

CORRECTED

**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934
Release No. 66212A / January 23, 2012**

**INVESTMENT ADVISERS ACT OF 1940
Release No. 3360A / January 23, 2012**

**ADMINISTRATIVE PROCEEDING
File No. 3-14710**

In the Matter of

**1st DISCOUNT BROKERAGE,
INC. and MICHAEL R.
FISHER**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO SECTION
15(b) OF THE SECURITIES EXCHANGE
ACT OF 1934 AND SECTIONS 203(e) AND
203(f) OF THE INVESTMENT ADVISERS
ACT OF 1940, MAKING FINDINGS,
IMPOSING REMEDIAL SANCTIONS AND A
CENSURE ORDER AS TO 1st DISCOUNT
BROKERAGE, INC., AND MAKING
FINDINGS AND IMPOSING REMEDIAL
SANCTIONS AS TO MICHAEL R. FISHER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"), against 1st Discount Brokerage, Inc. ("Respondent 1DB" or "1DB") and Michael R. Fisher ("Respondent Fisher" or "Fisher") (1DB and Fisher being sometimes hereinafter referred to individually as a "Respondent" and collectively as the "Respondents").

II.

In anticipation of the institution of these proceedings, each Respondent has submitted an Offer of Settlement (the "Offers") 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 Respondents and the subject matter of these proceedings, which are admitted, each Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e) and 203(f) of the Investment Advisers Act of 1940, Making Findings, Imposing Remedial Sanctions and a Censure Order as to 1st Discount Brokerage, Inc., and Making Findings and Imposing Remedial Sanctions as to Michael R. Fisher (the "Order"), as set forth below.

III.

On the basis of this Order and each of the Respondents' Offers, the Commission finds¹ that:

Summary

These proceedings arise out of 1DB's and Fisher's failure reasonably to supervise Michael J. Park ("Park") with a view to preventing and detecting his violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder. From 2002 to 2008, while Park was a registered representative associated with 1DB, he operated a Ponzi scheme which defrauded over 50 investors of nearly \$9 million.

1DB did not have policies and procedures reasonably designed to detect and prevent violations of the securities laws by registered representatives like Park. Had 1DB had such reasonable policies and procedures, it would have likely uncovered Park's fraud. Specifically, had 1DB had reasonable policies and procedures in the review of the "doing business as" business accounts of its registered representatives, it is likely that 1DB would have observed a substantial influx of money from 1DB's existing customers into Park's business account, through which he conducted his Ponzi scheme. In addition, 1DB had no policy requiring compliance auditors who were conducting audits to review the work papers and reports of previous compliance audits. Had 1DB had reasonable policies and procedures in this regard, it would have been apparent that Park had a history of insufficient or absent signage. As a result, auditors were unable to identify a reoccurring issue that, with follow-up, could have uncovered that Park took steps to conceal from his customers his association with 1DB for fear that they would alert the firm to his suspicious investment scheme. 1DB also failed to conduct unannounced audits in the Nashville office as specifically required in the firm's procedures. Had 1DB implemented a system to follow its own procedure of conducting unannounced audits in the Nashville office, it is likely that 1DB would

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

have found evidence of Park's Ponzi scheme. For example, an unannounced audit would have revealed that Park did not consistently provide signs to indicate to customers his association with 1DB.

From 2004 to 2008, Fisher was delegated the responsibility to oversee 1DB's Heightened Supervision Committee ("HSC"). Pursuant to 1DB's compliance and sales management manuals, the HSC is a part of 1DB's supervisory structure. As the designated head of the HSC, Fisher was responsible for having a system to implement the firm's policies and procedures regarding the periodic review of all activities of 1DB's registered representatives. Had 1DB, through Fisher, developed such a system for periodic reviews of the activities of all of 1DB's registered representatives, the HSC would have reviewed Park's activities and would have found several red flags, including inadequate or missing signage that required Park to disclose his association with 1DB, a customer complaint of unauthorized trading, and declining commissions. With respect to the declining commissions, any follow up by the HSC would have reasonably focused on Park's remaining customer accounts and contacting those customers, many of whom were also victims of Park's Ponzi scheme. As a result of Fisher's failure to implement the firm's policies and procedures regarding the periodic review of all activities of 1DB's registered representatives, Fisher failed reasonably to supervise Park with a view to preventing and detecting his violative conduct.

Respondents

1. 1st Discount Brokerage, Inc. is a Florida corporation head-quartered in West Palm Beach, Florida and operates as an introducing broker through over 80 offices and over 200 independent financial consultants. 1DB has been registered with the Commission as a broker-dealer since 1995 and as an investment adviser since 2007.

2. Michael R. Fisher, age 49, of Helen, Georgia, was during the relevant times, the executive-vice president for 1DB. From September 2004 through May 2008, Fisher had primary responsibility at 1DB, as defined within the firm's compliance and sales management manual, to oversee 1DB's HSC. The HSC was a committee created by 1DB to, according to the firm's compliance and sales management manual, "reduce the firm's exposure as a result of inappropriate [registered representative] conduct that might otherwise go undetected."

Other Relevant Person

3. Michael J. Park is a former registered representative employed by 1DB from August 21, 2002 to June 26, 2008. On October 29, 2008, a judgment was entered by consent in an action brought by the Commission against Park permanently enjoining him from future violations of Section 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder in the United States District Court for the Middle District of Tennessee. On December 18, 2008, the Commission barred Park from associating with any broker, dealer, or investment adviser. On February 27, 2009, Park pled guilty to wire and mail fraud charges brought by the United States Attorney's Office for the Middle District of Tennessee. In his criminal plea, Park admitted to operating a fraudulent scheme from 2001 to 2008 that defrauded 28 investors in

excess of \$8.6 million. In September 2010, Park was sentenced to a 96 month term of incarceration. The Financial Industry Regulatory Authority, Inc.'s Central Registration Depository shows that prior to joining 1DB Park received three customer complaints in connection with his employment at a prior Commission registered broker-dealer from July 1995 to June 1998. Two of the complaints alleged excessive commissions and margin interest on unsuitable trades. This prior broker-dealer terminated Park in connection with a complaint that he had received loans from two customers without receiving the firm's permission. From January 1999 to February 2000, Park worked for another Commission registered broker-dealer. This other broker-dealer terminated Park for forging a client's signature on a letter of authorization instructing the firm to charge a \$3,500 loss to the client.

Background

4. From 2001 to 2008, Park operated a Ponzi scheme that defrauded more than 50 investors, some of whom were 1DB customers, out of almost \$9 million. Park operated his fraudulent scheme through his securities business, which did business as Park Capital Management Group, Inc. ("PCMG"). Park convinced investors to transfer money to him to manage through PCMG by representing to them that they would earn substantial returns on their PCMG accounts through investments in publicly traded securities and/or in investment pools that Park managed. Once the investors transferred funds to PCMG, Park misappropriated the funds to subsidize his extravagant life-style which included a \$1.7 million house, expensive cars, and private school tuition for his children.

5. From 2002 through 2008, Park was a registered representative of 1DB. The firm, however, failed to detect Park's fraud due, in part, to multiple failures in its supervisory system, many of which directly related to Fisher's individual failure to implement the HSC as plainly specified in the firm's written compliance policies and procedures.

1DB's Failure to Have Reasonable Policies and Procedures Regarding its Compliance Audits

Failure to Review "Doing Business As" Accounts

6. 1DB employs an independent contractor broker model, which requires greater supervision than that of a traditional wire house brokerage firm. See, e.g., In the Matter of Royal Alliance Assocs., Inc., Exchange Act Rel. No. 38174 (Jan. 15, 1997). Despite the need to have stronger supervision, 1DB failed to establish reasonable policies and procedures for its review of Park's operations.

7. At 1DB, independent contractors, like Park, typically operate their securities business through a "doing business as" ("DBA") name and pay expenses for the business by using an account under the DBA's name ("DBA Account"). Although 1DB's compliance audit modules required review of limited information about a registered representative's DBA, the procedures were not reasonably designed to prevent and detect underlying securities law violations by registered representatives like Park.

8. 1DB's review of Park's DBA – PCMG – was limited to investigating whether 1DB was a party to any leases or contracts entered into by the registered representative.

9. Had 1DB had reasonable policies and procedures regarding the review of Park's DBA, 1DB's auditors could have discovered Park's Ponzi scheme.

10. Specifically, Park used the DBA Account to accept investments from victims and to make payouts. For example, Park described in the DBA Account records a May 2007 \$40,000 deposit by one of his victims as an "Initial Stock purchase." Park described a September 2005 check written to one of the investors as a "Liquidation of Account."

11. A review of Park's DBA Account would have likely uncovered the suspicious activity in the account and led to an investigation revealing Park's Ponzi scheme.

*Failure to Require Compliance Auditors to Review
Compliance Audit Reports from Previous Years*

12. During the relevant time period, 1DB failed to have reasonable policies or procedures requiring compliance auditors to review compliance audit reports from previous years. Each year, 1DB compliance auditors conducted announced audits of its registered representatives' operations. The auditor documented the compliance audit by completing an audit report with information about the operations, appearance, and possible deficiencies in the registered representative's business.

13. 1DB's auditors in subsequent audits could have used the information contained within prior audit reports to identify potential red flags. However, 1DB did not provide subsequent auditors with the previous audits. As a result, current auditors had no benchmark to compare a registered representative's current activities to his or her past compliance conduct. Consequently, the current auditor did not have the requisite information to identify reoccurring, potential red flags.

14. In the immediate matter, 1DB auditors failed to identify a reoccurring red flag: Park's failure to have adequate signage outside of his office that would have provided investors notice of Park's affiliation with 1DB. Compliance auditors audited Park's office annually from 2002 to 2007, inclusive. However, due to 1DB's failure to provide audits from previous years, auditors did not have an opportunity to identify Park's consistent failure to have proper signage, which was a red flag that Park was trying to conceal his affiliation with his broker in order to avoid a complaining customer alerting 1DB of his fraudulent conduct.

15. Specifically, Park failed to have adequate signage for three years in a row. In 2004, a 1DB compliance auditor noted that Park's signage at the front of his office door did not state that Park sold securities through 1DB. In 2005, a different auditor noted again a deficiency in Park's signage, namely that it was a temporary sign. In 2006, a third auditor noted that, as with the audit in 2004, Park's sign did not display 1DB's name. Because the auditors were not provided

with previous audits, they were unable to realize that Park's failure to have proper signage was not inadvertent, but was intended to conceal Park's association with 1DB so that investors in his Ponzi scheme would not contact 1DB regarding Park's suspicious investment scheme.

16. Had 1DB's compliance auditors received and reviewed previous audits of Park's operations, they would have likely discovered the recurring, red flag of Park's inadequate signage. Such discovery would have led 1DB to conduct a future examination of PCMG uncovering Park's Ponzi scheme.

*Failure to Conduct Unannounced Compliance Audits, as Required by the
Compliance and Sales Management Manual*

17. 1DB could have reasonably discovered Park's fraud had it conducted unannounced audits of Park and PCMG as specifically required in the firm's compliance and sales management manual. 1DB conducted annual audits of its registered representatives. However, the firm informed the registered representatives of the audit one month in advance.

18. 1DB's failure to have unannounced audits at Park's office contravened its compliance and sales management manual that stated that the firm would conduct "[u]nannounced inspections and audits, including reviewing customer accounts and other records, [and] sales methods."

19. With Park, each year of his affiliation with 1DB he received a "reminder" a month in advance of the upcoming audit. Such a reminder afforded Park the opportunity to conceal his fraudulent activity. For example, Park put up temporary signage for announced compliance audits and then removed them once the compliance audits were completed.

20. Had 1DB conducted unannounced compliance audits, it would have likely noted Park's failure to have any 1DB signage, which would have led to further examination of Park's activities and detection of his Ponzi scheme.

***Fisher's Failure in His Delegated Responsibilities
over 1DB's Heightened Supervision Committee***

21. In 1997, 1DB created a HSC in response to a 1997 National Association of Securities Dealers, Inc.'s ("NASD") Notice to Members recommending firms create heightened supervision procedures. The HSC's charge, according to 1DB's compliance and sales management manual, is to provide "continued special supervision of registered representatives" and "reduce the firm's exposure as a result of inappropriate RR conduct that might otherwise go undetected."

22. The HSC is a part of 1DB's supervisory system as evidenced by the fact that its duties and responsibilities are set forth in the compliance and sales management manual under the section entitled "STANDARDS OF SUPERVISION." Among other things, the HSC is, according to the compliance and sales management manual, to conduct "periodic reviews of

activities of all 1DB [registered representatives], including their [Central Registration Depository] disclosures and customer complaint history.”

Fisher Delegated with Overseeing the Heightened Supervision Committee

23. 1DB’s compliance and sales management manuals state that the HSC is to conduct periodic reviews of the activities of all of 1DB’s registered representatives. From 2004 to 2008, Fisher, 1DB’s executive-vice president, was delegated the responsibility for having a system to implement the firm’s policies and procedures for such periodic reviews. However, Fisher failed to implement the firm’s policies and procedures.

Red Flags of Park’s Conduct the Heightened Supervision Committee Missed Because it Failed to Conduct Periodic Reviews of 1DB’s Registered Representatives

24. Had the HSC conducted such a review of Park, it would have discovered several red flags regarding Park’s conduct. First, the HSC would have discovered that Park repeatedly violated NASD Rule 2210, requiring communications with the public to not be misleading, and the firm’s requirement for clear signage with respect to his office and its affiliation with 1DB. To the extent Park had any signage, it was insufficient.

25. Second, the HSC’s review of Park’s activities likely would have included inquiry into his declining commissions. Park’s annual commissions declined from their high in 2003 of \$72,000 to an annualized low in 2008 of \$9,500. An inquiry into this dramatic decline would have included examining Park’s remaining customer accounts and contacting customers who were closing or liquidating their accounts. Contacting these customers would have revealed that many of them were closing and/or liquidating their accounts in order to invest with Park’s other business, a Ponzi scheme.

26. Third, the HSC’s review of Park’s activities would have revealed that in March 2007 a 1DB customer filed a complaint alleging that Park engaged in unauthorized trading in the customer’s account. Because there was no review of Park’s activities, this complaint was never investigated by the HSC. If this complaint had been investigated, it is likely that the HSC would have contacted other customers regarding Park’s handling of their accounts, which likely would have led to the detection of Park’s Ponzi scheme.

27. As a result of the conduct described above, 1DB failed reasonably to supervise Park within the meaning of Section 15(b)(4)(E) of the Exchange Act, and within the meaning of Section 203(e) of the Advisers Act, when it failed to supervise Park with a view to preventing and detecting his violations of the federal securities laws.

28. As a result of the conduct described above, Fisher failed reasonably to supervise Park within the meaning of Section 15(b)(4)(E) of the Exchange Act, and within the meaning of Section 203(f) of the Advisers Act, when he failed to supervise Park with a view to preventing and detecting his violations of the federal securities laws.

29. In March 2009, 1DB entered into a voluntary settlement agreement with all of Park's victims, the majority of whom were not customers or clients of 1DB and had no contractual or other legal connection with 1DB. Pursuant to the voluntary settlement, 1DB contributed \$2 million to be distributed among Park's victims.

Remedial Efforts

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

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in each of the Respondent's Offers.

Accordingly, pursuant to Section 15(b) of the Exchange Act and Sections 203(e) and 203(f) of the Advisers Act, it is hereby ORDERED that:

A. Respondent 1DB shall pay civil penalties of \$40,000 to the Securities and Exchange Commission. Payment shall be made in the following installments: four installments of \$10,000 with the first payment to be made within ten days of the entry of the administrative order, and the remaining installment payments made 120, 240 and 360 days after the date of the administrative order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payments shall be: (A) made by wire transfer, 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 Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies 1DB as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to William P. Hicks, Associate Director, Division of Enforcement, Securities and Exchange Commission, 950 East Paces Ferry Road, Suite 900, Atlanta, GA 30326.

B. Respondent 1DB is censured.

C. Respondent Fisher be, and hereby is, suspended from association in a supervisory capacity with any broker, dealer, or investment adviser with the right to reapply for association in a supervisory capacity after nine (9) months to the appropriate self-regulatory organization, or if there is none, to the Commission.

D. Any reapplication for association by Respondent Fisher will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the

conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

E. Respondent Fisher shall pay civil penalties of \$10,000 to the Securities and Exchange Commission. Such payment shall be made within ten days of the entry of the administrative order. If such payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment shall be: (A) made by wire transfer, 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 Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Michael R. Fisher as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to William P. Hicks, Associate Director, Division of Enforcement, Securities and Exchange Commission, 950 East Paces Ferry Road, Suite 900, Atlanta, GA 30326.

F. Such civil money penalties may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended ("Fair Fund distribution"). Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payments of civil penalties in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Elizabeth M. Murphy
Secretary