



U.S. Securities and Exchange Commission

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PAUL E. JOHNSON,

Defendant.

**JURY TRIAL
DEMANDED**

COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission") alleges for its complaint against Paul E. Johnson as follows:

NATURE OF THE ACTION

1. This action involves the issuance of false and misleading research reports and public statements by Paul E. Johnson while he was a managing director and senior research analyst at Robertson Stephens, Inc.
2. In 1999 and 2000, Johnson provided research coverage on two publicly traded companies that announced proposed mergers with private companies. Johnson praised both proposed mergers in research reports and in media appearances, but failed to disclose that his supposedly objective advice was infected by serious conflicts of interest. In both cases he owned stock in the private companies that would be exchanged for public company shares if the mergers were completed. And in both cases the mergers he advocated resulted in multimillion dollar windfalls for himself. The failures to disclose his holdings in the stocks constituted omissions of material facts.
3. In January 2001, Johnson spoke privately about another company he covered to a committee of senior executives from Robertson Stephens that was responsible for making investment decisions for a group of partnerships that made private equity investments. Johnson's statements to the committee directly contradicted his existing "buy" recommendation on the covered company. Consequently, Johnson's inconsistent buy recommendation was false and misleading. After Johnson spoke, the committee voted to sell all the covered company stock held by two partnerships. In addition, the day after he made his private recommendation to the committee, Johnson sold nearly all of the stock he personally owned in the

covered company. Two days after his sale of the stock, Johnson issued another deceptive research report on the covered company that reiterated his bogus buy recommendation, but did not disclose his contrary private advice to the committee or that he had sold nearly all of his own stock two days earlier.

JURISDICTION

4. This Court has jurisdiction over this action pursuant to Sections 21(d)(1), 21(d)(3), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d)(1), 78u(d)(3), 78u(e), and 78aa] and Sections 20(b), 20(d)(1), and 22(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77t(b), 77t(d)(1), and 77v(a)].
5. Johnson, directly or indirectly, made use of the means and instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged herein.

FACTS

6. Defendant Paul E. Johnson, 42, is a resident of New York. Johnson joined Robertson Stephens, a registered broker-dealer, as a managing director in 1994. From 1994 through June 2002, Johnson worked at Robertson Stephens as a senior equity analyst. At all times relevant, Johnson provided research coverage on companies in the networking and telecommunications industries.

Johnson's False and Misleading Research Reports

7. Johnson was responsible for issuing research reports on companies in the networking and telecommunications industries. In the ordinary course of business, after Johnson or one of his staff drafted a research report, the draft report would be e-mailed to a supervisory analyst for review. Once approved by the supervisory analyst, the reports were distributed to Robertson Stephens' institutional clients and to several research reporting services. At all times relevant, the reports were available on Robertson Stephens' website, where they could be accessed by the firm's institutional and private services clients. Robertson Stephens' research reports often were accompanied by press releases issued by Robertson Stephens that typically included the analyst's rating on the covered company.
8. All the relevant research reports included a fine- print disclaimer paragraph at the end of the report. Research reports issued by Robertson Stephens and its analysts prior to September 26, 2000 included a sentence in the disclaimer paragraph stating that "Robertson Stephens, its managing directors, its affiliates, and/or its employees may have an interest in the securities of the issue(s) [sic] described and may make purchases or sales while this report is in circulation." (Emphasis added.) From on or about September 26, 2000, the disclaimer paragraph explicitly stated that it applied to "the research analysts authoring this report."

Johnson Failed to Disclose His Conflict of Interest When He Touted

the Pending Merger of Siara Systems with Redback

9. On or about January 1999, Johnson secretly invested approximately \$50,000 of his own personal funds in Siara Systems Inc., a privately-held network equipment vendor, purchasing 26,595 shares of Siara's Series B preferred stock through a private placement. At that time, Robertson Stephens policies and NASD rules required Johnson to submit a written request and obtain approval before making an investment in a private company. Johnson failed to comply with these requirements before he invested in Siara.
10. In June 1999, Johnson initiated research coverage on Redback Networks, Inc., a publicly traded networking company, with a "buy" rating. Johnson reiterated the "buy" rating for Redback in research reports issued on July 23 and October 14, 1999. On November 29, 1999, Redback announced that it had agreed to acquire Siara in a stock transaction valued at \$4.3 billion. Under the terms of the proposed transaction, Johnson's Series B preferred shares in Siara would have been converted into 31,728 freely-trading shares of Redback stock worth approximately \$4.8 million based on the closing market price of Redback's stock on the date of the announcement.
11. In a Bloomberg update issued at 11:51 a.m., Johnson was quoted commenting on the merger:

"This extends the product line to meet the network needs of its current customers and helps attract future customers," said analyst Paul Johnson of Robertson Stephens in New York. He rates Redback a "buy."

In an update issued at 2:30 p.m., Johnson's prior quote appeared along with a new quote from him:

"The stock market has decided that the customers you grab for the future are much more important than the money you make today," said analyst Paul Johnson of Robertson Stephens in New York, who rates Redback a "buy."

Neither news report disclosed that Johnson owned Siara stock and potentially would reap a multimillion dollar windfall if the merger closed.
12. At 3:22 p.m. on November 29, Bloomberg reported that Johnson had reiterated his "buy" recommendation on Redback. Johnson had issued a research report captioned: "Raising Estimates; Reiterate Buy Recommendation." Although the report included Robertson Stephens' boilerplate disclosure in small print, it, too, failed to disclose that Johnson owned Siara stock or that he stood to receive a huge windfall from the proposed merger.
13. On the morning of November 30, 1999, Robertson Stephens issued a press release entitled: "Robertson Stephens Reiterates Buy Rating on RBAK - Siara Systems Merger Viewed as Excellent Strategic Fit." The press release invited interested parties to contact their Robertson Stephens salesperson. The press release included three pages of boilerplate Robertson Stephens disclosures, including that Robertson Stephens's managing directors and employees may have interests in the securities of the companies described. However, the press release

failed to disclose either the existence or the magnitude of Johnson's interest in Siara stock.

14. At 12:53 p.m. on November 30, Bloomberg reported that Johnson had reiterated his "buy" rating on Redback, and Johnson issued another research report on the merger, entitled: "Merging with Siara Systems; Excellent Strategic Fit, in Our Opinion; Re-iterating Our Buy Rating." This report also included Robertson Stephens' standard disclaimers, but once again failed to disclose Johnson's financial interest in the proposed transaction.
15. On January 20, 2000, Johnson issued another research report on Redback entitled: "Reports Strong Fourth Quarter Financial Results; Raising Estimates; Initiating Fiscal 2001 Estimate; Reiterate Buy Recommendation." Also on January 20, Robertson Stephens issued a press release publicizing the research report. The headline on the press release stated, "Robertson Stephens Reiterates Buy Rating, Raises Estimates on RBAK." Although the press release did not mention the merger, it stated that Johnson had forecasted rising revenues for the company. Again, buried in three pages of boilerplate, was Robertson Stephens's standard disclaimer.
16. Redback's merger with Siara closed on March 8, 2000. As a result, Johnson received 30,069 shares of Redback stock, and his secret \$50,000 investment in Siara stock became worth approximately \$9.9 million.
17. Johnson knew, or was reckless in not knowing, that the research reports he issued and the public statements he made concerning the proposed acquisition of Siara by Redback, failed to disclose either the fact or the magnitude of his personal financial interest in the outcome of the transaction and, thereby, omitted material facts regarding the objectivity of his opinions.

Johnson Failed to Disclose His Conflict of Interest When he Touted the Merger of Sirocco Networks with Sycamore

18. On or about January 10, 2000, Johnson paid approximately \$75,000 to purchase 23,235 shares of Series D preferred stock in Sirocco Networks, Inc, a privately-held networking equipment company. Because Sirocco was a non-public company, there was no market for these securities. Johnson made his investment in Sirocco without submitting a written request and obtaining approval, again violating Robertson Stephens policies and NASD rules.
19. On June 6, 2000, shortly after midnight, Sycamore Networks Inc. announced that it would acquire Sirocco for \$2.88 billion in stock. Johnson had been issuing research reports on Sycamore since late 1989. On May 8, 2000, Johnson had issued a research report in which he reiterated his "buy" rating on Sycamore.
20. In an article published by Bloomberg at 9:36 a.m. on June 6, 2000, Johnson was quoted touting the pending merger:

"You have a very smart management team at Sycamore buying one of the best startups," said Paul Johnson, an analyst at Robertson

Stephens & Co. who has a 'buy' rating on Sycamore. "It's a very smart combination."

Also on June 6, Johnson appeared on cable television network CNNfn's Market Coverage program and spoke about Sycamore's acquisition of Sirocco. When asked whether \$2.9 billion was a fair value for Sirocco, Johnson replied: "It appears to be, now 'fair value' is an interesting comment...on a relative basis, it looks like a bargain." Johnson, however, never disclosed his interest in the target company's stock to anyone at CNNfn.

21. Also on June 6, Robertson Stephens issued a research report entitled, "Sycamore announced the acquisition of privately-held Sirocco Systems - An Intelligent Acquisition, in our view; Reiterate Buy Rating." Johnson was responsible for the substance of the report, including the buy rating. As usual, the report included a standard boilerplate disclosure in small print, which stated in part, "Robertson Stephens, its managing directors, its affiliates, and/or its employees may have an interest in the securities of the issue(s) [sic] described and may make purchases or sales while this report is in circulation." However, once again, the report failed to disclose Johnson's interest in the target company's stock.
22. Johnson did not tell anyone at Robertson Stephens that he owned Sirocco stock at the time the report was published. Johnson also did not disclose his personal investment in Sirocco to anyone at Bloomberg or CNNfn. In all three public statements, Johnson failed to disclose to investors that, if the merger was approved, his \$75,000 illiquid investment in Sirocco would convert into 18,848 shares of freely trading Sycamore common stock with a value of approximately \$1.9 million. Johnson had owned Sirocco stock for only five months.
23. Sycamore's merger with Sirocco closed on September 7, 2000. As a result, Johnson received 18,848 shares of Sycamore stock, and his \$75,000 investment in Sirocco stock became worth approximately \$2.3 million.
24. Johnson knew, or was reckless in not knowing, that the research reports he issued and the public statements he made concerning the proposed acquisition of Sirocco by Sycamore, failed to disclose either the fact or the magnitude of his personal financial interest in the outcome of the transaction and, thereby, omitted material facts regarding the objectivity of his opinions.

The Bayview Partnerships' investments in Corvis

25. The Bayview Partnerships were a series of limited partnerships, formed by Robertson Stephens and its senior executives, to invest in private company equities. Two of the limited partnerships ("Bayview 99 I and II"), formed in 1999, invested in a portfolio of companies that was chosen by an investment committee consisting of senior Robertson Stephens executives. That portfolio included Corvis Corporation, a maker of high-speed optical networking equipment, that began operations in June 1997. Another limited partnership ("Bayview Corvis"), also formed in 1999, invested solely in Corvis. In November 1999, following a presentation by Johnson, the Bayview investment committee voted to invest in Corvis, while the company

was still private. Shortly thereafter, in December 1999, Bayview 99 I and II and Bayview Corvis purchased approximately \$5 million worth of stock from Corvis. Johnson was a partner in two of the Bayview partnerships, having invested approximately \$35,000 in Bayview 99 II and approximately \$55,000 in Bayview Corvis.

26. The Bayview partnerships signed "lockup agreements" dated June 14, 2000. These agreements prohibited the partnerships from selling their Corvis shares until 180 days after the initial public offering.
27. Corvis conducted an initial public offering on July 27, 2000. The offering price was \$36 per share.
28. On August 22, 2000, Johnson initiated research coverage on Corvis with a "buy" rating. On October 20, 2000, with Corvis stock trading at \$59.61, Johnson reiterated his buy recommendation in another research report on Corvis.
29. On January 16, 2001, Corvis stock was trading at approximately \$23 a share. That day, Johnson was responsible for a 19-page report titled "Next Generation Networking." The report, which included tables, charts, and financial models, stated that the leading companies in the sector, including Corvis, represented "an attractive investment opportunity." On the second page of the report, Corvis was listed in a table as one of fourteen "leading players" in the sector. The table listed each company's market capitalization and estimated earnings per share. The table stated a buy recommendation on Corvis.

**Johnson tells the committee he would not buy Corvis
at the market price**

30. One week later, on January 23, 2001, the Bayview investment committee met to discuss its Corvis stock holdings. The Corvis lockup was to expire on January 24, 2001. During the meeting, Johnson spoke to the committee, by telephone, regarding his views on Corvis despite an explicit Bayview/Robertson Stephens policy prohibiting analysts from giving a recommendation to the investment committee regarding whether to sell a particular security. When a committee member asked Johnson whether he would buy Corvis at the prevailing price, Johnson replied that he would not buy it at that price. Corvis had closed the previous day at \$24.50 per share. Johnson told the committee that he would buy it at "12 to 14," effectively telling them to sell. Johnson statements to the committee directly contradicted the "buy" recommendation on Corvis included in the January 16, 2001 research report.
31. After Johnson spoke to the investment committee, the committee voted unanimously to sell all the Corvis stock held by Bayview 99 I and Bayview 99 II. Bayview Corvis partners were given the choice of receiving a "pro rata" distribution of their Corvis stock or having the Corvis stock sold for them. As the analyst for Corvis, Johnson was given the choice of selling the stock or having it transferred into a blind trust. On the next day, January 24, 2001, Bayview 99 I and Bayview 99 II sold all their Corvis stock. Johnson sold 6,550 of 8,175 shares, for a net profit of \$127,987. Robertson Stephens executed

Johnson's stock sale, selling the stock before the market opened on January 24, 2001 for an average price per share of \$25.609.

32. After the close of the market on the following day, January 25, 2001, Corvis reported a fourth quarter loss of \$89.7 million. On January 26, 2001, Johnson reiterated his buy rating on Corvis in a research report. The report, as usual, included Robertson Stephens's boilerplate disclosure, but failed to disclose Johnson's sale of Corvis.
33. Johnson sold additional shares of Corvis stock at the market open on January 29, 2001 at a price per share of \$19.8125. These shares had been distributed to him from a venture capital fund in which he had invested. Corvis stock currently trades for less than \$1 a share.
34. Johnson knew, or was reckless in not knowing, that the January 2001 research reports he issued on Corvis failed to accurately reflect his own personal belief on Corvis and failed to disclose that he had sold Corvis stock, and thereby, were false and/or misleading.

FIRST CLAIM FOR RELIEF

**Violations of Section 10(b) of the Exchange Act
and Rule 10b-5 thereunder
[False and Misleading Statements and/or Material Omissions in
Redback, Sycamore, and Corvis Research Reports
and Public Statements]**

35. Paragraphs 1 through 33 are hereby realleged and incorporated by reference.
36. Johnson, by engaging in the conduct described above, directly or indirectly, by use of the means or instruments of transportation or communication in interstate commerce, or by use of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of securities:
 - (1) employed devices, schemes, or artifices to defraud,
 - (2) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
 - (3) engaged in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon any person.
37. By reason of the foregoing, Johnson violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]. Unless restrained and enjoined, Johnson will continue to violate those provisions.

SECOND CLAIM FOR RELIEF

**Violations of Section 17(a) of the Securities Act
[False and Misleading Statements and Material Omissions in Corvis
Research Reports]**

38. Paragraphs 1 through 36 are hereby realleged and incorporated by

reference.

39. Defendant Johnson, by engaging in the conduct described above relating to the research reports on Corvis, directly or indirectly, in connection with 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:
 - (1) employed devices, schemes, or artifices to defraud,
 - (2) obtained money or property by means of untrue statements of material facts or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
 - (3) engaged in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon the purchasers of such securities.
40. By reason of the foregoing, Johnson, directly or indirectly, violated, and unless restrained and enjoined will continue to violate, Section 17 (a) of the Securities Act [15 U.S.C. § 77q(a)].

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Securities and Exchange Commission respectfully requests that this Court enter a judgment:

- (i) permanently enjoining Johnson from violating 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] and;
- (ii) ordering defendant to disgorge all profits realized from the unlawful conduct alleged herein, with prejudgment interest;
- (iii) ordering defendant to pay civil monetary penalties under Section 21 (d)(3) of the Exchange Act [15 U.S.C. § 78(d)(3)]; and
- (iv) granting such other relief as this Court may deem just and appropriate.

JURY DEMAND

Plaintiff demands a trial by jury on all allowable issues.

Respectfully submitted,

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Dated: _____, 2003
Washington, D.C.

<http://www.sec.gov/litigation/complaints/comp17922.htm>

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