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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

SALVATORE ZANGARI,

Defendant.

Civil Action No.
ECF Case

CV 10 - 1058

COMPLAINT

AMON, J.

J. ORENSTEIN, M.J.

Plaintiff Securities and Exchange Commission ("Commission"), for its complaint against

Defendant Salvatore Zangari ("Defendant" or "Zangari"), alleges as follows:

SUMMARY OF ALLEGATIONS

1. This action involves securities fraud committed by a former securities professional who worked on the securities lending, or "stock loan," trading desks at several major Wall Street brokerage firms. For nearly two years, from March 2004 through December 2005, Zangari, a stock loan trader at Morgan Stanley & Co., Inc. ("Morgan Stanley") and later at Banc of America Securities, LLC ("Banc of America"), participated in a cash kickback scheme while arranging stock loan transactions for the firms. Zangari received well over \$100,000 in cash from a Brooklyn, New York stock loan "finder" in exchange for sending Morgan Stanley and Banc of America stock loan orders to other brokerage firms that paid the finder for purportedly locating

the securities being borrowed and loaned. The finder shared part of the fees he received on the transactions with Zangari by paying him thousands of dollars in cash each month. Zangari's misconduct defrauded and otherwise harmed Morgan Stanley and Banc of America because he purposely arranged stock loan transactions on their behalf at borrowing and lending rates that were designed to generate finder fee payments rather than to maximize the firms' profits.

2. By virtue of the foregoing conduct, the Defendant, directly or indirectly, singly or in concert, violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and is also liable in the alternative, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], for aiding and abetting violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] committed by other individuals with whom the Defendant schemed. Unless the Defendant is permanently restrained and enjoined, he will again engage in the acts, practices, transactions and courses of business set forth in this complaint and in acts, practices, transactions and courses of business of similar type and object.

JURISDICTION AND VENUE

3. The Commission brings this action pursuant to the authority conferred by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], and seeks to restrain and enjoin the Defendant permanently from engaging in the acts, practices, transactions and courses of business alleged herein. The Commission also seeks a final judgment ordering the Defendant to disgorge his ill-gotten gains and pay prejudgment interest thereon, and ordering him to pay civil money penalties pursuant to Section

20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

4. The Court has jurisdiction over this action and venue properly lies in this District pursuant to Sections 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(d) and 77v(a)] and Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and 78aa]. The Defendant, directly and indirectly, has made use of the means or instrumentalities of, or the means or instruments of transportation or communication in, interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the transactions, acts, practices and courses of business alleged herein. Some of the transactions, acts, practices and courses of business occurred in the Eastern District of New York. For example, during the course of the scheme, the Defendant resided in Brooklyn, New York and on numerous occasions he met with another individual in Brooklyn and Queens, New York to collect his kickback payments.

DEFENDANT

5. **Zangari**, age 33, resides in New York, New York. For eleven years, from 1998 to 2009, he was employed as a stock loan trader at several major Wall Street brokerage firms where he was responsible for negotiating, arranging and entering into stock loan transactions on behalf of the firms. Most recently, from October 2006 to July 2009, Zangari worked as a stock loan trader at UBS Securities, LLC. Prior to UBS, he worked at Banc of America from May 2005 to October 2006, and before that, at Morgan Stanley from August 1998 to May 2005. During the course of his employment in the securities industry, Zangari held Series 7 and 63 professional licenses.

RELEVANT INDIVIDUALS AND ENTITIES

6. **Peter Sherlock (“Sherlock”)**, age 38, resides in East Norwich, New York. From October 1994 to June 2007, Sherlock worked as a stock loan trader at Morgan Stanley.
7. **Anthony Lupo (“Lupo”)**, age 65, resides in Freehold, New Jersey. From 1996 through September 2007, Lupo purported to perform stock loan finding services through his finder business Clinton Management, Ltd., which was located in Brooklyn, New York.
8. **Morgan Stanley** is registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act and as an investment adviser pursuant to Section 203(c) of the Investment Advisers Act of 1940 (“Advisers Act”), and maintains its principal place of business in New York, New York.
9. **Banc of America** is registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act and as an investment adviser pursuant to Section 203(c) of the Advisers Act, and maintains its principal place of business in New York, New York.
10. **Paloma Securities, LLC (“Paloma”)** is registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act and maintains its principal place of business in Greenwich, Connecticut.
11. **Swiss American Securities, Inc. (“SASI”)** is registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act and maintains its principal place of business in New York, New York. SASI is a member of Credit Suisse Group, which is headquartered in Zurich, Switzerland.

BACKGROUND

Structure Of Stock Loan Transactions

12. A securities loan is a collateralized, temporary exchange of securities. The collateral is usually cash or other securities. Under the terms of the standard loan agreements that govern these transactions and as a matter of industry practice, borrowers are free to re-lend, sell or otherwise do as they please with the securities, subject only to satisfying the obligation to return the same number of shares at the end of the loan term.

13. Financial institutions borrow securities for different purposes. For example, a broker-dealer may need to borrow securities to cover short sales or to lend securities to gain short-term access to cash. If the security is liquid (*i.e.*, readily available and thus called “easy-to-borrow”) the financial institution borrowing the security receives interest for the duration of the loan on the cash collateral it makes available to the lender. The interest payment is called a “rebate.” If the security is in limited supply (*i.e.*, “hard-to-borrow”) the borrower generally pays interest to the lender for the right to borrow the security. This interest payment is called a “negative rebate.” The rebates and negative rebates are a percentage of the total market value of the securities (*i.e.*, the number of shares multiplied by the share price) and are quoted as annual percentage rates. For example, a stock loan involving 1,000 shares of stock trading at \$10 per share would have a total market value of \$10,000. If the parties negotiated a 5% rebate or negative rebate, the payment would be 5% of \$10,000, or \$500 per year. Stock loan transactions may stay open for as little as one trading day or as long as several months or even a year.

Role And Compensation Of Finders

14. In the past, stock loan traders typically employed the services of finders to locate hard-to-borrow securities. In today's securities market, however, traders rarely need the services of finders. Technological advances and other improvements have made it easier and faster for traders to locate hard-to-borrow securities on their own. On April 29, 2005, the New York Stock Exchange issued an advisory opinion cautioning all member firms about continuing to do business with finders, and stating: "We have seen only limited instances where a finder is actually providing services that an effective stock loan department could not provide."

15. The stock loan finder's fee would typically be negotiated by the lender and borrower as part of the financial terms of the stock loan and, like the rebate rate, would be expressed as a percentage of the total market value of the stock.

16. The rebates and finder fees are calculated and paid on a daily basis, and the brokerage firms and finders continue to receive payments until the borrowed stock is returned or recalled. Accordingly, loans that remain open for extended periods may generate substantial profits for both broker-dealers and finders.

17. Although some broker-dealers permitted payments to finders during the relevant period, many broker-dealers, including Morgan Stanley and Banc of America, had policies prohibiting their stock loan traders from paying finders.

THE FRAUDULENT KICKBACK SCHEME

Zangari Joins An On-Going Kickback Scheme

18. Zangari and Sherlock were friends who worked together as stock loan traders at Morgan Stanley. In March 2004, Sherlock approached Zangari and asked him if he was interested in making some extra cash by helping him arrange for a stock loan finder named Lupo

to receive finder fee payments in connection with Morgan Stanley stock loan orders. Sherlock explained that for the past several years, he had been sending Morgan Stanley stock loan orders to brokerage firms that paid finder fees to Lupo and that Lupo was sharing the fees with him by paying him several thousands of dollars in cash each month.

19. Until March 2004, Sherlock was able to arrange for Lupo to receive payments on Morgan Stanley stock loan orders because Sherlock had the day-to-day responsibility on the firm's stock loan desk for borrowing and loaning hard-to-borrow stocks. Sherlock provided Lupo with the names of hard-to-borrow stocks that Morgan Stanley needed to borrow and lend, and then worked with Lupo to arrange unnecessary multi-step transactions at rates that were designed solely to generate finder fee payments to Lupo rather than to maximize the profit to Morgan Stanley.

20. Since Morgan Stanley prohibited payments to finders, Sherlock and Lupo arranged for a brokerage firm that was authorized to pay Lupo to act as an intermediary, or a "run-through," on the transactions. Lupo, who had a contact at Paloma, arranged for Paloma to pay him a finder fee on stock loan business that came from Morgan Stanley. However, because Morgan Stanley did not enter into stock loan transactions with Paloma directly, Sherlock and Lupo had to arrange for another brokerage firm, usually SASI, to serve as a run-through between Morgan Stanley and Paloma.

21. In the spring of 2004, Morgan Stanley reassigned Sherlock to a different stock loan trading desk where he was no longer responsible for the day-to-day borrowing and lending of hard-to-borrow stocks. This made it difficult for Sherlock to keep track of the prevailing market rates of the hard-to-borrow stocks as well as Morgan Stanley's overall stock loan needs and general securities lending inventory.

22. Because Zangari had taken over responsibility for the “hard-to-borrow” desk, Sherlock saw the opportunity to keep the kickback scheme operating by recruiting Zangari into the scheme. Zangari’s involvement would ensure that Lupo continued to receive a steady flow of Morgan Stanley stock loan orders from which he could generate finder fee payments, which, in turn, would ensure that Sherlock continued to receive payments from Lupo.

23. Zangari agreed to participate in the kickback scheme. He and Sherlock agreed to split the payments from Lupo evenly among themselves. Zangari, who did not know Lupo, did not want to have any direct contact or communications with Lupo during the course of the scheme. Sherlock, therefore, instructed Zangari to provide him with the necessary daily Morgan Stanley stock loan information, which he would then relay to Lupo’s contact at Paloma or to Lupo directly.

24. Zangari quickly got to work arranging phony finder fee payments for Lupo. For the next several months, Zangari, at the direction of Sherlock and Lupo, sent Morgan Stanley stock loan orders to SASI with instructions that SASI pass the orders to Paloma. Zangari did so with the intention of generating unnecessary finder fee payments to Lupo, which Lupo would later share with him and Sherlock.

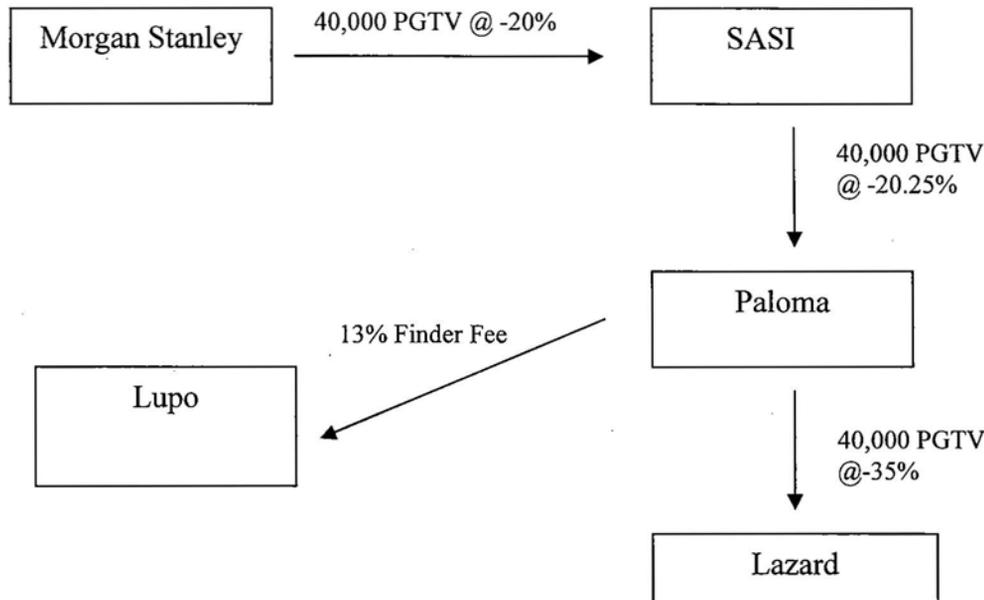
25. The scheme basically worked as follows: If Morgan Stanley needed to lend a particular stock, Zangari would arrange for SASI to borrow the shares from Morgan Stanley and then re-lend the shares to Paloma. Paloma would then lend the shares to another brokerage firm that needed the stock for some legitimate business purpose, such as effecting a customer short-sale, and Paloma would pay Lupo a finder fee out of its proceeds from that loan. This last leg of the transaction (between Paloma and the end-user firm) was done at a prevailing market rebate or

negative rebate rate and negotiated at arms-length. If Morgan Stanley needed to borrow a particular stock, then the arrangement worked in reverse.

26. When setting up these unnecessary multi-step stock loan transactions with the other firms, Zangari, Lupo and Sherlock had to ensure that Paloma made enough of a profit on the last leg of the transaction to enable Paloma to pay Lupo a finder fee. As such, Zangari arranged for the intermediate loans (*i.e.*, from Morgan Stanley to SASI and from SASI to Paloma) to be entered into at artificially low interest rates, and sometimes well below the rate that the end-user firms paid to Paloma. These arrangements harmed Morgan Stanley because Zangari was not arranging the transactions at the most favorable rates to the firm. Each leg of the multi-step transaction generally occurred on the same day.

27. The following is an example of a Morgan Stanley stock loan order that Zangari arranged for the specific purpose of extracting an unnecessary finder fee payment to Lupo. On August 30, 2004, Morgan Stanley loaned 40,000 shares of Pegasus Comm. Corp. (PGTV) stock to SASI at a negative rebate of 20%. SASI then loaned the same number of shares of PGTV stock to Paloma that same day at a slightly higher negative rebate of 20.25%. Paloma then loaned the same number of shares of PGTV stock to Lazard that same day at a much higher negative rebate of 35%, and paid Lupo a finder fee of 13% out of Paloma's 14.75% profit.

The following chart illustrates each step of the transaction:

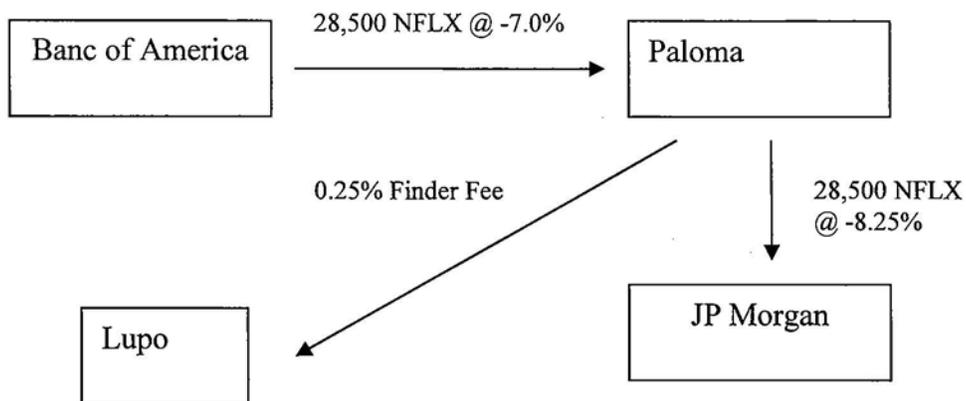


28. The rate paid by Lazard was most likely a genuine market rate that resulted from arms-length negotiations. Zangari, therefore, should have been able to lend the 40,000 shares of PGTV directly to Lazard at that market rate. Instead, Zangari worked with Sherlock and Lupo to arrange the transactions with SASI and between SASI and Paloma because Paloma had agreed to pay Lupo a finder fee -- and because Lupo, pursuant to the scheme, had agreed to split the finder fee with Zangari and Sherlock. By doing so, Zangari harmed Morgan Stanley by failing to negotiate the most favorable negative rebate rate (*i.e.*, prevailing market rate) for the stock loan transaction.

29. Zangari continued the kickback scheme after he left Morgan Stanley in May 2005 and began working at Banc of America. When Zangari left Morgan Stanley, Sherlock told Lupo to instruct his contact at Paloma to pay his finder firm on all business that came from Zangari at

Banc of America. As before, Lupo shared the finder fees on these transactions with Zangari and Sherlock.

30. The following is an example of a Banc of America stock loan order that Zangari arranged for the specific purpose of extracting an unnecessary finder fee payment to Lupo. On August 8, 2005, Banc of America loaned 28,500 shares of Netflix Inc. (NFLX) stock to Paloma at a negative rebate rate of 7.0%. Paloma then loaned the same number of NFLX shares that same day to JP Morgan Securities, Inc. (“JP Morgan”) at a higher negative rebate rate of 8.25%, and paid Lupo a finder fee of 0.25% out of Paloma’s 1.25% profit. The following chart illustrates each step of the transaction:



31. The rate paid by JP Morgan was most likely a genuine market rate that resulted from arms-length negotiations. Zangari, therefore, should have been able to lend the 28,500 shares of NFLX directly to JP Morgan at that market rate without having to run the transaction through Paloma. Instead, Zangari arranged the transactions with Paloma so that Paloma would pay Lupo a finder fee, which Lupo ultimately shared with Zangari and Sherlock. By doing so,

Zangari harmed Banc of America by failing to negotiate the most favorable negative rebate rate for the stock loan transaction.

32. The Banc of America aspect of the kickback arrangement continued for several months, until December 2005. It ended when many brokerage firms, including Paloma, stopped paying finders amidst inquiries from securities regulators into finder payment practices.

Zangari Takes Over \$100,000 In Cash Kickbacks

33. Zangari participated in the kickback scheme for nearly two years, from about March 2004 to December 2005. During that time, Sherlock collected the cash payments directly from Lupo at Lupo's Brooklyn, New York office and then met Zangari later to give him his half of the kickbacks. Sherlock usually met Zangari once or twice a month at local diners and restaurants in Brooklyn and Queens, New York where Sherlock handed Zangari between \$6,000 to \$10,000 in cash at each meeting. In total, Zangari took approximately \$100,000 to \$150,000 in cash kickbacks from Lupo, who paid him through Sherlock.

34. For a few months, however, Sherlock arranged for Lupo to pay the kickbacks by check to a shell-company. Sometime in early 2004, Sherlock asked his brother-in-law, who was employed as a pharmacist, to set up a shell-company so that Lupo could make the kickback payments by check rather than by cash. In July 2004, Sherlock's brother-in-law formed a company called DFT Consulting, Inc. ("DFT"). Between August 2004 and December 2004, Lupo sent checks totaling over \$200,000 to DFT. The payments to DFT were kickback payments for Sherlock and Zangari. Sherlock's brother-in-law kept approximately half of the money for himself and to pay corporate taxes, and withdrew the rest in cash for Sherlock, who then paid Zangari.

35. Several months after he joined the kickback scheme, Zangari opened a bank savings account and began depositing a portion of his kickback payments into the account. From November 2004 through October 2005, Zangari made 11 cash deposits ranging in value between \$3,500 and \$7,800 at a time. In total, he deposited \$65,600 in cash into the account. In January 2006, Zangari withdrew most of the money from the account to use as a down-payment to purchase an apartment in New York City.

Zangari's Misrepresentations To His Employers

36. During the course of his participation in the fraudulent kickback scheme, Zangari made a number of false and misleading misrepresentations to his employers, Morgan Stanley and Banc of America.

37. In particular, Zangari made false statements to his employers in connection with his annual and periodic employee compliance certifications. For example, Zangari falsely certified to Morgan Stanley that he was in compliance with the firm's Code of Conduct, which, among other things, prohibited him from "us[ing] the firm's premises, assets, information or influence for personal gain" and from "accept[ing] gifts or special favors (other than of nominal value) from any person or organization" in connection with his employment. Zangari made a similar false compliance certification to Banc of America when the firm hired him in May 2005. Zangari falsely certified to Banc of America that he would abide by the firm's Policies and Procedures Manual, which, among other things, required him to disclose "any other sources of income or compensation" in connection with outside business activities. Zangari's employee certifications were false and misleading because he never disclosed to his employers that he was receiving thousands of dollars in cash payments from a stock loan finder in connection with the stock loan business of his employers, Morgan Stanley and Banc of America.

38. Furthermore, Zangari did not disclose to any of the appropriate supervisory or compliance personnel at Morgan Stanley or Banc of America anything about his cash dealings with Sherlock and Lupo. Zangari did not disclose that he was giving Lupo daily access to his employers' stock loan orders, or that he was receiving cash kickback payments in connection with those orders. While Morgan Stanley and Banc of America stock loan traders were permitted to speak to finders during the course of the trading day if there was a legitimate business need to do so (*i.e.*, they needed outside assistance in locating hard-to-borrow stock) the firms had strict policies prohibiting traders from paying finders or accepting payments from finders.

CLAIM FOR RELIEF

Violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5

39. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 38.

40. The Defendant directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in, or the means or instrumentalities of, interstate commerce, or by the use of the mails, or of the facilities of a national securities exchange, in the offer or sale and in connection with the purchase or sale of securities, knowingly or recklessly, has: (a) employed devices, schemes and artifices to defraud; (b) obtained money or property by means of, or otherwise made, untrue statements of material fact, or has omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, transactions, practices and courses of business which operated or would have operated as a fraud or deceit upon purchasers of securities and upon other persons.

41. As part and in furtherance of the fraudulent scheme and other violative conduct described above, the Defendant, directly or indirectly, singly or in concert, employed the deceptive devices, schemes, artifices, contrivances, acts, transactions, practices and courses of business and/or made the misrepresentations and/or omitted to state the facts alleged above in paragraphs 36 through 38.

42. The false and misleading statements and omissions made by the Defendant, more fully described above in paragraphs 36 through 38, were material.

43. The Defendant knew, or was reckless in not knowing, that these material misrepresentations and omissions, more fully described above in paragraphs 36 through 38, were false or misleading, and the Defendant otherwise acted with the requisite scienter by knowingly or recklessly engaging in the fraudulent scheme described above in paragraphs 1 through 38.

44. By reason of the acts, statements, omissions, practices, and courses of business alleged herein, the Defendant, singly or in concert, directly or indirectly, has violated, and unless enjoined will again violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

45. By reason of the foregoing and pursuant to Section 20(e) of the Exchange Act, the Defendant, singly or in concert, directly or indirectly, also aided and abetted other individuals' primary violations by knowingly providing substantial assistance to the other individuals' violations of, and unless enjoined will again aid and abet violations of, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a Final Judgment:

I.

Permanently enjoining and restraining the Defendant, his agents, servants, employees and attorneys and all persons in active concert or participation with him who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating, directly or indirectly, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

II.

Ordering the Defendant to disgorge the ill-gotten gains he received from the violations alleged herein, and to pay prejudgment interest thereon.

III.

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

IV.

Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
March 7, 2010



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