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CHARLOTTE, N. C.

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U. S. DISTRICT COURT
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JAMES A. NIES,
JEFFREY DENE LEADER and
HOWARD DALTON DAVLIN,

Defendants.

Civil Action No. 3:00cv465MU

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against James A. Nies ("Nies"), Jeffrey Dene Leader ("Leader") and Harold Dalton Davlin ("Davlin"), alleges the following:

SUMMARY

1. This matter involves the fraudulent exercise of stock subscription rights by three registered representatives of a broker-dealer registered with the Commission in connection with at least 17 mutual thrift bank conversions. From early 1995 through early 1997, Nies, Leader and Davlin defrauded Home Federal of North Carolina ("HFNC"), as well as at least 16 other financial institutions in 11 states, and their account holders, through a fraudulent scheme in which Nies, Leader and Davlin orchestrated the purchase of stock issued by the banks as part of the banks' conversion from mutually owned banks to publicly traded companies.

2. Under applicable federal and state banking regulations, when a savings and loan association (“S&L”), savings bank or thrift converts to a publicly traded company, account holders (“depositors”) are given the first opportunity to purchase stock, but are prohibited from transferring their stock purchase rights or entering into pre-issuance arrangements to sell the stock. The conversions of S&Ls and savings banks from mutual thrifts to stock banks provided highly successful investment opportunities in the early and mid-1990s, with the stock of most converting thrifts trading at a substantial premium in the aftermarket.

3. Nies, Leader and Davlin, all registered representatives, orchestrated the fraudulent scheme through purchase of conversion stock by submitting Stock Order Forms to the converting thrifts in the names of eligible thrift depositors, which did not disclose the fact that the defendants, or other ineligible persons, were funding the stock purchase and would retain sole discretion to sell the stock. Had the banks known about the unlawful and fraudulent transfer of subscription rights, they would not have allowed the sales of the securities to proceed because such sales violated federal and state banking regulations. As most of the conversions were over-subscribed, the sales to Nies and Leader and their ineligible customers prevented many of the banks’ eligible depositors from receiving all of the shares they were entitled to receive.

4. Nies, Leader and Davlin fraudulently acquired the nontransferable subscription rights of certain account holders in the various financial institutions by improper solicitation and/or forgery. They established nominee accounts in the names of eligible account holders, and made unauthorized purchases of conversion stock through those accounts for the benefit of themselves and their brokerage customers. They established nominee accounts in the names of close personal

friends through which to process the stock on receipt from the various banks.

5. The defendants have engaged in, and unless enjoined, will continue to engage, directly or indirectly, in transactions, acts, practices, and courses of business that operated or would have operated as a fraud in connection with the purchase or sale of securities in violation 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].

6. Defendants' violations described herein involved fraud, deceit and deliberate or reckless disregard of regulatory requirements, and such violations directly and indirectly created a significant risk of substantial losses to the investing public.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa].

8. Venue lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Certain of the transactions, acts, practices and courses of business alleged herein occurred in Charlotte and within the Western District of North Carolina.

9. Each of the defendants, alone and in concert, directly and indirectly, has made use of the means and instrumentalities of interstate commerce and of the mails in connection with the acts, practices, transactions and courses of business described in this Complaint.

10. The Commission brings this action pursuant to the authority conferred on it by Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], seeking to permanently enjoin Nies, Leader and Davlin from engaging in the wrongful conduct alleged in this Complaint.

11. The Commission seeks an accounting, disgorgement of ill-gotten gains and pre-judgement

interest thereon from Nies, Leader and Davlin, as well as civil penalties as provided by Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

THE DEFENDANTS

12. Defendant James A. Nies ("Nies") lives in San Francisco, California. He was employed as a registered representative in the Charlotte, North Carolina office of Interstate/Johnson Lane ("Interstate"), now Wachovia Securities, Inc., a registered broker-dealer, from January 1995 to August 1997.

13. Defendant Jeffrey Dene Leader ("Leader") lives in New York, New York. He was employed as a registered representative in the Charlotte, North Carolina office of Interstate from May 1995 until April 1997.

14. Defendant Harold Dalton Davlin ("Davlin") lives in Annapolis, Maryland. He was employed as a registered representative in the Charlotte, North Carolina office of Interstate from September 15, 1993 to October 18, 1995, and in the Washington D.C. office of Capital Resources, Inc., a registered broker-dealer, from December 4, 1995 to April 1, 1996.

FACTS

15. S&Ls and savings banks are either mutual associations ("mutual thrifts"), owned by their depositors, or capital stock companies ("stock banks") owned by shareholders. A mutual thrift converts to a stock bank by selling shares of stock in the bank through a highly regulated process to ensure that conversions will benefit the converting entity, its members and the general public. Regulations promulgated by federal and state agencies, and in place during all times relevant to his complaint, govern conversion procedures.

16. The Office of Thrift Supervision (“OTS”) is responsible for the chartering, supervision and regulation of S&Ls. When federally chartered S&Ls seek to convert from mutual to stock ownership, OTS approval is required. An OTS regulation [12 C.F.R §563b.3(c)] requires, among other things, that eligible account holders be given non-transferable subscription rights entitling them to purchase conversion stock before the general public. Section 563b.3(i)(1) prohibits transfer of, or agreements or understandings to transfer, the legal or beneficial ownership of subscription rights. Section 563b.3(i)(2) prohibits offers to buy the stock prior to the completion of a conversion.

17. Beginning at least in early 1995, Nies and Leader began to follow banks that were likely to convert from mutual thrifts to stock banks. They contacted depositors in the thrifts to encourage them to open an account at Interstate and to purchase stock in the conversion.

18. Some depositors did not intend to purchase conversion stock, or could not afford to purchase as much stock as they were eligible to purchase. Nies and Leader began to match such depositors with investors who were not eligible to purchase conversion stock.

19. This developed into an elaborate fraudulent scheme to purchase shares in mutual thrift conversion offerings for themselves or certain customers who were not legally entitled to do so.

20. If the depositors, who held non-transferable subscription rights, did not intend to purchase stock or to purchase all they were entitled to purchase, then Nies and Leader persuaded them to submit stock applications maximizing their purchase and to give up their subscription rights.

21. Nies and Leader paid some of the depositors a percentage of the profits earned after conversion.

22. The converting mutual thrifts provided Stock Order Forms and prospectuses to their

depositors. Nies and Leader instructed the thrift depositors to sign blank Stock Order Forms which Nies and Leader completed and then submitted to the thrift.

23. In every case, the Stock Order Form included a restrictive legend representing that the stock was being purchased by and for the depositor.

24. The language of the Home Federal of North Carolina ("HFNC") Stock Order Form was typical: "Federal regulations prohibit any person from transferring, or entering into any agreement directly or indirectly to transfer, the legal or beneficial ownership of subscription rights or the underlying securities. . . . HFNC Financial Corp. . . . will not honor orders known by them to involve such transfer."

25. The prospectuses also state that the Office of Thrift Supervision ("OTS") regulations prohibit a qualified depositor from transferring or entering into an agreement to transfer the ownership of these subscription rights or the securities until the close of the subscription offering. Offering materials from all converting thrifts set forth below contained similar language.

26. To purchase the conversion stock, Nies and Leader received money from individuals, who were ineligible to purchase the stock, and transferred the money together with the Stock Order Form to the converting thrift.

27. The bank issued the stock in the name of the eligible depositor and sent the stock certificate, as requested in the Stock Order Form, to Nies or Leader.

28. Nies or Leader then transferred the stock, by means of a Letter of Authorization ("LOA"), to the account of an individual who was not eligible to purchase the conversion stock.

29. To accomplish the fraudulent scheme, Nies and Leader used nominee bank and brokerage

accounts, accounts in the names of personal friends, but over which Nies and Leader exercised control. Nies and Leader often deposited money they received from ineligible investors in nominee bank accounts in the names of, Nies's live-in girlfriend, Leader's fiancée, and a close family friend of Leader. Money received in these three accounts often was used to purchase conversion stock.

30. After the bank issued the stock in the name of an eligible depositor, Nies and Leader used nominee brokerage accounts, also in the names of their girlfriends and Leader's family friend, through which to process the stock.

31. Initially, the nominee brokerage accounts were at Interstate; however, by the end of 1995, Nies and Leader established nominee accounts at North American Institutional Brokers ("NAIB") in Fort Lauderdale, Florida for their girlfriends, as well as Davlin.

32. Nies controlled transactions in his girlfriend's and Davlin's accounts and Leader controlled his fiancée's and his family friend's NAIB accounts.

33. Nies and Leader opened NAIB accounts for 14 of their Interstate customers. They submitted account opening documentation. Some of the customers' signatures were forged.

34. Nies and Leader transferred stock purchased by eligible depositors into these NAIB accounts, where it was generally sold, by means of LOAs, for a profit. Nies and Leader transferred the profits from these transactions to investors who had not been eligible to purchase the stock or into their nominees' bank accounts, which the two controlled.

35. Nies and Leader used LOAs, a form printed from Nies's computer, to deposit stock to the account of a customer or to move the shares from one brokerage account to another. The typical LOA packet contained the stock certificate, stock power, and an LOA to deposit the stock into the

account of the person named on the certificate or into one of the nominee accounts. It usually included an LOA to transfer shares from the original account to one or more additional accounts, and often included an LOA to sell the shares.

36. Nies and Leader either had the customer sign, or forged their signatures to the documents. They frequently forged the signatures of their three nominees to LOAs that were used to transfer stock. Nies also forged the signatures of his girlfriend's mother and stepfather.

37. At the same time or later Nies or Leader would send NAIB an LOA to wire transfer funds from the sale of the stock to the personal bank accounts of either the customer or to one of the nominee bank accounts.

38. Davlin played a smaller but significant role in the scheme. When he first met Nies at Interstate, Davlin was an inexperienced broker, who was struggling to develop his business.

39. Nies mentored Davlin and encouraged him to get involved in the "playing" or "facilitating" of S&L conversions. Davlin attempted to build his business by soliciting individuals who held accounts at S&Ls; however, he was largely unsuccessful.

40. After Davlin was terminated by Interstate in October of 1995, he continued working for Nies by opening accounts at approximately a dozen S&Ls. Nies paid Davlin \$150 to open one account and \$250 if he opened two accounts at the same S&L.

41. Many S&Ls required their eligible depositors to be residents of a local area. To circumvent the residency requirement, Davlin often changed his drivers' license to show a new address. Davlin was, in fact, convicted in Wilson County, North Carolina, for filing a false affidavit in connection with obtaining a driver's license with a false address.

SPECIFIC FRAUDULENT PURCHASES OF CONVERSION STOCK

Home Federal of North Carolina

42. The most ambitious, complicated and profitable of the fraudulent conversions was HFNC. Nies and Leader sent Stock Order Forms to HFNC representing that stock was being purchased for the benefit of the eligible depositors only and that no arrangements to transfer the stock had been made. These representations were false.
43. Nies and Leader lined up eligible depositors and investors several months prior to the December 28, 1995, Initial Public Offering ("IPO") date. In addition to the nominee accounts of their girlfriends and Leader's family friend, Nies and Leader used the 14 newly established NAIB accounts of their customers, (six HFNC depositors and eight ineligible investors). A total of 266,319 shares of HFNC conversion stock were received into those NAIB accounts.
44. Nies and Leader each orchestrated the purchase of HFNC stock by several eligible depositors and the transfer of that stock to ineligible investors. Nies and Leader received ill-gotten gains from these transactions of at least \$191,000 and \$150,000 respectively.
45. In early September 1995, Nies invited a local tennis professional to work evenings as a part-time assistant for him. The assistant learned about the HFNC conversion and asked Nies about it. Nies told the assistant that he "was going to make a lot of money on the deal" and that he and Leader were going to be "taking down" a large block of the HFNC stock, controlling, in fact, about five percent of the stock. Nies and Leader told the assistant not to discuss their activities with anyone at Interstate because this was their unique niche and they did not want anyone in the office copying them.

46. The assistant asked Nies if he could purchase some of the HFNC stock. Nies told the assistant to give him a cashier's check before the deadline and he would "take care of it." The assistant, using borrowed family money, purchased a cashier's check made out to HFNC in the amount of \$228,500.

47. Upon receiving the cashier's check, Nies asked the assistant to sign an Agreement stating that he had "loaned" \$228,500 "for the purpose of purchasing up to 22,850 shares" of HFNC stock. Nies explained that the money was technically a loan but the Agreement was blank with respect to the identity of the borrower of the assistant's funds. The Agreement further specified that, upon the purchase of the stock, the borrower would deliver the stock to the assistant and that the assistant would pay the borrower \$2,285 or \$0.10 per share.

48. The assistant was one of seven investors who Nies matched with three of his long-time customers who had HFNC accounts. The assistant did not have an account at HFNC and was not eligible to purchase its conversion stock. The assistant has testified that he never saw a prospectus or Stock Order Form and did not know the stock was nontransferable.

49. Nies submitted Stock Order Forms from the HFNC account holders and \$1,685,000 from the investors and one of the account holders, seeking to purchase 168,500 shares of stock. Because the offer was oversubscribed, Nies' customers received a total of 141,231 shares, which he deposited into various accounts that he controlled at NAIB.

50. Nies made numerous transfers of stock among these accounts, the end result being that his girlfriend's account received the largest portion. The proceeds of the sale of HFNC stock in his girlfriend's NAIB account, approximately \$770,000, were wired to her bank account.

51. From these funds, Nies' girlfriend, acting on Nies' instructions, wrote various checks including a check for over \$60,000 to purchase a Porsche for Nies. Remaining funds were disbursed to several of the ineligible investors who purchased HFNC through Nies.

52. Nies' girlfriend and Leader's fiancée did not open the NAIB accounts in their own names. They learned of the accounts after they were opened but generally did not see the account statements.

53. In October 1995, Leader held a meeting at a Charlotte restaurant for HFNC depositors who might be interested in participating in the upcoming conversion. At that meeting, Leader met a young man whose mother had accounts at HFNC.

54. Leader gave the man two documents for his mother to sign; one to add the son to the mother's account and a blank Stock Order Form. After the meeting, the man delivered the signed documents to Leader, along with a cashier's check for \$50,000. Leader determined which of the mother's accounts they would use. He told the young man that he would handle everything including purchasing the conversion stock, selling the stock and sending him a check.

55. Leader raised an additional \$550,000 from five other investors and submitted the Stock Order Form and checks to HFNC, which then issued a stock certificate for 60,000 shares in the mother's name.

56. In early January, Leader sent the stock certificate to NAIB together with an LOA, signed by young man, to transfer all 60,000 shares into the name and account of his family friend, and a separate LOA in his friend's name to sell the 60,000 shares. Leader also sent instructions in his friend's name to wire the profits from the sale, which totaled \$188,400, into her bank account.

57. Leader's family friend was unaware of any account in her name at NAIB. Her account statements were sent to Leader's home address.

58. Leader decided to cut some of the investors out of any profits so he lied to three of the five investors, telling them that he had been unsuccessful in getting any HFNC stock. He returned their money plus a small amount of interest. Leader personally profited by approximately \$150,925 on this transaction.

59. Leader coordinated another transfer of HFNC stock using the account of his fiancée's stepfather, a HFNC depositor. Leader paid the stepfather approximately \$350 to act as "facilitator" for him during the conversion.

60. Leader submitted \$200,000 and a Stock Order Form in the stepfather's name and requesting 20,000 shares of HFNC stock. The funds accompanying the order came from two of Leader's Interstate customers. After the shares were issued in the stepfather's name, Leader transferred them into his family friend's NAIB account.

61. Although all of the profits from this transaction were given to Leader's two customers, he, nevertheless, benefited from their future goodwill.

Catskill Financial Corp.

62. In December 1995, a few months after Davlin was terminated by Interstate, with Nies's encouragement, he obtained employment at Capital Resources, a broker-dealer that specialized in managing mutual thrift conversions.

63. Early in 1996, Davlin was assigned by Capital Resources to work on site at Catskill Savings Bank, in preparation for its conversion to Catskill Financial Corporation ("Catskill"). At the bank,

Davlin had access to the list of individuals who were eligible to purchase stock in the Catskill conversion and in January 1996 provided Nies with a list of the depositors in North and South Carolina and a Catskill Stock Order Form.

64. Thereafter, Nies told Davlin that he prospected the individuals on the list but that he “didn’t have any success.” Among the depositors on the list contacted by Nies were a South Carolina couple. Nies told Davlin that the couple “were asleep at the wheel” and that he intended to “play this thrift conversion without their knowledge.”

65. Nies submitted Stock Order Forms to Catskill, on which he had forged the couple’s signatures, along with funds to purchase conversion stock for himself and Leader.

66. Using the couple’s account information, Nies submitted Stock Order Forms, on which he had forged their signatures, to fraudulently purchase 39,000 shares of stock at \$10 per share for himself and Leader.

67. Leader convinced one of his customers to put up \$200,000 to buy Catskill stock. Nies was responsible for the remaining \$190,000.

68. The Catskill Stock Order Forms included a restrictive legend similar to that of HFNC. The Catskill Prospectus further stated: “Persons found to be involved in the transfer of Subscription Rights may be subject to substantial federal penalties and sanctions.”

69. Prior to its April 1996 IPO date, Nies and Leader sent Stock Order Forms to Catskill representing that eligible depositors were purchasing stock for their own accounts and that no arrangements to transfer the stock had been made. These representations were false.

70. Funds for the Catskill conversion stock, which accompanied the two orders were deposited

temporarily into an escrow account, and earned interest for the South Carolina couple ultimately triggering the Form 1099INT that revealed the fraudulent scheme.

71. Nies received the interest checks, forged the couple's names to the checks and gave them to Davlin in payment for his providing the list. Davlin deposited the interest payments into his bank account.

72. The Stock Order Forms, bearing the South Carolina couple's names, requested that the stock certificates be sent to CERES Securities, Inc. ("CERES") at a commercial mailbox service located near the Charlotte offices for Interstate. CERES is a registered broker-dealer located in Omaha, Nebraska. CERES has no office or agent in Charlotte.

73. Nies retrieved the Catskill stock certificates for 39,000 shares issued to the Niekamps from the "CERES" mailbox and sent them to NAIB. Nies then prepared forged LOAs to NAIB, with instructions to deposit 19,000 shares of the Catskill stock into his girlfriend's NAIB account and 20,000 shares into Leader's family friend's NAIB account.

74. Leader sold the stock in his friend's account and returned \$200,000 to his customer. Leader told him he was unable to get the stock and kept profits of \$8,750 for himself.

75. Nies received profits of \$8,310 from the Catskill conversion, which were deposited into his girlfriend's bank account.

South Street Financial Corp.

76. In or around September 1996, Nies worked on the South Street conversion in Albemarle, North Carolina. He sent Stock Order Forms to the bank representing that eligible depositors were buying stock for their own accounts, and that no arrangements to transfer the stock had been made.

These representations were false.

77. Nies met with an office manager, a resident of Albemarle, and her employer. The employer was a customer of Nies' who was interested in investing in the South Street conversion although he was not a South Street depositor. Nies told the office manager, whose children had accounts at South Street, that he was with Interstate, that there was going to be an offering of stock to depositors at South Street, and that there would be investors who would like to buy stock through her children's accounts.

78. He explained that certain individuals would "loan" her money to purchase conversion stock. He told her that people were normally compensated with 10 percent of the stock purchased or a percent of the profits for acting as facilitators.

79. The office manager agreed to allow Nies to use her children's accounts, knowing that her employer wanted to invest in the South Street conversion. Nies told her that he would try to get the maximum number of shares he could with the small accounts.

80. The office manager met again with Nies and her employer two weeks later and executed a Stock Order Form and a stock power in blank. The Stock Order Form bore, in the Acknowledgement section, similar language to that of HFNC and Catskill restricting the transfer of subscription rights or the underlying securities.

81. Nies had the office manager also sign an Agreement between her and her employer stating that the employer had loaned her the sum of \$100,000 and that she was using the funds to purchase 10,000 shares of South Street stock. Nies explained to her that the Agreement created a security interest in favor of the employer in the shares to be purchased, and was collateral for a \$100,000

promissory note from the employer payable to her.

82. Nies also instructed the office manager to sign a form purportedly for the purpose of opening an account at Interstate. In fact, that form was used, without her knowledge, to open an account in her name at NAIB.

83. Nies submitted the office manager's Stock Order Form to the bank together with \$100,000 from her employer and \$250,000 from another investor.

84. On September 19, two days after the deadline to complete the subscription, the office manager received a call from Trident Securities, which managed the conversion, telling her she needed to sign an affidavit concerning her stock order. She initially refused to sign the affidavit because it, along with an attachment, stated that the subscription was "solely for the account of the person exercising the rights" and that the affiant was "not acting in concert with any other person in connection with the purchase of these shares. . . ."

85. The office manager called Nies, and told him that Trident had asked her to sign an affidavit she was not comfortable signing. At Nies' request, she faxed the affidavit to him at his office. Nies called her back that afternoon and claimed that he had spoken with the deputy general counsel at Interstate, and that "what was being done was perfectly legal." He told her to go back to the bank and tell them that she had been "advised by my counsel" that she did not have to give them anyone else's name because they were not "acting in concert," but simply granting a loan and that it was for "her own interest." Reassured, the office manager signed the affidavit.

86. The office manager's account at NAIB received 16,297 shares of South Street stock. Nies sent LOAs, purportedly signed by her, to NAIB to transfer 9,900 of those shares to the employer's

account, 2,974 shares to Nies' girlfriend's account, and 3,260 shares to the account of another Nies customer. The office manager denies signing the LOAs.

87. The remaining 163 shares, 10 percent of the 16,297 purchased in the office manager's name, were sold in her account for a profit of \$375, her payment for use of her children's accounts.

88. Nies' girlfriend's NAIB account sold the shares from the office manager realizing a profit of \$7,061. In the absence of an accounting indicating otherwise, these funds are attributed to Nies.

89. Davlin gave Nies \$68,000 thinking that he also was investing in the South Street conversion using the account of this particular depositor. Davlin has admitted that he knew he was not entitled to purchase South Street conversion stock using another depositor's account.

90. Nies accepted the money from Davlin; however, he did not apply it to the South Street conversion. Instead, Nies applied Davlin's money to the Carolina Fincorp conversion, and matched the South Street depositor with three other ineligible investors.

91. Nies submitted the Stock Order Form to South Street together with funds that came from three of his customers. South Street issued 70,750 shares of stock in the depositor's name.

92. Nies received the stock and transferred it into an account at NAIB, from which he distributed the 64,750 shares to the three investors and returned 6,000 shares of the stock to the depositor as payment for using his account.

First Ashland Financial Corporation

93. The first bank conversion in this scheme was in April 1995 and involved First Ashland Financial Corporation ("First Ashland"), in Kentucky, the home of Nies' girlfriend's parents. Nies submitted Stock Order Forms to First Ashland representing that her parents were buying the

conversion shares for their accounts only and that no arrangements to transfer the stock had been made. These representations were false.

94. Nies obtained the cooperation of his girlfriend's mother, father and two other of his customers, all of whom were depositors. His girlfriend's parents questioned Nies about the Stock Order Form that included the statement that the stock purchase was for their own account.

95. Nies assured them what "everybody does it" and that it was "not illegal." His girlfriend's father received 10,000 shares, which were deposited into his Interstate account. Nies promptly transferred 1,000 of those shares to his girlfriend's Interstate account, sold another 1,000 shares in her father's account, and transferred the remaining shares to three different customers of his.

96. Profits totaled \$2,062.50 from the sale of the 1000 shares in Nies' girlfriend's account, which he controlled. Nies also profited from the commissions and the intangible goodwill of his customers.

First Mutual Bancorp

97. In or around July 1995, Leader coordinated the purchase of conversion stock of First Mutual Bancorp ("First Mutual") in Illinois using his fiancée's status as a depositor and funds from his customer and landlord.

98. His landlord noticed the restrictive legend on the Stock Order Forms and asked Leader about it. Leader persuaded him to invest by "downplaying it," saying: "Well, that's on there, but it really doesn't mean anything."

99. According to Leader's instructions, the landlord wired \$200,000 to Leader's fiancée's bank account, and on June 16, 1995, Leader submitted a Stock Order Form and a check from his

fiancée's bank account for \$200,000 to First Mutual for the purchase of conversion stock.

100. Leader knew that the Stock Order Form represented to the bank that the conversion stock was being purchased for the benefit of his fiancée, an eligible depositor. This representation was false.

101. The misrepresentation caused First Mutual to issue 13,079 shares in Leader's fiancée's name, which were deposited into her Interstate account, which was managed by Leader. Within a few days the stock was sold and the proceeds wired into Leader's fiancée's bank account. They were then almost immediately wired out, apparently to Leader's landlord's account.

Hardin Bancorp

102. In September 1995, Leader used an account in his landlord's name to purchase conversion stock of Hardin Bancorp ("Hardin") in Missouri. The Stock Order Form represented to Hardin that the conversion stock was being purchased for the account of Leader's landlord, an eligible depositor, and that no arrangements to transfer the stock had been made. This representation was false.

103. In fact, the \$75,000 to purchase the stock was wired from Leader's fiancée's bank account to his landlord's bank account and then submitted with the Stock Order Form to Hardin, requesting 7,500 shares of stock.

104. Because the conversion was over-subscribed, only 987 shares were issued in the landlord's name. The shares were immediately transferred to Leader's fiancée and deposited in her account at Interstate.

105. The stock was sold out of Leader's fiancée's Interstate account and the proceeds, including

profits of \$1,974, were transferred to an unidentified third party.

106. Nies purchased Hardin conversion stock in the name of two of his customers who were depositors at Hardin. One customer's subscription rights were used to purchase 7,500 shares of stock which were transferred on receipt from his Interstate account to Nies' girlfriend's account.

107. Profits from the sale of the shares in Nies' girlfriend's account totaled \$904.56. Because Nies controlled her Interstate account, these profits should be attributed to him.

108. Nies purchased 3,000 shares through another customer's subscription rights. Nies transferred 270 shares from that customer's account to the account of another of his customers and 1,167 shares to the account of the wife of one of his biggest customers.

109. Profits in these two ineligible customers' accounts were \$2,334 and \$573.75, respectively. The eligible customer retained the remaining shares. Nies profited from his customers' goodwill.

Klamath First Bancorp

110. In October 1995, Nies submitted a Stock Order Form to Klamath First Bancorp ("Klamath"), in Oregon representing that a depositor was purchasing stock for his own account and that no agreements to transfer the stock had been made. This representation was false.

111. Due to over-subscription, that depositor was allocated 7,752 shares of the 26,500 he requested. However, 3,350 shares were immediately transferred to Nies' girlfriend's account, all being sold the same day for a profit of \$9,840.63. Because Nies controlled her account, these profits are attributable to him.

Joachim Bancorp

112. In December 1995, Leader persuaded his aunt and uncle, who were depositors at Joachim

Bancorp in Missouri, to allow him to use their accounts to purchase conversion stock. He sent Stock Order Forms to the bank representing that the eligible depositors were buying stock for their accounts only and that no agreements to transfer the stock had been made. These representations were false.

113. Leader put up \$50,000 to purchase 5,000 shares, had the stock certificates issued in the name of his aunt and uncle and mailed to him at Interstate. Leader then transferred the stock into his fiancée's NAIB account and sold it at a profit of \$27,485, all of which he kept for himself.

Washington Bancorp

114. Nies located two depositors at Washington Bancorp in Iowa who had subscription rights to purchase conversion stock in the bank's March 1996 IPO. Nies and Leader each invested in these stock conversions and received 6,000 shares of conversion stock apiece.

115. Nies and Leader submitted Stock Order Forms that represented to the bank that the depositors were purchasing the shares for their own accounts and that no arrangement for transfer of the shares had been made. These representations were false.

116. After the stock was issued in the depositors' names, Nies and Leader transferred the stock into the NAIB accounts of their girlfriend and fiancée. They each sold 6,000 shares of Washington Bancorp stock through their girlfriends' NAIB accounts, Nies for a profit of \$5,896 and Leader for a profit of \$6,375.

North Central Bancshares

117. Between March 1996 and September 1996, Nies and Leader continued to match depositors who were eligible to purchase conversion stock with ineligible investors recruited by Nies and

Leader to purchase the stock.

118. One of Nies' customers was a depositor of North Central Bancshares in Iowa, which was converting in March 1996.

119. Nies submitted the Stock Order Form for his customer to purchase 30,000 shares of conversion stock. The Stock Order form represented to the bank that the stock was for the account of the legitimate account holder only and that no arrangements to transfer the stock had been made. These representations were false.

120. After the stock was issued in the customer's name, Nies transferred 10,000 shares to his girlfriend's NAIB account, which he controlled. The profits of \$6,846 may be attributed to Nies.

Scotland Bancorp

121. Nies arranged the purchase of 2,222 shares of conversion stock of Scotland Bancorp in North Carolina in April 1996 by two of its depositors.

122. Nies submitted Stock Order Forms stating that the depositors were purchasing stock for their accounts only and that no arrangements to transfer the stock had been made. These representations were false.

123. The bank issued stock certificates for 1,111 shares in each of the depositors' names, and Nies transferred that stock into the name and NAIB account of another of his customers, who was ineligible to purchase the conversion stock. Profits on the shares sold in this account totaled \$4,579.

Commonwealth Bancorp

124. In June 1996, Nies arranged for three of his customers who were depositors at

Commonwealth Bancorp ("Commonwealth") in Pennsylvania to purchase conversion stock and then transfer the stock to ineligible individuals.

125. Nies submitted the Stock Order Forms to Commonwealth representing that the legitimate account holders were buying the stock for their accounts only and that no arrangements to transfer the stock had been made. These representations were false.

126. For example, one depositor purchased 15,000 shares of conversion stock, 5,000 of which Nies transferred to his girlfriend's NAIB account. Neither the signature on the Stock Power nor the LOA transferring the shares to his girlfriend was that of the depositor.

127. That stock was sold in his girlfriend's nominee account for a profit of \$2,188, and may be attributed to Nies.

128. Two other Nies customers, who were depositors, purchased 13,000 shares of conversion stock for their own accounts.

129. By prior agreement, Nies had arranged to have 7,000 shares transferred to accounts of two of Leader's ineligible customers. These customers sold 1,000 shares for a profit of \$1,435 and retained 6,000 shares.

Home Financial

130. In July 1996, Nies and Leader used bank accounts at Home Financial in Indiana in the name of Leader's sister and her fiancée to purchase stock. They submitted Stock Order Forms representing that the legitimate account holders were buying the stock for their own accounts and that no arrangements to transfer the stock had been made. These representations were false.

131. On the Stock Order Forms, Nies and Leader forged the account holders' names and

specified that the stock certificates were to be sent to the fictitious CERES P. O. Box in Charlotte that was used in the Catskill conversion.

132. Leader used his sister's account, to purchase 10,000 shares in her name and then transferred the stock into Antoniak's NAIB account. Profits from the shares were only \$95, attributable to Leader.

133. Nies used the account of Leader's sister's fiancée to purchase 10,000 shares and then transferred the stock to Crew's account at NAIB. Profit on this stock was \$796, attributable to Nies.

Ocean Financial

134. In another July 1996 conversion, involving Ocean Financial in New Jersey, Nies arranged to purchase 6,734 shares of conversion stock in the name of one of his New York customers, who was a depositor at the bank.

135. The Stock Order Form contained the representation that the stock purchase was for the New York customer's account only and that no arrangements to transfer the stock had been made. These representations were false.

136. Immediately after the stock was issued, Nies transferred 5,450 of the shares to two of his customers who were not depositors and who were thus ineligible to purchase the conversion stock.

137. One of these customers sold Ocean Financial stock realizing a profit of \$6,059.50 and the other realized a profit of \$1,497.50. The New York customer retained the remaining 1,284 shares in his account, and the proceeds of the sale of these shares were wired to his bank account.

138. It appears that from the transactions in this conversion, Nies received only the future good

will of his customers.

Mitchell Bancorp

139. Nies made representations to Mitchell Bancorp, in North Carolina, in connection with its July 12, 1996, IPO that shares were being purchased for the benefit of a bank depositor and that no arrangements to transfer the stock had been made. These representations were false.

140. After the bank issued 9,900 shares in the name of the depositor, Nies transferred the stock to his girlfriend's NAIB account where it was sold for a profit of \$3,673. Because Nies controlled his girlfriend's account, these funds are attributable to him.

Perpetual Federal Savings Bank

141. In September 1996, Nies used an account in his girlfriend's name at Perpetual Federal Savings Bank ("Perpetual"), in South Carolina, to purchase conversion stock. Nies forged his girlfriend's name on the Stock Order Form representing that the stock was being purchased for her account only and that no arrangements to transfer the stock had been made. These representations were false.

142. Nies transferred a portion of the stock purchased in his girlfriend's name to one of his customers. A check was written on his girlfriend's bank account, which Nies controlled, to Perpetual in the amount of \$121,095 for the stock purchase. The signature does not match hers.

143. Nies's girlfriend's signature was also forged on an LOA, journaling shares of Perpetual stock into the account of the Nies customer. An LOA from the customer then journaled \$24,929 from his account into Nies's girlfriend's NAIB account, which Nies also controlled.

Carolina Fincorp

144. In November 1996, Nies collected a group of five depositors in whose names to purchase the conversion stock of Carolina Fincorp ("CFC") in North Carolina, along with four ineligible investors, including Davlin. Nies used the money that Davlin thought had been invested in South Street to purchase CFC stock.

145. Nies submitted the Stock Order Forms to CFC representing that the eligible depositors were purchasing the stock for their accounts only and that no arrangements had been made to transfer the stock. Those representations were false.

146. After the CFC stock was issued, Nies transferred it into and among the various accounts which he controlled at NAIB.

147. In early December 1996, Davlin opened, at Nies' request, an account at NAIB and allowed Nies to control it. Davlin understood that Nies was in the process of breaking-up with his girlfriend and did not want to use her account.

148. Nies transferred 31,932 shares of CFC stock into Davlin's NAIB account. Davlin sold two blocks of stock in December 1996 and January 1997, resulting in a profit for Davlin of \$16,287.

149. On two other occasions, Nies sold CFC stock from Davlin's NAIB account, deposited that money in Davlin's personal bank account and then requested Davlin to pay him the money. Davlin complied, providing Nies with \$30,000 in February 1997 and \$4,500 in March 1997.

Profits from the Fraudulent Scheme

150. Nies received at least \$300,000 in profits from the sale of conversion stock in Crew's Interstate account, Crew's NAIB account, Davlin's NAIB account, and the "commission" from

Streiff for his purchase of HFNC.

151. Leader received profits of at least \$193,000 from transactions in the stock of five of the 17 converting thrifts.

152. An accounting from Nies and Leader will be required to determine accurately the amount of their ill-gotten gains.

153. Davlin received \$17,072 in ill-gotten gains.

CLAIM FOR RELIEF
CAUSE OF ACTION

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]

154. Paragraphs 1 through 153 are hereby realleged and are incorporated herein by reference.

155. From in or about early 1995 to in or about early 1997, defendants Nies and Leader, aided and abetted by Davlin, singly and in concert, in connection with the purchase and sale of securities, specifically the common stock of HFNC, Catskill and other converting bank securities, by the use of means or instruments of transportation or communication in interstate commerce, or by the use of the mails, directly or indirectly:

- (a) employed devices, schemes, and artifices to defraud;
- (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made in light of the circumstances under which they were made, not misleading; and
- (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon persons all as more particularly described in

paragraphs 1 through 153 above.

156. The defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud.

157. By reason of the foregoing, the defendants 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].

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff Commission, respectfully prays that the Court:

I.

Declare, determine and find that each of the defendants herein named committed the violations alleged herein.

II.

Issue permanent injunctions restraining and enjoining defendants Nies, Leader and Davlin as their aider and abettor, along with their agents, servants, employees, attorneys, and all persons in active concert or participation with them, who receive actual notice of the order of injunction, by personal service or otherwise, and each of them, in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, from directly or indirectly:

- (a) employing any device, scheme or artifice to defraud;
- (b) obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the

statements made, in the light of the circumstances under which they were made, not misleading; or

- (c) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

concerning, but not limited to, those statements or omissions described in Paragraphs 1 through 153 above.

III.

Issue an Order requiring an accounting from the defendants of all funds received from the sale of securities.

IV.

Issue an Order requiring the defendants to pay disgorgement of ill-gotten gains along with prejudgment interest, as well as civil penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. 77t(d).

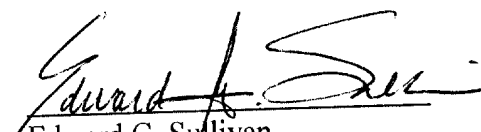
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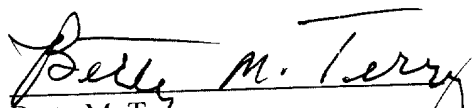
Further, Plaintiff Commission respectfully prays that this Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may have been or be entered or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

VI.

Grant such other and further relief as may be necessary and appropriate.

Respectfully submitted,


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Staff Attorney

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