

**United States of America  
Before the  
Securities and Exchange Commission**

**Investment Advisers Act Of 1940  
Release No 2064 / October 1, 2002**

**Administrative Proceeding  
File No. 3-10906**

**In the Matter of RENBERG CAPITAL MANAGEMENT, INC. AND DANIEL H. RENBERG,  
Respondents.**

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

**I.**

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), against Respondents Renberg Capital Management, Inc. ("Renberg Capital") and Daniel H. Renberg ("Renberg").

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the "Offer") which 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 to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, and the findings contained in Section III., paragraphs A. and B. below, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions Pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 ("Order"), as set forth below.

**III.**

On the basis of this Order and Respondents' Offer, the Commission finds that:

**Respondents**

A. Renberg Capital, located in Beverly Hills, California, has been registered with the Commission as an investment adviser since 1969 (File No. 801-05753).

B. Renberg, age 71, founded Renberg Capital in 1964 and has been its president, sole shareholder, and senior portfolio manager since inception.

**Background**

C. From at least 1997 through at least 1999, Renberg Capital failed to seek best execution in securities transactions for certain advisory clients because of an undisclosed trading practice involving cross trades between client accounts. The cross trades occurred in connection with a portfolio management technique employed by Renberg Capital called "repositioning." Renberg developed this technique in the 1960s and 1970s.

D. Renberg Capital engaged in repositioning when it identified a stock held by clients that it believed remained a good long-term investment but that had declined in price at least 20%. Because Renberg Capital viewed the price decline as a buying opportunity, it determined that certain clients should purchase additional shares in order to restore the position in the stock to its pre-price decline weighting in these clients' portfolios. In these situations, Renberg Capital would buy the amount of additional shares of the stock required for the clients in the open market and allocate all of these shares to only one group of the clients. The clients in this first group held tax-exempt accounts that could sell stock immediately after buying without being subject to the "wash sale" provisions of the Internal Revenue Code. This allocation therefore resulted in the first group of clients holding a temporary "double position," i.e., the just purchased lower cost shares, and the previously owned higher cost shares.

### **Failure to Seek Best Execution in Client Cross Trades**

E. Shortly after creating a double position (often within minutes, but always within the same day), Renberg Capital would sell the previously owned higher cost shares from the first group to a second group of clients in a cross trade. Clients in the second group held taxable accounts. Because of the "wash sale" provisions, they would wait at least 31 days before selling their previously owned higher cost shares. When they sold, they usually realized a tax loss that could be used to offset future taxable gains. Renberg Capital determined the price that the taxable accounts paid to the tax-exempt accounts in the cross trades, and the commissions paid by both accounts to effect the cross trades. Renberg Capital always chose a crossing price that was within the prevailing bid-ask spread at the time of the cross trade, but was higher than the initial purchase price paid by the tax-exempt accounts.

F. As a result of this cross trade practice, the taxable accounts that purchased in the cross trades paid higher execution costs for their shares than the first group of tax-exempt accounts. Renberg Capital could have obtained better execution terms for the taxable accounts in executing the cross trades. From 1997 through 1999, the cross trade practice caused clients with taxable accounts that purchased in the cross trades to pay approximately \$310,000 in higher prices and commissions than if such clients had acquired the shares at the same per share cost as the tax-exempt accounts.

### **Fiduciary Duty to Seek Best Execution**

G. An investment adviser's fiduciary duty includes the requirement to seek best execution of client securities transactions. Kidder Peabody & Co., Inc., Edward B. Goodnow, Advisers Act Rel. No. 232 (Oct. 16, 1968). To fulfill this duty, investment advisers should "periodically and systematically" evaluate the execution they are receiving for clients. Interpretive Release Concerning Scope of Section 28(e) of the Securities Exchange Act of 1934, Exchange Act Rel. No. 34-23170 (April 23, 1986). The Commission has repeatedly sanctioned investment advisers that have failed to seek best execution. See *In the Matter of Portfolio Advisory Services, LLC and Cedd L. Moses*, Advisers Act Rel. No. 2038 (June 20, 2002) (investment adviser and its president failed to seek best execution by interposing a broker-dealer between clients and market makers on OTC principal trades to compensate brokers for referring clients to the adviser); *In the Matter of Michael L. Smirlock*, Advisers Act Rel. No. 1393 (November 29, 1993) (chief investment officer of an investment adviser ordered execution of client cross trades in disregard of the duty to seek best execution).

### **Violations**

H. As a result of the conduct described in paragraphs III.A. through F. above, Renberg Capital violated its duty to seek best execution and therefore willfully violated Section 206(2) of the Advisers Act, which prohibits an investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. Renberg, who developed the cross trade practice and was involved as portfolio manager in all cross trades at issue, willfully aided and abetted and caused Renberg Capital's violation.

### **Remedial Actions**

I. After the staff began investigating the cross trade practice, Respondents ceased the practice and agreed to make restitution to taxable accounts in the amount set forth in paragraph F. above.

#### **IV. Undertakings**

Renberg Capital has undertaken to:

A. Retain, within 15 days of the entry of the Order, at its expense, an independent consultant (the "Consultant") not unacceptable to the Commission staff. Renberg Capital shall not terminate the Consultant without the prior written approval of the Commission staff. The Consultant shall be retained to conduct a review of Renberg Capital's existing policies, practices, and procedures designed to prevent and detect federal securities laws violations. Renberg Capital shall ensure that the Consultant's review includes: (a) whether Renberg Capital's existing policies and procedures are adequate; (b) whether such policies and procedures have been effectively implemented, followed, and enforced; and (c) what other policies or procedures (or amendments to existing policies or procedures), if any, are necessary and appropriate.

B. Provide to the Commission staff, no later than 10 days from the date of the engagement of the Consultant, a copy of the engagement letter detailing the Consultant's responsibilities.

C. Require the Consultant to enter into an agreement that provides that for the period of the engagement and for a period of two (2) years from the completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Renberg Capital or Renberg, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the Consultant is affiliated or of which he or she is a member, and any person engaged to assist the Consultant in the performance of his or her duties under the Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Renberg Capital or Renberg, or any of their present or former affiliates, directors, officers, employees, or agents in their capacity as such for the period of the engagement and for a period of two (2) years after the engagement.

D. Cooperate fully with the Consultant, including providing the Consultant with access to any and all files, books, records, account statements, other documents, and personnel as reasonably requested for the review set forth in paragraph A. of these Undertakings, and obtaining the cooperation of Renberg Capital's affiliated persons, employees, or other persons under their control.

E. Require the Consultant to report to the Commission staff on its activities as the staff shall request.

F. Arrange for the Consultant to issue a written report within 60 days of the date of engagement setting forth in detail the nature and scope of the review conducted, the Consultant's conclusions, and any recommendations to strengthen and improve Renberg Capital's policies, practices, and procedures. Renberg Capital shall arrange for the Consultant to provide the staff of the Commission's Pacific Regional Office ("PRO") a copy of this report, within 10 days from its issuance.

G. Take all necessary and appropriate steps to adopt and implement all recommendations of the Consultant.

H. Arrange for the Consultant to conduct a follow-up review, within 90 days after the issuance of the report required in paragraph F. above, to determine whether all recommendations have been implemented. Renberg Capital shall arrange for the Consultant to provide the staff of the Commission's PRO, within 30 days from the date of such follow-up review, a written report stating that the follow-up review has been completed and whether the recommendations have been implemented.

I. Arrange for the Consultant to conduct a second follow-up review to commence no earlier than one year after the date of the follow-up report required in paragraph H. above, but not later than 15 months after the date of the follow-up report required in paragraph H. above, to determine whether all recommendations have been implemented. Renberg Capital shall arrange for the Consultant to provide the staff of the Commission's PRO, within 30 days from the date of this second follow-up review, a

written report stating that the second follow-up review has been completed and whether the recommendations have been implemented.

J. Within 30 days after the Consultant has issued the report on the second follow-up review required in paragraph I. above, provide an affidavit by certified mail to the staff of the Commission's PRO, confirming its compliance with the undertakings set forth in paragraphs A. to I. above.

**V.**

In view of the foregoing, the Commission deems it appropriate, and in the public interest, to impose the sanctions specified in Respondents' Offer.

ACCORDINGLY, IT IS ORDERED that:

A. Renberg Capital and Renberg are censured.

B. Renberg Capital and Renberg shall cease and desist from committing or causing any violation and any future violation of Section 206(2) of the Advisers Act.

C. Renberg Capital and Renberg shall, within ten days of the entry of this Order, jointly and severally pay a civil money penalty in the amount of forty thousand dollars (\$40,000) 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) hand-delivered or mailed to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia 22312; and (D) submitted under a cover letter that identifies Renberg Capital and Renberg as respondents in these proceedings, and sets forth the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Andrew Petillon, Pacific Regional Office, Securities and Exchange Commission, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036.

D. Renberg Capital shall comply with the undertakings enumerated in Section IV. above.

By the Commission.

Jonathan G. Katz  
Secretary