

1 **FINDINGS OF FACT**

2 The Director **FINDS** that:

3 **Part One: The Respondents**

4 1. Respondent **BROOKSTREET SECURITIES** was, on May 11, 2002, a broker-
5 dealer firm with at least one office located in the State of Oregon. The firm's Central Records
6 Depository (CRD) number is 14667. The firm is headquartered at 2361 Campus Drive, Suite
7 210, Irvine, California 92612. The firm's President and CEO is Stanley Brooks.

8 2. Kathleen McPherson was, on May 11, 2002, the Executive Vice President of
9 Compliance for **BROOKSTREET SECURITIES**. McPherson's Central Records Depository
10 (CRD) number is 1526361. McPherson conducts business from 2361 Campus Drive, Suite 210,
11 Irvine, California 92612.

12 3. Respondent **CABEZAS** was, on May 11, 2002, a broker-dealer salesperson in the
13 employ of **BROOKSTREET SECURITIES**. **CABEZAS**'s Central Records Depository (CRD)
14 number is 2809119. On May 11, 2002, **CABEZAS** conducted business from 2361 Campus
15 Drive, Suite 210, Irvine, California 92612.

16 4. Respondent **BROOKSTREET SECURITIES** was, on May 11, 2002, licensed to
17 conduct business as a broker-dealer in the State of Oregon.

18 5. Kathleen McPherson, who has passed the Series 24 examination, was, on May 11,
19 2002, authorized to act in a supervisory capacity over a broker-dealer salesperson.

20 6. While licensed in several other jurisdictions, Respondent **CABEZAS** was, on May
21 11, 2002, not licensed to sell securities in the State of Oregon.

22 7. Respondent **BROOKSTREET SECURITIES** had, pursuant to OAR 441-205-0210
23 (2), a duty to designate a supervisor for each associated person in its employ, including broker-
24 dealer salespersons. Kathleen McPherson, Executive Vice President of Compliance, was the
25 designated supervisor of Respondent **CABEZAS** with respect to his duties involving
26 "brooksdirect.com."



1 **Part Two: Offer To Sell Securities**

2 8. Stanley Brooks, President of **BROOKSTREET SECURITIES**, hired Respondent
3 **CABEZAS** in November, 2000. **CABEZAS** had developed a website that allowed a retail
4 brokerage customer to bid for and purchase shares in an initial public offering (“IPO”)
5 electronically while at a previous securities firm, and was retained by Brooks to develop the
6 same capacity for **BROOKSTREET SECURITIES**.

7 9. **BROOKSTREET SECURITIES** dedicated a section of its website,
8 www.brooksdirect.com, to the IPO project. **BROOKSTREET SECURITIES** contracted
9 with an outside vendor, NetChemistry, to license the use of its specialized IPO trading platform
10 and to conduct the firm’s electronic communications with current and prospective IPO clients.

11 10. **BROOKSTREET SECURITIES** employed electronic mail solicitations as a means
12 of garnering business for the IPO website. Specifically, Respondent **CABEZAS** used electronic
13 mail to inform current and prospective clients of the availability of shares in specific IPO blocks.

14 11. Respondent **CABEZAS** drafted the electronic mail communications, which were
15 reviewed and approved by Kathleen McPherson. **CABEZAS** forwarded the content of the
16 approved text to NetChemistry, which was charged with formatting and disseminating the e mail
17 to the database of e mail addresses it maintained at the behest of the Respondents.

18 12. On May 11, 2002, Respondent **CABEZAS** employed, either directly or indirectly
19 through NetChemistry, the electronic mail address of rcabezas@mail.bkst.com in the
20 course of his job duties.

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

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

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

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

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

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

19 19. The "solicitation of interest" in an IPO (such as the above referenced e mail) is, in
20 securities industries practice, the sole offer to sell the stock that is tendered to a prospective
21 purchaser. Prior to the "effective date" of an IPO (the date trading in the stock is authorized),
22 broker-dealer salespersons contact persons thought to be interested in purchasing part of the
23 offering. If there is an affirmative indication of interest by a client, the salesperson (or, in the
24 case of electronic platforms, the software) "writes and holds" the purchase request (the "ticket").
25 On the date the IPO becomes "effective" the broker-dealer salesperson (or, in the case of
26 electronic platforms, the software) does not communicate with the purchaser: the tickets are

1 instantly processed for allocation and purchase of a block of shares. This is how an IPO
2 involving millions of shares can “sell out” in a matter of minutes.

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

5 **Part Three: Unregistered Securities**

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

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

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

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

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

20 **Part Four: Unlicensed Sales**

21 26. Respondent **CABEZAS** was, pursuant to ORS 59.165 (1), obligated to obtain an
22 Oregon securities license before engaging in the activities of a broker-dealer salesperson,
23 including making offers for the sale of securities, in this State.

24 27. As noted above, Respondent **CABEZAS** was not licensed to sell securities in the
25 State of Oregon on May 11, 2002.

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

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

15 **CONCLUSIONS OF LAW**

16 The Director **CONCLUDES** that:

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

19 38. Respondent **CABEZAS** offered securities into the State of Oregon without being
20 licensed as a broker-dealer salesperson, in violation of ORS 59.165 (1).

21 39. Respondent **BROOKSTREET SECURITIES** employed an individual that offered
22 securities into the State of Oregon without being licensed as a broker-dealer salesperson, in
23 violation of ORS 59.165 (3).

24 40. Respondent **BROOKSTREET SECURITIES** failed to exercise diligent supervision
25 over the securities activities of its associated persons by employing an unlicensed broker-dealer
26 salesperson, in violation of OAR 441-205-0210 (1).



1 41. Respondent **BROOKSTREET SECURITIES** failed to exercise diligent supervision
2 over the securities activities of its associated persons by authorizing a broker-dealer salesperson
3 to offer an unregistered security for sale, in violation of OAR 441-205-0210 (1).

4 42. Respondent **BROOKSTREET SECURITIES** failed to establish, maintain, and
5 enforce written policies and procedures that governed the review of the form, content, and filing
6 of all correspondence related in any way to the purchase or sale or solicitation for the purchase or
7 sale of securities by failing to review the final version of the May 11, 2002 e mail sent by
8 **CABEZAS** to Kailey, in violation of OAR 441-205-0210 (3) (e).

9 43. Respondent **BROOKSTREET SECURITIES** failed to establish, maintain, and
10 enforce written policies and procedures that governed the review of the form, content, and filing
11 of all correspondence related in any way to the purchase or sale or solicitation for the purchase or
12 sale of securities by failing to monitor and/or audit the contents of the database of e mail
13 addresses that NetChemistry maintained on its behalf to ensure that improper solicitations for the
14 sales of securities would not occur, in violation of OAR 441-205-0210 (3) (e).

15 **ORDER**

16 Therefore, the Director **ORDERS**

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

20 45. That Respondent **BROOKSTREET SECURITIES** is ordered to pay the sum of
21 **TWELVE THOUSAND FIVE HUNDRED DOLLARS** (\$12,500.00) as a civil penalty for
22 violations of ORS 59.055, ORS 59.165 (3), OAR 441-205-0210 (1), and OAR 441-205-0210 (3)
23 (d) described herein. Of this amount, the sum of **THREE THOUSAND FIVE HUNDRED**

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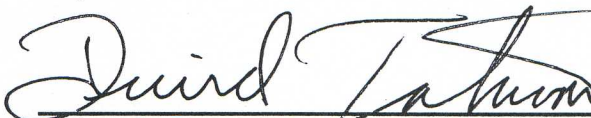


1 **DOLLARS (\$3,500.00) shall be SUSPENDED PENDING FULL COMPLIANCE WITH**
2 **THE TERMS OF THIS ORDER.** The remaining **NINE THOUSAND DOLLARS**
3 **(\$9,000.00) shall be paid at the time of the entry of this Order.**

4 **IT IS SO ORDERED.**

5 Dated this 2nd day of ~~October~~, 2005 at Salem, Oregon.
November

7 CORY STREISINGER, Director
8 Department of Consumer and Business Services

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10 David C. Tatman, Acting Administrator
11 Division Of Finance And Corporate Securities

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CONSENT TO ENTRY OF ORDER
Department of Finance and Corporate Securities
Case No. A-05-0017(A)

Respondent states: that it has read the foregoing Order and fully understands the contents thereof; that it has been advised of the right to a hearing and of the right to be represented by counsel in this matter; that it, voluntarily, and without any force or duress, consents to the entry of this Order, expressly waiving any right to a hearing in this matter; that it understands that the Director reserves the right to take further actions to enforce this Order or to take appropriate action upon discovery of other violations of the Oregon Securities Laws; and that it will fully comply with the terms and conditions stated herein.

Respondent further assures the Director that neither Brookstreet Securities, nor its employees or independent contractors, if any, will engage in securities transactions in Oregon unless such activities are in full compliance with Chapter 59 of the Oregon Revised Statutes.

Respondent understands that this Consent Order is a public document.

Dated this 19 day of October, 2005.

For Brookstreet Securities:

I, Stanley C. Brooks represent that I am President of Brookstreet Securities, Inc. and that, as such, have been authorized by Brookstreet Securities, Inc. to enter into this Order for and on behalf of Brookstreet Securities, Inc..

Dated this 19 day of October, 2005.

Brookstreet Securities, Inc.

By: _____

Title: President



Susie M. Diaz
(Printed Name of Notary Public)
Notary Public
for the State of: California
My commission expires: July 8, 2007

