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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

E-filing

JSC

CV 11

4795

15 SECURITIES AND EXCHANGE COMMISSION, Case No. CV

16 Plaintiff,

COMPLAINT

17 v.

18 KURT S. HOVAN, LISA B. HOVAN,
19 EDWARD J. HOVAN, JR., and HOVAN
20 CAPITAL MANAGEMENT, LLC,

Defendants.

21
22 Plaintiff Securities and Exchange Commission (the "Commission") alleges:

23 SUMMARY OF THE ACTION

24 1. From 2008 through 2009, Hovan Capital Management, LLC ("HCM"), a Northern
25 California investment adviser, misappropriated assets held for the benefit of its clients and, to conceal
26 its wrongdoing, provided phony documents to the Commission during a 2010 examination of the
27 firm.
28

1 2. HCM's fraud involved the misuse of so-called "soft dollars" – commission rebates
2 HCM received from brokerage firms for trades executed in HCM's client accounts. In numerous
3 disclosure documents and agreements, HCM and its principals – Kurt Hovan and Lisa Hovan –
4 assured clients and others that HCM would only use soft dollars to pay for a limited category of
5 services that benefitted HCM's clients (such as investment research) and would not use soft dollars to
6 pay for items that benefitted only HCM. Contrary to their disclosures, HCM, Kurt Hovan, and Lisa
7 Hovan secretly used soft dollars to pay the salary of Kurt Hovan's brother Edward. Kurt Hovan, Lisa
8 Hovan, and HCM also received kickbacks from soft dollars paid to Edward Hovan and a consultant,
9 which they used for prohibited purposes.

10 3. In January 2010, when Commission examiners requested records related to HCM's
11 soft dollar uses, Kurt Hovan created and produced phony research reports to the examiners to make it
12 appear that the soft dollars were spent for legitimate research that could benefit clients.

13 4. By engaging in the acts alleged in this Complaint, Kurt Hovan, Lisa Hovan, Edward
14 Hovan, and HCM, among other things, violated the antifraud provisions of the federal securities laws.
15 The Commission seeks an order enjoining Kurt Hovan, Lisa Hovan, Edward Hovan, and HCM from
16 future violations of the securities laws and requiring them to disgorge ill-gotten gains with
17 prejudgment interest and pay civil monetary penalties.

18 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

19 5. The Commission brings this action under Section 21(d) of the Securities Exchange
20 Act of 1934 ("Exchange Act") [15 U.S.C. § 78u(d)], Section 209(d) of the Investment Advisers Act
21 of 1940 ("Advisers Act") [15 U.S.C. § 80b-9(d)], and Section 42 of the Investment Company Act of
22 1940 ("Investment Company Act") [15 U.S.C. § 80a-41].

23 6. This Court has jurisdiction over this action under Sections 21(d), 21(e), and 27 of the
24 Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa], Sections 209 and 214 of the Advisers Act [15
25 U.S.C. §§ 80b-9 and 80b-14], and Sections 42(d), 42(e), and 44 of the Investment Company Act [15
26 U.S.C. §§ 80a-41(d), 80a-41(e), and 80a-43].

27 7. Venue in this District is proper under Section 27 of the Exchange Act [15 U.S.C. §
28 78aa], Section 214 of the Advisers Act [15 U.S.C. § 80b-14], and Section 44 of the Investment

1 Company Act [15 U.S.C. § 80a-43] because defendants Kurt Hovan, Lisa Hovan, and HCM reside in,
2 and a substantial portion of the conduct alleged in this complaint occurred within, the Northern
3 District of California.

4 8. Assignment to the San Francisco Division is appropriate pursuant to Civil Local Rules
5 3-2(c) and 3-2(d) because acts and omissions giving rise to the Commission's claims occurred,
6 among other places, in Marin County.

7 **DEFENDANTS**

8 9. **Kurt S. Hovan**, age 43, resides in Belvedere, California and, since 1999, has served
9 as member, President, and Chief Investment Officer of HCM. He is the husband of Lisa Hovan and
10 the brother of Edward Hovan, Jr. He holds Series 7, 63, and 65 securities licenses issued by FINRA.

11 10. **Lisa B. Hovan**, age 46, resides in Belvedere, California and, since 1999, has served as
12 member and Chief Financial Officer of HCM. She has also served as Chief Compliance Officer of
13 HCM. She is the wife of Kurt Hovan. Lisa Hovan formerly worked as a tax manager at two large
14 accounting firms and currently provides accounting support to an investment adviser. She is a
15 certified public accountant, currently licensed in California and previously licensed in New Jersey
16 and New York.

17 11. **Edward J. Hovan, Jr.**, age 46, resides in Bolton, Connecticut. He is the brother of
18 Kurt Hovan. From at least September 2008 through June 2009, he held the titles of Executive Vice
19 President and Portfolio Manager of HCM.

20 12. **Hovan Capital Management, LLC** is a California limited liability company formed
21 in 1999 with its primary place of business in Belvedere, California. From August 2006 until March
22 2009, it served as a sub-adviser to a registered investment company that was based in Harrison, New
23 York ("Client A"). It also acted as the investment adviser and general partner for at least one
24 investment partnership. HCM is indirectly owned by Kurt Hovan and Lisa Hovan through HCM
25 Group, LLC. HCM was registered with the Commission as an investment adviser from April 3,
26 2006, through April 7, 2011.

1 OTHER RELEVANT ENTITY

2 13. **Bolton Research, LLC** is a Connecticut limited liability company formed on October
3 1, 2008, with its primary place of business in Bolton, Connecticut. During its short life, it was simply
4 a conduit for payments to Edward Hovan by HCM.

5 FACTUAL ALLEGATIONS

6 **A. HCM Had Soft Dollar Relationships with Two Brokerage Firms.**

7 14. HCM, as a registered investment adviser, owed fiduciary duties to its clients. HCM,
8 then, could not use client assets to pay for its own expenses. So-called soft dollars create a potential
9 conflict of interest for investment advisers, like HCM, because soft dollars may be used to pay for
10 certain research and brokerage services HCM would otherwise have use its own money to obtain.

11 15. Because of this potential conflict, HCM, as a registered investment adviser, was
12 required to disclose soft dollar arrangements in disclosure documents filed with the Commission,
13 namely a Form ADV. As a registered investment adviser, HCM was also required to furnish its
14 advisory clients and prospective advisory clients with written disclosures of its soft dollar
15 arrangements.

16 16. In 2008 and 2009, HCM had “soft dollar” agreements with two brokerage firms. Kurt
17 Hovan signed one of the agreements and Lisa Hovan signed the other. Under these agreements,
18 HCM agreed to direct brokerage business to these firms. In return, the firms agreed to give rebates
19 on commissions paid for securities trades executed in the accounts of HCM’s clients.

20 17. Specifically, the firms agreed to a soft dollar credit of \$0.01 for every \$0.02 of
21 brokerage commissions generated by trades in the accounts of HCM’s clients. During this time
22 period, an overwhelming majority of HCM’s trades were executed on behalf of Client A.

23 18. The agreements HCM had with its brokerage firms required HCM to use soft dollars
24 only for certain research and brokerage services and prohibited HCM from using soft dollars to pay
25 for other items, including office equipment, salaries, rent, and computer hardware and accessories.

26 19. HCM agreed to similar restrictions in its uses of soft dollars in its agreement with
27 Client A. Kurt Hovan signed the agreement on behalf of HCM.

28

1 20. On or about October 20, 2008, Lisa Hovan, on behalf of HCM, provided Client A with
2 a signed Certificate of Compliance for the quarter ended September 30, 2008. In the Certificate of
3 Compliance, Lisa Hovan certified that “we have reviewed and followed [Client A’s] . . . Soft Dollar
4 Arrangement Policies.” On or about October 20, 2008, Lisa Hovan, on behalf of HCM, also provided
5 Client A with an additional certification titled “Soft Dollar Arrangements.” In the form, Lisa Hovan
6 represented that none of the products and services acquired with soft dollars were used for “non-
7 research” purposes and that all products and services acquired with soft dollars solely assisted HCM
8 in making investment-related decisions. Lisa Hovan also affirmed that HCM’s then-current soft
9 dollar expenditures were in compliance with the federal securities laws. Lisa Hovan provided Kurt
10 Hovan with a copy of HCM’s certifications.

11 21. On or about January 15, 2009, Lisa Hovan, on behalf of HCM, provided Client A with
12 similar certifications for the quarter ended December 31, 2008.

13 22. In Forms ADV filed with the Commission on or about February 13, 2008 and
14 February 28, 2009, HCM, Kurt Hovan, and Lisa Hovan made representations regarding the firm’s
15 soft dollar practices. In each, HCM, Kurt Hovan, and Lisa Hovan stated that HCM would use soft
16 dollars to acquire only certain research and brokerage services. In other words, HCM, Kurt Hovan,
17 and Lisa Hovan assured clients that HCM would not use soft dollars to pay for items such as office
18 equipment, salaries, rent, and computer hardware and accessories.

19 23. Kurt Hovan controlled the statements contained in the Forms ADV. As President and
20 Chief Investment Officer of HCM, he controlled HCM, including all of its investment, marketing,
21 solicitation, and other operational activities. He also received a portion of the management fee
22 earned by HCM as compensation.

23 24. Lisa Hovan signed HCM’s Forms ADV, certifying under penalty of perjury that the
24 information and statements contained in them, including exhibits and other information submitted,
25 were true and correct.

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1 **B. Defendants Defrauded HCM's Advisory Clients by Misappropriating Soft**
2 **Dollars.**

3 25. Despite their disclosures, agreements, and certifications, Kurt Hovan, Lisa Hovan, and
4 HCM used more than \$178,000 of client soft dollars to pay for prohibited expenses. Among the
5 expenses paid for with these monies, in August 2008, Kurt Hovan, Lisa Hovan, and HCM arranged
6 for an HCM consultant to kick back money received from soft dollars so that HCM could purchase a
7 new computer server. In another instance, from September 2008 through June 2009, Kurt Hovan,
8 Lisa Hovan, and HCM used soft dollars to pay the salary of Edward Hovan, under the guise of
9 obtaining research services provided by a purportedly independent company, Bolton Research, LLC.
10 Under the deal, Edward Hovan gave approximately 40% of the soft dollars he received to Kurt Hovan
11 and Lisa Hovan, who used the money to pay HCM's office rent.

12 **1. Defendants Submitted False Invoices to HCM's Brokerage Firms in Order to**
13 **Pay Edward Hovan's Salary Using Soft Dollars.**

14 26. Before September 2008, Edward Hovan had been unemployed for several months and
15 had not worked in the securities industry since January 2002.

16 27. In or about September 2008, Edward Hovan began working at HCM with the title of
17 "Portfolio Manager." Edward Hovan executed trades based on instructions and guidance from Kurt
18 Hovan. Edward Hovan emailed and spoke by telephone with HCM's brokers, providing them trading
19 instructions. He signed these emails "Portfolio Manager" of HCM and later signed them as
20 "Executive Vice President & Portfolio Manager." Edward Hovan was also identified in HCM's
21 Form ADV Schedule II, dated February 28, 2009 as "Executive Vice President & Portfolio
22 Manager."

23 28. To pay Edward Hovan's salary, the Hovans devised a scheme to use soft dollars
24 inappropriately and contrary to HCM's representations.

25 29. As part of the scheme, Kurt Hovan and Lisa Hovan had Edward Hovan create a
26 supposed research firm, Bolton Research, LLC ("Bolton"). Bolton was simply a conduit for
27 payments to Edward Hovan by HCM. Bolton's only client was HCM and the only income Bolton
28 ever received was the soft dollars it received as part of this scheme.

1 30. At the direction of Kurt Hovan and Lisa Hovan, to aid in concealing the misuse of
2 funds, Edward Hovan's name was not included on Bolton's organizational paperwork filed with the
3 State of Connecticut and his name was not listed on Bolton's bank account.

4 31. To convince HCM's brokerage firms that Bolton was a legitimate, independent
5 research provider (and to disguise the fact that it was merely the means for using soft dollars to pay
6 Edward Hovan), the Hovans provided false and misleading documents to the brokerage firms, as
7 described below.

8 32. On or about October 29, 2008, Kurt Hovan drafted a purported "research report"
9 relating to an investment fund run by a manager who was renting space from HCM. Kurt Hovan
10 instructed Edward Hovan to cut and paste the report onto Bolton stationary, making it look like
11 Bolton drafted the report. Kurt Hovan also provided Edward Hovan with a so-called due diligence
12 questionnaire purportedly completed by the investment fund manager and instructed Edward Hovan
13 to alter the headers and footers to make it look like a "Bolton piece."

14 33. On November 4, 2008, Lisa Hovan emailed one of HCM's brokerage firms an invoice
15 for \$16,666.67 from Bolton, the purported research report that Kurt Hovan had drafted and Edward
16 Hovan had pasted onto Bolton letterhead, and the so-called due diligence questionnaire, which was
17 modified to include Bolton's name on the cover and in the footer. In the email, Lisa Hovan wrote:
18 "I've also attached copies of the type of research [Bolton] provide[s] to us since this is the first time
19 [the brokerage firm] has paid them." The invoice falsely represented that Bolton had completed the
20 research report and the due diligence questionnaire. Lisa Hovan copied Kurt Hovan on the email.
21 She also copied an email account used by Edward Hovan, but which did not identify him by name.

22 34. None of the documents the Hovans provided to the brokerage firm tied Edward Hovan
23 to Bolton. Defendants did not tell the brokerage firm that Bolton was really a conduit for payments
24 to Edward Hovan or that Kurt Hovan had created the supposed "research reports." Unaware of the
25 Hovan's scheme, the brokerage firm approved the soft dollar payment.

26 35. From November 2008 through June 2009, defendants continued this scheme. Each
27 month, using a "Bolton" email account, Edward Hovan sent Lisa Hovan an invoice for work he
28 knew, or was reckless in not knowing, he had not done. The emails were signed simply "Michelle,

1 Bolton Research LLC.” (Michelle Hovan was the name of Edward Hovan’s wife, but the emails
2 conspicuously omitted her last name.) Edward Hovan did so knowing, or was reckless in not
3 knowing, that Lisa Hovan would forward the invoice to a brokerage firm, which would rely on the
4 invoice to process payment. Edward Hovan continued executing trades on behalf of HCM, which
5 generated additional soft dollars, and thus ensured himself future payments.

6 36. All told, between November 2008 and June 2009, defendants submitted (and the
7 brokerage firms paid) 10 of these invoices, totaling approximately \$166,667. The scheme ended only
8 after defendants depleted the available soft dollars.

9 37. Kurt Hovan, Lisa Hovan, and HCM knew, or were reckless in not knowing, that
10 paying the salary of an employee (Edward Hovan) was prohibited unless disclosed. Kurt Hovan, Lisa
11 Hovan, and HCM further knew, or were reckless in not knowing, that HCM’s disclosures contained
12 no mention that HCM used soft dollar credits for such expenses.

13 **2. Defendants Further Defrauded HCM’s Clients by Orchestrating a Kickback**
14 **Scheme Through Which They Received Additional Soft Dollars.**

15 38. Between August 2008 and August 2009, Kurt Hovan, Lisa Hovan, and HCM
16 employed schemes from which they received \$77,000 in kickbacks from two individuals paid in soft
17 dollars.

18 39. The largest monthly source of kickbacks came from Edward Hovan. Initially, in
19 hiring Edward Hovan as the Portfolio Manager, Kurt Hovan and Lisa Hovan agreed to pay him
20 \$10,000 per month. However, soon after hiring Edward Hovan, Kurt Hovan agreed to increase the
21 monthly amount to \$16,666.67 on the condition that Edward Hovan pay HCM’s office rent.

22 40. From November 2008 to July 2009, Bolton (acting as the conduit for funds to Edward
23 Hovan) received approximately \$16,667 each month in soft dollars from brokerage firms.

24 41. Lisa Hovan sent Bolton’s invoices for purported research to the brokerage firms,
25 knowing, or reckless in not knowing, that Bolton would use part of the funds received to pay HCM’s
26 rent.

1 42. Each month, Bolton issued a check made out to HCM's landlord in the amount of
2 \$6,500 – approximately the amount of the increase to which Kurt Hovan and Edward Hovan had
3 agreed.

4 43. Lisa Hovan received the checks from Bolton and gave them to HCM's landlord.

5 44. All told, HCM received \$65,000 from Edward Hovan in the form of HCM's office
6 rent. The office rent kickbacks accounted for approximately 40% of the money Edward Hovan
7 received in soft dollars.

8 45. The second largest source of kickbacks to HCM from soft dollars came from a third
9 party consultant to the firm. In or around August 2008, Kurt and Lisa Hovan instructed an HCM
10 consultant paid in soft dollars to inflate the consultant's invoices by approximately \$12,000. The
11 consultant complied and inflated her invoices. Lisa Hovan then submitted the padded invoices to a
12 brokerage firm for payment in soft dollars. Once the consultant received the soft dollar payment, the
13 consultant issued to HCM's technology vendor a \$12,000 check, so that HCM could purchase a new
14 computer server. The consultant sent the check to Lisa Hovan, who then gave it to HCM's
15 technology vendor.

16 46. Kurt Hovan, Lisa Hovan, and HCM knew, or were reckless in not knowing, that they
17 could not invoice the brokerage firms directly for office rent and computer hardware expenses. They
18 also knew, or were reckless in not knowing, that using soft dollars to pay for office rent and computer
19 equipment was inconsistent with the disclosures they had made in HCM's Form ADV, the
20 certifications they had made to Client A, and the agreements HCM had with the brokerage firms and
21 Client A.

22 47. Edward Hovan knew, or was reckless in not knowing, that he submitted invoices for
23 work he had not done. He knew, or was reckless in not knowing, that the amount on the invoices had
24 been inflated so that he could pay HCM's office rent. Edward Hovan knew, or was reckless in not
25 knowing, that his conduct was part of scheme to give a false impression of the type of work he had
26 done and to disguise the use of the funds.

1 **C. Kurt Hovan and HCM Falsified Records During a Commission Examination.**

2 48. Beginning in December 2009, the Commission’s examination staff conducted an
3 examination of HCM.

4 49. On or about January 13, 2010, the Commission’s examination staff requested HCM to
5 provide all research reports produced by Bolton.

6 50. In response to the examiners’ request, Kurt Hovan sent Lisa Hovan an email with
7 attachments that included 10 one-page reports regarding various hedge funds and 10 due diligence
8 questionnaires (“DDQs”) on the same hedge funds. Kurt Hovan described these documents as “10 of
9 Ed [Hovan]’s monthly DDQ and Summary reports.” The DDQs attached to Kurt Hovan’s email
10 were dated between September 2008 and June 2009, the same months in which Bolton was paid in
11 soft dollars. The one-page “Summary reports” were not dated, but their subject matter corresponds to
12 the DDQs, to give the impression that they were prepared at or about the same time. All of the
13 “monthly DDQs and Summary reports” appeared to have been prepared by Bolton, as all bore the
14 Bolton logo. Lisa Hovan provided the Commission’s examination staff with these documents on or
15 around January 21, 2010.

16 51. Contrary to the impressions created by Kurt Hovan and Lisa Hovan, Bolton did not
17 prepare the documents provided to the examiners. Rather, Kurt Hovan created the documents
18 following the Commission’s staff’s January 13, 2010 request. Kurt Hovan drafted the one-page
19 reports. Also, to create the DDQs, Kurt Hovan took DDQs that had already been saved on HCM’s
20 server and doctored them to make them appear to be reports prepared monthly by Bolton. Among
21 other things, Kurt Hovan changed the dates on the cover pages of the DDQs (making it appear as if
22 they were regularly prepared between September 2008 and June 2009), the contact information (to
23 make them appear to have been prepared by Bolton and not an employee of HCM), and the
24 certification dates on which various hedge fund managers purportedly completed the DDQs. The
25 false documents were designed to give the appearance that Bolton was a legitimate research firm
26 which had prepared reports in 2008 and 2009, for which it was appropriately compensated in soft
27 dollars.

1 52. When the Commission's staff asked Kurt Hovan whether he created the one-page
2 reports or DDQs, Kurt Hovan testified under oath that he "did not create the documents during the
3 examination, no." Kurt Hovan lied. In subsequent testimony also under oath, Kurt Hovan admitted
4 that he had, in fact, created the documents during the Commission's examination.

5 **D. Kurt Hovan, Lisa Hovan, and HCM Made Additional Misrepresentations in**
6 **HCM's Disclosures.**

7 53. Kurt Hovan, Lisa Hovan, and HCM also made other material misrepresentations,
8 including misrepresentations about the size of HCM in HCM's February 13, 2008 and June 3, 2009
9 Forms ADV.

10 54. Lisa Hovan signed the 2008 and 2009 Forms ADV, certifying under penalty of perjury
11 that the information and statements made in the ADV, including exhibits, were true and correct.

12 55. In addition, as President and Chief Investment Officer of HCM, Kurt Hovan was
13 responsible for the statements in HCM's Forms ADV.

14 56. In HCM's February 13, 2008 Form ADV, Kurt Hovan, Lisa Hovan, and HCM listed
15 one of HCM's consultants as a portfolio manager. They listed the consultant as an employee in this
16 Form ADV with the intention of making the firm appear larger than it was.

17 57. In HCM's June 3, 2009 Form ADV, Kurt Hovan, Lisa Hovan, and HCM represented
18 that HCM was eligible for registration with the Commission because it had more than \$25 million in
19 assets under management and because it was a sub-adviser to a registered investment company.
20 Neither representation was true at the time. In fact, HCM had not managed more than \$25 million
21 since October 2008, and HCM had not served as a sub-adviser since March 2009, two months before
22 filing Part I of the Form ADV representing otherwise. Kurt Hovan, Lisa Hovan, and HCM
23 intentionally made these false statements so that HCM could remain registered with the Commission,
24 a status they considered to be important to potential investors.

FIRST CLAIM FOR RELIEF

***Violations of Exchange Act Sections 10(b) and 20(a) and Rule 10b-5 and Aiding and Abetting
(Against All Defendants)***

58. The Commission realleges and incorporates by reference paragraphs 1 through 57.

59. By engaging in the conduct described above, Kurt Hovan, Lisa Hovan, Edward Hovan, and HCM, directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, or the mails, with scienter:

- a. Employed devices, schemes, or artifices to defraud;
- b. Made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and
- c. Engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons, including purchasers and sellers of securities.

60. By reason of the foregoing, Kurt Hovan, Lisa Hovan, Edward Hovan, and HCM have violated and, unless restrained and enjoined, will continue to violate 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].

61. During the period of approximately July 1, 2008 through the filing of this Complaint, Kurt Hovan was and is, directly or indirectly, a control person of HCM for purpose of Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)].

62. As a control person of HCM, Kurt Hovan is jointly and severally liable with and to the same extent as HCM for HCM's violations of Section 10(b) the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] during this time period, as alleged above.

63. In addition, Lisa Hovan knowingly provided substantial assistance to HCM's and/or Kurt Hovan's and Edward Hovan's 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], and therefore is liable as an aider and abettor pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)]. Unless restrained and enjoined, Lisa Hovan will continue violate and to 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].

1 **FOURTH CLAIM FOR RELIEF**

2 ***Violations of Section 204(a) of the Advisers Act and Rule 204-2(a)(7) and Aiding and Abetting***
3 ***(Against HCM and Kurt Hovan)***

4 71. The Commission realleges and incorporates by reference paragraphs 1 through 57.

5 72. By engaging in the acts and conduct alleged above, HCM, an investment adviser who
6 at all relevant times made use of the mails and other means and instrumentalities of interstate
7 commerce in connection with its business as an investment adviser, failed to make and keep for
8 prescribed periods accurate records as the Commission, by rule, prescribed, including, but not limited
9 to, communications received relating to recommendations made or proposed to be made and advice
10 given or proposed to be given.

11 73. By reason of the forgoing, HCM has violated Section 204(a) of the Advisers Act [15
12 U.S.C. § 80b-4(a)] and Rule 204-2(a)(7) thereunder [17 C.F.R. § 275.204-2(a)(7)], and unless
13 restrained and enjoined will continue to violate this provision.

14 74. Kurt Hovan knowingly provided substantial assistance to HCM's violations of Section
15 204(a) of the Advisers Act [15 U.S.C. § 80b-4(a)] and Rule 204-2(a)(7) thereunder [17 C.F.R. §
16 275.204-2(a)(7)] and therefore he is liable as an aider and abettor pursuant to Section 209(d) of the
17 Advisers Act [15 U.S.C. § 80b-9(d)], and unless restrained and enjoined will continue to aid and abet
18 such violations.

19 **FIFTH CLAIM FOR RELIEF**

20 ***Violations of Section 17(e)(1) of the Investment Company Act of 1940***
21 ***(Against Kurt Hovan, Edward Hovan, and HCM)***

22 75. The Commission realleges and incorporates by reference paragraphs 1 through 57.

23 76. By engaging in the acts and conduct alleged above, Kurt Hovan, Edward Hovan, and
24 HCM accepted compensation other than regular salary or wages from a registered investment
25 company for the purchase or sale of property for the registered investment company. At the time
26 HCM accepted such compensation, it was affiliated with a registered investment company. At the
27 time Kurt Hovan and Edward Hovan accepted such compensation, they were affiliated with HCM,
28 which was affiliated with a registered investment company.

1 77. By reason of the foregoing, these defendants have violated Section 17(e)(1) of the
2 Investment Company Act of 1940 [15 U.S.C. § 80a-17(e)(1)], and unless restrained and enjoined will
3 continue to violate this provision.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, the Commission respectfully requests that this Court:

6 I.

7 Permanently enjoin Kurt Hovan from directly or indirectly violating Section 10(b) of the
8 Exchange Act and Rule 10b-5 thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5], Sections
9 204(a), 206(1), 206(2), and 207 of the Advisers Act and Rule 204-2(a)(7) thereunder [15 U.S.C.
10 §§ 80b-4(a); 80b-6(1), 80b-6(2), and 80b-7 and 17 C.F.R. § 275.204-2(a)(7)], and Section 17(e)(1) of
11 the Investment Company Act of 1940 [15 U.S.C. § 80a-17(e)(1)];

12 II.

13 Permanently enjoin Lisa Hovan from directly or indirectly violating Section 10(b) of the
14 Exchange Act and Rule 10b-5 thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5] and
15 Sections 206(1), 206(2), and 207 of the Advisers Act [15 U.S.C. §§ 80b-6(1), 80b-6(2), & 80b-7];

16 III.

17 Permanently enjoin Edward Hovan from directly or indirectly violating Section 10(b) of the
18 Exchange Act and Rule 10b-5 thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5], Sections
19 206(1), and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) & (2)], and Section 17(e)(1) of the
20 Investment Company Act of 1940 [15 U.S.C. § 80a-17(e)(1)];

21 IV.

22 Permanently enjoin HCM from directly or indirectly violating Section 10(b) of the Exchange
23 Act and Rule 10b-5 thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5], Sections 204(a),
24 206(1), 206(2), and 207 of the Advisers Act and Rule 204-2(a)(7) thereunder [15 U.S.C. §§ 80b-4(a);
25 80b-6(1), 80b-6(2), 80b-7 and 17 C.F.R. § 275.204-2(a)(7)], and Section 17(e)(1) of the Investment
26 Company Act of 1940 [15 U.S.C. § 80a-17(e)(1)];

V.

Order Kurt Hovan, Lisa Hovan, Edward Hovan, and HCM to disgorge any wrongfully obtained benefits, including prejudgment interest;

VI.

Order Kurt Hovan, Lisa Hovan, Edward Hovan, and HCM to pay civil penalties pursuant to Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], Section 209 of the Advisers Act [15 U.S.C. § 80b-9], and, with respect to Kurt Hovan, Edward Hovan, and HCM, Section 42(e) of the Investment Company Act [15 U.S.C. § 80a-41(e)];

VII.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court; and

VIII.

Grant such other and further relief as this Court may determine to be just and necessary.

DATED: September 28, 2011

Respectfully Submitted,



Karen Kreuzkamp
Attorney for Plaintiff

SECURITIES AND EXCHANGE COMMISSION