

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

INVEST BETTER 2001, COLE A. BARTIROMO,
and JOHN and JANE DOES 1-10,

Defendants.

01 Civ. 11427 (BSJ)

FIRST AMENDED
COMPLAINT

COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission"), for its Complaint against Defendants Invest Better 2001 ("IB2001") and Cole A. Bartiromo ("Bartiromo"), IB2001's controlling person and principal, and John and Jane Does 1-10 ("Does 1-10") (collectively, the "Defendants"), alleges as follows:

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U.S. DISTRICT COURT
S.D. OF N.Y.
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SUMMARY

1. The Commission brings this action in response to several fraudulent and unregistered offerings of securities, in the form of notes, investment contracts or other evidence of indebtedness (the "securities") reflecting investments in at least four investment programs (the "Investment Programs") offered by Defendants IB2001, Bartiromo and Does 1-10. Through advertisements and solicitations on the Internet, the Defendants promised investors astronomical, short-term investment yields by promising to return between 125% and 2500% of investor principal over very short periods – between three days and several weeks – while also promising that the investments are "risk-free" and "guaranteed." Defendants IB2001, Bartiromo and Does

1-10, who are other yet unidentified persons behind IB2001, represented to investors and potential investors that IB2001 can provide such extraordinary, risk-free profits, by pooling investors' funds and betting on sporting events. The representations by Defendants IB2001, Bartiromo and Does 1-10 that the offered securities are risk-free or guaranteed are false, because instruments promising such extraordinary yields, and instruments that are based on gambling to generate profit, cannot be risk-free. The Defendants conducted their fraudulent offering of unregistered securities from approximately November 1, 2001 through approximately December 15, 2001, and have sold such securities to an undetermined number of investors. The Defendants principally solicited investors and potential investors through a website bearing IB2001's name ("IB2001 website") and bulletin boards and web pages on the Microsoft Corporation's MSN Network ("IB2001 bulletin board" or "MSN bulletin board"). In addition to being fraudulent, the offerings of securities by the Defendants are not registered with the Commission. Through their fraud, Defendants have raised at least \$900,000 from a least one thousand investors.

2. Defendants IB2001, Bartiromo and Does 1-10, directly and indirectly, violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a), 77e(c), and 77q(a), and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5.

3. Unless Defendants IB2001, Bartiromo and Does 1-10 are temporarily, preliminarily, and permanently enjoined, they will engage in the transactions, acts, practices and courses of business of a similar type and object.

JURISDICTION

4. The Commission brings this action pursuant to authority conferred by Section

20(b) of the Securities Act, 15 U.S.C. § 77t(a), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), seeking to permanently enjoin Defendants IB2001, Bartiromo and Does 1-10 from engaging in the wrongful conduct alleged in this complaint. The Commission also seeks a final judgment ordering the Defendants to disgorge their ill-gotten gains and to pay prejudgment interest thereon, and ordering the Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d). The Commission also seeks during the pendency of this action an order directing Defendants IB2001 and Bartiromo to repatriate assets, freezing the assets of Defendants IB2001 and Bartiromo, directing that Defendants IB2001 and Bartiromo provide an accounting, and providing for expedited discovery and preventing the destruction of documents.

5. This Court has jurisdiction over this action, and venue lies in this District, pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Sections 21(d), 21(e) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 77u(e) and 78aa.

6. The Defendants, directly or indirectly, singly or in concert, have made use of the means or instrumentalities of transportation or communication in, or the instrumentalities of, interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

7. Certain of the transactions, acts, practices and courses of business constituting the violations alleged herein occurred within the Southern District of New York, including the use of computer servers in this District to host IB2001's website, the solicitation of investors and potential investors residing in this District, and the maintenance of telephone numbers in the (914) area code, which is in this District, by Defendants IB2001, Bartiromo and Does 1-10.

THE DEFENDANTS

8. Defendant IB2001 is an entity that until Monday, December 3, 2001, operated a website, hosted by a server in New York City, and subsequently operated, a bulletin board at the MSN Networks Communities website. Through the website and bulletin board, Defendants IB2001, Bartiromo and Does 1-10 offered to investors and potential investors guaranteed exorbitant returns on short-term investments in IB2001's Investment Programs. The website provided an email address to contact Defendant IB2001, but provided no address or telephone number. ZoneEdit, Inc., a company located at 111 Broadway, 11th Floor, New York, New York 10006, hosted Defendant IB2001's website.

9. Defendant Bartiromo, a 17-year-old high school student residing in Mission Viejo, California, is the principal and controlling person behind Defendant IB2001. Bartiromo organized, created and maintained Defendant IB2001's website and Defendant IB2001's bulletin board on the MSN Network Communities website. Bartiromo orchestrated the offering fraud that is the subject of this complaint and obtained ill-gotten gains from defrauded investors in excess of \$900,000.

10. Defendants Does 1-10 are unknown individuals and/or groups of individuals responsible for, and/or controlling, the Investment Programs offered by Defendants IB2001 and Bartiromo, and the IB2001 website and/or bulletin board. Defendants Does 1-10 include individuals, in addition to Bartiromo, who are responsible for maintaining, organizing and funding the IB2001 website and bulletin board, as well as those persons responsible for constructing and advertising the Investment Programs offered by IB2001.

**THE FRAUDULENT AND
UNREGISTERED SECURITIES OFFERINGS**

11. From approximately November 1, 2001, through approximately December 15, 2001, the Defendants, through the IB2001 website and bulletin board, offered investments into four Investment Programs. The Investment Programs were short-term investments, with terms from three days to several weeks depending upon the program, and promised exorbitant returns ranging between what IB2001 characterizes as 125% and 2500%. Although it is not entirely clear from the IB2001 website or bulletin board, it appears that, actually, Defendant IB2001 did not promise an interest yield of 125% to 2500%, but instead promised to remit to investors a single payment equal to 125% to 2500%, of their investment principal after the specified duration of time.

12. The Defendants, through representations on the IB2001 website and bulletin board, represented to investors that the investments in, and returns from, the four Investment Programs were safe and guaranteed. For example, in program descriptions on the IB2001 website and bulletin board, IB2001 stated, under the heading “DISCLAIMERS AND AGREEMENTS,” that “there is no risk involved, your investments are safe and guaranteed the return we offer [sic].” Elsewhere in the same passage, IB2001 boasted that “Investments are GUARANTEED and are risk-free.” (capitalization in original).

13. On the IB2001 website and bulletin board, the Defendants represented that IB2001 “is already the #1 investment service in existence and we are [sic] continuing to rapidly grow with new program releases, multiplying members and investors and the best customer service possible.”

14. For all of IB2001's Investment Programs, the Defendants placed no limitations on the number of investors that could invest in an Investment Program, the residence of an investor, the amount of an investor's investment and the amount of monies that IB2001 was seeking to raise for the Investment Program.

15. The four Investment Programs offered by the Defendants through the IB2001 website and bulletin board were as follows:

- **"125% 3 Day Ongoing Program."** Through this program, IB2001 guaranteed a 125% return after a three-day investment. There was no minimum or maximum investment in this program, just a guarantee that three days after the investment was made, 125% of the investment would be paid out.
- **"250% 1 Week Ongoing Program."** Through this program, IB2001 guaranteed a 250% return after a one-week (5-7 days) investment. The minimum investment in the one-week program was \$50 and there was no maximum investment.
- **"1250% 1 Month Program."** Through this program, IB2001 guaranteed a 1250% return after a one-month investment. Defendant IB2001 stated that investors could invest "any amount from \$50 and up" and were to be "returned 1250% on your investment exactly one month from when you invest."
- **"2500% Christmas Miracle Program."** IB2001 guaranteed a 2500% return for monies invested between November 10, 2001, and December 15, 2001. IB2001 represented to investors that money invested during that time frame would pay a return of 2500% commencing December 26, 2001. The minimum investment for the Christmas Miracle Program was \$100 and there was no maximum investment.

16. The Defendants represented that IB2001 generated profits for the Investment Programs and Christmas Miracle Program by pooling investors' money and placing "safe bets" with three online sportsbooks. IB2001 maintained that its team of bettors was "flawless in this sort of betting." IB2001 suggested that it used a "formula for success" also employed by "Las Vegas and the Casinos and Sportsbooks [to] make their billions." IB2001 shared in the winnings of the pooled bets after making payments to investors.

17. The Defendants instructed investors to invest funds in its Investment Programs by making payments to one of Defendants' accounts with various Internet-based payment services that provide for money transfers and payment on the Internet. The Defendants instructed investors and potential investors to send funds and make payments to IB2001 through the payment services Osgold, E-gold, Evocash, and Paypal. By transferring funds to accounts maintained by IB2001 at those payment services, the Defendants represented that the investor "established" an account with IB2001. Each investor's investment in IB2001 was a note, investment contract or other evidence of indebtedness. On its website and bulletin board, IB2001 did not explain how payments were made from IB2001 to the investors.

18. The Defendants also represented on the IB2001 website and bulletin board that Defendant IB2001 had a referral program whereby anyone that introduced a new member to the website would receive 10% of the initial investment of the new participant. Additionally, Defendant IB2001 offered a "Premium Investor's Class" for those individuals wishing to invest \$25,000 or more. The Defendants represented that such investors would receive an even larger rate of return. As of December 3, 2001, the IB2001 website and bulletin contained representations by the Defendants claiming that there were three members in this class.

19. The representations described in paragraphs 1 and 11 through 18 were materially false and misleading as the investments in, and return on investments from, the four Investment Programs offered by the Defendants had risk and were not risk-free or guaranteed. Among other things, gambling by its very nature requires the undertaking of risk, and IB2001 could not provide risk-free exorbitant returns on investments in the Investment Programs by betting on sporting events. In addition, it is economically not feasible for an issuer of fixed-income instruments to provide exorbitant short-term financial returns, in an open-ended offering, which are "risk-free." The investment terms offered by the Defendants -- short-term, fixed-financial returns, that were both exorbitant and risk-free -- were patently fraudulent and, in the past, have been offered only in fraudulent schemes, such as Ponzi or Prime Bank.

20. When making the misrepresentations described in paragraphs 1 and 11 through 19, the Defendants knew or should have known, or were reckless in not knowing, that they were false.

21. Through the above-described Investment Programs, Defendants IB2001, Defendant Bartiromo and Does 1-10 have raised more than \$900,000 from at least one thousand investors. In December 2001, Defendant Bartiromo arranged the electronic transfer of at least \$900,000 of ill-gotten gains to an account, controlled by Defendant Bartiromo, at a casino in Costa Rica.

FIRST CLAIM FOR RELIEF

Violations of Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c)

22. The Commission repeats and realleges the allegations contained in Paragraphs 1

and 8 through 21 by reference as if fully set forth herein.

23. As described in paragraphs 1 and 8 through 21, the Defendants, directly or indirectly, have made use of the means or instruments of transportation or communication in interstate commerce, or of the mails to:

a. sell securities in the form of notes, investment contracts and/or other evidence of indebtedness on a website and bulletin board on the Internet when no registration statement was in effect as to such offerings of securities;

b. carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation for the purpose of sale or delivery after sale, securities in the form of notes, investment contracts, and/or other evidence of indebtedness, when no registration statement was in effect as to such offerings of securities; or

c. offer to sell or offer to buy through the use or medium of any prospectus or otherwise, securities in the form of the notes, investment contracts and/or other evidence of indebtedness, when no registration statement was filed as to such offerings of securities.

24. By reason of the acts, practices, and courses of business set forth in this complaint, the Defendants violated and, unless restrained and enjoined, will again violate, Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

SECOND CLAIM FOR RELIEF

Violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

25. The Commission repeats and realleges the allegations contained in Paragraphs 1 and 8 through 21 by reference as if fully set forth herein.

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

27. As part of and in furtherance of this violative conduct, the Defendants, directly or indirectly, made the representations and omitted to state the facts alleged in paragraphs 1 and 8 through 21 above.

28. The false statements and omissions made by Defendants, more fully described in paragraphs 1 and 8 through 21, above, were material.

29. The Defendants knew, or were reckless in not knowing, that the material misrepresentations, more fully described in paragraphs 1 and 8 through 21 above, were false or misleading.

30. By reason of the acts, omissions, practices, and courses of business set forth in this Complaint, the Defendants have violated and, unless restrained and enjoined, will again violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission respectfully requests that this Court grant:

I.

Orders temporarily and preliminarily, and Final Judgments permanently, restraining and enjoining the Defendants, their agents, servants, employees, attorneys in-fact, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c), and 77q(a), and 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.

An Order directing that the assets of Defendants IB2001 and Bartiromo be frozen (to the extent of the funds raised by them from investors).

III.

An Order directing Defendants IB2001 and Bartiromo to each file with this Court and serve upon the Commission, within twenty business days, or within such extension of time as the Commission agrees in writing or as otherwise Ordered By the Court, verified written

accountings, signed by each of them under penalty of perjury.

IV.

An Order directing Defendants IB2001, Bartiromo and Does 1-10 to repatriate assets held overseas.

V.

An Order Permitting expedited discovery.

VI.

An Order enjoining and restraining the Defendants, and any person or entity acting at their direction or on their behalf from destroying, altering, concealing, or otherwise interfering with the access of the Commission to relevant documents, books and records.

VII.

A Final Judgment requiring the Defendants to disgorge their ill-gotten gains from the fraudulent conduct alleged in this complaint, and to pay prejudgment interest thereon.

VIII.

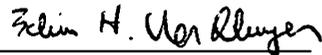
Final Judgments imposing against the Defendants civil monetary penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d), for the violations alleged herein.

IX.

Such other and further relief as the Court deems appropriate.

Dated: January 7, 2002
New York, New York

Respectfully Submitted,



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