

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AUG 6 9 33 AM '01

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

EDWARD R. VOCCOLA,

Defendant.

Case No.

01-11359 NG

RECEIPT # _____
AMOUNT \$ _____
SIGNATURE _____
DATE _____
TYPE OF SERV. _____
NOT ISSUED _____
AG 120 OR 121 _____
BY DPTY CLK _____

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission ("Commission") alleges the following against defendant Edward R. Voccola ("Voccola"):

PRELIMINARY STATEMENT

1. This enforcement action concerns Voccola's fraudulent purchase of securities using 38 worthless checks totaling more than \$4.9 million. By purchasing securities without actually paying for them – a practice known as "free riding" – Voccola sought to claim the profits from his short-term, high-volume trading activity in technology stocks while shifting the risk of loss to the numerous brokerage firms in Massachusetts where he had accounts. In fact, from February through August 2000, Voccola purchased almost \$7.4 million of securities on margin while making actual payments of only \$232,500.

2. Voccola also made numerous material misrepresentations and omissions to the brokerage firms with which he did business. For example, when opening a new brokerage

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account, he routinely misrepresented his employment status and his current salary. On two occasions, he even misrepresented his social security number in order to open a new account at a firm that had already prohibited him from further trading.

3. Through the activities alleged in this Complaint, Voccola engaged in fraud in the offer or sale of securities, in violation of Section 17(a) of the Securities Act of 1933 ("Securities Act"), and engaged in fraudulent or deceptive conduct in connection with the purchase or sale of securities, in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder.

4. Accordingly, the Commission seeks: (i) entry of a permanent injunction prohibiting Voccola from further violations of the relevant provisions of the federal securities laws; (ii) disgorgement of Voccola's ill-gotten gains and losses avoided, plus pre-judgment interest; and (iii) the imposition of a civil monetary penalty due to the egregious nature of Voccola's violations.

JURISDICTION

5. The Commission seeks a permanent injunction and disgorgement pursuant to Section 20(b) of the Securities Act [15 U.S.C. §77t(b)] and Section 21(d)(1) of the Exchange Act [15 U.S.C. §78u(d)(1)]. The Commission seeks the imposition of a civil monetary penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

6. This Court has jurisdiction over this action pursuant to Sections 20(d) and 22(a) of the Securities Act [15 U.S.C. §§77t(d), 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§78u(d), 78u(e), 78aa]. Voccola resides in this District.

7. In connection with the conduct described in this Complaint, Voccola directly or indirectly made use of the mails or the means or instruments of transportation or communication in interstate commerce.

DEFENDANT

8. **Voccola**, age 47, of Hingham, Massachusetts, is an attorney whose license to practice law in Massachusetts has been suspended. Prior to April 10, 2000, he was employed by State Street Bank and Trust ("State Street Bank") as a vice president. In response to the Commission's subpoena for testimony, he invoked his Fifth Amendment privilege against self-incrimination and refused to answer the staff's questions about the activities alleged in this Complaint. On September 7, 2000, he pleaded guilty to three counts of tax evasion. On December 15, 2000, he was sentenced to prison for twelve months and one day, to be followed by 36 months of supervised release.

STATEMENT OF FACTS

Summary

9. As set forth below, from February through August 2000, Voccola purchased almost \$7.4 million of securities, primarily volatile technology stocks, in margin accounts at ten brokerage firms in Massachusetts. Because he purchased the securities on margin, he was required to pay only 50% of the purchase price. He purported to do so with checks drawn on his checking account at Fleet Bank and on several of his brokerage accounts. In reality, virtually all of the checks – 38 checks for more than \$4.9 million – were worthless. By repeatedly depositing worthless checks into his brokerage accounts, Voccola made it appear that the accounts had a

sufficient balance even when a prior check was returned unpaid. He thus misled the brokerage firms into believing that he had paid for the securities and delayed their discovery of his fraudulent scheme. Moreover, by purchasing securities without actually paying for them, he was able to obtain a net profit of approximately \$20,000 from his trading in some of the brokerage accounts while leaving the brokerage firms with a net loss of approximately \$195,000 from his trading in the other accounts.

Trading at Schwab

10. On February 9, 2000, Voccola purchased more than \$218,000 of stock in an individual margin account at Charles Schwab & Co., Inc. ("Schwab"). Because of prior payment problems, Schwab required him to pay for his purchases on the order date. He purported to pay for the stock with a \$230,000 check drawn on his Fleet checking account. The check was worthless, because his checking account balance was less than \$4,000. Nevertheless, he sold the stock the next day for a profit of approximately \$90,000.

11. On February 10 and 11, 2000 – before the first check was returned for insufficient funds – Voccola purchased more than \$671,000 of additional stock, which he promptly sold for a profit of approximately \$187,000. On February 15, 2000, he deposited a second worthless \$230,000 check drawn on his Fleet checking account. Two days later, he purchased more than \$556,000 of additional stock. He continued to buy and sell large amounts of stock during the rest of February.

12. As of March 1, 2000, Voccola had purchased more than \$2.1 million of stock while depositing worthless checks totaling \$460,000 and making only one actual payment of \$230,000. He had sold some of the stock for a net profit of nearly \$300,000, of which he

withdrew \$54,500 in cash, and his remaining holdings were worth about \$458,000.

13. During March and early April 2000, Voccola continued this pattern of short-term, high-volume trading in his Schwab account. He purported to pay for his additional purchases with seven worthless checks totaling \$1,275,000. Unlike his earlier trading, however, his trading in this period generated substantial losses, including \$80,000 on one stock and \$198,000 on another.

14. On March 15, 2000, Voccola opened a new margin account at Schwab jointly with his wife. Between March 29 and April 11, he purchased more than \$1 million of stock in the joint account without making any actual payments. Instead, he deposited four worthless checks totaling \$405,000 and used the proceeds from the earlier sales to help finance the later purchases.

15. On April 6, 2000, Schwab prohibited further trading and liquidated Voccola's remaining positions in the individual account. On April 11, the firm took similar action with respect to the joint account.

16. Between February 9 and April 11, 2000, Voccola purchased more than \$4 million of stock in the two Schwab accounts, deposited more than \$2.1 million of worthless checks, and made only a single payment of \$230,000. He also wrote numerous worthless checks on the Schwab accounts payable to other brokerage firms, thereby expanding his scheme to other victims. When Schwab closed the two accounts, the combined debit balance was approximately \$93,000 due to Voccola's trading losses in March and April. Schwab later filed an arbitration claim to collect the debit balance. The arbitration claim was settled earlier in 2001.

Trading at Quick & Reilly

17. On March 14, 2000, Voccola purchased more than \$240,000 of stock in a margin account at Quick & Reilly, Inc. ("Quick & Reilly"). He purported to pay for the stock with a worthless \$130,000 check drawn on the individual Schwab account. On March 17, he deposited a second worthless \$130,000 check drawn on the same Schwab account. On March 21 – just before the first two checks were returned for insufficient funds – he deposited a worthless \$100,000 check drawn on the same Schwab account and purchased almost \$160,000 of additional stock. On March 29, he deposited a worthless \$275,000 check drawn once again on the same Schwab account.

18. Voccola's trading activity in his Quick & Reilly account was profitable. At the end of March 2000, the account had a credit balance of \$43,000. Since he had not paid for his purchases, Quick & Reilly initially refused to release the balance to him. After several unsuccessful attempts to obtain the funds, he falsely represented that he had filed an arbitration claim against the firm. As a result, Quick & Reilly agreed to pay him \$10,000.

Trading at TD Waterhouse

19. From March 20 to March 31, 2000, Voccola purchased more than \$347,000 of stock and options in a margin account at TD Waterhouse Investor Services, Inc. ("TD Waterhouse"). He purported to pay for the securities with two worthless checks totaling \$245,000: one drawn on the Schwab joint account and the other drawn on his Quick & Reilly account. By April 10, Voccola had sold all of the securities for a profit of only \$350, which he has not claimed.

Trading at Morgan Stanley

20. On April 12, 2000 – the day after Schwab had closed the joint account and two days after he left his job with State Street Bank – Voccola opened a margin account at Morgan Stanley Dean Witter, Inc. (“Morgan Stanley”). He falsely represented in his account opening statement and to the Morgan Stanley broker that he was employed by State Street Bank and earned \$700,000 per year. The same day, he deposited a worthless \$125,000 check drawn on the Schwab individual account, which had been closed one week earlier. On April 17, he deposited a worthless \$105,000 check drawn on the Schwab joint account, which had likewise been closed one week earlier. The same day, he purchased \$240,000 of stock. In purported payment for the stock, he deposited three more worthless checks totaling \$365,000 during the next ten days. Morgan Stanley liquidated the account on April 27, leaving a debit balance of approximately \$81,500.

Trading at CIBC

21. On April 14, 2000 – two days after opening the Morgan Stanley account – Voccola opened a margin account at CIBC World Markets Corp. (“CIBC”). He falsely represented in his account opening statement and to the CIBC broker that he was employed by State Street Bank and earned \$750,000 per year. The same day, he purchased \$195,000 of stock. He purported to pay for the stock with a worthless \$125,000 check drawn on the closed Schwab joint account. Six days later, he deposited a worthless \$105,000 check drawn on the closed Schwab individual account. After the checks were returned unpaid, CIBC liquidated the account, leaving a debit balance of \$20,000.

Trading at Merrill Lynch

22. On April 24, 2000 – ten days after opening the CIBC account – Voccola opened a margin account at Merrill Lynch Pierce Fenner & Smith, Inc. (“Merrill Lynch”). He falsely represented in his account opening statement that he was employed by State Street Bank. Between April 24 and May 11, he purchased more than \$230,000 of stock and options. He purported to pay for the securities with two worthless checks totaling \$89,000 drawn on the closed Schwab individual account. After selling the stock on May 2 and allowing the options to expire on May 22, his account balance was \$97.

Trading at PaineWebber

23. On May 4, 2000 – two days after the last transaction in the Merrill Lynch account – Voccola opened a margin account at PaineWebber & Co., Inc. (“PaineWebber”). He falsely represented in his account opening statement and to the PaineWebber broker that he was employed with State Street Bank and earned \$750,000 per year. On May 4, he purchased more than \$160,000 of stock. He purported to pay for the stock with a worthless \$85,000 check drawn on the closed Schwab individual account. On May 11, after the broker informed him that the check had been written on a closed account, he deposited a worthless \$85,000 check drawn on his Fleet checking account. On May 17, he deposited a worthless \$87,500 check drawn on the Merrill Lynch account, immediately before the broker informed him that PaineWebber had liquidated his account because the second \$85,000 check had been returned unpaid. The account was closed with a credit balance of \$1,360, of which Voccola promptly wired \$1,260 to his Fleet checking account.

Trading at Fidelity

24. On May 25, 2000 – one week after PaineWebber had liquidated his account – Voccola opened a margin account at Fidelity Brokerage Services, Inc. (“Fidelity”). He falsely represented in his account opening statement that he was employed by State Street Bank. The next day, he purchased more than \$200,000 of stock. He purported to pay for the stock with a worthless \$80,000 check drawn on the PaineWebber account and a worthless \$125,000 check drawn on the Merrill Lynch account. At the time, both accounts had balances of approximately \$100. By the end of May, Voccola had purchased approximately \$330,000 of stock in the Fidelity account using worthless checks totaling \$415,000. On May 31, Fidelity liquidated the account, leaving a debit balance of \$118.

Trading at Legg Mason

25. On June 12, 2000 – less than two weeks after Fidelity had liquidated his account – Voccola opened a margin account at Legg Mason Wood Walker, Inc. (“Legg Mason”). He falsely represented in his account opening statement and to the Legg Mason broker that he was employed by State Street Bank. The next day, he purchased more than \$130,000 of stock. He purported to pay for the stock with a worthless \$67,500 check drawn on the closed Schwab individual account. On June 15, just before the check was returned for insufficient funds, he deposited a worthless \$78,000 check drawn on the same closed account. By the end of June, Voccola had made a profit of approximately \$105,000 from buying and selling stock worth more than \$1 million, despite having made no actual payments.

26. Voccola made numerous requests to Legg Mason for the funds. In an undated letter, he attached a copy of the March 2000 statement for his individual Schwab account, which

showed an account balance of \$446,700, ostensibly to prove that he had the means to pay for his stock purchases. However, he did not disclose to Legg Mason that his purchases at Schwab had actually been made with checks backed by insufficient funds. To date, Legg Mason has refused to release the account balance.

Additional Trading at TD Waterhouse

27. On July 14, 2000, Voccola opened a second margin account at TD Waterhouse. He used a false social security number to open the account, and so the firm did not immediately identify him. The same day, he deposited a \$75,000 check drawn on his Fleet checking account, which then had a balance of less than \$4,000. On July 25, TD Waterhouse identified Voccola and closed the second account. By that time, however, he had purchased and sold approximately \$300,000 of stock and had withdrawn almost \$9,000 in the form of checks to pay personal expenses. The account was closed with a debit balance of \$21.

Trading in Violation of a Court Order

28. On March 29, 2000, Voccola was indicted for tax evasion in the District of Massachusetts. One condition of his pre-trial release was that he not engage in any criminal activity. On July 26, the U.S. Attorney's Office notified the Court that Voccola had violated that condition by purchasing securities with worthless checks. The same day, the Court (Saris, J.) ordered Voccola to purchase securities only with ready funds. Nevertheless, as shown below, he continued with his scheme to purchase securities without actually paying for them.

29. On August 17, 2000 – just three weeks after the Court had ordered him to purchase securities only with ready funds – Voccola walked into the same office of Merrill

Lynch where he had previously had an account and deposited a worthless \$85,000 check drawn on the TD Waterhouse account which had been closed in July. After Merrill Lynch representatives informed him that he could not purchase securities due to his previous payment problems, he responded that he would then “go to Fidelity.”

30. On August 21, 2000 – four days after Merrill Lynch had refused to allow him to purchase securities – Voccola opened a brokerage account at a third office of TD Waterhouse using yet another false social security number. The next day, however, TD Waterhouse identified Voccola as the holder of the other accounts and closed the new account before he could purchase any securities.

31. On August 25, 2000 – three days after TD Waterhouse had refused to allow him to purchase securities – Voccola opened a margin account at Spartan Brokerage, a subsidiary of Fidelity. He deposited a \$2,500 check drawn on his Fleet checking account and a worthless \$85,000 check drawn on the TD Waterhouse account which had been closed in July. On August 28, he purchased \$107,000 of stock – in clear violation of the Court order – but Spartan liquidated his holdings later the same day due to an adverse credit report.

32. On September 18, 2000, the Court (Saris, J.) modified the conditions of Voccola’s pre-trial release by placing him in home detention with electronic monitoring, prohibiting him from any securities trading, and requiring him to attend gambling addiction counseling.

FIRST CLAIM FOR RELIEF
(Violation of Section 17(a) of the Securities Act)

33. The Commission repeats and incorporates by reference the allegations in

paragraphs 1-32 of the Complaint as if set forth fully herein.

34. Voccola, directly and indirectly, acting intentionally, knowingly or recklessly, in the offer or sale of securities by the use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails: (a) has employed or is employing devices, schemes or artifices to defraud; (b) has obtained or is obtaining money or property by means of untrue statements of material fact or omissions 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) has engaged or is engaging in transactions, practices or courses of business which operate as a fraud or deceit upon purchasers of the securities.

35. As a result, Voccola has violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. §77q(a)].

36. Voccola's violations of Section 17(a) of the Securities Act have involved fraud, deceit or deliberate or reckless disregard of regulatory requirements and have resulted in substantial losses or significant risk of substantial losses to other persons, within the meaning of Section 20(d) of the Securities Act [15 U.S.C. §77t(d)].

SECOND CLAIM FOR RELIEF
(Violation of Section 10(b) of the Exchange Act and Rule 10b-5)

37. The Commission repeats and incorporates by reference the allegations in paragraphs 1-36 of the Complaint as if set forth fully herein.

38. Voccola, directly or indirectly, acting intentionally, knowingly or recklessly, by the use of means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities: (a) has employed or is employing devices, schemes or artifices

to defraud; (b) has made or is making untrue statements of material fact or has omitted or is omitting to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) has engaged or is engaging in acts, practices or courses of business which operate as a fraud or deceit upon certain persons.

39. As a result, Voccola has violated and, unless 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].

40. Voccola's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder have involved fraud, deceit or deliberate or reckless disregard of regulatory requirements and have resulted in substantial losses or significant risk of substantial losses to other persons, within the meaning of Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that this Court:

A. Enter a permanent injunction restraining Voccola and each of his agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and effect, in violation of:

1. Section 17(a) of the Securities Act [15 U.S.C. §77q(a)]; and
2. 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];


B. Require Voccola to disgorge his ill-gotten gains and losses avoided, plus pre-judgment interest, with said monies to be distributed in accordance with a plan of distribution to be ordered by the Court;

C. Order Voccola to pay an appropriate civil monetary penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)];

D. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

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

Respectfully submitted,



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