UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53339 / February 21, 2006

INVESTMENT COMPANY ACT OF 1940
Release No. 27225 / February 21, 2006

INVESTMENT ADVISERS ACT OF 1940
Release No. 2487 / February 21, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12212

In the Matter of **THOMAS W. McCONNELL,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 15(b)(6) OF THE SECURITIES EXCHANGE ACT OF 1934, SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940 AND SECTIONS 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 Section 15(b)(6) of the Securities Exchange Act of 1934 ("Exchange Act"), Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") and Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Thomas W. McConnell ("Respondent" or "McConnell").

II.

In anticipation of the institution of these proceedings, Respondent has 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 him and the subject matter of these proceedings, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing

Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, Section 9(b) of the Investment Company Act of 1940 and Sections 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 Respondent's Offer, the Commission finds that:

RESPONDENT

1. Thomas W. McConnell, 59, a resident of Old Lyme, Connecticut, was NES' president from 1993 to November 2002. He received a bachelor's degree from Trinity College in 1967, is a registered representative (CRD No. 325857), and has a Series 1 license.

Related Party

2. New England Securities Corp., headquartered in Boston, Massachusetts, is a registered investment adviser (File No. 801-47061) and broker-dealer (File No. 8-13910) operating through a nationwide network of offices. NES is owned by MetLife, Inc. via a series of wholly-owned subsidiaries. MetLife merged with New England Mutual Life, then NES' parent company, in 1996. MetLife's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act (File No. 001-15787) and principally trades on the New York Stock Exchange.

Facts

The IM Program

3. The Investment Manager ("IM") Program is a non-discretionary wrap investment program in which NES recommends an allocation of clients' assets among a suite of no-load and load-waived mutual funds that the company screens and evaluates for quality, and which it monitors on an ongoing basis. Investments in each client's account are spread among various mutual funds generally based upon one of five basic asset allocation models, with the client selecting a mix of funds for each asset class. The models are comprised of a mix of stock, bond and money market offerings, and offer various levels of risk, with the most aggressive models being more heavily tilted toward stock funds.

4. NES introduced the IM Program as a pilot program in 1995. By 1997, the company offered the program nationally through its force of approximately 1,800 investment

advisory representatives. Clients in the IM Program include ERISA plans, other retirement plans and individual investors with general investment accounts. The minimum initial investment in an IM Program account was $100,000. NES generally charged IM Program clients an annual management fee from 1 to 1.75 percent of total assets, with fee rates negotiable. NES represented to clients that they would receive various services, including mutual fund screening, assistance in setting up their asset allocation portfolios, quarterly reports, and notice if selected rebalancing parameters were crossed.

5. As the IM Program grew over time, its continued profitability and success were important to McConnell. He received a significant portion of his annual compensation in the form of year-end bonuses that were tied to whether he had met goals with respect to NES' investment products.[1] Furthermore, throughout the life of the IM Program, McConnell wanted it to be successful, so that it would be designated as a MetLife core product, raising its conspicuousness within the company.

Representations to Clients Concerning Rebalancing

6. From the program's inception in 1995 until March 2003, NES consistently represented to its IM Program clients that it would send them notifications on an agreed schedule if their asset allocation varied by a specified amount from client-chosen allocation or "baseline." NES also distributed numerous marketing materials to both current and prospective clients in which it represented that it would provide such notices as part of the program. NES also instructed its sales representatives to tell their clients that they would receive rebalancing notifications based upon their stated preferences.

7. Between 1997 and 2002, McConnell reviewed and approved the use by NES' salespersons of the company's marketing materials containing representations regarding rebalancing. McConnell also knew that NES had promised rebalancing to its IM Program clients in the client questionnaires and that the questionnaires were being used throughout the life of the IM Program.

October 1999: An Internal Audit Identifies Control Problems with Rebalancing

1 For a manager at McConnell's level, year-end bonuses were typically in the range of 20%-30% of annual salary.

8. In 1999, a member of New England Financial's internal audit department conducted a routine audit of the IM Program as part of a larger audit of NES investment wrap products. The auditor concluded that NES did not have effective controls in place to ensure adherence to IM Program clients' original asset allocation preferences, to maintain those preferences over time, or to generate rebalancing notifications either if accounts drifted by more than 5% or when annual anniversaries occurred. The auditor also concluded that there was no system of review or follow-up in place to determine whether IM Program clients had been properly informed that their accounts needed rebalancing.

9. The auditor prepared a report dated October 26, 1999, specifically identifying the systems failure with respect to the IM Program's rebalancing component as follows:

> Client Wrap accounts do not always remain within the portfolio allocation percentages originally set by NES and the client. Without an effective system to re-balance client accounts to their original allocation percentages, NES may not meet its clients' investment objectives.

10. Immediately following this entry, the audit report identified the following "management action plan" to address the problem:

> We are currently testing software from Fidelity that will allow us to identify accounts requiring rebalancing and process the necessary trades. The testing should be complete by the first week of November. We do not expect to find anything that will prevent us from using the software at this point. Once a final decision is made, we will notify the NES field force and contact clients seeking their consent. Those that opt out of the automatic rebalancing feature will assume responsibility for their asset allocation and tracking.

11. The 1999 audit report also stated that the software testing would be completed by November 5, 1999, that a system of automatic rebalancing would be implemented by December, and that a direct report to NES' vice president of product origination would be accountable for implementing this plan.

12. The 1999 audit report was distributed to various executives at NES, including McConnell. McConnell took no steps, however, to implement the management action plan. Neither he nor anyone else at the company followed up to determine whether the management action plan actually was implemented prior to the next internal audit of the IM Program in 2001.

September 2000 to March 2001: Worsening Problems with Rebalancing

13. From the inception of the IM Program in 1995 through September 2000, NES did not have an automated system for identifying the IM Program accounts that required a rebalancing notice, or for checking accounts' current asset allocation against original asset allocation baseline. Instead, NES' product origination group produced a quarterly report that listed the current holdings of each client, and an assistant to the vice president of product origination visually scanned that report each quarter and determined which accounts required a rebalancing notice. By 1999 or 2000, as the program grew larger, this "manual" method of determining who should receive rebalancing notices had become essentially unmanageable.

14. In September 2000, for reasons unrelated to the rebalancing program, NES changed clearing firms. As a result of the shift, the stable flow of data that NES had been receiving was replaced by inadequate data coming from the successor firm. Consequently, NES' ability to reconcile IM Program accounts was severely impaired. During the period from September 2000 to March 2001, an account was rebalanced only when a client or sales representative actually requested that the account be rebalanced.

15. From September 2000 to March 2001, McConnell was aware that the company was not sending rebalancing notices. However, he did not take sufficient steps to investigate or address the problem. During this period, he failed to order changes to the continuing references to rebalancing in the IM Program client questionnaires and marketing materials, and the company continued to accept new IM Program clients.

16. In January 2001, McConnell requested that New England Financial's chief compliance officer conduct a review of the IM Program's procedures for processing new client applications. In March 2001, the chief compliance officer directed a member of her staff to conduct a general review of all of the IM Program's procedures. During this review, NES' vice president of product origination left the chief compliance officer a voice message in which he told her, among other things, that there was a "gap" in rebalancing IM Program accounts and that NES had purchased new software to address the rebalancing issue. The chief compliance officer sent NES' vice president of product origination a responsive e-mail on April 6, 2001, which she copied to McConnell, in which she stated, in part:

> John, this is a follow up to your voice mail. I understand from your voice mail that currently there is a gap in rebalancing clients' accounts. You have purchased software to address this issue. I am concerned given the current market that
>
> people who were expecting to be rebalanced were not. NES could potentially have some liability. Please keep me posted on the implementation of your system.

As a result of this email, McConnell knew that NES' continuing failure to rebalance IM Program client accounts in the spring of 2001 could constitute a liability issue for the company.

17. The chief compliance officer subsequently brought to the attention of NES' in-house legal counsel several IM Program-related issues, including rebalancing, and she set up a meeting on May 9, 2001, between NES' vice president of product origination, herself and other members of NES' compliance, legal and operations departments to discuss those issues. NES' vice president of product origination told the meeting participants that he had purchased software to address the rebalancing problem.

Summer 2001: An Internal Audit Identifies the Rebalancing Failure

18. Approximately two years after the 1999 internal audit, the same auditor conducted another routine audit of the IM Program in the summer of 2001, with NES' vice president of product origination acting as the company's "point person." Of twenty accounts tested, the auditor found three instances where the client's originally selected asset allocation percentages had drifted by more than 5%. Of the remaining seventeen accounts, the auditor concluded that only two showed some effort at rebalancing, but that the remaining accounts appeared to be in compliance due only to "luck" or "market conditions." In his work papers for the 2001 audit, the auditor noted that "[t]his was an issue in the past [1999] audit and continues to be an issue here as the procedures in place for rebalancing in the past (none) have not changed." The auditor concluded that no formal rebalancing procedures existed at NES, and that the company was not monitoring IM Program accounts to determine whether they were out of balance.

19. When the auditor completed the 2001 audit, he prepared an audit report dated July 31, 2001 that, in part, stated:

> **NES does not have an effective system in place to rebalance IM accounts**. As a result, client accounts do not always remain within the portfolio allocation percentages originally set by NES and the client. Without an effective system to re-balance client accounts, NES may not meet its clients' investment objectives.

(Emphasis in original).

20. Immediately following the above entry, the report identified the following "management action plan" to address the rebalancing issue:

> NES has already begun implementation of an automated rebalancing system that uses the Advent "MOXY" rebalancing engine as a central element. That software has been installed and tested, and is functional. NES has begun a mailing to reps

> and clients to inform them of certain changes to our rebalancing policies, and to notify them that out-of-balance accounts will be rebalanced shortly after they receive the notices.

21. The report also noted that October 2001 would be the target date for “all accounts to be rebalanced,” and that NES’ vice president of product origination would be accountable for implementing it.

22. The auditor distributed the 2001 audit report to various NES executives, including McConnell.

23. Contrary to what was stated in the 2001 audit report, NES had not, by the end of July, commenced a mailing to sales representatives and clients informing them of changes to NES’ rebalancing policies. The October 2001 target date set in the July 31 report for all accounts to be rebalanced was inaccurate because, in July 2001, NES’ vice president of product origination’s expectation was only that all notifications would be sent by October – and not that all clients would respond to such notifications and that all rebalancing would be completed by then. NES’ vice president of product origination subsequently reported to McConnell that this target date would not be met.

Summer 2001 – Fall 2002: McConnell Fails to Rectify Rebalancing Problems

24. Major problems with rebalancing continued from the summer of 2001 through the fall of 2002. Between November 2001 and March 2002, despite the fact that NES still had not installed a final automated solution to the rebalancing problem, the company sent to most of its IM program clients information packages about new automated options that supposedly would soon be available, together with rebalancing notifications. NES sent out three batches of such mailings in November 2001, and January and March 2002. By June 2002, NES had sent to approximately 2,500 IM Program clients out of the approximately 3,500 clients that had been in the program as of October 2001. NES sent no further notices after June 2002.

25. Even after these mailings, NES never provided the automated rebalancing services that it told its clients they could select. Furthermore, from December 2001 through the end of 2002, NES did not monitor new IM Program accounts for asset allocation drift. By February 2002, NES had ceased making substantial efforts to address the rebalancing problem.

26. During the period from the summer of 2001 through October 2002 (when McConnell left NES), McConnell received periodic status reports regarding rebalancing from NES’ vice president of product origination during weekly one-on-one meetings. During those meetings in the fall of 2001, the vice president fully apprised McConnell regarding the

company's continuing problems with rebalancing. During late 2001 and early 2002, the vice president of product origination provided written reports to McConnell, describing to him which IM Program clients had received rebalancing notifications and when. As a result, during this entire period McConnell was aware of the scope of the rebalancing problem and what was being done to rectify it.

27. Nevertheless, during this entire period, McConnell still failed to recommend or order that the IM Program be closed to new clients, that notices be sent to IM Program clients notifying them of the rebalancing problem, or that the rebalancing representations contained in the IM Program client questionnaires and marketing materials be changed.

Late 2002 – Early 2003: NES Closes the IM Program to New Clients and Self-Reports

28. In October 2002, McConnell left NES for reasons unrelated to the rebalancing problems in the IM Program.

29. During that same month, a MetLife official became concerned that there may be rebalancing problems with the IM Program during discussions related to switching NES' clearing firm. In November, that official communicated his concerns to NES' chief compliance officer, who arranged a conference with the company's vice president of product origination. During that conference, the vice president of product origination told the chief compliance officer that the MOXY software that he had installed in 2001 had not accomplished automated rebalancing, and that he had not sent out the vast majority of the rebalancing notices by October 2001, as required by the 2001 audit report's management action plan. During this meeting, he also advised that he had periodically reported these ongoing problems to McConnell. The chief compliance officer subsequently reported these issues to in-house legal counsel. As a result, in December, NES closed the IM Program to new clients (although the program remained open for existing IM Program clients). On or about March 12, 2003, NES sent a letter to its sales field force and existing IM Program clients explaining that it had failed to rebalance some number of IM Program accounts over the past few years, and that it would no longer be performing the rebalancing feature of the program.

30. In March 2003, NES self-reported to the Commission staff the company's failure to rebalance IM Program accounts in accordance with its representations to its clients.

31. After the commencement of the staff's investigation, NES retained an independent consultant to analyze the impact upon IM Program client accounts of the company's failure to provide promised rebalancing services. The independent consultant calculated the investment returns that each IM Program client would have received during the life of the program, had he or she received all of the rebalancing notices that the company failed to provide, based upon the assumption that all clients would have opted to rebalance their portfolios upon

the receipt of such notices. The independent consultant concluded that some accounts had lower returns or greater losses as a result of the lack of rebalancing, while others had better returns. According to the analysis, the total amount of harm to investors from the reduced returns and increased losses was $7,531,999. During 2004, NES distributed this amount to those IM Program clients whose accounts had lower returns or greater losses, together with interest in the total amount of $425,765.

VIOLATIONS

32. As a result of the conduct described above, McConnell willfully aided and abetted and caused NES' violations of Sections 206(1) and 206(2) of the Advisers Act, which make it unlawful for any investment adviser, directly or indirectly, to employ any device, scheme or artifice to defraud, or to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in the Offer of Settlement of Respondent. Accordingly, pursuant to Section 15(b)(6) of the Exchange Act, Section 9(b) of the Investment Company Act and Sections 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Pursuant to Section 203(k) of the Advisers Act, Respondent shall cease and desist from committing or causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act;

B. Respondent McConnell be, and hereby is barred from association with any broker, dealer, or investment adviser, and is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter, with the right to reapply for association after one (1) year to the appropriate self-regulatory organization, or if there is none, to the Commission;

C. Any reapplication for association by the Respondent 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.

D. Respondent shall, upon entry of the Order, pay a civil penalty in the amount of $100,000 and disgorgement in the amount of $10,000 to the United States Treasury, plus prejudgment interest thereon of $1,824.65. 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 Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies Thomas W. McConnell 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 David Bergers, Associate District Administrator, Securities and Exchange Commission, 73 Tremont Street, Boston, Massachusetts, 02108. 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, Respondent agrees that he shall not, after offset or reduction in any Related Investor Action based on Respondent's payment of disgorgement in this action, further benefit by offset or reduction of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such Penalty Offset, Respondent agrees that he 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. 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.

Nancy M. Morris
Secretary