

N

Carmen J. Lawrence (CL-9154)
Regional Director

00 CIV 25 02

DOC #1

Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
Northeast Regional Office
7 World Trade Center
New York, NY 10048
Telephone No. (212) 748-8035

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

DANA C. GIACCHETTO and
THE CASSANDRA GROUP, INC.,

Defendants.

00 Civ. ()

COMPLAINT

[Signature]

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against Dana C. Giacchetto ("Giacchetto") and The Cassandra Group, Inc. ("Cassandra") (together, "Defendants"), alleges as follows:

PRELIMINARY STATEMENT

1. This action concerns an extensive fraudulent course of conduct by Giacchetto, acting through Cassandra, a registered investment adviser. Cassandra and Giacchetto have made numerous misrepresentations and misleading omissions of material facts to advisory clients and to the staff of the Commission. Furthermore, Cassandra and Giacchetto diverted and misappropriated the assets of advisory clients, and are continuing to do so.

2. Since at least September 1997 to the present, Cassandra and Giacchetto have

improperly transferred and taken custody of at least \$20 million of client assets, of which a substantial portion has been misappropriated. More than \$4 million of the \$20 million has not been returned to clients. The assets were misappropriated chiefly by Giacchetto causing checks to be issued from clients' custodial accounts at the registered broker-dealer Brown & Company Securities Corporation ("Brown") and then endorsing the checks himself and depositing those funds into Cassandra's main operating bank account at U.S. Trust Co. ("U.S. Trust").

3. Cassandra and Giacchetto concealed their mishandling and misappropriation of client funds by knowingly or recklessly making misrepresentations and misleading omissions to various clients, including 1) misrepresenting to clients that Cassandra invested their funds in securities transactions that never took place, including non-existent bond purchases; 2) representing to clients that their funds were invested in various private transactions when in fact such funds had been commingled in Cassandra's operating account and characterized as "loans" to Cassandra or as "deposits" on Cassandra's books; 3) misrepresenting to clients that Cassandra undertakes a "conservative" investment strategy and that Cassandra does not take custody of client assets; 4) providing false order tickets and portfolio statements to clients; and 5) falsely stating that clients' assets are held in "trust" or "escrow" accounts that did not, in fact, exist..

4. During 1999, Cassandra and Giacchetto also made misrepresentations and misleading omissions to clients -- and breached their fiduciary duties -- by receiving compensation from an unseasoned public company while purchasing and selling the securities of that issuer in dozens of clients' accounts, as well as in Cassandra's account. In addition, Cassandra and Giacchetto failed to disclose to clients that, since 1997, Cassandra has suffered

severe financial difficulties which impair Cassandra's ability to meet obligations to its clients, and, as of the end of 1999, Cassandra's liabilities greatly exceeded its assets.

5. Cassandra and Giacchetto also knowingly or recklessly made false statements in Cassandra's Form ADV filings with the Commission concerning Cassandra's assets under management and Giacchetto's educational background. Cassandra also failed to maintain, or maintained inaccurate and false, required books and records. Moreover, Cassandra and Giacchetto also lied to the Commission's investment adviser examination staff ("IA staff") and failed to produce required books and records during an examination of Cassandra by the IA staff in December 1999 and January 2000.

6. Defendants Cassandra and Giacchetto, directly or indirectly, have engaged, are engaging, and are about to engage, in violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §77q(a), and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5, and Sections 206(1), (2) and (4) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-6(1), (2) and (4), and Rules 206(4)-2 and 206(4)-4 thereunder, 17 C.F.R. §§275.206(4)-2 and 206(4)-4.

7. In addition to their violations of the antifraud provisions, Cassandra and Giacchetto violated Section 207 of the Advisers Act, 15 U.S.C. § 80b-7; and Cassandra, aided and abetted by Giacchetto, violated Section 204 of the Advisers Act, 15 U.S.C. § 80b-4, and Rule 204-2, 17 C.F.R. § 275.204-2, promulgated thereunder.

8. Unless temporarily, preliminarily, and permanently restrained and enjoined,

Cassandra and Giacchetto will continue to engage in the transactions, acts, practices, and courses of business alleged herein, and in transactions, acts, practices, and courses of business of a similar type and object.

JURISDICTION AND VENUE

9. The Commission brings this action pursuant to authority conferred by Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), and Section 209(d) of the Advisers Act, 15 U.S.C. § 80b-9(d), seeking to enjoin permanently Cassandra and Giacchetto from future violations of the federal securities laws. Because the fraudulent conduct by Cassandra and Giacchetto is ongoing, the Commission also seeks a temporary restraining order and preliminary injunction restraining and enjoining them from future violations of the federal securities laws. The Commission also seeks: (a) an asset freeze pendente lite; (b) an accounting; (c) an order appointing a temporary and permanent receiver; (d) an order fixing the amount of disgorgement and prejudgment interest owed by Cassandra and Giacchetto; (e) an order granting expedited discovery; and (f) such other equitable relief that may be deemed appropriate.

10. The Commission also brings this action pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9, for civil penalties against Cassandra and Giacchetto.

11. This Court has jurisdiction over this action, and venue lies in this District, pursuant to Sections 20(d) and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(d) and 77v(a),

Sections 21(d), 21(e) and 27 of the Exchange Act, 15 U.S.C. §§77u(d), 77u(e) and 78aa, and Section 214 of the Advisers Act, 15 U.S.C. § 80b-14. Venue in this District is proper because Giacchetto is a resident of, and Cassandra's principal place of business is in, New York, New York, which is within this District, and transactions and events giving rise to the claims alleged herein also occurred in New York, New York.

12. Cassandra and Giacchetto, directly and indirectly, made use of the means or instruments of transportation or communication in interstate commerce, the means or instrumentalities of interstate commerce, the mails, or the facilities of a national securities exchange, in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

THE DEFENDANTS

13. **Giacchetto**, age 37, is and was at all relevant times a resident of New York, New York. Giacchetto is the sole owner, president, chief investment officer, and treasurer of Cassandra.

14. **Cassandra**, located in New York, New York, has been registered with the Commission as an investment adviser since April 19, 1991. Cassandra provides investment advisory services to individual investors and entities and receives fees calculated as a percentage of assets under management. Cassandra directs Brown and other broker-dealers to pay advisory fees directly to Cassandra from client custodial accounts.

BACKGROUND

15. From at least January 1997 through the present, Giacchetto personally solicited

potential advisory clients for Cassandra's investment advisory services. Cassandra and Giacchetto sought to attract clients from the arts and entertainment industry, many of whom lacked financial sophistication. In order to appeal to these prospective clients, Giacchetto promoted Cassandra as a safe and conservative money manager. Cassandra's promotional literature stated that the firm's "conservative investment strategy primarily focuses on large-cap companies with solid growth prospects." The literature represented that "[o]ur investment philosophy emphasizes long-term growth with a priority placed on preservation of capital."

16. Giacchetto's and Cassandra's promotional literature further touted the purported safety of investing with Cassandra by claiming prominently that Cassandra does not have custody of client assets:

For maximum safety, The Cassandra Group does not have custody of any client's funds or securities. Rather, the assets are held by a designated, S.I.P.C. (Securities Investor Protection Corporation)-insured broker/dealer. This arrangement allows us to make investment decisions independent of any outside bias, and assures the client security of his or her account.

17. In both 1995 and 1997, following examinations conducted by the IA staff, Giacchetto received deficiency letters detailing violations by Cassandra of the custody, books and records and conflict of interest provisions of the Advisers Act. By letter dated July 25, 1997, Giacchetto represented to the IA staff that Cassandra would remedy the cited violations and that Cassandra would in the future not take custody of client assets.

**MISSAPPROPRIATION BY WRONGFUL
ENDORSEMENT OF CLIENTS' CHECKS**

18. From at least June 1997 through as recently as March 20, 2000, Giacchetto has wrongfully endorsed checks drawn from Cassandra clients' accounts at Brown and deposited those

checks in Cassandra's bank accounts. Giacchetto accomplished these transfers by telephoning Brown and directing Brown employees to issue from a client's account a check made payable to the client. Giacchetto then instructed Brown employees to deliver such checks to Cassandra by overnight mail, rather than to the client's address. Even though each check was made payable to the client and not Cassandra or Giacchetto, Giacchetto endorsed his clients' checks and deposited them in Cassandra's bank accounts.

19. Altogether, Giacchetto has knowingly or recklessly taken custody of more than 100 checks and deposited more than \$20 million of his clients' funds in bank accounts where those moneys have been commingled with Cassandra's operating funds and disbursed by Giacchetto for a variety of purposes, including the payment of Cassandra's and Giacchetto's expenses.

20. During the relevant period, Cassandra clients did not authorize Giacchetto to endorse checks payable to them.

21. In recent months, since August 1999 to the present, Giacchetto has misappropriated more than \$4 million of his clients' funds in this manner.

22. Since at least November 1999, Giacchetto has wrongfully endorsed checks and deposited those funds in Cassandra's bank accounts primarily to repay other clients who have complained regarding the handling of their accounts and in order to pay Cassandra's and Giacchetto's expenses. By making repeated deposits of client checks into Cassandra's operating account at U.S. Trust, and withdrawals soon after to repay other clients and the expenses of Cassandra and Giacchetto, the defendants have been able to conceal their misappropriation of clients' funds and to conceal Cassandra's financial difficulties, as discussed below in paragraphs

**FALSE STATEMENTS REGARDING BOND
PURCHASES AND PRIVATE PLACEMENT INVESTMENTS**

23. Cassandra and Giacchetto knowingly or recklessly made materially false statements, and omitted to state material facts necessary to make the statements made not misleading to clients who inquired about withdrawn funds or other activity in their accounts.

24. Since approximately January 1998 through the present, Cassandra and Giacchetto told inquiring clients that he had invested their withdrawn funds in securities that were held somewhere other than the particular client's Brown account. Giacchetto would often tell clients, as well as Cassandra's staff, that he had used clients' funds withdrawn from Brown accounts to purchase bonds issued by AT&T or Premier Parks corporations, or other such securities.

25. These representations were false and/or misleading. Cassandra and Giacchetto did not use client funds to purchase AT&T bonds or Premier Parks bonds or other such securities.

26. On a number of occasions, Giacchetto issued false trade or order tickets, portfolio statements or other false documents to clients who wanted proof of the bond purchases. Cassandra and Giacchetto knowingly or recklessly told clients that assets transferred from their Brown accounts were held by Cassandra in "escrow," "trust" or "sub" accounts. These representations were false and/or misleading as Cassandra had no escrow, trust or sub accounts.

27. Since approximately January 1998, Giacchetto knowingly or recklessly told his clients that Cassandra had used their withdrawn funds to purchase securities Cassandra obtained in various "private placements" ("private placements"). In connection with such representations,

Giacchetto knowingly or recklessly omitted to disclose one or more of the following material facts to clients:

- Cassandra commingled client funds in Cassandra's operating account at U.S. Trust;
- In many instances, Cassandra failed to forward client funds to the designated private placement issuer;
- In many instances, rather than forward client funds to the designated private placement issuer, Cassandra characterized client funds as a "loan" to Cassandra and treated client funds as a "deposit" on Cassandra's general ledgers;
- In many instances, Cassandra and Giacchetto used client funds to pay the expenses of Cassandra and Giacchetto and for Cassandra's operations, rather than for the client's benefit;
- In some instances when Cassandra did in fact forward client funds to a private placement issuer, Cassandra and Giacchetto failed to properly identify to the issuer the underlying Cassandra clients on whose behalf Cassandra made the investment;
- Cassandra and Giacchetto failed to obtain from private placement issuers adequate documentation, such as stock or bond certificates, or notes, which evidenced client investments;
- The securities issued by the private placement issuers are unregistered, nontradable and highly risky;

- Since 1997, Cassandra has incurred expenses exceeding its revenues; and
- As of at least November 1999, Cassandra's liabilities exceed its assets.

28. Furthermore, contrary to Giacchetto's representations regarding investments in AT&T bonds, Premier Parks bonds and various securities and investments in private placement transactions, Cassandra used client funds to make payments to other clients, some of which Cassandra previously defrauded, as well as payments for Cassandra's and Giacchetto's expenses.

CASSANDRA'S FINANCIAL CONDITION

29. Since at least 1997, Cassandra's operating and other expenses have greatly exceeded its income.

30. Since at least 1997, Casssandra's bookkeepers, the accounting firm of Vance, Cronin and Stephenson ("VCS"), have maintained ledgers and balance sheets which indicate that Cassandra has incurred large losses and has substantial liabilities described as "deposits from customers," "advance deposits" and "loans" payable to customers. According to these ledgers and balance sheets, which Cassandra did not produce to the IA staff during its recent examination, for the period ending November 30, 1999 ("VCS 1999 balance sheet"), Cassandra had liabilities in the form of "deposits from customers" totaling \$3,391,565. The VCS 1999 balance sheet also states that as of November 30, 1999, Cassandra had current liabilities totaling \$9,364,859 and current assets totaling \$6,415,944. A large part of Cassandra's reported assets are "investments" in various private entities and "loans" receivable from various clients.

31. On or about December 17, 1999, Cassandra and Giacchetto executed confessions of judgment in which Cassandra and Giacchetto admitted to the "misappropriation" of \$4.7

million from the accounts of six Cassandra clients (“Confessions of Judgment”). The Confessions of Judgment provide that Cassandra and Giacchetto are jointly and severally liable to the referenced six Cassandra clients for the total sum of \$4.7 million.

32. Cassandra and Giacchetto never disclosed to Cassandra’s clients any information concerning Cassandra’s financial condition, including information about Cassandra’s reliance on clients’ assets to remain solvent, or Cassandra’s losses, liabilities and insolvency.

FALSE STATEMENTS IN CASSANDRA’S FORMS ADV

33. Pursuant to Sections 203 and 204 of the Advisers Act, 15 U.S.C. §§ 80b-3 and 80b-4, Cassandra filed Forms ADV with the Commission dated April 6, 1998 (“1998 Form ADV”) and March 31, 1999 (“1999 Form ADV”).

34. Giacchetto signed each of Cassandra’s Forms ADV, attesting that the information contained therein was true and accurate.

35. The Forms ADV required Cassandra to disclose, among other things, the dollar value of clients’ assets managed by Cassandra and Giacchetto’s educational background.

36. Cassandra’s 1998 Form ADV represented that Cassandra managed 351 securities portfolios containing assets with a market value of \$315 million. That statement was false as Cassandra managed client assets valued at less than \$200 million.

37. Cassandra’s 1998 and 1999 Forms ADV represented that in 1984 Giacchetto graduated with a B.A. degree from the University of Massachusetts (“U. Mass.”) and that Giacchetto took two years of graduate level courses in Economics, Banking and English at Harvard University (“Harvard”). Those statements were false as Giacchetto obtained his B.A.

degree from U. Mass. in 1990 and Giacchetto took only “extension” school courses from Harvard which he employed to obtain his undergraduate degree from U. Mass.

38. Giacchetto knowingly or recklessly signed the Forms ADV, attesting that the information contained therein was true and correct, even though the Forms ADV contained the material misrepresentations and omissions detailed above.

**CONFLICTS OF INTEREST, MISREPRESENTATIONS AND OTHER
IMPROPER ACTIVITY RELATING TO PARADISE SECURITIES**

39. From at least May 1999 through November 1999, Cassandra and Giacchetto knowingly and recklessly breached their fiduciary duties, and knowingly or recklessly made materially false statements, and omitted to state material facts necessary to make the statements made not misleading, to clients regarding purchases and sales of the securities of Paradise Music & Entertainment, Inc. (“Paradise”).

40. From at least May 1999 through November 1999, Cassandra and Giacchetto made numerous purchases and sales of Paradise securities in clients’ Brown accounts even while Cassandra and Giacchetto owned and traded substantial amounts of Paradise securities.

41. In addition, since approximately December 1998, Cassandra and Giacchetto had substantial interests in and affiliation with Paradise. Pursuant to agreements with Paradise, Cassandra and Giacchetto invested clients’ funds in, or solicited Cassandra clients to purchase, Paradise securities pursuant to two private placements offerings in December 1998 (“1st Paradise offering”) and April 1999 (“2nd Paradise offering”).

42. In December 1998, Cassandra and Giacchetto invested \$2 million of Cassandra clients’ funds in the 1st Paradise offering. In April 1999, Cassandra and Paradise agreed that

Cassandra would solicit, and Cassandra did solicit, Cassandra clients to collectively invest an additional \$4 million in the 2nd Paradise offering.

43. Documents filed with the Commission by Paradise disclose, among other things, that at the time Cassandra and Giacchetto invested clients' funds to purchase securities offered in the 1st Paradise offering, Paradise had very little operating history, had not yet operated on a profitable basis, and, on November 3, 1998, NASDAQ had notified Paradise that it wanted to delist Paradise securities from trading as Paradise's net asset value was below NASDAQ's "Smallcap" requirements.

44. By approximately April 1999, in exchange for "consulting" services, Paradise had issued, or agreed to issue, to Giacchetto 200,000 shares of Paradise common stock as well as 800,000 warrants that convert to Paradise common stock at prices ranging from \$5 per share to \$10 per share. In exchange for these securities, Paradise and Giacchetto agreed that Giacchetto would perform "consulting" services for Paradise and, among other things, assist Paradise in obtaining financing.

45. By approximately May 1999, in connection with the Cassandra-arranged investments in Paradise, at least two Cassandra clients had become the Chief Operating Officer and President at Paradise and one Cassandra employee and one Cassandra client had joined Paradise's board of directors.

46. In May 1999, through as late as November 1999, Cassandra and Giacchetto purchased publicly traded Paradise securities in dozens of clients' Brown accounts at prices ranging from \$4 to \$8 per share. From at least August 1999 through November 1999, Cassandra executed

dozens of purchases and sales of Paradise securities in its own account at Brown, as well as in clients' Brown accounts. Many Cassandra clients had no knowledge that Cassandra and Giacchetto purchased Paradise securities in their accounts. Cassandra and Giacchetto purchased Paradise securities for at least two Cassandra clients that had specifically declined to subscribe to the 1st or 2nd Paradise offerings. Cassandra and Giacchetto purchased Paradise securities for other Cassandra clients who had subscribed to the 1st or 2nd Paradise offerings, but did not want additional Paradise securities in their accounts.

47. Cassandra and Giacchetto failed to disclose to their clients that Cassandra and Giacchetto owned Paradise securities and that Giacchetto owned Paradise warrants exercisable at prices ranging from \$5 to \$10 per share.

48. Cassandra and Giacchetto failed to disclose to their clients that Paradise securities involved a high degree of risk or that those securities constituted a substantial part of their portfolios.

49. The portfolios of many Cassandra clients have suffered significant losses as the market price of Paradise securities has substantially declined.

50. Giacchetto and Cassandra also induced two clients to transfer Paradise securities from their accounts to Cassandra's Brown account, without disclosing to these clients that they were "loaning" their securities to Cassandra. For at least one such customer, Giacchetto falsely stated that her securities were held in a "sub-account" or "trust" account. On other occasions, Giacchetto told Cassandra clients that he had executed "short sales" for their benefit in Cassandra's Brown account.

51. Giacchetto told these clients that he had sold their Paradise securities in the period around August 25 and 26, 1999, when the share price and trading volume of Paradise securities briefly peaked. Giacchetto then instructed these clients to agree to transfer their Paradise securities to Cassandra's account. When Giacchetto subsequently compensated these clients for the sales in Cassandra's account, he did so weeks or months later and gave clients less proceeds than he had previously represented they would receive.

52. On at least one occasion, in November 1999, Cassandra purchased additional Paradise securities in a client's Brown account instead of transferring back to that client Paradise securities which Giacchetto told the client he had not been able to sell during the August 25-26 period. When Giacchetto subsequently compensated these clients for the sales in Cassandra's account, he did so weeks or months later and gave clients less proceeds than he had previously represented they would receive.

**CASSANDRA FAILED TO KEEP,
AND PRODUCE TO THE COMMISSION'S STAFF,
ACCURATE BOOKS AND RECORDS REQUIRED BY LAW**

53. As a registered investment adviser, Cassandra is required to maintain certain books and records pursuant to Section 204 of the Advisers Act, 15 U.S.C. § 80b-4, and Rule 204-2 thereunder, 17 C.F.R. § 275.204-2. Those same provisions of the Advisers Act require such books and records to be true and accurate and for investment advisers to make such records available for inspection during examinations by representatives of the Commission.

54. From at least 1991 through the present, Giacchetto, and Cassandra employees supervised and directed by Giacchetto, were primarily responsible for maintaining Cassandra's

books and records.

55. The IA staff conducted an examination on the premises of Cassandra from December 14, 1999 to January 13, 2000. During that examination, the IA staff requested that Giacchetto produce Cassandra's books and records. Among other items, Cassandra failed to maintain, or produce to the IA staff, the following required books and records: 1) financial records such as ledgers, blotters and checking account statements; 2) the files of client accounts which Cassandra closed in 1999; 3) the monthly account statements and cancelled checks or any other records regarding Cassandra's main operating account at U.S. Trust; 4) the November 1999 monthly account statements for Cassandra's clients' Brown accounts; and 5) any monthly statements for Cassandra's account at Brown.

56. Giacchetto also made numerous false statements to the IA staff during its examination. Among other things, Giacchetto stated that 1) Cassandra had no correspondence with clients; 2) Cassandra did not take custody of clients' funds; and 3) Cassandra had no copies of monthly statements for its Brown account as Brown purportedly did not provide Cassandra with such statements. Each of these representations was false.

57. Giacchetto also tendered to the IA staff a balance sheet for the period ending November 1999, which falsely represented that Cassandra had no liabilities.

FIRST CLAIM FOR RELIEF

**VIOLATIONS OF SECTION 17(a) OF
THE SECURITIES ACT,
15 U.S.C. §77q(a), AND SECTION 10(b) OF THE
EXCHANGE ACT, 15 U.S.C. §78j(b), AND
RULE 10b-5, 17 C.F.R. § 240.10b-5**

(Violations of General Antifraud Provisions in Offer,
Sale or Purchase of Securities)
(Against Cassandra and Giacchetto)

58. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 - 57 above as if fully set forth herein.

59. Cassandra and Giacchetto, directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in, or the means or instrumentalities of, interstate commerce, or of the mails, in the offer or sale, and in connection with the purchase or sale, of securities: (a) have employed and are employing devices, schemes and artifices to defraud; (b) have obtained and are obtaining money or property by means of, or otherwise have made and are making, untrue statements of material fact or 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 (c) have engaged and are engaging in transactions, acts, practices and courses of business which operated as a fraud or deceit upon other persons.

60. As part of and in furtherance of this violative conduct, Cassandra and Giacchetto knowingly or recklessly made the false and misleading statements and omissions, and engaged in fraudulent schemes, as alleged in paragraphs 15 - 57.

61. The misrepresentations and omissions by Cassandra and Giacchetto were

material.

62. By reason of the foregoing, Cassandra and Giacchetto violated and, unless restrained and enjoined, will again violate Section 17(a) of the Securities Act, 15 U.S.C. §77q(a), and Section 10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5, 17 C.F.R. §240.10b-5.

SECOND CLAIM FOR RELIEF

**VIOLATIONS OF SECTIONS 206(1)
AND 206(2) OF THE ADVISERS ACT,
15 U.S.C. §§ 80B-6(1) AND (2)**

(Fraud Upon Advisory Clients and
Breach of Fiduciary Duty by Investment Adviser)
(Against Cassandra, Aided and Abetted by Giacchetto)

63. The Commission realleges and incorporates paragraphs 1 - 57 by reference as if fully set forth herein.

64. Since at least 1991, Cassandra, for compensation, engaged, and is continuing to engage, in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

65. Throughout the relevant period, Cassandra was registered with the Commission as an investment adviser. Throughout the relevant period, Giacchetto controlled Cassandra and used Cassandra to misappropriate client assets and to engage in other violative conduct.

66. As described more fully in paragraphs 15 - 57 above, Cassandra and Giacchetto, by use of the mails, telephone or other means or instrumentalities of interstate commerce, directly or indirectly, employed devices, schemes or artifices to defraud clients and/or prospective clients, and engaged in transactions, practices, or courses of business which operated

as a fraud or deceit upon clients and/or prospective clients.

67. As part of and in furtherance of this violative conduct, Cassandra and Giacchetto knowingly or recklessly made the false and misleading statements and omissions, and engaged in fraudulent schemes, as alleged in paragraphs 15 - 52.

68. By reason of the foregoing, Cassandra violated Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and (2), and Giacchetto aided and abetted Cassandra's violations.

THIRD CLAIM FOR RELIEF

VIOLATIONS OF SECTION 206(4) OF THE ADVISERS ACT, 15 U.S.C. § 80B-6(4), AND RULES 206(4)-2 AND 206(4)-4 THEREUNDER, 17 C.F.R. §§ 275.206(4)-2 AND 275.206(4)-4

**(Fraudulently Taking Custody of Clients' Assets;
Failure to Disclose Financial Condition)
(Against Cassandra, Aided and Abetted By Giacchetto)**

69. The Commission realleges and incorporates paragraphs 1- 57 by reference as if fully set forth herein.

70. As more fully described in paragraphs 14 and 18 - 22 above, Cassandra has taken custody and possession of funds or securities in which Cassandra's advisory clients had a beneficial interest. Moreover, the funds and securities of Cassandra clients were commingled with Cassandra's funds and securities, and the funds and securities held by Cassandra were never verified by an independent audit.

71. As more fully described in paragraphs 14, 18 - 32, and 39 - 52 above, Cassandra,

while acting as an investment adviser, by use of the mails or means or instrumentalities of interstate commerce, directly and indirectly, engaged in acts, practices, or courses of business which were fraudulent, deceptive, or manipulative in that Cassandra, while in custody or possession of funds or securities in which clients had a beneficial interest, did an act or took an action, directly or indirectly, with respect to those funds or securities, without:

- (1) segregating all such securities of each such client, marking such securities to identify the particular client who has the beneficial interest therein, and holding such securities in safekeeping in some place reasonably free from risk of destruction or other loss;
- (2) depositing in one or more bank accounts which contain only clients' funds all such funds of such clients, maintaining such accounts in Cassandra's name as agent or trustee for such clients, and maintaining a separate record for each account which shows the name and address of the bank where each account is maintained, the dates and amounts of deposits in and withdrawals from such account, and the exact amount of each client's beneficial interests in such account;
- (3) immediately after accepting custody or possession of funds or securities from any client, notifying the client in writing of the place and manner in which such funds and securities will be maintained, and thereafter giving written notice to each client when there was a change in the place or manner in which such funds or securities were being maintained;
- (4) sending not less frequently than once every three months, an itemized statement

showing the funds and securities in the custody or possession of Cassandra at the end of such period, and all debits, credits, and transactions in such client's account during such period; or

- (5) verifying by actual examination at least once during each calendar year by an independent public accountant at a time chosen by such accountant without prior notice to Cassandra all such funds and securities of Cassandra's advisory clients, and attaching to a completed Form ADV-E and transmitting to the Commission a certificate of such accountant stating that an examination of such funds and securities has been made, and describing the nature and extent of the examination.

72. As more fully described in paragraphs 18 - 32 and 39 - 52 above, Giacchetto rendered substantial assistance to the violation alleged in paragraphs 70 - 71, by, inter alia, disregarding his fiduciary duty to ensure that Cassandra complied with custody requirements and among other things, endorsing and depositing into Cassandra's bank accounts client checks not payable to Cassandra and Giacchetto and transferring clients' securities into Cassandra's brokerage account.

73. Without its fraudulent misappropriation of clients' assets, Cassandra would have been unable to pay its expenses and to repay clients who were dissatisfied with Cassandra's handling of their accounts.

74. As more fully described in paragraphs 29 - 32 above, Cassandra, while acting as a registered investment adviser with discretionary authority or custody over a client's funds or securities, by use of the mails or means or instrumentalities of interstate commerce, directly and

indirectly, engaged in acts, practices, or courses of business which were fraudulent, deceptive, or manipulative in that Cassandra failed to disclose to a client or prospective client all material facts with respect to a financial condition of the adviser that is reasonably likely to impair the ability of the adviser to meet contractual commitments to clients.

75. Cassandra has discretionary authority over client funds and securities, and has custody of certain clients' funds. Cassandra is currently insolvent as it has liabilities of greater than \$9 million and assets totaling no more than approximately \$6 million. This is a financial condition that is reasonably likely to impair the ability of Cassandra to meet contractual commitments to clients. Cassandra and Giacchetto never disclosed this financial condition of Cassandra to any advisory clients.

76. By reason of the foregoing, Cassandra violated and Giacchetto aided and abetted Cassandra's violations of Section 206(4) of the Advisers Act, 15 U.S.C. § 80b-6(4), and Rules 206(4)-2 and 206 (4)-4 thereunder, 17 C.F.R. §§ 275.206(4)-2 and 275.206(4)-4.

FOURTH CLAIM FOR RELIEF

**VIOLATIONS OF SECTION 207
OF THE ADVISERS ACT,
15 U.S.C. § 80B-7**

(Material Misstatements in Forms ADV
Filed with the Commission)
(Against Cassandra and Giacchetto)

77. The Commission realleges and incorporates paragraphs 1 - 57 by reference as if fully set forth herein.

78. As described more fully in paragraphs 33 - 38 above, Giacchetto signed

Cassandra's 1998 and 1999 Forms ADV.

79. As described more fully in paragraphs 33 - 38 above, Cassandra and Giacchetto willfully made untrue statements of material fact and/or omissions in Cassandra's Forms ADV, which are registration or application forms filed with the Commission. Among other subjects, Cassandra and Giacchetto included in the Forms ADV false and misleading statements and omissions concerning the dollar amount of assets under management by Cassandra and Giacchetto's educational background.

80. By reason of the foregoing, Cassandra and Giacchetto violated Section 207 of the Advisers Act, 15 U.S.C. § 80b-7.

FIFTH CLAIM FOR RELIEF

**VIOLATIONS OF SECTION 204
OF THE ADVISERS ACT,
15 U.S.C. § 80B-7 AND RULE 204-2
THEREUNDER, 17 C.F.R. § 275.204-2**

**(Books and Records Violations)
(Against Cassandra, Aided and Abetted by Giacchetto)**

81. The Commission realleges and incorporates paragraphs 1 - 57 by reference as if fully set forth herein.

82. As described in paragraphs 53 - 57 above, Cassandra and Giacchetto failed to make, maintain on its premises, or keep accurate, certain books and records required by law. For example, Cassandra failed to make, maintain on its premises or keep accurate, books and records concerning its assets, liabilities, finances, client accounts, closed client accounts, and correspondence with clients.

83. As described above in paragraphs 53 - 57, Cassandra willfully failed to provide the Commission's IA staff with records subject to examination.

84. By reason of the foregoing, Cassandra violated Section 204 of the Advisers Act, 15 U.S.C. § 80b-4, and Rule 204-2 thereunder, 17 C.F.R. § 275.204-2, and Giacchetto, as the sole owner and President of Cassandra, aided and abetted Cassandra's violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission respectfully requests that this Court grant:

I.

Orders temporarily and preliminarily, and a Final Judgment permanently, restraining and enjoining Cassandra, its agents, servants, employees, attorneys in-fact, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of 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, Sections 204, 206(1), (2) and (4), and 207 of the Advisers Act, 15 U.S.C. §§ 80b-4, 80b-6(1), (2) and(4), and 80b-7 and Rules 204-2, 206(4)-2 and 206(4)-4 thereunder, 17 C.F.R. §§ 275.204-2, 275.206(4)-2 and 275.206(4)-4.

II.

Orders temporarily and preliminarily, and a Final Judgment permanently, restraining and enjoining Giacchetto, his agents, servants, employees, attorneys in-fact, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of 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 thereunder, 17 C.F.R. § 240.10b-5, and Section 207 of the Advisers Act, 15 U.S.C. § 80b-7, and aiding and abetting violations of Sections 204, 206(1), (2) and (4), of the Advisers Act, 15 U.S.C. §§ 80b-4, 80b-6(1), (2), and (4), and Rules 204-2, 206(4)-2 and 206(4)-4 thereunder, 17 C.F.R. §§275.204-2, 275.206(4)-2 and 275.206(4)-4.

III.

An Order directing that the assets of Cassandra and Giacchetto be frozen.

IV.

An Order appointing a temporary receiver and receiver for Cassandra.

V.

An Order directing Cassandra and Giacchetto to each file with this Court and serve upon Commission, within five business days, or within such extension of time as the Commission agrees in writing, verified written accountings, signed by Giacchetto under penalty of perjury.

VI.

An Order permitting expedited discovery.

VII.

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

VIII.

A Final Judgment requiring Cassandra and Giacchetto to disgorge their unjust enrichment

from the fraudulent conduct alleged in this Complaint, and to pay prejudgment interest thereon.

IX.

Final Judgments imposing against Cassandra and Giacchetto civil monetary penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. §77t(d), Section 21(d)(3) of the Exchange Act, 15 U.S.C. §78u(d)(3), and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9 for the violations alleged herein.

X.

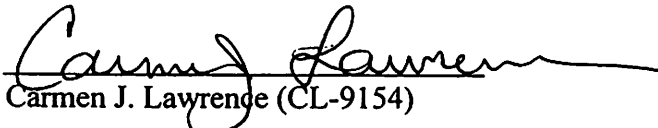
Such other and further relief as the Court deems appropriate.

Dated: April 3, 2000

New York, New York

Respectfully submitted,

CARMEN J. LAWRENCE
REGIONAL DIRECTOR


By: Carmen J. Lawrence (CL-9154)

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
7 World Trade Center -13th Floor
New York, New York 10048
Telephone No.: (212) 748-8035

Of Counsel:

Edwin H. Nordlinger
Wayne M. Carlin
Alexander M. Vasilescu
Thomas A. Capezza
Janet Leiben