

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. _____

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
v.)
)
WILLIAM W. MCGUIRE, M.D.,)
)
Defendant.)

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”) alleges as follows against defendant William W. McGuire, M.D.:

SUMMARY OF ALLEGATIONS

1. From no later than April 1994 through 2005, defendant William W. McGuire, M.D. (“McGuire”), then the Chief Executive Officer and Chairman of the Board of UnitedHealth Group Inc. (“UnitedHealth” or the “Company”), enriched himself and others at the Company by participating in a stock options backdating scheme. McGuire and others used hindsight to pick advantageous grant dates for the Company’s nonqualified stock options that on many occasions coincided with dates of historically low annual and quarterly closing prices, or dates that were close to such historically low annual and quarterly closing prices, for UnitedHealth’s common stock. McGuire and others used the closing price of the Company’s common stock on those days as the strike price of the options that were granted. As a result of the scheme in which McGuire and others at the Company participated, UnitedHealth routinely made grants of

disguised and undisclosed in-the-money stock options to its officers and employees. In addition, UnitedHealth officers and employees created, at McGuire's direction and/or with his knowledge, Company records that falsely indicated that the grants had occurred on the earlier dates when the Company's stock price had been at a low.

2. Many UnitedHealth options granted by McGuire contradicted the Company's public disclosures that it only granted options at strike prices not less than the fair value of its common stock on the date of grant, and contravened certain of UnitedHealth's stock option plans that prohibited in-the-money stock options.

3. McGuire personally received numerous backdated grants of options, representing as many as 44 million shares of UnitedHealth stock on a split-adjusted basis, and exercised more than 11 million of those options for approximately \$6 million in gains attributable to improper backdating.

4. Because of the undisclosed backdating, UnitedHealth filed with the Commission and disseminated to investors quarterly and annual reports, proxy statements and registration statements that McGuire knew, or was reckless in not knowing, contained materially false and misleading statements pertaining to the true grant dates of UnitedHealth options. This caused investors to believe, falsely, that the Company granted options with strike prices equal to the fair market value of UnitedHealth stock on the date of grant. In addition, contrary to Generally Accepted Accounting Principles ("GAAP"), UnitedHealth did not record or disclose the compensation expenses it incurred as a result of the in-the-money portions of the option grants. Consequently, UnitedHealth materially understated its compensation expenses and materially overstated its quarterly and annual pretax earnings and earnings per share in its financial statements. On March 6, 2007, UnitedHealth restated its financial statements and disclosed

cumulative pre-tax errors in stock-based compensation accounting, which were material to the Company's financial statements for each year from 1994 through 2005 and totaled \$1.526 billion for that period under Accounting Principles Board Opinion No. 25 ("APB 25"). UnitedHealth also announced that its financial statements for this period, and all earnings and press releases and similar communications issued by the Company for such period and the related reports of the Company's independent registered public accounting firm, should no longer be relied upon.

5. By committing the acts alleged in this Complaint, McGuire directly and indirectly engaged in, and unless restrained and enjoined by the Court will continue to engage in, acts, transactions, practices and courses of business that violate Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)], Sections 10(b), 13(b)(5), 14(a), and 16(a) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(b)(5), 78n(a), and 78p(a)], and Exchange Act Rules 10b-5, 13a-14, 13b2-1, 13b2-2, 14a-9, and 16a-3 [17 C.F.R. §§ 240.10b-5, 240.13a-14, 240.13b2-1, 240.13b2-2, 240.14a-9, and 240.16a-3]. McGuire aided and abetted UnitedHealth's violations of Section 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78(m)(b)(2)(A), and 78(m)(b)(2)(B)] and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

6. The Commission seeks a judgment from the Court: (a) enjoining McGuire from engaging in future violations of the sections of the federal securities laws that he violated; (b) requiring him to disgorge, with prejudgment interest, ill-gotten gains derived from his violations; (c) requiring him to pay a civil monetary penalty pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act [15 U.S.C. §§ 77t(d) and 78u(d)(3)]; (d) requiring him to reimburse UnitedHealth for all cash bonuses, profits from stock sales, and stock options he received from 2003 through 2006 pursuant to Section 304 of the Sarbanes-Oxley Act of 2002

("Sarbanes-Oxley Act") [15 U.S.C. § 7243(a)]; and (e) barring him from acting as an officer or director of a public company pursuant to Section 20(e) of the Securities Act and Section 21(d)(2) of the Exchange Act [15 U.S.C. §§ 77t(e) and 78u(d)(2)].

JURISDICTION AND VENUE

7. The Court has jurisdiction of this civil enforcement action pursuant to Section 22(a) of the Securities Act and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 77v(a), 78u(d), 78(u)(e), and 78aa]. McGuire, directly or indirectly, made use of the means or instruments of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the acts, transactions, practices and courses of business alleged in this Complaint.

8. Venue lies in the District of Minnesota pursuant to Section 22(a) of the Securities Act and Section 27 of the Exchange Act [15 U.S.C. §§ 77v(a) and 78aa]. Defendant McGuire resides in Minnesota, UnitedHealth is a Minnesota corporation, and many of the acts alleged herein occurred in Minnesota.

THE PARTIES

9. The plaintiff is the Securities and Exchange Commission, which brings this civil enforcement action pursuant to the authority conferred on it by Section 20(b) of the Securities Act and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 77t(b), 78u(d) and 78u(e)].

10. Defendant McGuire, age 59, lives near Minneapolis, Minnesota. McGuire served as UnitedHealth's CEO from 1991 until November 30, 2006 (and as Chairman from 1999 to October 15, 2006). While CEO and/or Chairman, McGuire reviewed and/or signed periodic

reports, registration statements, and proxy statements filed with the Commission and disseminated to investors.

FACTS

A. Background

11. UnitedHealth used employee stock options as an important form of compensation. Each option gave the grantee the right to buy one share of UnitedHealth common stock from the Company at a set price, called the “exercise” or “strike” price, on a future date after the option vested. The option was “in-the-money” whenever the trading price of UnitedHealth’s common stock exceeded the option’s strike price. The option was “at-the-money” whenever the trading price of UnitedHealth’s common stock and the strike price were the same. The option was “underwater” or “out-of-the-money” whenever the trading price of UnitedHealth’s common stock was less than the strike price. Under McGuire’s leadership, UnitedHealth relied heavily on stock options as a competitive tool to recruit, retain, and compensate employees in lieu of higher cash compensation.

12. Throughout the relevant time period, UnitedHealth accounted for stock options using the intrinsic method described in APB 25. Under APB 25, employers were required to record as an expense on their financial statements the “intrinsic value” of a fixed stock option on its “measurement date.” The measurement date, as defined by APB 25, is the first date on which the following information is known: (i) the number of options that an individual employee is entitled to receive, (ii) the identity of the employee receiving the options, and (iii) the strike price. An option that is in-the-money on the measurement date has intrinsic value, and the difference between its strike price and the quoted market price must be recorded as compensation

expense to be recognized over the vesting period of the option. Options that are at-the-money or out-of-the-money on the measurement date need not be expensed.

13. McGuire understood that UnitedHealth was required to record an expense if it granted employees in-the-money stock options. He also understood that the number of shares and the identity of the recipients had to be decided to establish an option's grant date.

B. UnitedHealth's Option Plans and Public Disclosures about Stock Options

14. In its filings with the Commission for fiscal years 1994 through 2005, UnitedHealth routinely represented that it complied with APB 25, and its financial statements reflected that the Company had not recognized compensation cost for its employee stock options. For example, in its 2002 Annual Report UnitedHealth stated: "we do not recognize compensation expense in connection with employee stock option grants because we grant stock options at strike prices not less than the fair value of our common stock on the date of grant."

15. Beginning in approximately 2002, UnitedHealth granted millions of stock options pursuant to the Company's shareholder-approved 2002 Stock Incentive Plan (the "2002 Plan"). The 2002 Plan prohibited UnitedHealth from granting stock options with strike prices of less than the stock's fair market value on the date of grant.

C. The Backdating Scheme

16. From no later than 1994 through 2005, McGuire and others at UnitedHealth disregarded and contravened UnitedHealth's public disclosures about stock options and, starting in 2002, provisions of the 2002 Plan by looking back and choosing, with the benefit of hindsight, purported grant dates that coincided with the dates of low closing prices for UnitedHealth stock, resulting in in-the-money options.

17. McGuire and others at UnitedHealth retrospectively priced “interim grants” to employees for selective promotions, new hires and special performance. These interim grants routinely were priced shortly after the end of the quarter or month in which the promotion, hire or special performance occurred. The purported date of the grant was that which corresponded to the lowest share price between the date of the offer letter, employment, promotion letter or official written recognition for special performance and the end of quarter or month in which the event took place. This policy was reduced to writing no later than 2000. Even if not involved in the selection of a particular employee or grant date, McGuire personally signed CEO Certificates approving all interim grants.

18. UnitedHealth granted approximately 50 million split-adjusted shares of in-the-money interim grants from 1994 through 2005, while recording zero compensation expense under APB 25. In its March 2007 restatement, UnitedHealth reduced earnings before income taxes by \$82 million under APB 25 as a result of accounting errors for backdated interim grants.

19. “Mass grants” were broad-based grants made once or twice per year to one or more categories of UnitedHealth employees, including thousands of middle and senior managers and top officers with ownership reporting obligations under Section 16 of the Exchange Act (“Section 16 grants”) [15 U.S.C. § 78p(a)], which included McGuire. McGuire usually determined the strike price for mass grants. For non-Section 16 mass grants, McGuire was authorized by the Company’s applicable stock option plans to determine the date of the grant and the strike price. For Section 16 grants, the Compensation Committee approved grant dates and strike prices chosen by McGuire.

20. Like the interim grants described above, McGuire looked back over a window of time and selected the purported grant date for mass grants. Usually, this window opened when

McGuire first began contemplating a mass grant and closed around the next Compensation Committee meeting. But the size of the window was not fixed or consistent—it could be as long as four to six months, or as short as a week or two. However long the window, mass grants were often priced at or very near the lowest point in UnitedHealth’s quarterly stock price.

21. From 1994 through 2005, McGuire initiated more than 29 separate mass grants of more than 340 million split-adjusted shares, while zero compensation expense was recorded by the Company under APB 25. In its March 2007 restatement, UnitedHealth reduced earnings before income taxes by more than \$400 million under APB 25 as a result of backdated mass grants.

22. At McGuire’s direction and/or with his knowledge, other UnitedHealth officers and employees prepared documents falsely indicating that the selection of the strike price for mass grants and interim grants occurred on the purported grant date, which date usually was earlier than when the selection had actually occurred and when the final documents were prepared or signed. These inaccurate and misleading documents consisted of CEO Certificates signed by McGuire, Written Actions of the Compensation Committee, or minutes of Compensation Committee meetings approved by McGuire. The inaccurate stock option grant information reflected in these authorizing documents concealed the real measurement date under APB 25, misled UnitedHealth’s external auditors, and directly caused UnitedHealth to file false and misleading financial statements. The inaccurate date and price data from these documents was entered into a software application called Equity Edge, which UnitedHealth used to record and account for employee stock options. Equity Edge invariably calculated zero compensation expense under APB 25 because the strike price on the purported grant date of the option always equaled the fair market value of UnitedHealth’s stock on that date. The Company regularly

provided its auditors inaccurate options data from Equity Edge, together with false and misleading minutes, Written Actions, and CEO Certificates.

23. As a result of the foregoing, UnitedHealth's books and records falsely and inaccurately reflected the dates of option grants, the Company's stock-based compensation expenses, and the Company's financial condition. As a result, on March 6, 2007, UnitedHealth restated its financial statements and disclosed cumulative pre-tax errors in stock-based compensation accounting totaling \$1.526 billion under APB 25. UnitedHealth's stock option accounting errors, including those directly or indirectly caused by McGuire's misconduct, were material. UnitedHealth's financial statements for fiscal years 1994 through 2005 also falsely represented that UnitedHealth followed APB 25 and that it did not grant in-the-money options.

24. UnitedHealth's reports on Forms 10-K and 10-Q since the third quarter 2002 included a certification signed by McGuire pursuant to Section 302 of the Sarbanes-Oxley Act [15 U.S.C. § 7241]. McGuire certified that the Company's reports do not contain any untrue statement or omission of material fact and that the financial statements in the report fairly present in all material respects the financial condition and results of the issuer. Due to his backdating of mass and interim grants, and the impact such backdating had on UnitedHealth's financial statements, McGuire signed certifications he knew, or was reckless in not knowing, were false.

25. McGuire, who drove the stock option granting process, also failed to ensure that UnitedHealth maintained a system of internal accounting controls sufficient to provide assurances that stock option grants were recorded as necessary to permit the proper preparation of financial statements in conformity with GAAP. In 2006, UnitedHealth disclosed that the Company had identified a significant deficiency in its controls relating to stock option plan administration and accounting for and disclosure of stock option grants.

26. From 1994 through 2005, McGuire received more than 44 million split-adjusted UnitedHealth stock options. Most or all of these options were backdated. McGuire has exercised and sold more than 11 million of these backdated options for an in-the-money gain of more than \$6 million. McGuire also received nearly \$5 million of incentive-based cash bonuses in 2005 and 2006 tied to earnings per share targets that UnitedHealth would not have achieved under financial statements restated due to errors in stock-based compensation accounting.

27. Prior to 2003, McGuire reported his stock option grants pursuant to Section 16 of the Exchange Act [15 U.S.C. § 78p(a)] on Commission Forms 4 and 5 that contained false and misleading statements with regard to the true grant dates and strike prices.

FIRST CLAIM

(Violations of Securities Act Section 17(a))

28. The Commission realleges paragraphs 1 through 27.

29. McGuire, directly or indirectly, by use of the means or instruments of interstate commerce or of the mails, in connection with the offer or sale of securities, and with knowledge, recklessness, or negligence: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers of UnitedHealth securities.

30. By engaging in the conduct alleged above, McGuire violated Sections 17(a)(1), (2), and (3) of the Securities Act [15 U.S.C. §§ 77q(a)(1), (2), and (3)].

SECOND CLAIM

(Violations of Exchange Act Section 10(b) and Exchange Act Rule 10b-5)

31. The Commission realleges paragraphs 1 through 30.

32. McGuire, directly or indirectly, by use of the means or instruments of interstate commerce or of the mails, or of the facility of a national securities exchange, in connection with the purchase or sale of securities, and with knowledge or recklessness: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person.

33. By engaging in the conduct alleged above, McGuire violated Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 [15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5].

THIRD CLAIM

(Violations of Exchange Act Rule 13a-14)

34. The Commission realleges paragraphs 1 through 33.

35. In certifications signed by McGuire that UnitedHealth included in reports it filed under Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], McGuire falsely certified that UnitedHealth's reports do not contain any untrue statement or omission of material fact and that the financial statements in the reports fairly present in all material respects the financial condition and results of the Company.

36. By engaging in the conduct alleged above, McGuire violated Rule 13a-14 [17 C.F.R. § 240.13a-14].

FOURTH CLAIM

(Violations of Exchange Act Section 13(b)(5) and Exchange Act Rule 13b2-1)

37. The Commission realleges paragraphs 1 through 36.

38. McGuire, directly or indirectly, knowingly circumvented or knowingly failed to implement a system of internal accounting controls at UnitedHealth subject to Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)], knowingly falsified books, records and accounts at the Company subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)], and caused to be falsified, such books, records and accounts.

39. By engaging in the conduct alleged above, McGuire violated Section 13(b)(5) of the Exchange Act and Exchange Act Rule 13b2-1 [15 U.S.C. § 78m(b)(5); 17 C.F.R. § 240.13b2-1].

FIFTH CLAIM

(Violations of Exchange Act Rule 13b2-2)

40. The Commission realleges paragraphs 1 through 39.

41. McGuire made or caused material misstatements or omissions to be made to an accountant in connection with audits, reviews, or examinations of the financial statements of UnitedHealth.

42. By engaging in the conduct alleged above, McGuire violated Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

SIXTH CLAIM

(Violations of Exchange Act Section 14(a) and Exchange Act Rule 14a-9)

43. The Commission realleges paragraphs 1 through 42.
44. McGuire, directly or indirectly, by use of the means or instruments of interstate commerce or of the mails, or of the facility of a national securities exchange, knowingly, recklessly or negligently solicited proxies by means of a proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing statements which, at the time and in light of the circumstances under which they were made, were false and misleading with respect to material facts, or which omitted to state material facts which were necessary in order to make the statements made not false or misleading or which were necessary to correct statements in earlier false or misleading communications with respect to the solicitation of proxies for the same meeting or subject matter.
45. By engaging in the conduct alleged above, McGuire violated Section 14(a) of the Exchange Act and Exchange Act Rule 14a-9 [15 U.S.C. § 78n(a); 17 C.F.R. § 240.14a-9].

SEVENTH CLAIM

(Violations of Exchange Act Section 16(a) and Exchange Act Rule 16a-3)

46. The Commission realleges paragraphs 1 through 45.
47. McGuire filed false or misleading reports disclosing changes in his beneficial ownership of UnitedHealth securities that he was required to file as an officer and director of the Company.

48. By engaging in the conduct alleged above, McGuire violated Section 16(a) of the Exchange Act and Exchange Act Rule 16a-3 [15 U.S.C. §78p(a); 17 C.F.R. § 240.16a-3].

EIGHTH CLAIM

(Aiding and Abetting UnitedHealth's Filing of False and Misleading Periodic Reports)

49. The Commission realleges paragraphs 1 through 48.

50. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Exchange Act Rules 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.13a-1, 240.13a-11, and 240.13a-13], require issuers of registered securities to file with the Commission factually accurate annual and quarterly reports. Exchange Act Rule 12b-20 [17 C.F.R. § 240.12b-20] further provides that, in addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they were made not misleading.

51. UnitedHealth filed with the Commission and disseminated to investors false and misleading quarterly and annual reports in violation of Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [15 U.S.C. § 78m(a); 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13]. McGuire knowingly or recklessly gave substantial assistance to UnitedHealth in its violations of Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [15 U.S.C. § 78m(a); 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

52. By engaging in the conduct alleged above, McGuire aided and abetted UnitedHealth's violations of Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20,

13a-1, 13a-11, and 13a-13 [15 U.S.C. § 78m(a); 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 13a-13].

NINTH CLAIM

(Aiding and Abetting UnitedHealth's Failure to Maintain Accurate Books and Records and Sufficient Internal Controls)

53. The Commission realleges paragraphs 1 through 52.

54. Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] requires issuers to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of its assets. Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain the accountability of assets.

55. UnitedHealth violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78(m)(b)(2)(B)]. McGuire knowingly or recklessly gave substantial assistance to UnitedHealth in its failure to make and keep accurate books, records and accounts and its failure to devise and maintain a sufficient system of internal accounting controls.

56. By engaging in the conduct alleged above, McGuire aided and abetted UnitedHealth's violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78(m)(b)(2)(B)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Permanently enjoin McGuire from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Sections 10(b), 13(b)(5), 14(a), and 16(a) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(b)(5), 78n(a), and 78p(a)], and Exchange Act Rules 10b-5, 13a-14, 13b2-1, 13b2-2, 14a-9, and 16a-3 [17 C.F.R. §§ 240.10b-5, 240.13a-14, 240.13b2-1, 240.13b2-2, 240.14a-9, and 240.16a-3]; and aiding and abetting violations of Section 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78(m)(b)(2)(A), and 78(m)(b)(2)(B)] and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13];

II.

Order McGuire to disgorge all ill-gotten gains obtained by virtue of the conduct alleged herein, and to pay prejudgment interest thereon;

III.

Order McGuire to pay civil monetary penalties pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act [15 U.S.C. §§ 77t(d) and 78u(d)(3)];

IV.

Order McGuire to reimburse UnitedHealth for all cash bonuses, profits from stock sales, and stock options he received from 2003 through 2006, pursuant to Section 304 of the Sarbanes-Oxley Act [15 U.S.C. § 7243(a)];

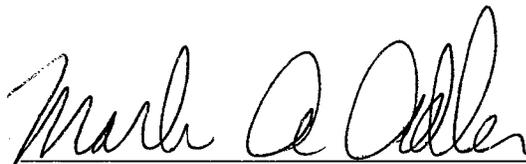
V.

Bar McGuire from serving as an officer or director of a public company pursuant to Section 20(e) of the Securities Act and Section 21(d)(2) of the Exchange Act [15 U.S.C. §§ 77t(e) and 78u(d)(2)]; and

VI.

Grant such equitable relief as may be appropriate or necessary for the benefit of investors pursuant to Section 21(d)(5) of the Exchange Act.

Dated: December 6, 2007
Washington, D.C.



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