

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
(Tampa Division)

03 FEB 25
Clerk U.S. District Court
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA
11:25
Handwritten signature
CASE NO. 8:03-CV-321-T-27MSS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ROBERT A. MAGNAN, INVESTMENT
RECOVERY NETWORK, INC., JOHN
DELPRINCE, and OLD DOMINION
SECURITIES, INC.,

Defendants.

CASE NO. 8:03-CV-321-T-27MSS

COMPLAINT FOR
INJUNCTIVE AND
OTHER RELIEF

Plaintiff Securities and Exchange Commission ("Commission") alleges:

I. INTRODUCTION

1. The Commission brings this action to enjoin the Defendants from violating the federal securities laws. Defendant Robert A. Magnan ("Magnan"), whom the Commission previously barred from associating with any broker or dealer and who previously pleaded guilty to criminal violations of the federal securities laws, defrauded investors of Defendant Investment Recovery Network, Inc. ("Investment Recovery" or the "Company"), a Florida corporation Magnan formed and controlled.

2. From at least 1999 through 2001, Magnan and Investment Recovery engaged in a fraudulent scheme to induce prospective investors to purchase unregistered shares of Investment Recovery stock by, among other things, disseminating written offering materials that contained false and misleading information about: (i) the value of and demand for Investment Recovery

WV

|

stock; (ii) the prospect and value of an initial public offering (“IPO”) conducted by Investment Recovery; (iii) the existing financial condition and prospective profitability of Investment Recovery; and (iv) Magnan’s background.

3. In addition, from at least June 2000 to December 2000, Magnan, without the consent of the Commission, became and was associated with Defendant Old Dominion Securities, Inc. (“Old Dominion”), a broker-dealer registered with the Commission. Defendant John DelPrince (“DelPrince”), the president and registered principal of Old Dominion, aided and abetted Old Dominion’s unauthorized association with Magnan.

4. Given Magnan’s history as a repeat offender, the length and seriousness of the violations alleged here, the degree of scienter, and the willful and wanton disregard for the federal securities laws that all Defendants have displayed, the Defendants have shown they will continue to violate the federal securities laws unless the Court enjoins them.

II. DEFENDANTS

5. Magnan resides in Clearwater, Florida. At all relevant times, Magnan was the founder, president, and chief executive officer of Investment Recovery. On April 5, 1995, the Commission issued an order barring Magnan from, among other things, association with any broker or dealer. See In the Matter of Robert A. Magnan, et al., Securities Act Rel. No. 7155 (April 5, 1995) (“1995 Order,” attached as Exhibit A).

6. Investment Recovery is a Florida corporation with its principal place of business in Tampa, Florida. Investment Recovery changed its name from Global Investment Recovery Services, Inc. on April 26, 2001.

7. Old Dominion is a Florida corporation with its principal place of business in Ft. Lauderdale, Florida, and which maintained offices in Tampa, Florida during the relevant time

period. Old Dominion has been registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") since November 24, 1997.

8. DelPrince resides in Ft. Lauderdale, Florida, and is the president of Old Dominion.

III. JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t(b), 77t(d) and 77v(a); and Sections 21(d), 21(e), and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e) and 78aa, as amended by Section 603 of the Sarbanes-Oxley Act of 2002.

10. Personal jurisdiction over the Defendants and venue are proper in the Middle District of Florida as Magnan resides in the Middle District, Investment Recovery has its principal place of business in the Middle District, Old Dominion (through DelPrince and others) conducted business in the Middle District during the relevant time period, and almost all of the acts and practices constituting violations of the Securities Act and the Exchange Act occurred in the Middle District through the use of the means and instrumentalities of interstate commerce.

IV. FACTUAL ALLEGATIONS

A. Magnan's Previous Commission Bar

11. In the 1995 Order, the Commission barred Magnan from association with any broker or dealer pursuant to Section 15(b)(6) of the Exchange Act, based on his willful violations of Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. At all relevant times, the 1995 Order has been in effect.

12. Based on substantially the same misconduct as the 1995 Order sets forth, Magnan pleaded guilty in a separate criminal action in United States District Court to criminal violations of federal law and was sentenced to 60 months probation on April 13, 1999.

B. Investment Recovery's Unregistered Stock Offerings

13. Investment Recovery was purportedly in the business of offering "investment recovery services" to investors who had lost money as a result of broker misconduct. Using in-house sales agents who made cold calls from lists of investors that Magnan had obtained, Investment Recovery solicited clients and referred many of them to attorneys for potential legal action against the brokers. Investment Recovery received a percentage of any settlement or judgment the clients received.

14. Investment Recovery's business generated only \$213,287 in total revenue from 1998 to 2001. The company had a net loss of \$767,559 in 2000 and \$620,017 in 2001.

15. Beginning in 1999 and continuing through 2001, Investment Recovery offered its stock to investors through general solicitation, which included at least four private securities offerings. Potential investors, some of whom were Investment Recovery's clients, were solicited through *telephone calls* and mailings. Investment Recovery agents and others sent a Company business plan, subscription agreements, and private placement memoranda to potential investors describing the Investment Recovery opportunity. Investors were given shares in the Company in exchange for their funds.

16. These offerings raised approximately \$3 million from at least 80 investors nationwide. Investment Recovery never filed a registration statement with the Commission for the sale of Investment Recovery stock. In addition, the Company was not entitled to any exemptions to the registration provisions of Section 5 of the Securities Act.

C. False Statements And Omissions Of Material Fact

17. During the offerings, Investment Recovery and Magnan made numerous misrepresentations and omissions of material fact to prospective investors, as well as baseless projections about the Company's future financial prospects. The false statements included, among other things: the existing and future profitability of Investment Recovery; that Investment Recovery would sell its stock to the public through an IPO at a certain stock price; and that the stock price would significantly appreciate as a result.

18. From at least 1999 through May 2000, Investment Recovery and Magnan circulated a business plan to prospective investors that described the Company, provided a detailed resume of Magnan's prior employment history in the securities industry, and contained financial information and future projections.

19. The business plan contained false information about the number of clients Investment Recovery had, listing as clients anyone who had ever signed an agreement expressing interest in Investment Recovery's services without regard to whether an attorney had agreed to accept the case or take any action.

20. The business plan also contained false information about the dollar value of potential claims held by "clients" of Investment Recovery, listing whatever anyone who had signed an agreement expressing interest in Investment Recovery's services said their claim was worth, without regard to documentation supporting that claim or whether any attorney had ever agreed to take action.

21. Based in part on the flagrantly false claims about the numbers of clients and the dollar value of their alleged claims, Investment Recovery and Magnan made baseless projections about the Company's future revenue and profitability. Because the projections were based at least

in part on these inflated figures and the likely occurrence of an IPO, the figures lacked any reasonable basis. The false statements about clients and dollar value of claims, as well as the projections, were material to prospective investors because they concerned the Company's financial performance and prospects.

22. The business plan also failed to disclose that the Commission barred Magnan from the securities industry in April 1995, or that he pleaded guilty to securities fraud.

23. During 2000, Magnan mailed letters to prospective investors predicting that Investment Recovery's stock prices would rise as high as \$60 per share in 2002. At the time, Investment Recovery's stock was sold to investors at less than \$5 per share. This prediction lacked any reasonable basis for numerous reasons, including the fact that it was based on false and inflated claims about the number of clients Investment Recovery represented, the dollar value of those claims, and the likely prospect of an IPO occurring. The letters also contained many of the misrepresentations about clients and dollar value of claims.

24. In these letters and in telephone calls, Magnan and Investment Recovery's sales agents also told prospective investors that Investment Recovery would sell its shares to the public through an IPO within various time periods and at various prices.

25. For example, they told many investors that Investment Recovery would conduct an IPO within one year at a share price ranging from \$15 to \$25 a share. Often these assertions of an initial offering price, as well as future stock prices ranging from \$19 to \$60 a share, were made within days of each other without any changes in facts that would have caused an estimate of future stock price to double or triple.

26. Magnan's claims about an impending IPO as well as any initial offering price were false and Magnan knew it when he made the claims. Magnan knew when he made these statements

that he had been unable to convince any brokerage firms other than Old Dominion or investment banks to do business with him, much less underwrite a public offering. In addition, Investment Recovery never applied to be listed on any stock exchange.

27. From at least June 2000 to July 2001, Magnan and Investment Recovery disseminated several private placement memoranda to prospective Investment Recovery investors that also made numerous misrepresentations of material fact.

28. The private placement memoranda contained false statements similar to those in the business plan and the letters regarding the number of clients and the dollar value of those “clients’ ” claims.

29. Based in part on the false and inflated numbers and the likely occurrence of an IPO, the memoranda contained projections about the Company’s future business and profitability that lacked any reasonable factual basis and masked the reality that Investment Recovery was a start-up company, its operations generated very little revenue, and it maintained operations primarily through raising new investor capital.

D. Magnan’s Unlawful Association with Old Dominion

30. On or about June 15, 2000, Magnan retained Old Dominion, a broker-dealer registered with the Commission, as the private placement agent for Investment Recovery’s securities offerings.

31. At the time they entered into an agreement with Magnan, Old Dominion and DelPrince were aware of Magnan’s securities industry bar. Also at the time, Old Dominion was practically inactive, maintained accounts for fewer than 25 customers, generated little revenue, and operated out of the Ft. Lauderdale, Florida home of its owner, DelPrince. Old Dominion had no offices in Tampa until it signed an agreement with Magnan and Investment Recovery in June 2000.

32. From at least July 2000 through December 2000, in connection with the Investment Recovery securities offering, Magnan effectively controlled Old Dominion's office in Tampa. He established, funded, and maintained Old Dominion's Tampa office by subletting an office within Investment Recovery's headquarters to Old Dominion, rent-free, and paying all of Old Dominion's operational expenses.

33. The only function of Old Dominion's Tampa office during this time was to sell Investment Recovery stock. Old Dominion had one registered representative in its Tampa office but did not provide him with an electronic trading system to execute trades, and he did not manage any Old Dominion customer accounts.

34. After retaining Old Dominion, Magnan and his sales staff continued to solicit a majority of the investors that purchased shares of Investment Recovery. Magnan and his sales staff then transferred investors interested in purchasing Investment Recovery stock to Old Dominion, which would prepare the necessary paperwork.

35. Between June and December 31, 2000, commissions from the Investment Recovery private placement accounted for substantially all of Old Dominion's revenue. The Investment Recovery placement accounted for more than 50% of the firm's total revenue for all of 2000.

36. The Commission never consented to Magnan's association with Old Dominion.

V. VIOLATIONS ALLEGED

COUNT I

VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 AGAINST MAGNAN AND INVESTMENT RECOVERY

37. The Commission incorporates and realleges Paragraphs 1-36 of this Complaint.

38. From at least 1999 through 2001, Defendants Magnan and Investment Recovery, directly and indirectly, by use of the means and instrumentality of interstate commerce, and of

the mails, and of any facility of any national securities exchange, in connection with the purchase or sale of the securities, as described herein, knowingly, willfully or recklessly: (i) employed devices, schemes or artifices to defraud; (ii) made untrue statements of material facts and 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; and (iii) engaged in acts, practices and courses of business which operated and will operate as a fraud upon the purchasers of such securities.

39. By reason of the foregoing acts, Defendants Magnan and Investment Recovery, directly or indirectly, 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, 17 C.F.R. § 240.10b-5.

COUNT II

**VIOLATION OF SECTION 17(a)(1) OF THE SECURITIES ACT
AGAINST MAGNAN AND INVESTMENT RECOVERY**

40. The Commission incorporates and realleges Paragraphs 1-36 of this Complaint.

41. From at least 1999 through 2001, Defendants Magnan and Investment Recovery, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by use of the mails, in the offer or sale of securities, as described herein, knowingly, willfully or recklessly employed devices, schemes or artifices to defraud.

42. By reason of the foregoing acts, Defendants Magnan and Investment Recovery, directly and indirectly, violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

COUNT III

**VIOLATION OF SECTIONS 17(a)(2) AND 17(a)(3) OF THE SECURITIES ACT
AGAINST MAGNAN AND INVESTMENT RECOVERY**

43. The Commission incorporates and realleges Paragraphs 1-36 of this Complaint.

44. From at least 1999 through 2001, Defendants Magnan and Investment Recovery, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by the use of the mails, in the offer or sale of securities, as described herein: (i) obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and (ii) engaged in transactions, practices and courses of business which are operated and will operate as a fraud or deceit upon purchasers and prospective purchasers of such securities.

45. By reason of the foregoing acts, Defendants Magnan and Investment Recovery, directly and indirectly, have violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77(q)(a)(2) and 77(q)(a)(3).

COUNT IV

**VIOLATION OF SECTIONS 5(a) AND 5(c) OF THE SECURITIES ACT
AGAINST MAGNAN AND INVESTMENT RECOVERY**

46. The Commission incorporates and realleges Paragraphs 1-36 of this Complaint.

47. From at least 1999 through 2001, Defendants Magnan and Investment Recovery, directly or indirectly:

(a) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities as described herein, through the use or medium of a business plan, private placement memoranda, prospectus or otherwise;

(b) carried securities or caused such securities, as described herein, 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; and/or

(c) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise, as described herein;

without a registration statement having been filed or being in effect with the Commission as to such securities.

48. Investment Recovery was not entitled to any exemptions from registration under Section 5 of the Securities Act.

49. By reason of the foregoing acts, Defendants Magnan and Investment Recovery, directly and indirectly, violated and, unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

COUNT V

VIOLATION OF SECTION 15(b)(6)(B)(i) OF THE EXCHANGE ACT AGAINST MAGNAN

50. The Commission incorporates and realleges Paragraphs 1-36 of this Complaint.

51. From at least July 2000 through December 2000, Defendant Magnan, against whom an Order issued by the Commission pursuant to Section 15(b)(6)(A) of the Exchange Act barring him from association with a broker or dealer was in effect, and without the consent of the Commission, willfully became or was associated with a broker-dealer in contravention of the Commission's 1995 Order.

52. By reason of the foregoing acts, Defendant Magnan, directly and indirectly, violated and, unless enjoined, will continue to violate Section 15(b)(6)(B)(i) of the Exchange Act, 15 U.S.C. § 78o(b)(6)(B)(i).

COUNT VI

**VIOLATION OF SECTION 15(b)(6)(B)(ii) OF THE EXCHANGE ACT
AGAINST OLD DOMINION**

53. The Commission incorporates and realleges Paragraphs 1-36 of this Complaint.

54. From at least July 2000 through December 2000, Defendant Old Dominion permitted Defendant Magnan, against whom an Order issued by the Commission pursuant to Section 15(b)(6)(A) of the Exchange Act barring him from association with a broker or dealer was in effect, and without the consent of the Commission, to become and remain associated with Old Dominion in contravention of the Commission's 1995 Order. Old Dominion was aware of the 1995 Order at the time it permitted Magnan to associate himself with Old Dominion.

55. By reason of the foregoing acts, Defendant Old Dominion, directly and indirectly, violated and, unless enjoined, will continue to violate Section 15(b)(6)(B)(ii) of the Exchange Act, 15 U.S.C. § 78o(b)(6)(B)(ii).

COUNT VII

**AIDING AND ABETTING THE VIOLATION OF SECTION 15(b)(6)(B)(ii) OF
THE EXCHANGE ACT AGAINST DELPRINCE**

56. The Commission incorporates and realleges Paragraphs 1-36 of this Complaint.

57. From at least July 2000 through December 2000, Defendant DelPrince knowingly, willfully, or recklessly aided and abetted Old Dominion in permitting Defendant Magnan, against whom an Order issued by the Commission pursuant to Section 15(b)(6)(A) of the Exchange Act barring him from association with a broker or dealer was in effect, and without the consent of the

Commission, to become and remain associated with Old Dominion in contravention of the Commission's 1995 Order.

58. By reason of the foregoing acts, Defendant DelPrince aided and abetted and, unless enjoined, will continue to aide and abet Old Dominion's violation of Section 15(b)(6)(B)(ii) of the Exchange Act, 15 U.S.C. § 78o(b)(6)(B)(ii).

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court:

I.

Declaratory Relief

Declare, determine and find that Defendants Magnan, Investment Recovery, Old Dominion, and DelPrince committed the violations of the federal securities laws alleged.

II.

Permanent Injunctive Relief

Enter a Final Judgment of Permanent Injunction, permanently enjoining:

A. Defendants Magnan and Investment Recovery from directly or indirectly violating Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and (c);

B. Defendants Magnan and Investment Recovery from directly or indirectly violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a); 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;

C. Defendant Magnan from directly or indirectly violating Section 15(b)(6)(B)(i) of the Exchange Act, 15 U.S.C. § 78o(b)(6)(B)(i);

D. Defendant Old Dominion from directly or indirectly, violating Section 15(b)(6)(B)(ii) of the Exchange Act, 15 U.S.C. § 78o(b)(6)(B)(ii); and

E. Defendant DelPrince from directly or indirectly aiding and abetting violations of Section 15(b)(6)(B)(ii) of the Exchange Act, 15 U.S.C. § 78o(b)(6)(B)(ii).

III.

Penny Stock Bar

Issue an Order pursuant to the Court's equitable jurisdiction and Section 603 of the Sarbanes-Oxley Act of 2002 permanently enjoining Defendant Magnan from directly or indirectly participating in an offering of penny stock, as defined by Rule 3a51-1 under the Exchange Act, 17 C.F.R. § 240.3a51-1.

IV.

Compliance with Prior Commission Order

Issue an Order requiring Defendant Magnan to comply with the Commission's 1995 Order.

V.

Disgorgement and Prejudgment Interest

Issue an Order requiring Defendants Magnan, Investment Recovery, Old Dominion, and DelPrince to disgorge all profits or proceeds that they have received as a result of the acts and/or courses of conduct complained of, with prejudgment interest.

VI.

Penalties

Issue an Order directing Defendants Magnan, Investment Recovery, Old Dominion, and DelPrince to pay civil fines and/or 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. § 78(d)(3).

VII.

Accounting

Issue an Order requiring sworn accountings by Defendants Magnan, Investment Recovery, Old Dominion, and DelPrince of all profits or proceeds each has received as a result of the conduct complained of.

VIII.

Further Relief

Grant such other and further relief as the Court may deem just and appropriate.

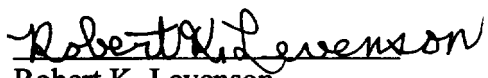
IX.

Retention of Jurisdiction

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

Respectfully submitted,

February 17, 2003


Robert K. Levenson
Senior Trial Counsel
Florida Bar No. 0089771
(Designated Trial Counsel Pursuant to
Local Rule 1.05(c))
Telephone: (305) 982-6341
Facsimile: (305) 536-4154

Gary Klein
Branch Chief
New York Bar No. GK4939
Telephone Number: (305) 982-6382

Ernesto Palacios
Staff Attorney
Florida Bar No. 529168
Telephone Number: (305) 982-6306

Attorneys for Plaintiff
**SECURITIES AND EXCHANGE
COMMISSION**
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 982-6300
Facsimile: (305) 536-4154

EXHIBIT A

1ST ITEM of Level printed in FULL format.

In the Matter of ROBERT A. MAGNAN STEVEN J. LABRASCIANO and
DONALD A. ROCHE, JR.

Admin. Proc. File No. 3-8370

SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933, Release No. 7155; SECURITIES
EXCHANGE ACT OF 1934, Release No. 35565

1995 SEC LEXIS 789

April 5, 1995

CORE TERMS: customer, per share, trading, stock, prospectus, stock price, falsely, Exchange Act, annual basis, invest, ratio, broker-dealer, violative, Securities Act, registered representative, high degree, recommendations, speculative, financial statement, recommending, guaranteed, offering, earnings, convince, interstate commerce, sale of securities, willfully violated, stop loss order, fully described, facts necessary

TEXT: [*1]

ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS ON ROBERT A. MAGNAN

I.

On May 19, 1994, the Securities and Exchange Commission ("Commission") issued an Order For Public Proceedings And Notice Of Hearing Pursuant To Section 8A of the Securities Act of 1933, and Sections 15(b)(6) and 21C of the Securities Exchange Act of 1934 ("Order Instituting Proceedings"), to determine whether the allegations contained in the Order Instituting Proceedings were true, and what remedial action, if any, was appropriate in the public interest. See Securities Act Release No. 33-7062; Exchange Act Release No. 34-34078.

II.

Respondent Robert A. Magnan ("Magnan") has submitted an Offer of Settlement which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission or to which the Commission is a party, and without admitting or denying the findings herein, except that Magnan admits the jurisdiction of the Commission over him and over the subject matter of these proceedings, and prior to a hearing pursuant to the Commission's Rules of Practice, 17 C.F.R. @ 201.1 et seq., Magnan consents to the entry [*2] of the findings and remedial sanctions set forth below.

III.

On the basis of this Order, the Order Instituting proceedings, and Magnan's Offer of Settlement, the Commission finds the following:

A. Magnan, age 30, is a resident of Tierra Verde, Florida. From October 1992, to in or about October 1994, Magnan was a registered representative with Sovereign Equity Management Corp. ("Sovereign"), a broker-dealer in Tampa,

Florida. From January 1991, until October 1992, Magnan was a registered representative with PaineWebber, Inc. ("PaineWebber") in its St. Petersburg, Florida branch office. In December 1990, Magnan was a registered representative in the Clearwater, Florida office of Chatfield Dean & Co., a broker-dealer which took over the accounts of The Stuart-James Company, Inc. ("Stuart-James") and hired many of its brokers. Magnan was a registered representative for Stuart-James from September 1986, until November 1990, in its Tampa, Clearwater, Chicago, and Houston offices. Magnan became a branch manager for Stuart-James in 1987, and a regional vice president in July 1989.

n1 The findings herein are made pursuant to Magnan's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding. [*3]

B. During the period from in or about June 1988, through May 1993, Magnan willfully violated Section 17(a) of the Securities Act, in that he, directly or indirectly, in the offer and 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 fact and 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; and (3) engaged in transactions, practices and courses of business which have operated or would operate as a fraud or deceit upon purchasers of securities, as more fully described below.

C. During the period from in or about June 1988, through May 1993, Magnan willfully violated Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder in that he, directly or indirectly, in connection with the purchase and sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of a national securities exchange: [*4] (1) employed devices, schemes or artifices to defraud; (2) made untrue statements of material fact and 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; and (3) engaged in acts, practices, and courses of business which have operated or would operate as a fraud or deceit upon persons, including purchasers and sellers of such securities, as more fully described below.

D. Magnan engaged in some of the violative conduct alleged herein while employed at Stuart-James, then a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act. On March 17, 1993, a Securities and Exchange Commission administrative law judge revoked Stuart-James's registration upon finding, among other things, that Stuart-James violated certain antifraud provisions of the federal securities laws. The initial decision against Stuart-James became final on May 12, 1993.

E. Magnan worked for a period of time in the St. Petersburg office of PaineWebber and in the Tampa office of Sovereign where he engaged in some of the violative conduct alleged herein. PaineWebber and Sovereign [*5] are, and were at the time of the alleged violative conduct, broker-dealers registered with the Commission pursuant to Section 15(b) of the Exchange Act.

Certain Companies Involved

F. CM Communications, Inc. ("CM") from 1987 to 1990 was a wholesaler of cellular phones in Southern California. CM lost money in the two years prior to making an initial public offering ("IPO") in January 1990. The prospectus stated that the securities offered were speculative. The prospectus also stated that CM intended to phase out its then current business and enter into a new line of business, that of importing and selling on a nationwide basis a new proprietary cellular phone. Many of its potential competitors in such a venture were better financed and more experienced than CM. CM continued to lose money and is now defunct.

G. The Meadow Group, Inc. ("Meadow") made an IPO on March 17, 1988. The offering, underwritten by Stuart-James, was a "blind pool" (that is, the company had no existing business). Meadow's prospectus stated that the shares were highly speculative and should be purchased only by persons who could afford to lose their entire investment. In September 1989, Meadow [*6] issued a prospectus in connection with a proposed merger. That prospectus disclosed that Meadow would incur "substantial indebtedness" to finance the merger, which could significantly limit [Meadow's] ability . . . to produce consolidated earnings." Meadow subsequently reported losses and went bankrupt.

H. Tocor II, Inc. ("Tocor") was formed in November 1991 to engage in research and development in bio-technology fields for Centocor, Inc., its parent, which had the rights to all its research and developments. Tocor offered securities to the public in an IPO on January 21, 1992. Tocor's prospectus stated that its securities were speculative and involved a high degree of risk. The prospectus also listed numerous other risk factors. It had no history of earnings.

I. Advanced Tissue Sciences, Inc. ("Advanced Tissue") was a new issue in June 1988. It offered shares to the public in September 1989 as a development stage company. Its prospectus stated that the offering "involves a high degree of risk and substantial immediate dilution." It was engaged in developing technology relating to the replication in culture of bone marrow cells and cells of certain other organs. [*7] As of October 1991, it had an accumulated deficit of \$ 19,100,000. It has continued to lose money since then.

J. Global Health Sciences Fund ("Global") on January 16, 1992, was a newly formed closed-end mutual fund underwritten by PaineWebber and two other broker-dealers which offered 20,000,000 shares to the public at \$ 15 per share. The prospectus stated that Global intended to invest its funds in health science companies worldwide. Global was authorized to invest up to 25 percent of its money in illiquid securities and 10 percent in junk bonds. Global's shares declined 36 percent in value during its first year of operation.

K. Independent Air Holdings, Inc. ("Independent Air") made an IPO in October 1985. Stuart-James underwrote the offering. Independent Air provided commercial charter air transportation. Independent Air's prospectus stated that its securities involved a high degree of risk. The company made money in 1986 but lost money continuously thereafter and is now defunct.

L. Rexcom Systems Corporation ("Rexcom") made an IPO in January 1985. Rexcom was engaged in the business of marketing the AutoLink system, a computer system that manages the [*8] information processing needs of car rental agencies. In May 1990, the company announced that it was experiencing a critical shortage of cash, and as a result was unable to pay for and complete

its annual audit, and unable to pay its annual listing fee to the National Association of Securities Dealers. By the end of May 1990, the company's stock was trading in the pink sheets for approximately \$.01 to \$.03 per share.

M. As part of the violative conduct, Magnan:

1. During the period from in or about June 1988, through in or about March 1993, made predictions, without a reasonable basis, to customers that the prices of certain securities he was recommending, for example, the securities of CM, Global, Independent Air, Rexcom, I-Stat, World Acceptance Corporation and Advanced Tissue would rise to specified levels within specified periods of time, in spite of the fact that the securities possessed one or more of the following characteristics: involved a high degree of risk, were issued by corporations with limited operating histories, had only recently gone public, were planning to enter a new line of business and/or were operating at a loss, for example:

a. In or about April [*9] 1990, when CM's stock was trading at approximately \$ 8.875 per share, Magnan told a customer that it was not time to sell CM because the stock would be over \$ 17 per share very soon, that CM's total earnings were expected to be higher than predicted and that CM's stock would reach \$ 12 per share within two days.

b. On or about July 23, 1990, when CM was trading at approximately \$ 3.87 per share, Magnan told a customer that he was in direct contact with CM company officials and knew that, although CM would not meet its estimated profit of \$ 1.24 per share, it would make \$.80 per share and that the company's stock price would rise to \$ 10 per share.

c. On or about March 7, 1990, when CM's stock was trading at approximately \$ 5.12 per share, Magnan told a customer that CM should earn about \$ 1.12 per share for the fiscal year and that CM's trading price should go to \$ 12 per share within 30 to 60 days.

d. On or about April 2, 1990, Magnan told a customer that if that customer bought 10,000 shares of CM "I think I could make you 100 to 120 grand . . . If we got 5,000 [shares], I think we'd make between 35 and 50 [thousand]."

e. In or about March 1990, when CM's stock was trading [*10] at approximately \$ 6 per share, Magnan told a customer that CM's trading price would go to \$ 100 per share by summer 1991.

f. In or about January 1992, Magnan told a customer that Global's per share price would double by the end of the year.

g. On or about January 14, 1992, when World Acceptance was trading at \$ 7.25 per share, Magnan told a customer that World Acceptance's stock price would rise to \$ 10 or \$ 11 per share.

h. In or about December 1989, when Rexcom was trading at approximately \$.06 per share, Magnan told a customer that Rexcom's stock price would rise to \$.12 per share.

i. In or about March 1990, when CM was trading at approximately \$ 8 per share, Magnan told a customer that CM's stock price would rise to \$ 15 to \$ 20 per share.

j. In or about January 1992, Magnan told a customer that she would double her money in one year if she purchased Global.

k. On or about April 27, 1990, when CM was trading at approximately \$ 8 per share, Magnan told a customer that he would make a minimum of \$ 7 per share on CM within a few months and recoup a previously incurred loss of \$ 3,000.

l. On or about May 1, 1990, Magnan told a customer that CM would go to \$ 12 to [*11] \$ 15 per share in 4 to 6 months.

m. In or about June 1988, when Independent Air was trading at approximately \$.25 per share, Magnan told a customer that the company's price would reach \$.75 per share in a short time, and would increase to \$.28 per share that very day.

n. In or about October 1992, when Advanced Tissue was trading at approximately \$ 9.30 per share, Magnan told a customer that Advanced Tissue's stock had a long term potential of \$ 50 to \$ 70 per share.

o. In or about December 1992, Magnan told a customer that I-Stat, Corp. then trading at approximately \$ 14 per share, would rise to approximately \$ 20 to \$ 25 per share.

2. During the period from in or about October 1989, through in or about April 1993, made misrepresentations and/or omitted to state material information about the business performance, prospects, and the risks of investing in companies whose securities he was recommending, such as CM, Meadow, and other high-risk speculative securities, for example:

a. On or about March 7, 1990, Magnan told a customer that CM was going to do approximately \$ 60 to \$ 70 million in revenues for 1990 and that in the short term there was absolutely no chance that [*12] CM would go broke because the company had over \$ 10 million in cash.

b. On or about April 2, 1990, Magnan told a customer that CM was a sound company, with very strong assets and should have revenues of \$ 242 million for the year.

c. In or about March 1990, Magnan told a customer that an investment in CM was a "no brainer", that he "couldn't miss" and that it was "guaranteed." Magnan also falsely told the customer that CM had an unlimited upside potential because the company had no competition.

d. In or about March 1990, Magnan told a customer that CM was so hot the customer could not pass it up, as the earnings, which would be announced in approximately six weeks, would be very high.

e. In or about January 1992, Magnan told a customer that Tocor was an absolute winner and that the customer could sell it within a week for a tidy profit.

f. In or about April 1990, Magnan told a customer that he had just had a private lunch with the president of CM who had communicated to him favorable information not available to the general public that, when made public, would cause the company's stock price to increase.

g. In or about November 1989, Magnan told a customer that Meadow [*13] was going to take off and that he should buy Meadow stock as quickly as possible because it would start to increase in price any day.

3. In 1990, induced customers to purchase stock of CM by falsely telling them that he would limit those customers' possible losses by causing their CM stock to be sold if its price declined by a certain amount, for example:

a. In or about April 5, 1990, Magnan falsely told a customer that he would enter a stop loss order of \$ 8.25 per share on that customer's 500 share purchase of CM so that the customer would not lose more than \$ 1 per share on the investment.

b. On or about April 2, 1990, Magnan falsely told a customer that he would enter a \$ 7.50 per share stop loss order on CM, guaranteed the customer that he could sell the investment for \$ 7.50 per share, and would not lose more than \$ 3000 to \$ 4000 on CM.

c. In or about March 1990, Magnan falsely guaranteed a customer that if he purchased CM, Magnan would watch the investment and would sell the customer's 1000 shares of CM if CM's stock price fell \$ 1 from the \$ 7.90 per share purchase price.

d. In or about March 1990, Magnan told a customer that he would sell the customer's CM stock [*14] if CM's stock price declined by \$ 2 to \$ 3 from the purchase price.

4. During the period from in or about February 1991, through in or about May 1993, willfully caused trading in customers' accounts he controlled that was excessive and unsuitable in light of those customers' investment objectives and the character of their accounts. For example:

a. From in or about February 1991, through in or about March 1992, Magnan turned over a customer's account 13 times on an annual basis. The customer lost approximately \$ 96,000, and Magnan's trading generated approximately \$ 181,249 in gross commissions. During that period, the account's commission to equity ratio was more than 64%. Magnan persuaded this customer to continue to accept his recommendations by, among other things, falsely overstating the performance of the account. Magnan further told this customer that, as a friend, he would never let anything bad happen in the customer's account.

b. From in or about January 1992, through in or about August 1992, Magnan turned over a customer's account 13.7 times on an annual basis. The customer lost approximately \$ 109,654, and Magnan's trading generated approximately \$ 63,635 in [*15] gross commissions. During that period, the account's commission to equity ratio was more than 94%. Magnan convinced this customer to continue to invest with him by, among other things, predicting that his recommendations would go up 75% in one year.

c. From in or about May 1991, through in or about April 1992, Magnan turned over a customer's account 12.6 times on an annual basis. The customer lost approximately \$ 34,498, and Magnan's trading generated approximately \$ 19,676 in gross commissions. During that period, the account's commission to equity ratio was more than 94%. Magnan persuaded this customer to give him the authority to execute trades in the customer's account without prior approval by telling

the customer that the customer had to act quickly, that the stocks would go up quickly, and that the stocks were a "sure thing."

d. From in or about May 1991, through in or about October 1992, Magnan turned over a customer's account 12.9 times on an annual basis. The customer lost approximately \$ 94,500, and Magnan's trading generated approximately \$ 150,894 in gross commissions. During that period, the account's commission to equity ratio was more than 104%. To convince [*16] this customer to invest with him, Magnan told the customer, among other things, that he had inside information from reliable sources about the stocks he was recommending.

e. From in or about December 1992, through in or about May 1993, Magnan turned over a customer's account 32 times on an annual basis. The customer lost approximately \$ 78,480, and Magnan's trading generated approximately \$ 22,581 in gross commissions. During that period, the account's commission to equity ratio was more than 62%. To convince this customer to continue to invest with him, Magnan falsely told the customer, among other things, that all of his customers made money.

f. From in or about April 1991, through in or about October 1992, Magnan turned over a customer's account 14 times on an annual basis. The customer lost approximately \$ 25,866, and Magnan's trading generated approximately \$ 40,519 in gross commissions. During that period, the account's commission to equity ratio was more than 137%. To convince this customer to continue to invest with him, Magnan, among other things, failed to disclose the nature and risks of trading on margin and trading in the stocks Magnan recommended.

5. During [*17] the period from in or about 1989, through in or about August 1992, made unsuitable investment recommendations to customers who followed such recommendations.

6. During the period from in or about June 1989, through in or about April 1992, effected unauthorized stock transactions in customers' accounts.

N. The Commission has reviewed Magnan's sworn financial statement and has determined that he does not have the financial ability to pay an administrative penalty. The Commission may, at any time, reopen this matter solely to reconsider Magnan's inability to pay an administrative penalty if the Commission obtains information from any source that the financial information provided by Magnan was inaccurate or incomplete in any material aspect.

IV.

Accordingly, IT IS HEREBY ORDERED, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, that Magnan cease and desist from committing or causing any violations and any future violation of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

IT IS FURTHER ORDERED, pursuant to Section 15(b)(6) of the Exchange Act, that Magnan be, and he hereby is, barred from association [*18] with any broker, dealer, municipal securities dealer, investment adviser or investment company.

IT IS FURTHER ORDERED that Magnan disgorge \$ 505,344, representing the commissions he generated based on his violative conduct described in P III.

1995 SE EXIS 789, *18

above, together with prejudgment interest thereon. Magnan, having submitted to the Division of Enforcement a Statement of Financial Condition sworn to on March 27, 1995 ("the Financial Statement"), representing his financial condition, \$ 445,344 of the disgorgement and all interest awarded in this Order is waived, contingent on the truthfulness of the representations in the Financial Statement. Such payment shall be made to the U.S. Securities and Exchange Commission by cashier's check, certified check or postal money order, as follows: \$ 30,000 shall be paid within five (5) business days of entry of this Order Making Findings and Imposing Remedial Sanctions Against Robert A. Magnan; and \$ 30,000 shall be paid on or before June 30, 1995.

By the Commission.