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13 UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 SECURITIES AND EXCHANGE
16 COMMISSION,

17 Plaintiff,

18 v.

19 JB OXFORD HOLDINGS, INC.,
20 NATIONAL CLEARING
21 CORPORATION, JAMES G. LEWIS,
22 KRAIG L. KIBBLE, and JAMES Y. LIN,

23 Defendants.

Case No.

**COMPLAINT FOR
VIOLATIONS OF THE
FEDERAL SECURITIES LAWS**

24 Plaintiff Securities and Exchange Commission (“Commission”) alleges as
25 follows:

JURISDICTION AND VENUE

26 1. This Court has jurisdiction over this action pursuant to Sections
27 20(b), 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15
28 U.S.C. §§ 77t(b), 77t(d)(1) & 77v(a); Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27
of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),
78u(d)(3)(A), 78u(e) & 78aa; and Sections 42(d), 42(e)(1) and 44 of the
Investment Company Act of 1940 (“Investment Company Act”), 15 U.S.C.

1 §§ 80a-41(d), 80a-41(e)(1) & 80a-43. Defendants have, directly or indirectly,
2 made use of the means or instrumentalities of interstate commerce, of the mails, or
3 of the facilities of a national securities exchange in connection with the
4 transactions, acts, practices, and courses of business alleged in this Complaint.

5 2. Venue is proper in this district pursuant to Section 22(a) of the
6 Securities Act, 15 U.S.C. § 77v(a), Section 27 of the Exchange Act, 15 U.S.C.
7 § 78aa, and Section 44 of the Investment Company Act, 15 U.S.C. § 80a-43,
8 because certain of the transactions, acts, practices, and courses of conduct
9 constituting violations of the federal securities laws occurred within this district,
10 and because each of the defendants may be found, is an inhabitant of or transacts
11 business in this district.

12 SUMMARY

13 3. This action concerns the facilitation of fraudulent late trading and
14 market timing by a registered broker-dealer, its parent company, and three senior
15 executives. From June 2002 until September 2003, the defendants facilitated over
16 12,000 late trades by select institutional customers in over 600 mutual funds.
17 “Late trading” refers to the practice of placing orders to buy or sell mutual fund
18 shares after 4:00 p.m. Eastern time, the time as of which mutual funds typically
19 calculate their net asset value (“NAV”), but receiving the price based on the NAV
20 already determined as of 4:00 p.m. Late trading enables the trader to profit from
21 market events that occur after 4:00 p.m. but that are not reflected in that day’s
22 price.

23 4. The defendants also deceived the mutual funds by engaging in
24 deceptive tactics to conceal their customers’ impermissible market timing
25 activities from the mutual funds. “Market timing” includes (a) frequent buying
26 and selling of shares of the same mutual fund or (b) buying or selling mutual fund
27 shares in order to exploit inefficiencies in mutual fund pricing. Market timing,
28 while not illegal *per se*, can harm other mutual fund shareholders because it can

1 dilute the value of their shares, if the market timer is exploiting pricing
2 inefficiencies, or disrupt the management of the mutual fund's investment
3 portfolio and cause the targeted mutual fund to incur costs borne by other
4 shareholders to accommodate frequent buying and selling of shares by the market
5 timer.

6 5. Through its participation in the fraudulent late trading and market
7 timing schemes, defendant National Clearing Corporation ("NCC") realized
8 almost \$1 million in proceeds from compensation arrangements with its
9 institutional customers who engaged in late trading and market timing and allowed
10 those customers to reap at least \$8 million in profits at the expense of long-term
11 mutual fund shareholders. NCC's parent company, defendant JB Oxford
12 Holdings, Inc. ("JBOH"), prepared its financial statements that were included in
13 its Forms 10-Q for the second quarter of 2002 through the third quarter of 2003
14 and its 2002 and 2003 Forms 10-K on a consolidated basis, thus reporting as
15 revenue the profits that NCC obtained from its late trading and market timing
16 activities.

17 6. The agreements by which NCC enabled its customers to engage in
18 late trading were negotiated by defendant James G. Lewis, a member of JBOH's
19 board of directors, JBOH's president and chief operating officer and NCC's
20 president and CEO, and by NCC's vice president of correspondent services,
21 defendant James Y. Lin. Defendant Kraig L. Kibble, who was NCC's director of
22 operations, transmitted and approved transmittal of late trades to the mutual funds.
23 With Lewis' knowledge, Lin and Kibble engaged in various fraudulent practices
24 designed to conceal from the mutual funds the market timing of their shares by
25 NCC's customers, including opening multiple customer accounts for the same
26 customer with different account numbers and using multiple representative codes
27 (identifying the originating broker) and office codes (identifying where the trade
28 originated) when transmitting orders.

1 2004. He was president and CEO of JB Oxford & Co. and NCC from 1999 until
2 he resigned in December 2003. Lewis holds Series 7 (general securities), Series
3 24 (general securities principal), and Series 63 (uniform state law examination)
4 securities licenses. Lewis is also an attorney admitted to practice in Florida and
5 Tennessee.

6 11. Kraig L. Kibble, age 44, is a resident of La Crescenta, California.
7 Kibble has been NCC's director of operations since September 2002. Kibble was
8 the assistant vice president of operations from January 2002 until he was promoted
9 to director of operations in September 2002. As the assistant vice president and as
10 director of operations, Kibble supervised NCC's mutual fund department and
11 oversaw the trading by NCC's institutional customers. Kibble reported to Lewis
12 throughout 2002 until August 2003. Kibble currently holds Series 4 (registered
13 options principal), Series 7 (general securities), Series 24 (general securities
14 principal), Series 53 (municipal securities principal), Series 55 (registered equity
15 trader), and Series 63 (uniform state law examination) securities licenses.

16 12. James Y. Lin, age 46, is a resident of Rancho Palos Verdes,
17 California. Lin has been the vice president of correspondent services at JB Oxford
18 & Co. and NCC since at least May 2002. In that position, Lin is responsible for
19 attracting additional correspondent brokers and negotiating clearing agreements
20 between those brokers and NCC. From at least May 2002 through December
21 2003, Lin reported directly to Lewis. Lin holds Series 4 (registered options
22 principal), Series 7 (general securities), and Series 24 (general securities principal)
23 securities licenses.

24 **THE FRAUDULENT SCHEME**

25 **A. NCC's Mutual Fund Trade Entry Procedures**

26 13. The National Securities Clearing Corporation ("NSCC") is the main
27 provider of centralized information services and money settlement for mutual
28 funds and was established to take over clearance and settlement for the major

1 stock exchanges. NSCC's FundServ system assists in this process by automating
2 and centralizing the processing of mutual fund transactions. Orders for purchases
3 and sales of mutual funds flow electronically from broker-dealers and other
4 financial institutions through FundServ to the appropriate mutual fund. Using
5 FundServ, each fund and each firm require only one electronic link to NSCC for
6 transaction processing, thereby streamlining money settlement. Throughout 2002
7 and 2003, NCC used a service provider, ADP/SIS, as its link to NSCC's FundServ
8 system.

9 14. NCC's ADP/SIS software accepted NCC-originated mutual fund
10 orders, edited them for errors, and delivered them through FundServ to NSCC.
11 NSCC, in turn, delivered those orders to the various mutual funds. Orders
12 processed through NSCC were executed with the mutual fund companies on an
13 "omnibus basis." When trades were communicated in this manner, the mutual
14 funds received only customer account numbers, representative codes (identifying
15 the originating broker), and office codes (identifying where the trade originated)
16 as client identifiers rather than learning their identity.

17 **B. NCC Enters Into An Agreement With Its First Institutional Customer**

18 15. In May 2002, Lewis began negotiating the opening of two accounts at
19 NCC in the amount of \$5 million each with a Switzerland-based money
20 management firm (the "Swiss money management firm"). During or about May
21 2002, Lewis met with representatives of the Swiss money management firm's
22 London-based investment adviser (the "London Adviser"). During that meeting,
23 Lewis learned that the London Adviser's main trading strategy was market timing
24 and that it utilized some United States brokerage firms to carry out this strategy.

25 16. Representatives from the London Adviser also expressed an interest
26 in late trading during this meeting. The representatives explained that they were
27 permitted to submit trades to one clearing firm until 7:00 p.m. Eastern time.
28 During the meeting, Lewis learned that the London Adviser was able to consider

1 after-market news and market performance in making its trading decisions. Lewis
2 understood that in order to obtain this business, NCC would have to provide
3 similar services to those provided by other United States clearing firms.

4 17. After the London meeting, Lewis directed Kibble to look into NCC's
5 cut-off time for mutual fund order entry. As a result, Kibble contacted an
6 ADP/SIS customer service representative who told Kibble that NCC could submit
7 mutual fund trades until 3:50 p.m. Pacific time (6:50 p.m. Eastern time).

8 18. In a May 24, 2002 e-mail in response to an e-mail by Kibble informing
9 Lewis that NCC could submit trades to ADP/SIS up until 3:50 p.m. Pacific time,
10 Lewis responded:

11 this is great news! I will tell them we need preliminary [order entry]
12 during the day and final orders by 6:30 pm EST; and no fee on no
13 load; and we will continue working on getting a later time entry on
14 orders. I will tell them we want \$25 MM to start and would like to do
15 more once we show them the great CX [customer service] we are
16 going to deliver!

17 19. NCC, through Lewis' efforts, entered into a written agreement with
18 the Swiss money management firm establishing the terms of the relationship. That
19 agreement, called a mutual fund procedural agreement, was used as a template for
20 each successive procedural agreement that NCC entered into with future
21 institutional customers. Kibble and Lewis obtained the information for the
22 agreement, including the time by which the Swiss money management firm was
23 required to confirm mutual fund trades, through negotiations with the London
24 Adviser and the Swiss money management firm. The portion of the agreement
25 relating to late trading stated:

26 Each day that Customer intends to engage in mutual fund transactions,
27 Customer shall send via Excel spreadsheet or other mutually
28 acceptable means to [NCC] a list of proposed transactions before 4:15

1 p.m. New York time. Transaction detail shall include mutual fund
2 names and symbols, plus all other information necessary to effect the
3 transaction(s) as agreed to by the parties. Customer intends to confirm
4 and activate such trade communication via telephone by 4:45 p.m.,
5 New York time, which shall be deemed made upon oral or written
6 verification by [NCC]. . . .

7 20. Lewis reviewed and edited the original procedural agreement between
8 NCC and the Swiss money management firm and approved the final document.
9 Lewis signed the agreement on behalf of NCC on May 30, 2002.

10 **C. The Late Trading Scheme**

11 **1. The Defendants Facilitate Late Trading**

12 21. From June 2002 through September 2003, NCC facilitated more than
13 12,000 late trades on behalf of its institutional customers in more than 74 mutual
14 fund families, which included more than 600 mutual funds. The fund families
15 included, but were not limited to, the AIM Funds, American Skandia Funds,
16 Alliance Funds, and PAX World Balanced Fund. The institutional customers each
17 conducted business with NCC based upon procedures set forth in procedural
18 agreements virtually identical to the agreement negotiated by Lewis with the Swiss
19 money management firm. The original procedural agreement required the Swiss
20 money management firm to pay NCC 90 basis points (or 0.9% of assets under
21 management) for the right to engage in late trading and market timing through
22 NCC. Future institutional customers paid 100 basis points (or 1% of assets under
23 management) for the same opportunities. While the cut-off time for order
24 submission varied in the procedural agreements for different institutional
25 customers, all institutional customers who engaged in late trading through NCC
26 were permitted to receive the same day's NAV for mutual fund trades confirmed
27 after 4:00 p.m. Eastern time.

28 22. With Lewis' knowledge, Lin sought out additional institutional

1 customers interested in market timing and late trading in mutual funds after the
2 initial procedural agreement with the Swiss money management firm was executed.
3 Once Lin identified potential new customers, he negotiated the terms of the
4 relationship. Lin provided the institutional customers with a procedural agreement
5 after Lewis signed it. Once these agreements were in place, late trading and market
6 timing commenced.

7 23. Lin negotiated such late trading arrangements with at least four of
8 NCC's institutional customers, including a Boca Raton, Florida-based
9 correspondent broker that was one of NCC's most lucrative clients (the "Boca
10 Raton correspondent client"). In order to obtain the Boca Raton correspondent
11 client's business, Lin promised representatives from the Boca Raton correspondent
12 client that they could submit or cancel mutual fund orders as late as 6:00 p.m.
13 Eastern time. As of September 25, 2002, Lin opened accounts through which late
14 trading and market timing was to occur worth over \$40 million.

15 24. Lin also acted as the liaison for some of the institutional customers
16 and was advised of any problems that arose from their mutual fund trades. Lin
17 knew that the institutional customers submitted, confirmed, and cancelled mutual
18 fund trades after 4:00 p.m. Eastern time. In one instance, Lin assured the Boca
19 Raton correspondent client's representatives that NCC personnel would be
20 available to modify orders up until 6:15 p.m. Eastern time.

21 25. Pursuant to Lewis' instructions, Kibble notified NCC's mutual fund
22 department personnel of the terms of the original procedural agreement between
23 NCC and the Swiss money management firm and instructed the mutual fund
24 department to follow the procedures in the agreement for mutual fund order entry.
25 Kibble understood that NCC's mutual fund department followed the procedures for
26 the additional institutional customers NCC attracted and instructed his staff to
27 facilitate trades in mutual funds after 4:00 p.m. Eastern time.

28 26. Pursuant to their procedural agreements with NCC, each institutional

1 customer sent an e-mail to NCC's mutual fund department personnel between 2:00
2 p.m. and 4:00 p.m. Eastern time with an attached spreadsheet listing that day's
3 potential trades. Also pursuant to their procedural agreements, the institutional
4 customers notified NCC by telephone or e-mail to have the order executed,
5 cancelled, or revised after 4:00 p.m. Eastern time the same day.

6 27. Each institutional customer's procedural agreement specified the cut-
7 off time by which the customer had to submit its trade confirmation to NCC. The
8 agreements specified that orders had to be confirmed either by 4:15 p.m. or 4:45
9 p.m. Eastern time. Most days, however, some customers, including the Boca Raton
10 correspondent client, confirmed trades later than the times specified in their
11 agreements.

12 28. Lewis frequently communicated to NCC employees, including Kibble
13 and Lin, that he considered the institutional customers to be a very important part
14 of the business and a significant revenue generator for the firm. Defendants Lin
15 and Kibble therefore kept Lewis abreast of the status and profitability of
16 institutional customer business on a regular basis.

17 29. Lewis routinely approved overtime for mutual fund department
18 personnel who entered mutual fund trades that were received after 2:00 p.m. Pacific
19 time – the time that employees were scheduled to go home. Lewis knew from e-
20 mail communications from Kibble on August 2, 2003 and August 8, 2003, among
21 other sources, that overtime was needed so that mutual fund department personnel
22 could enter "late trades."

23 30. On or about September 3, 2003, Lewis was informed through an e-
24 mail communication from Kibble that a mutual fund department employee wanted
25 to require the institutional customers to submit their trades earlier in the day to
26 provide the department with more time to review trades for errors and restrictions.
27 Lewis instead directed that another employee be added to the department in order
28 to allow clients to submit trades as late in the day as possible. Lewis also

1 transmitted an e-mail to Kibble stating, “kraig, I would like to know what is going
2 on here. we got these clients by promising certain services. why are we shorting
3 [sic] the time?” Later, in the same e-mail chain, Lewis also stated:

4 . . . as a matter of practice, we discussed a 5 pm PACIFIC cut-off for
5 trades, if we want to keep this business, we need to give our clients as
6 much opportunity as possible to make money. we have a strategic
7 advantage in our west coast location; we should not be trying to match
8 NY, but being better on the westcoast [sic]. we have a great
9 opportunity here and I would like a better explanation of why we can't
10 deliver [sic].

11 **2. The Defendants Knew Or Were Reckless In Not Knowing That**
12 **Late Trading Was Illegal**

13 31. Prior to being permitted to facilitate trades in a particular mutual fund,
14 NCC was required to enter into a dealer agreement with the mutual fund family in
15 which its customers wanted to trade. As a result, NCC had dealer agreements with
16 many mutual fund families. These dealer agreements obligated NCC to comport
17 with the mutual funds’ prospectuses, among other things. The dealer agreements in
18 place between NCC and many mutual fund families, including but not limited to,
19 the AIM Funds, Alliance Capital Funds, American Skandia Funds, INVESCO
20 Funds, and MFS Funds, required NCC to sell and redeem shares at the publicly
21 available price as established in the prospectuses. The prospectuses from each of
22 these funds state that the publicly available price for the shares is calculated at 4:00
23 p.m. Eastern time or at the close of the New York Stock Exchange (which is also
24 4:00 p.m. Eastern time). For example, NCC’s dealer agreement with ING
25 specifically provides for a 4:00 p.m. Eastern time cut-off for trade entry at the
26 current day’s NAV:

27 You understand that Instructions [for purchases, redemptions, or
28 exchanges] shall be deemed to have been received as of the day on

1 which the Instructions [for purchases, redemptions, or exchanges]
2 were placed by you with the Trust or its designated agent, if such
3 Instructions [for purchases, redemptions, or exchanges] are received
4 by you from Client, or from a person having discretion over a client's
5 account, prior to 4:00 p.m., Eastern Standard Time ("EST") on a
6 business day on which the New York Stock Exchange is open ("Close
7 of Trading") and transmitted to Trust no later than 8:30 a.m., Eastern
8 Time, on the next business day following such Trade Date.

9 32. Some prospectuses for mutual fund families in which NCC facilitated
10 late trades, including, but not limited to, the Alliance Capital Funds, PAX Funds,
11 PIMCO Funds, Saratoga Funds, SunAmerica Capital Services Funds, Armada
12 Funds, and Harbor Funds state that only trades received prior to 4:00 p.m. Eastern
13 time will be given that day's NAV. For example, the Alliance Capital Funds'
14 February 2002 prospectus states:

15 . . . the Funds' net asset value or NAV is calculated at 4:00 p.m.,
16 Eastern time, each day the Exchange is open for business. . . Your
17 order for purchase, sale, or exchange of shares is priced at the next
18 NAV calculated after your order is received in proper form by the
19 Fund. . . Your broker must receive your sales request by 4:00 p.m.,
20 Eastern time, and submit it to the Fund by 5:00 p.m., Eastern time, for
21 you to receive that day's NAV. . . .

22 33. NCC's computer system that processed retail trades was programmed
23 to alert retail customers who placed mutual fund orders after 4:00 p.m. Eastern time
24 that their orders would be placed at the next day's NAV. Lewis, Kibble, and Lin
25 circumvented this safeguard by authorizing mutual fund personnel to manually
26 enter trades after 4:00 p.m. Eastern time and still receive the same day's NAV.

27 34. In July 2003, NCC received a subpoena from the New York Attorney
28 General's Office asking for documents related to any late trading or market timing

1 activities. Once NCC's chief compliance officer received the subpoena and learned
2 for the first time that NCC had been facilitating late trading, he met with Kibble
3 and members of the mutual fund department and instructed them to cease the late
4 trading activity.

5 35. Even though the defendants were on notice of the New York Attorney
6 General's investigation of late trading and market timing, and despite the chief
7 compliance officer's instruction, NCC continued accepting late trades from the
8 Boca Raton correspondent client until September 3, 2003 – when the New York
9 Attorney General filed a civil complaint related to late trading and market timing
10 activities. *State of New York v. Canary Capital Partners, LLC et al.* (N.Y. Sup.
11 Ct.).

12 **D. The Defendants Facilitate Illegal Market Timing**

13 36. NCC not only allowed its institutional customers to conduct late
14 trading but also facilitated their market timing activities. Mutual funds track
15 market timing through client identifiers such as customer account numbers,
16 representative codes (identifying the originating broker), and office codes
17 (identifying where the trade originated).

18 37. Once a fund identified a potential timer by its account number and
19 began rejecting its trades, it often terminated the client's privilege of trading in the
20 fund for a certain amount of time. If the fund continued to notice the same account
21 number executing additional short-term trades, that account number was typically
22 restricted and no longer allowed to trade in the fund. Likewise, if funds recognized
23 representative codes as frequent market timers, they would restrict trades from
24 clients bearing that representative code. The same procedure held true for office
25 codes – if funds noticed a pattern of market timing activity originating from the
26 same office code they eventually rejected all trades from that office.

27 38. From June 2002 through September 2003, NCC employed various
28 methods to conceal certain of its institutional customers' market timing activity

1 from the mutual funds. Specifically, NCC, Lewis, Kibble, and Lin authorized
2 and/or provided institutional customers with multiple client identifier numbers
3 (account numbers, representative codes, and office codes) to prevent the funds
4 from identifying timers and misrepresented NCC's knowledge about the timing to
5 the funds.

6 39. In about July 2002, NCC began receiving notification from mutual
7 funds that trades were being rejected due to market timing. These "kick-out
8 letters" noted a particular account number, representative code, or office code and
9 indicated that the trade was rejected because of impermissible "market timing,"
10 "short-term trading," or "excessive trading." The kick-out letters often
11 quoted language from the fund's prospectus stating the fund's market timing
12 policy. For example, a July 9, 2002, kick-out letter from Fidelity Investments
13 stated:

14 Short-term or excessive trading into and out of the fund may harm
15 performance by disrupting portfolio management strategies and by
16 increasing expenses. Accordingly, the fund may reject any purchase
17 orders, including exchanges, particularly from market timers or
18 investors who, in [Fidelity's] opinion, have a pattern of short-term or
19 excessive trading or whose trading has been or may be disruptive to
20 the fund. For these purposes, [Fidelity] may consider an investor's
21 trading history in the fund or other [funds within the same family], and
22 accounts under common ownership or control.

23 40. From July 2002 through September 2003, NCC received hundreds of
24 kick-out letters from various mutual funds, including AIM Funds, Alliance Capital
25 Funds, PIMCO Funds, INVESCO Funds, American Skandia Funds and MFS
26 Funds. Defendants Lewis, Kibble and Lin knew about these letters.

27 41. After trading in accounts bearing certain account numbers was
28 restricted at a number of funds, NCC allowed some institutional customers,

1 including the Swiss money management firm and the Boca Raton correspondent
2 client, to open numerous additional accounts with different numbers. Because the
3 funds did not know the identity of the client behind an account number, those
4 clients were able to continue market timing without the funds knowing that their
5 trading had previously been restricted because of their market timing. The practice
6 of generating numerous accounts to facilitate market timing was referred to by
7 NCC and the Boca Raton correspondent client as “cloning.”

8 42. NCC opened over 100 different accounts for the Boca Raton
9 correspondent client and at least 48 accounts for the Swiss money management
10 firm over a 15-month period in order to facilitate their market timing. Specifically,
11 from June 2002 through September 2003, NCC facilitated almost 25,000 market
12 timing trades in at least 74 fund families for these customers, generating realized
13 gains for these two customers of at least \$6.7 million.

14 43. In addition to authorizing the cloning of accounts, Kibble and Lin
15 authorized NCC mutual fund department personnel to issue numerous new
16 representative codes and office codes to NCC clients, including the Boca Raton
17 correspondent client and the Swiss money management firm, when these clients’
18 previous codes were blocked by the mutual funds, in order to facilitate the clients’
19 market timing activities.

20 44. Lin agreed to provide the Boca Raton correspondent client with
21 multiple representative and office codes when he negotiated their correspondent
22 agreement. A representative of the Boca Raton correspondent client communicated
23 directly with either Kibble, Lin or Lin’s assistant when he needed more
24 representative or office codes in order to continue facilitating additional market
25 timing of trades. Kibble and Lin authorized NCC personnel to provide the Boca
26 Raton correspondent client with at least 25 representative codes for the five
27 registered representatives working for the Boca Raton correspondent client.
28 Additionally, on several occasions, including as late as September 5, 2003, Kibble

1 provided the Boca Raton correspondent client with different office codes, even
2 though he knew that client only operated out of one office.

3 45. Kibble communicated concerns he had about continued market timing
4 to Lewis and Lin. Specifically, in an October 16, 2002, e-mail to Lewis and Lin,
5 Kibble stated:

6 I have mentioned this point regarding mutual fund market-timing
7 before; yet I think it bears repeating. I caution against [NCC]
8 believing it will continue to receive significant revenue from market-
9 timers over the medium to long-term. The restrictions that more and
10 more companies place on market-timing continue to increase. The
11 fund companies put a great deal of effort into finding and restricting
12 accounts. They watch for broker-dealers that allow clients to market-
13 time. They are increasingly aware of [NCC] and the market-timing
14 our clients have been doing. [NCC mutual fund department
15 personnel] are on the telephone with fund companies every morning
16 trying to talk our way out of further restrictions and other threats from
17 the fund companies. . . .

18 46. In a June 26, 2003 e-mail to the Swiss money management firm, and
19 copied to Lin regarding NCC's increasing inability to facilitate market timing
20 activities due to the funds' restrictions, Kibble stated:

21 It is correct that the number of trade rejects and fund restrictions for
22 your accounts have increased over time. It is also correct that clients'
23 trading patterns have led to the rejections and restrictions. We share
24 your concern. Thus we continually look for ways to increase the
25 executions and decrease the restrictions. We have taken steps such as
26 opening multiple accounts for each of your clients to reduce the size of
27 the trades and changing office codes and rep numbers [sic]. These
28 steps yield more execution than you would receive without them; yet,

1 the problem you describe still exists.

2 47. Similarly, in an August 7, 2002 e-mail to Lewis and forwarded to Lin
3 regarding the same issues, Kibble wrote:

4 In the conference call with [the London Adviser] yesterday, we gave
5 them our primary recommendation to minimize the number of funds
6 that may restrict them due to market-timing. As I mentioned to you a
7 few days ago, that recommendation is for them to periodically choose
8 new fund families in which they would like to invest. Unfortunately,
9 they said that will not help them greatly, because they are only willing
10 to market-time international funds that are large enough to handle the
11 high dollar amount of their trades without charging a redemption fee.
12 Hence, they have restricted their market-timing “universe” to
13 approximately 60 funds. Next, [The London Adviser] and we decided
14 to change the rep numbers on each of their accounts so that each
15 would be different, in an attempt to reduce restrictions. Similarly, we
16 decided to send new trades for some of their accounts with the
17 accounts changed to the client name, rather than [NCC’s] name.

18 48. As a result of increased market timing restrictions imposed on NCC by
19 the mutual funds, in May 2003, NCC began negotiating with a trust company to
20 clear additional mutual fund trades. NCC knew that this additional platform could
21 provide clearing services to its Boca Raton correspondent client and other
22 institutional customers without mutual funds making the connection between this
23 activity and NCC. Defendant Kibble sent an e-mail to NCC’s head of information
24 technology in order to begin the process of connecting NCC to the trust company’s
25 back office system. In that e-mail, Kibble stated that clearing trades through the
26 trust company would “provide more trade executions and fewer rejections to the
27 [correspondent] client.”

28 49. NCC also negotiated timing capacity on behalf of its Boca Raton

1 correspondent client and the Swiss money management firm with at least one
2 mutual fund even though Kibble and Lin understood that such an arrangement was
3 inconsistent with that fund's disclosure in its prospectuses about its market timing
4 policies. In a June 26, 2003 e-mail to the Boca Raton correspondent client, Kibble
5 stated:

6 We have negotiated with fund companies in an effort to reach an
7 agreement that would allow you the number of round trips per month
8 you request. However, thus far, such discussions have not shown
9 promise, with the exception of high yield funds. We have arranged
10 with one major fund company for you to be able to buy into a high
11 yield fund and make eight round trips per year.

12 Likewise, in an August 7, 2002 e-mail to Lewis, Kibble indicated that he took steps
13 to negotiate capacity on behalf of the Swiss money management fund, stating:

14 . . . per your [Lewis'] suggestion, Jonathan and I have been calling a
15 few, large fund companies to explore establishing a special
16 arrangement allowing JB Oxford [NCC] to do some market-timing
17 (e.g., one round trip per fund per week of 10MM) [sic]. That could
18 significantly help. We do not yet have answers to report.

19 **E. JBOH Reports As Revenues Fees Received By NCC Based On Its**
20 **Facilitation Of Late Trading And Market Timing**

21 50. JBOH prepared its financial statements included in its Forms 10-Q for
22 the second quarter of 2002 through the third quarter of 2003 and its 2002 and 2003
23 Forms 10-K filed with the Commission on a consolidated basis. JBOH thus
24 reported as revenues the almost \$1 million in proceeds NCC received from
25 compensation arrangements with its institutional customers who engaged in late
26 trading and market timing. Lewis signed JBOH's 2002 and 2003 Forms 10-K filed
27 with the Commission in his capacity as a member of the board of directors.

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1 **FIRST CLAIM FOR RELIEF**

2 **FRAUD IN THE OFFER OR SALE OF SECURITIES**

3 **Violations of Section 17(a) of the Securities Act**

4 **(Against All Defendants)**

5 51. The Commission realleges and incorporates by reference ¶¶ 1 through
6 50 above.

7 52. The Defendants, and each of them, by engaging in the conduct
8 described above, directly or indirectly, in the offer or sale of securities by the use of
9 means or instruments of transportation or communication in interstate commerce or
10 by use of the mails:

- 11 a. with scienter, employed devices, schemes, or artifices to
12 defraud;
- 13 b. obtained money or property by means of untrue statements of a
14 material fact or by omitting to state a material fact necessary in
15 order to make the statements made, in light of the circumstances
16 under which they were made, not misleading; or
- 17 c. engaged in transactions, practices, or courses of business which
18 operated or would operate as a fraud or deceit upon the
19 purchaser.

20 53. By engaging in the conduct described above, each of the Defendants
21 violated, and unless restrained and enjoined will continue to violate, Section 17(a)
22 of the Securities Act, 15 U.S.C. § 77q(a).

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1 **THIRD CLAIM FOR RELIEF**

2 **IMPROPER LATE TRADING**

3 **Violation of Rule 22c-1 Promulgated Under**
4 **Section 22(c) of the Investment Company Act**
5 **(Against Defendant NCC)**

6 57. The Commission realleges and incorporates by reference ¶¶ 1 through
7 50 above.

8 58. In all instances of late trading alleged above, NCC was a dealer in the
9 mutual fund's securities and was designated in the mutual fund's prospectus as
10 authorized to consummate transactions in the mutual fund's securities.

11 59. Defendant NCC, by engaging in the conduct described above, sold,
12 redeemed, or repurchased securities of registered investment companies at prices
13 not based upon the current net asset value of each such security next computed
14 after receipt of a tender of such security for redemption or of an order to purchase
15 or sell such security.

16 60. By engaging in the conduct described above, Defendant NCC violated,
17 and unless restrained and enjoined will continue to violate, Rule 22c-1, 17 C.F.R. §
18 270.22c-1, promulgated under Section 22(c) of the Investment Company Act of
19 1940, 15 U.S.C. § 80a-22(c).

20 **PRAYER FOR RELIEF**

21 WHEREFORE, the Commission respectfully requests that the Court:

22 **I.**

23 Issue findings of fact and conclusions of law that the defendants committed
24 the alleged violations.

25 **II.**

26 Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently
27 enjoining each Defendant and his or its officers, agents, servants, employees and
28 attorneys, and those persons in active concert or participation with any of them,

1 who receive actual notice of the order by personal service or otherwise, and each of
2 them, from violating Section 17(a) of the Securities Act and Section 10(b) of the
3 Exchange Act and Rule 10b-5 thereunder, and also permanently enjoining NCC
4 from violating Rule 22c-1 promulgated under Section 22(c) of the Investment
5 Company Act.

6 **III.**

7 Enter an order, pursuant to Section 20(e) of the Securities Act, 15 U.S.C. §
8 77t(e), and Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2),
9 prohibiting Defendant Lewis from acting as an officer or director of any issuer that
10 has a class of securities registered pursuant to Section 12 of the Exchange Act, 15
11 U.S.C. § 781, or that is required to file reports pursuant to Section 15(d) of the
12 Exchange Act, 15 U.S.C. § 78o(d).

13 **IV.**

14 Order each Defendant to disgorge all ill-gotten gains from his or its illegal
15 conduct, together with prejudgment interest thereon.

16 **V.**

17 Order the Defendants to pay civil penalties under Section 20(d) of the
18 Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15
19 U.S.C. § 78u(d)(3), and additionally order Defendant NCC to pay a civil penalty
20 under Section 42(e)(1) of the Investment Company Act, 25 U.S.C. § 80a-41(e)(1).

21 **VI.**

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

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VII.

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

DATED: August 24, 2004

Jessica Rigley Marren
Attorney for Plaintiff
Securities and Exchange Commission