dawson-Samberg's use of soft dollar credits to pay for personal and non-research business travel, marketing expenses and the other administrative expenses discussed in this Order.

1. Improper Soft Dollar Practices

a. Travel

Problems with travel began in August 1994, when Dawson-Samberg obtained a corporate American Express account and authorized American Express cards (the "AMEX Card") for employees to charge research-related travel expenses. Simultaneously, Dawson-Samberg arranged for a broker-dealer to pay research-related travel expenses charged on the AMEX card using soft dollar credits.6 Dawson-Samberg then began to forward AMEX Card bills to soft dollar brokers for payment, without determining whether some of the charges on those bills were for personal or non-research travel expenses. As a result, between August 1994 and November 1996, Dawson-Samberg improperly used soft dollar credits to pay $174,000 in non-research related (but otherwise ordinary) business travel expenses that had been charged to the account and $35,700 in personal

travel expenses.7 Non research-related travel included marketing trips, a management retreat, transportation rentals and telephone calls. Altogether, 21 Dawson-Samberg employees used $174,000 in soft dollar credits to pay for non-research or other business travel that could not adequately be documented as research-related.

In addition, personal travel by four Dawson-Samberg senior officers and one employee, and their respective family members, was charged on the AMEX Card and paid using soft dollar credits. This travel consisted of vacations and personal "legs" of business travel.8 These improper charges occurred because the travel agent utilized by Dawson-Samberg, after obtaining both business and personal credit card information and travel preferences for its clients, placed a default setting on her computer that automatically charged all travel, whether business or personal, to the AMEX Card.9 No one at Dawson-Samberg instructed the travel agent that only research-related travel was to be charged on the AMEX Card.10

One of Mack's responsibilities was to submit appropriate vendor invoices to brokers for payment using soft dollar credits. It was Mack's responsibility to ensure that only travel for research purposes was charged on the AMEX Card and submitted for soft dollar payment. Mack knew the AMEX Card was only to be used for business research travel, but failed to recognize that not all travel was research-related. Because she failed to recognize this distinction, Mack, who initially was herself responsible for gathering and reviewing travel records, failed to review the AMEX bills for the purpose of separating research and non-research business expenses, and failed to identify the personal travel that had been charged on the AMEX Card. Nor did Mack obtain all information necessary to verify the nature of the travel charged on the AMEX Card. During 1995, Mack delegated these duties to her assistant, but did not ensure that an appropriate review was conducted.11 As a result, throughout the relevant period, Dawson-Samberg submitted the AMEX Card bills in their entirety to a soft dollar broker for payment. The soft dollar broker paid these bills using soft dollar credits that Dawson-Samberg had generated through trading activity in client accounts.

b. Referral Fees

Between February 1994 and October 1996, Dawson-Samberg used soft dollar credits to pay $270,000 for marketing fees owed to six individuals or entities who had referred clients to Dawson-Samberg. Although Dawson-Samberg disclosed to clients that commissions would be directed to brokers who referred clients to it, that disclosure was inadequate because Dawson-Samberg did not inform investors that soft dollar credits would be used to compensate referring agents. For administrative convenience, the firm began to compensate referring agents with soft dollars rather than via directed commissions, but its disclosure was not similarly changed. During this period, eleven different marketing invoices were submitted to soft dollar brokers for payment. Seven of the eleven invoices that Dawson-Samberg submitted to soft dollar brokers for payment of referral fees indicated that payment was for unspecified consulting services.

c. Other Undisclosed Expenses

Between 1990 and November 1996, Dawson-Samberg used soft dollar credits to pay for various other administrative expenses, not covered by Dawson-Samberg's disclosure, such as attendance at training seminars, replacement parts for electronic office equipment, software and subscriptions to non-research periodicals. Dawson-Samberg also used soft dollar credits to pay for certain mixed-use products or services, without making any allocation between the product's or service's research and non-research use. The payments were not adequately disclosed to investors or were otherwise not properly documented.12

2. Dawson-Samberg Willfully Violated Section 206(2) of the Advisers Act

Section 206(2) of the Advisers Act imposes a fiduciary duty upon investment advisers to act for the benefit of their clients. Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11, 17 (1979);

Oakwood Counselors, Inc., Advisers Act Rel. No. 1614, 63 SEC Docket 2485 (Feb. 10, 1997); Chancellor Capital Management, Inc., Advisers Act Rel. No. 1447, 57 SEC Docket 2489, 2500 (Oct. 18, 1994). This includes the duty to exercise the utmost good faith in dealings with clients, to disclose all material facts, and to employ reasonable care to avoid misleading clients. SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 194 (1963); Chancellor, 57 SEC Docket at 2500.

An investment adviser has a duty to disclose to clients all material information which might incline an investment adviser consciously or unconsciously to render advice which is not disinterested. Capital Gains, 375 U.S. at 191-92. The standard of materiality is whether a reasonable client or prospective client would have considered the information important in deciding whether to invest with the adviser. See SEC v. Steadman, 967 F.2d 636, 643 (D.C. Cir. 1992). Soft dollar arrangements are material because of the potential conflict of interest arising from an adviser's receipt of some benefit in exchange for directing brokerage on behalf of client accounts. See Renaissance Capital Advisers, Inc., Advisers Act Rel. No. 1688, 66 SEC Docket 564, 567 (December 22, 1997); Oakwood, 63 SEC Docket at 2488; S Squared Technology Corp., Advisers Act Rel. No. 1575, 62 SEC Docket 1560, 1564 (August 7, 1996); Kingsley, Jennison, McNulty & Morse, Inc., Advisers Act Rel. No. 1396, 55 SEC Docket 2434, 2441-42 (Dec. 23, 1993) (Opinion of the Commission) ("Kingsley Opinion"); 1986 Interpretive Release, 35 SEC Docket at 909. Because the advisory clients' commission dollars generate soft dollar credits, soft dollar benefits are the assets of the clients. See Republic New York Securities Corp., Advisers Act Rel. No. 1789, (February 10, 1999).

Moreover, disclosure of soft dollar arrangements is specifically required by Form ADV. See Renaissance Capital, 66 SEC Docket at 568; Oakwood, 63 SEC Docket at 2488-89; and S Squared, 62 SEC Docket at 1564. Form ADV includes items intended to ensure that material information regarding brokerage placement practices and policies are disclosed to investors. See Investment Adviser Requirements Concerning Disclosure, Recordkeeping, Applications for Registration and Annual Filings, Advisers Act Rel. No. 664, 16 SEC Docket 901 (Jan. 30, 1979); Disclosure of Brokerage Placement Practices By Certain Registered Investment Companies and Certain Other Issuers, Advisers Act Rel. No. 665, 16 SEC Docket 837 (Jan. 30, 1979).

Items 12 and 13 and Schedule F of Part II of Form ADV require registrants to disclose arrangements with broker-dealers. For investment advisers who have discretionary authority to select the broker-dealers to be used to execute trades in client accounts, Item 12.B requires a description of factors considered in selecting brokers and determining the reasonableness of their commissions. Further, the adviser must describe the "products, research and services" received from broker-dealers, if their value is a factor in selecting broker-dealers.13 Item 13.E requires an investment adviser to disclose and describe any arrangement whereby it receives an economic benefit from a non-client in connection with its advisory business.

These disclosure requirements are designed to assist clients in determining whether to hire an adviser, and permit them to evaluate any conflicts of interest inherent in the adviser's arrangements for allocating brokerage. Kingsley Opinion, 55 SEC Docket at 2441-42. Moreover, the disclosure must provide sufficient detail to enable advisory clients to understand the nature of the products and services being obtained. See 1986 Interpretive Release; Kingsley Opinion, 55 SEC Docket at 2443 (disclosure that services were "expected to enhance [respondent's] general portfolio management capabilities" was insufficient in light of Form ADV requirement to describe any services that do not involve brokerage or research). Thus, an adviser must provide more detailed disclosure where the receipt of products or services falls outside the safe harbor of Section 28(e). See, e.g. S Squared, 62 SEC Docket at 1565, n.3 (adviser's receipt of products or services that are outside the scope of Section 28(e), except where nominally valued, is presumed to be a factor in the selection of brokers and therefore must be disclosed); SEC v. Tandem Management, Inc., Lit. Rel. No. 14670, 60 SEC Docket 1331 (October 2, 1995) (adviser failed to disclose that soft dollar credits were used to reimburse adviser for non-research expenses).

Even though Dawson-Samberg's Forms ADV and client contracts disclosed a number of products and services that were paid using soft dollar credits, Dawson-Samberg failed to disclose material information about the firm's use of soft dollar credits. Specifically, Dawson-Samberg failed to disclose use of soft dollar credits to pay for the non-research business travel, personal travel, and marketing and other administrative or undocumented expenses discussed above. Dawson-Samberg's inadequate disclosures and omissions were material. Accordingly, Dawson-Samberg willfully violated Section 206(2) of the Advisers Act.

3. Mack Willfully Aided and Abetted and Caused Dawson-Samberg's Violations of Section 206(2) of the Advisers Act

Mack was at all times the corporate officer with day-to-day responsibility for administering Dawson-Samberg's soft dollar program. Mack submitted AMEX Card bills, marketing invoices and invoices for other administrative expenses for payment with soft dollar credits that were not disclosed. Based on the foregoing, Mack willfully aided and abetted and caused violations of Section 206(2) of the Advisers Act.

D. Dawson-Samberg and Mack Violated Section 207 of the Advisers Act

Section 207 of the Advisers Act provides that it shall be unlawful for any person willfully to make any untrue statement of material fact in any registration application or report filed with the Commission or willfully to omit to state in any such application or report any material fact required to be stated therein.14 A person violates Section 207 by filing a false Form ADV or false amendments thereto. Stanley Peter Kerry, Advisers Act Rel. No. 1550, 61 SEC Docket 431 (January 25, 1996). Under Section 207 of the Advisers Act, Dawson-Samberg had a duty to file Forms ADV that were not false or materially misleading and that did not omit to state material facts required to be stated therein. See S Squared, 62 SEC Docket at 1567.15 As discussed in the preceding sections, Dawson-Samberg's amended Forms ADV filed during 1995 and 1996 omitted to disclose certain of the firm's soft dollar practices. Mack was responsible for administering the firm's soft dollar program and, as an officer, signed the Forms ADV. See Chancellor Capital Management, Inc., Advisers Act Rel. No. 1447, 57 SEC Docket 2489 (October 18, 1994) (secretary of investment adviser violated Section 207 by signing false and misleading Form ADV). Under these standards, Dawson-Samberg and Mack willfully violated Section 207 of the Advisers Act.

E. Dawson-Samberg Failed Reasonably to Supervise Mack

1. Standards of Supervision

Section 203(e)(6) of the Advisers Act authorizes the Commission to institute proceedings to determine whether it is in the public interest to sanction an investment adviser if it has failed reasonably to supervise another person, subject to its control, who commits a violation. The Commission has repeatedly emphasized that the duty to supervise is a critical component of the federal regulatory scheme. Vilis Pasts and BTS/Bond Timing, Inc., Advisers Act Rel. No. 1663, 65 SEC Docket 1106, 1114 (September 15, 1997); see John H. Gutfreund, Exchange Act Release No. 31554, 52 SEC Docket 4370, 4386 (Dec. 3, 1992) (same principal applied to broker-dealers). Citing Capital Gains, the Commission has recognized that the "delicate fiduciary relationship" between an investment adviser and a client imposes an obligation on an adviser to review and monitor its activities and the activities of its employees. Shearson Lehman Brothers, Inc. and Stein Roe & Farnham, Exchange Act Rel. No. 23640, 36 SEC Docket 1075 (September 24, 1996); see also Kemper Financial Services, Inc., Advisers Act Rel. No. 1387, 55 SEC Docket 783 (October 20, 1993); Van Kampen American Capital Asset Management, Inc., Advisers Act Rel. No. 1525, 60 SEC Docket 1284 (Sept. 29, 1995). Accordingly, an investment adviser that does not reasonably supervise its associated persons with a view towards preventing violations of federal securities laws may be subject to sanction by the Commission. See Nicholas-Appelgate Capital Management, a California Limited Partnership, Advisers Act Rel. No. 1741, 67 SEC Docket 2312 (August 12, 1998) ("NACM failed reasonably to supervise the Senior Trader with a view toward preventing his

violations of the federal securities laws by placing the Senior Trader in a conflict of interest position with respect to the NACM employee plan without establishing adequate procedures to ensure these conflicts of interest were properly monitored and failing to institute adequate procedures to review and supervise the Senior Trader's personal trading"). Although an investment adviser that has established procedures designed to detect and prevent wrongdoing by supervisees may, under Section 203(e)(6)(A) and 203(e)(6)(B) assert those procedures as a defense to a Commission action for failure to supervise, that defense is not available to Dawson-Samberg because its procedures were inadequate.

Procedures must also be enforced. Appropriate resources must be allocated to the compliance function. The Commission has discussed this requirement in analyzing a broker-dealer's duties under Section 15(b) of the Exchange Act, a provision containing operative language identical to Section 203(e) of the Advisers Act. In that context, the Commission has stated that a registrant must not only adopt effective procedures for supervision, but must also "provide effective staffing, sufficient resources and a system of follow-up and review to determine that any responsibility to supervise delegated to compliance officers, branch managers and other personnel is being diligently exercised." Mabon, Nugent & Co., Exchange Act Rel. No. 19424, 47 S.E.C. 862, 867 (1983). See also Bryant, 54 SEC Docket at 442 (firm's structure must include "specific controls or supervisory procedures designed to deter or detect misconduct").

2. Discussion

Dawson-Samberg failed reasonably to supervise Mack with a view towards preventing her violations by placing her in a position of responsibility with respect to soft dollar payments without proper training and without establishing adequate procedures to ensure that soft dollar payments were properly monitored. Nicholas-Appelgate, 67 SEC Docket 2312. Dawson-Samberg devoted inadequate resources to soft dollar compliance and control mechanisms. The Registrant relied on Mack's on-the-job training to ensure compliance with soft dollar requirements, without substantive review or follow-up. While such reliance sufficed when the firm maintained few soft dollar relationships, the lack of formal training and guidelines became a problem as the firm's use of soft dollar credits increased. As a result, Dawson-Samberg suffered from breakdowns in its supervisory procedures relating to payments for personal travel, non-research business travel, marketing and other administrative and undocumented expenses.

With respect to travel, the arrangement to use soft dollar credits to pay for research travel charged on the AMEX Card represented a significant change in how the Registrant's travel expenses were processed.16 Despite this change, Dawson-Samberg failed to establish a clear procedure for reviewing the AMEX Card bills to identify and distinguish those items that could not properly be paid using soft dollar credits. Dawson-Samberg did not provide clear or sufficiently detailed instructions as to what travel was permissible, and had no written procedures concerning travel. Written procedures would have identified the steps that Mack should have taken to monitor and review travel invoices and obtain necessary supporting documentation. Written procedures also would have clarified the duties of responsible individuals and established a system for reporting and review. See, e.g., Goodrich Securities, Exchange Act Rel. No. 28141, 46 SEC Docket 975 (June 25, 1990) (broker-dealer cited for failure to supervise improper soft dollar payments lacked an adequate compliance manual). As a result of the failures described above, Mack and her designee did not understand the method that they should follow to review the charges or the types of travel that could properly be charged. As a result, no meaningful review of the AMEX Card bills was conducted, reviews were not properly documented, and no one verified, even on a spot basis, whether a review had occurred.

With respect to marketing and other administrative or undocumented payments, Dawson-Samberg failed to implement a procedure requiring a designated compliance individual to conduct a periodic review of soft dollar vendors and the nature of the services they provided to ensure that these relationships were adequately documented and disclosed. Appropriate procedures would have included verification procedures tailored to the firm's business. See, e.g., Pasts, 65 SEC Docket at

1115-1116 (registered investment adviser had inadequate procedures to verify payments to referring agents and requests to issue manual checks); REFCO Securities, Inc., Exchange Act Rel. No. 37531, 62 SEC Docket 1322 (August 6, 1996) (broker-dealer failed to establish written procedures for verification of audit confirmations and review of incoming facsimiles and overnight mail). Appropriate procedures were particularly important in light of the growth in Dawson-Samberg's soft dollar usage. Accordingly, Dawson-Samberg failed reasonably to supervise Mack, a person subject to its supervision, within the meaning of Section 203(e)(6) of the Advisers Act, with a view to preventing her aiding and abetting violations of Section 206(2) and her violations of Section 207.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to accept the Offers of Settlement submitted by Dawson-Giammalva and Mack and impose the sanctions agreed to in the Offers.

V.

In determining to accept the Offers, the Commission considered remedial acts promptly undertaken by the Respondents and cooperation afforded the Commission staff.

VI.

Accordingly, IT IS HEREBY ORDERED, pursuant to Section 203(k) of the Advisers Act, that Dawson Samberg, now known as Dawson-Giammalva, and Mack cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 207 of the Advisers Act;

IT IS FURTHER ORDERED that Dawson-Samberg, now known as Dawson-Giammalva, and Mack be, and hereby are, censured;

IT IS FURTHER ORDERED that, within ten (10) days of the issuance of this Order, pursuant to Section 203(i) of the Advisers Act, Dawson-Samberg, now known as Dawson-Giammalva, shall pay a civil money penalty in the amount of $100,000, representing a $50,000 penalty for the violations and $50,000 for the failure to supervise discussed herein, and Mack shall pay a civil money penalty in the amount of $20,000, to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) sent by certified mail to the Office of the Comptroller, U.S. Securities and Exchange Commission, 450 5th Street, N.W., Mail Stop 0-3, Washington, D.C. 20549; and (D) submitted under cover letter which identifies Dawson-Giammalva and Mack as the Respondents in these proceedings, the file number of these proceedings and the Commission's case number, a copy of which cover letter and money order or check shall be sent to Juan Marcel Marcelino, District Administrator, Securities and Exchange Commission, Boston District Office, 73 Tremont Street, Suite 600, Boston, Massachusetts, 02108; and

IT IS FURTHER ORDERED that Dawson-Giammalva shall comply with the following undertakings contained in its offer of settlement:

1. Dawson-Giammalva shall retain, within 30 days of the date of this Order, at its expense, an Independent Consultant (the "Consultant") not unacceptable to the Commission staff. The Consultant shall conduct a review of the Registrant's supervisory, compliance and other policies and procedures designed to prevent and detect federal securities law violations of the nature involved in this matter.

2. Dawson-Giammalva shall provide to the Commission staff, within 30 days of the issuance of the Order, with a copy of an engagement letter detailing the Consultant's responsibilities;

3. Dawson-Giammalva shall cooperate fully with the Consultant, including providing the consultant with access to its files, books, records, and personnel as reasonably requested for the above-mentioned review, and obtaining the cooperation of Dawson-Giammalva's employees or other persons under its control;

4. The Consultant shall report to the Commission staff on his activities as the staff shall request;

5. The Consultant may engage such assistance, clerical, legal or expert, as necessary and at reasonable cost, to carry out his activities and the cost, if any, of such assistance shall be borne exclusively by Dawson-Giammalva;

6. Dawson-Giammalva shall require the Consultant, at Dawson-Giammalva's expense, to prepare a report making recommendations as to Dawson-Giammalva's policies and procedures and system for applying such procedures, as described in paragraph (1) above;

7. Dawson-Giammalva shall require the Consultant to deliver the report to Dawson-Giammalva and to the Commission staff within 90 days of the issuance of this Order;

8. Dawson-Giammalva shall adopt all recommendations by the Consultant in the report within six months after its issuance; provided, however, that as to any of the Consultant's recommendations that Dawson-Giammalva determines is unduly burdensome or impractical, Dawson-Giammalva may suggest an alternative procedure designed to achieve the same objective, submitted in writing to the Consultant and the Commission staff. The Consultant shall reasonably evaluate Dawson-Giammalva's alternative procedure. Dawson-Giammalva shall abide by the Consultant's determination with regard thereto and adopt such recommendations; and

9. Dawson-Giammalva shall ensure that, for the period of the engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship, with Dawson-Giammalva, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. Any firm with which the Consultant is affiliated or of which he/she is a member, and any person engaged to assist the Consultant in the performance of his/her duties under this Order shall not, without prior written consent of the Boston District Office, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Dawson-Giammalva, or any of its present of former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of engagement and for a period of two years after the engagement; and

10. Dawson-Giammalva shall employ a director of compliance, shall define the duties of such officer, and shall ensure that such officer has access to Dawson-Giammalva's board of directors, and is subject to the direct supervision of, and reports to, Dawson-Giammalva's Chief Executive Officer.

IT IS FURTHER ORDERED that Dawson-Giammalva shall, within nine months from the issuance of this Order, provide an affidavit via certified mail to Juan Marcel Marcelino, District Administrator, Securities and Exchange Commission, Boston District Office, 73 Tremont Street, Suite 600, Boston, Massachusetts 02108, that it has complied with the above undertakings. Such affidavit shall contain a statement describing the procedures adopted and implemented in compliance with paragraph (8) above. Such letter shall be submitted under cover letter which identifies Dawson-Samberg, now known as Dawson-Giammalva, as the respondent in these proceedings, the file number and the Commission's case number.

By the Commission.

Jonathan G. Katz

FOOTNOTES

1 As of January 1, 1999, certain principals of the firm formed a new registered investment adviser which assumed a portion of Dawson-Samberg's business. Dawson-Samberg continued to operate as a registered investment adviser offering individualized portfolio management.

2 At the time of the conduct at issue, Rule 204-1(c) required that registered advisers file annual reports on Form ADV-S. Pursuant to Rule 204-1(d), a Form ADV-S was a "report" within the meaning of section 207. The Commission has since rescinded Form ADV-S.

3 Soft dollar practices are arrangements under which products or services other than the execution of securities transactions are obtained by an investment adviser from or through a broker-dealer in exchange for the direction by the adviser of client brokerage transactions to the broker-dealer. Soft dollars are benefits generated by such direction of brokerage. In the Matter of Republic New York Securities Corp., Advisers Act Rel. No. 1789 (Feb. 10, 1999); Inspection Report on the Soft Dollar Practices of Broker-Dealers, Investment Advisers and Mutual Funds (Sept. 22, 1998); Disclosure by Investment Advisers Regarding Soft Dollar Practices, Advisers Act Rel. No. 1469 (Feb. 14, 1995).

4 Section 28(e) of the Exchange Act provides a safe harbor that protects an investment adviser from charges of breach of fiduciary duty for failing to obtain the lowest available commission rate when the adviser uses client brokerage commissions to obtain research and brokerage services from or through a broker-dealer, discloses such use and complies with other applicable requirements. Research is generally defined as a product or service that provides lawful and appropriate assistance to a money manager in making investment decisions. See Republic New York Securities Corporation, Advisers Act Rel. No. 1789, (February 10, 1999); see also Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934 ("1986 Interpretive Release"), Exchange Act Rel. No. 23170, 35 SEC Docket 905 at 906-907 (April 23, 1986). The amount of commission must be reasonable in relation to the value of brokerage and research services provided. See 1986 Interpretive Release, 35 SEC Docket at 906; Renaissance Capital Advisers, Inc., Advisers Act Rel. No. 1688, 66 SEC Docket 564, 568 n.2 (December 22, 1997).

5 Dawson-Samberg's Forms ADV filed during 1990 through 1994 contained essentially the same soft dollar disclosure.

6 Prior to August 1994, Dawson-Samberg employees used their personal credit cards for travel and Dawson-Samberg used operating funds to pay for all business travel. Thus, the firm did not need a procedure to separate research-related travel from non-research travel.

7 Dawson-Samberg failed to maintain adequate records indicating whether certain travel or administrative charges paid using soft dollar credits were research-related. In the absence of such records, Dawson-Samberg was unable to sufficiently demonstrate that these payments were research-related, and that its disclosure was adequate. Accordingly, while certain categories of travel and administrative payments were not properly disclosed, the discussion of violative conduct herein also includes a number of undocumented payments made by Dawson-Samberg using its soft dollar credits.

8 On several occasions, a Dawson-Samberg officer or employee wrote personal checks to the firm to reimburse the cost of personal legs of business travel. On other occasions, travelers did not reimburse Dawson-Samberg for personal legs. Even where reimbursement checks were written, however, Mack deposited the funds in Dawson-Samberg's operating account. Because Mack took no steps to use those funds towards payment of the AMEX Card bill, Dawson-Samberg still used soft dollars to pay for personal legs of business travel.

9 The travelers were not aware at the time that personal travel was being charged on the AMEX Card. Dawson-Samberg's clerical staff generally handled both personal and business travel

reservations, as well as routine bill-paying duties. For example, one officer, who traveled frequently, provided a power of attorney to his secretary, who paid his personal bills.

10 Because the travel agent handled reservations for both personal and business travel, in the absence of an explanation from Dawson-Samberg that it needed to separate personal from business travel, the travel agent believed that any needed separation of travel charges would be handled by Dawson-Samberg. Dawson-Samberg personnel erroneously assumed and expected that the travel agent would use personal cards for personal travel as she had done in the past.

11 For example, Mack did not instruct her assistant how to determine whether travel was research-related, did not follow-up to ensure that the assistant was conducting a review, and never informed other members of management that she had delegated her review duties.

12 After the staff began its investigation, Dawson-Samberg conducted an internal investigation of all uses of soft dollars from 1990 to 1996. As a result, before the entry of this Order, Dawson-Samberg paid the sum of $1,823,019.56 to clients in an effort to ensure that its soft dollar practices throughout that seven-year period were appropriate. This amount represents $479,700 in soft dollar expenditures discussed in Section III.C.1.a and .b of this Order, the additional sum of $938,000 relating to soft dollar expenditures discussed in this section, and prejudgment interest of $405,319.56.

13 See 1986 Interpretive Release, 35 SEC Docket at 909.

14 Section 204 of the Advisers Act and Rule 204-1 thereunder require periodic filing and amendment of Forms ADV by investment advisers. At the time of the conduct at issue, Rule 204-1(d) stated that an application on Form ADV and any amendment thereto was a "report" within the meaning of Section 207. The Commission has since redesignated Rule 204-1(d) as 204-1(c).

15 Violations of Section 207 do not require a showing of scienter. Parnassus Investments, Inc., Initial Decision Rel. No. 131, 67 SEC Docket 2760, 2784 (September 3, 1998).

16 As previously discussed, prior to obtaining the AMEX Card, Dawson-Samberg employees used their personal credit cards for travel and Dawson-Samberg paid for travel out of operating funds. This procedure did not require a distinction between research and non-research travel. After Dawson-Samberg started using soft dollar credits to pay for travel, it became more important to obtain documentation. However, the policy was not enforced.