

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCE AND CORPORATE SECURITIES
ENFORCEMENT SECTION
BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND
BUSINESS SERVICES

<p>4 In the Matter of:</p> <p>5 BROOKSTREET SECURITIES</p> <p>6 CORPORATION, INC. and RICARDO</p> <p>7 CABEZAS,</p> <p>8 Respondents.</p>	<p>)</p>	<p>5 No. A-05-0017(B)</p> <p>6 FINAL ORDER TO CEASE AND</p> <p>7 DESIST, DENYING EXEMPTIONS,</p> <p>8 AND ASSESSING CIVIL PENALTIES</p> <p>9 ENTERED BY DEFAULT AGAINST</p> <p>10 RICARDO CABEZAS ONLY</p>
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11 **WHEREAS**, the Director of the Department of Consumer and Business Services for the
 12 State of Oregon (hereafter the "Director"), acting pursuant to the authority granted by the Oregon
 13 Securities Law (ORS 59.005 *et seq.*), has conducted an investigation into the activities of
 14 **BROOKSTREET SECURITIES CORPORATION, INC.** (hereafter "**BROOKSTREET**
 15 **SECURITIES**") and **RICARDO CABEZAS** (hereafter "**CABEZAS**");

16 **WHEREAS**, on November 3, 2005 Respondent **CABEZAS** was duly served with a true
 17 copy of the Order and Notice by United States Mail, first class postage prepaid, addressed to
 18 Respondent **CABEZAS** at the following last known address: 3013 Winter Street, Los Angeles,
 19 California 90063. This mailing was not returned.

20 **WHEREAS**, on November 3, 2005 Respondent **CABEZAS** was duly served with a true
 21 copy of the Order and Notice by certified United States Mail (Item #7004 1350 0000 5011
 22 8117), postage prepaid, and addressed to Respondent **CABEZAS** at the following last known
 23 address: 3013 Winter Street, Los Angeles, California 90063. This mailing was returned to
 24 sender, marked "Unclaimed."

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Division of Finance and Corporate Securities
 Labor and Industries Building
 350 Winter Street NE, Suite 410
 Salem, OR 97301-3881
 Telephone: (503) 378-4387





1 13. On May 11, 2002, John M. Kailey was a Securities Examiner for the Oregon
2 Division of Finance and Corporate Securities in Salem, Oregon.

3 14. On May 11, 2002, Kailey employed the electronic mail address of
4 john.m.kailey@state.or.us in the course of his job duties.

5 15. On May 11, 2002, Kailey was not a client of **BROOKSTREET SECURITIES**, nor
6 did he have any preexisting business relationship with the firm. At no time did Kailey request
7 that offers regarding initial public offering opportunities be directed to him.

8 16. On May 11, 2002 at 12:01 AM, Kailey received an e mail from
9 rcabezas@mail.bkst.com with the heading "Offering Alert – Now Accepting Conditional
10 Offers – Overstock.com, Inc." (Cease and Desist Exhibit "A") The body of the text began by
11 asserting that "Brookstreet Securities is now accepting conditional offers for the Initial Public
12 Offering of Overstock.com, Inc." The e mail described the number of shares in the offering, the
13 expected timing of the offering, and the estimated price of the offering and directed Kailey to the
14 www.brooksdirect.com website.

15 17. Respondents, through NetChemistry, caused the above referenced e mail to be sent to
16 approximately thirty thousand (30,000) additional individuals that did not have any preexisting
17 business relationship with **BROOKSTREET SECURITIES** or request to be informed about the
18 IPO offerings of **BROOKSTREET SECURITIES**. On information and belief, at least one of
19 these additional recipients was a resident of the State of Oregon.

20 18. ORS 59.015 (13) defines an "offer" or "offer to sell" a security as including "every
21 attempt or offer to dispose of, or *solicitation of an offer to buy*, a security or interest in a security
22 for value." (emphasis added)

23 19. The "solicitation of interest" in an IPO (such as the above referenced e mail) is, in
24 securities industries practice, the sole offer to sell the stock that is tendered to a prospective
25 purchaser. Prior to the "effective date" of an IPO (the date trading in the stock is authorized),
26 broker-dealer salespersons contact persons thought to be interested in purchasing part of the

1 offering. If there is an affirmative indication of interest by a client, the salesperson (or, in the
2 case of electronic platforms, the software) “writes and holds” the purchase request (the “ticket”).
3 On the date the IPO becomes “effective” the broker-dealer salesperson (or, in the case of
4 electronic platforms, the software) does not communicate with the purchaser: the tickets are
5 instantly processed for allocation and purchase of a block of shares. This is how an IPO
6 involving millions of shares can “sell out” in a matter of minutes.

7 20. The May 11, 2002 e mail from **CABEZAS** to Kailey constituted an “offer” to sell a
8 security under ORS 59.015 (13).

9 **Part Three: Unregistered Securities**

10 21. Respondents were, pursuant to ORS 59.055, obligated to only offer securities for sale
11 in Oregon if the securities were registered with the Division of Finance and Corporate Securities,
12 the securities were exempt from registration under ORS 59.025 or ORS 59.035, or the securities
13 qualified as a “federal covered security” for which a notice was filed.

14 22. No offering for the sale of common stock of Overstock.com, Inc. was registered with
15 the Division of Finance and Corporate Securities on May 11, 2002.

16 23. No statutory exemption to the registration obligations of ORS 59.055 applied to the
17 sale of common stock of Overstock.com, Inc. on May 11, 2002.

18 24. The offering of common stock of Overstock.com, Inc. was not a federal covered
19 security for which a notice had been filed on May 11, 2002. (The stock did not achieve this status
20 until May 29, 2002.)

21 25. Respondents violated their obligation to only offer for sale securities which had been
22 registered in this State by transmitting an offer for the sale of unregistered shares of
23 Overstock.com, Inc. to Oregon resident John M. Kailey on May 11, 2002.

24 **Part Four: Unlicensed Sales**

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1 **CABEZAS** would be, through NetChemistry, sending electronic communications containing
2 offers to sell securities nationwide yet was not licensed in more than a handful of states.

3 34. Respondent **BROOKSTREET SECURITIES** had, pursuant to OAR 441-205-0210
4 (3) (e), an obligation to establish, maintain, and enforce written policies and procedures that
5 governed the review of the form, content, and filing of all correspondence related in any way to
6 the purchase or sale or solicitation for the purchase or sale of securities.

7 35. Respondent **BROOKSTREET SECURITIES** violated its obligation to establish,
8 maintain, and enforce written policies and procedures that governed the review of the form,
9 content, and filing of all correspondence related in any way to the purchase or sale or solicitation
10 for the purchase or sale of securities by failing to review the e mail sent by **CABEZAS** to Kailey
11 in the format that the recipient of the communication read it in. (Respondent **BROOKSTREET**
12 **SECURITIES** reviewed only a draft of the text, which differed from the final version that
13 Kailey received in that the sender was not “Brookstreet Securities” but “rcabezas”.)

14 36. Respondent **BROOKSTREET SECURITIES** further violated its obligation to
15 establish, maintain, and enforce written policies and procedures that governed the review of the
16 form, content, and filing of all correspondence related in any way to the purchase or sale or
17 solicitation for the purchase or sale of securities by failing to monitor and/or audit the contents of
18 the database that NetChemistry maintained on its behalf to ensure that improper solicitations for
19 the sales of securities, such as the mass e mailing to thirty thousand (30,000) individuals at issue
20 in the case at bar, would not occur.

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21 **CONCLUSIONS OF LAW**

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23 The Director **CONCLUDES** that:

24 37. Respondents **BROOKSTREET SECURITIES** and **CABEZAS** offered unregistered
25 securities for sale in the State of Oregon, in violation of ORS 59.055.

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1 44. That Respondents shall **CEASE AND DESIST** from offering or selling securities to
2 persons in the State of Oregon in violation of ORS Chapter 59, OAR Chapter 441, or the Oregon
3 securities law.

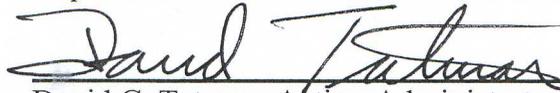
4 45. That Respondent **CABEZAS** is ordered to pay the sum of **TEN THOUSAND**
5 **DOLLARS** (\$10,000.00) as a civil penalty for violations of ORS 59.055 and 59.165 (1)
6 described herein.

7 46. That Respondent **CABEZAS** is hereby denied the use of any exemptions
8 authorized by ORS 59.025 and ORS 59.035, until further order of the Director, pursuant to ORS
9 59.045.

10 **IT IS SO ORDERED.**

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12 Dated this 17th day of March, 2006 NUNC PRO TUNC November 2, 2005 at Salem, Oregon.

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14 CORY STREISINGER, Director
15 Department of Consumer and Business Services

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17 David C. Tatman, Acting Administrator
18 Division Of Finance And Corporate Securities

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