

Thomas C. Newkirk (TN7271)
John D. Worland, Jr. (JW1962)
Mark K. Braswell
Bernard A. McDonough
Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
450 Fifth Street, N.W., Mail Stop 8-8
Washington, D.C. 20549
(202) 942-4522 (Worland)

01 Civ. 0726 (GN)

Robert B. Blackburn (RB1545)
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
7 World Trade Center
Suite 1300
New York, New York 10048
(212) 748-8185

JAN 30 2001
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

v.

**WALL STREET MANAGEMENT GROUP,
ROBERT CIOFALO,
CALVIN MOORE,
THOMAS CLINES,
HEIDI DECONDE CLINES, and
KATHLEEN CONNELL**

Defendants.

01 Civ. 0726 (GN)
COMPLAINT

COMPLAINT

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

INTRODUCTION

1. This case concerns the unlawful resale of securities in violation of the strict-liability registration provisions of the federal securities laws. Defendants were issued the vast majority of these shares for free. Collectively, Defendants reaped approximately \$860,077 in trading profits when they resold these unregistered securities into an artificially inflated market that was being manipulated by others. Shortly after Defendants resold their shares, the manipulation unraveled, leaving many innocent investors with worthless shares. Accordingly, the SEC brings this action: (i) to enjoin Defendants Wall Street Management Group ("WSMG"), Robert Ciofalo ("Ciofalo"), Calvin Moore ("Moore"), Thomas Clines ("Clines"), Heidi DeConde Clines ("DeConde"), and Kathleen Connell ("Connell") from further violation of the registration provisions, (ii) to recover their ill-gotten gains, (iii) to recover prejudgment interest thereon, (iv) to impose civil monetary penalties against all Defendants for their willful conduct, and (v) to appoint a receiver to collect and marshal such monies and other assets as the Court may order Defendants to disgorge.

2. In multiple transactions from January through March 1996, Defendants WSMG, Ciofalo, Moore, Clines, DeConde, and Connell acquired a total of 920,000 newly-issued, facially-unrestricted shares of Software of Excellence, Inc., a.k.a. Systems of Excellence, Inc. ("SOE") common stock by allegedly exchanging services for the shares, including assistance with SOE's acquisition of ICMX Federal Systems, Inc. ("ICMX"), a provider of video teleconferencing equipment. Without exception, these shares were acquired in transactions with SOE that were neither registered, nor exempt from registration.

3. In addition, Defendant Connell also acquired another 209,484 newly-issued shares of SOE common stock in a so-called "private placement" in early 1996. These SOE private placement shares were acquired in a single transaction with SOE that was neither registered, nor exempt from registration.

4. SOE had these consulting and private placement shares issued without a restricted legend by presenting various S-8 registration statements to its transfer agent and misrepresenting that the registration statement had been filed with the Commission. In actuality, SOE did not file any S-8 registration statements until months later, on September 24, 1996.

5. The distribution of facially-unrestricted shares was part of a massive fraud perpetrated by SOE, its chairman Charles O. Huttoe ("Huttoe") and others. Monies raised through Connell's private purchase of SOE securities, for example, provided SOE with needed cash and allowed Huttoe and others to carry on the operations of SOE and to further manipulate the market for SOE stock.

6. On October 4, 1996, the Commission suspended trading in the securities of SOE for a ten-day period pursuant to Section 12(k) of the Securities Exchange Act of 1934, in part, because of questions regarding the illegal distribution and resale of millions of unregistered SOE shares. Prior to the trading suspension, Defendants had illegally resold the vast majority of their SOE stock -- 971,000 of the total 1,129,484 unregistered consulting and private placement shares acquired -- into a market manipulated by others. Collectively, Defendants reaped ill-gotten gains (*i.e.*, net trading profits) of approximately \$860,077.

7. Wall Street Management Group, Robert Ciofalo, and Calvin Moore: On January 11, 1996, SOE issued 500,000 unregistered shares to WSMG pursuant to an agreement negotiated by Michelle Sotnikow ("Sotnikow"), a promoter working for SOE. The shares were originally issued to WSMG to induce Ciofalo, WSMG's principal, and Moore, a paid consultant for WSMG, to "promote" SOE by bribing brokers to push SOE stock on investors. Following a dispute with Sotnikow's partner, Sheldon Kraft ("Kraft"), resulting from WSMG's immediate sale of 250,000 unregistered shares, Ciofalo returned the remaining 250,000 shares. He later secured the return of 125,000 shares and thus ultimately received a portion of the proceeds from the resale of 375,000 unregistered SOE shares. At the time WSMG received its shares, the promoter also instructed SOE to issue 50,000 shares in the name of Carmen Pena, Calvin Moore's nominee. Moore's nominee performed no services for SOE and was unaware of the issuance of shares in her name. 50,000 shares were sold through the nominee account at the brokerage firm of Moore's brother in late January 1996 for proceeds of \$23,215.

8. Clines and DeConde: SOE issued Clines 195,000 consulting shares in early 1996 and he resold 126,000 of those shares between April and September 1996 for \$209,288. In addition, his then girlfriend, now wife, Heidi DeConde Clines, was issued 150,000 consulting shares in January 1996 and resold them all that month for \$90,371. Clines and DeConde received these shares for allegedly consulting on the merger of ICMX and SOE.

9. Kathleen Connell: SOE issued Ms. Connell 150,000 consulting shares in January 1996 and she resold all of those shares during January and February 1996 for \$53,980. Ms. Connell received these shares for allegedly consulting on the merger of

ICMX and SOE. Ms. Connell also was issued 209,484 SOE shares in the private placement and resold 120,000 of them between April and September 1996 for net profits of \$136,106.

10. Because none of these shares were offered or resold in transactions that were registered or exempt from registration, Defendants WSMG, Ciofalo, Clines, DeConde, and Connell violated the registration provisions of the federal securities laws when they resold their shares or, in the case of Moore, when he directed the resale of shares held by his nominee.

11. Defendants, directly or indirectly, have engaged in transactions, acts, practices, and courses of business which constitute violations of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a) and 77e(c)], and, unless enjoined, are likely to do so in the future.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)].

13. The Commission brings this action pursuant to authority conferred upon it by Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)].

14. Defendants, directly and indirectly, used the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, in connection with the acts, practices, and courses of business alleged herein.

15. Venue is appropriate, pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], because this is the district wherein each of the Defendants is found or transacts business or where the offer or sale took place.

DEFENDANTS

16. Wall Street Management Group, a New York corporation with no current ongoing operations, claimed to offer investment banking services. Although WSMG and SOE allegedly negotiated an investment banking services agreement, no final version was ever signed. Despite the absence of a final agreement, SOE issued "consulting shares" to WSMG, which WSMG quickly resold.

17. Robert Ciofalo, age 55, resides in Bronx, New York and served as the president of WSMG. Ciofalo had Series 4, 24, and 63 licenses at the time of WSMG's resales of unregistered SOE securities. He directed the resales of WSMG's unregistered SOE consulting shares and received a portion of the proceeds.

18. Calvin Moore, age 32, resides in Hillside, New Jersey. Moore was a registered representative at Global Equities Group when he introduced Michelle Sotnikow to WSMG to work out an "investment banking" agreement between WSMG and SOE. At Moore's direction, Sotnikow caused SOE to issue unregistered SOE consulting shares in the name of his mother-in-law, Carmen Pena, who he falsely claimed had agreed to help market SOE's product in the Caribbean. Moore then directed the resale of unregistered SOE securities in his nominee's account. From 1989 through approximately the summer of 2000, Moore was employed as a stockbroker with nine different broker-dealers and maintained a National Association of Securities Dealers' Series 7 license.

19. Thomas Clines, age 71, resides in Huddleston, Virginia with his wife, Heidi DeConde Clines. Clines allegedly provided consulting services to SOE in exchange for 195,000 SOE consulting shares. He introduced Kraft and Huttoe to ICMX

with the help of his friends, Jerry and Kathleen Connell. Clines went on to briefly become president of SOE after the trading suspension in October 1996. In 1990, Clines was convicted on four felony tax evasion charges in federal district court in Maryland, including willfully failing to report over \$260,000 in profits from secret arms shipments to the Nicaraguan contras during the Iran/Contra affair.

20. Heidi DeConde, now Heidi Clines, age 56, resides in Huddleston, Virginia with her husband, Thomas Clines. DeConde played a small role in assisting with the ICMX/SOE merger, hosting investor parties at her home, for which she received 150,000 SOE consulting shares.

21. Kathleen Connell, age 63, resides in Middletown, Rhode Island. She has previously served as Secretary of State of Rhode Island. Along with her husband, Jerry Connell, Connell introduced Kraft and Huttoe to the ICMX management through Jerry Connell's friend, Thomas Clines.

OTHER RELATED INDIVIDUALS AND ENTITIES

22. Systems of Excellence, Inc. ("SOE" or the "Company"), a Florida corporation, was first purportedly engaged in the manufacture and distribution of dental software (operating under the name Software of Excellence, Inc.) and, later, in the distribution of video teleconferencing equipment designed for use by hospitals and other medical facilities. At the relevant time, SOE common stock was quoted on the National Association of Securities Dealers' OTC Bulletin Board. SOE has since ceased all operations and is currently in bankruptcy liquidation proceedings; its securities have been deregistered by the Commission pursuant to Section 12(j) the Securities Exchange Act of 1934.

23. Charles O. Huttoe ("Huttoe") was formerly the Chairman and Chief Executive Officer of SOE. In a prior action filed in federal court on November 7, 1996 (styled SEC v. Huttoe, et al., Civ. Act. No. 96-2543 (GK) (D.D.C.)), plaintiff accused Huttoe of violating the antifraud provisions of the federal securities laws for his role in a massive market manipulation of SOE securities. Huttoe consented to the entry of a civil injunction and, in a related criminal case, pleaded guilty to securities fraud and money laundering.

24. Sheldon Kraft ("Kraft") is a former stockbroker who acted as a promoter for SOE. In a prior action filed in federal court on January 14, 1998 (styled SEC v. Kraft, Civ. Act. No. 98-0095 (GK) (D.D.C.)), plaintiff accused Kraft of violating the antifraud provisions of the federal securities laws for his conduct relating to SOE. Kraft consented to the entry of a civil injunction and, in a related criminal case, pleaded guilty to conspiracy to commit securities fraud, money laundering, and failure to file tax returns.

25. Michelle Sotnikow ("Sotnikow") was a stock promoter who ran the public relations firm Internetwork Communications, in which Sheldon Kraft owned a stake. On September 18, 1998, Sotnikow settled the Commission's action against her by consenting to the entry of an order of permanent injunction and other relief in SEC v. Sotnikow. On May 8, 1998, Sotnikow pleaded guilty to conspiracy to commit securities fraud and to defeat the lawful function of the IRS. The Commission has barred Sotnikow from participating in an offering of penny stock. She is cooperating with the government.

26. ICMX Federal Systems, Inc. ("ICMX"), was a Virginia corporation acquired by SOE in 1996. Even before the acquisition, SOE falsely hyped ICMX as a

company with \$10 million in previous purchase orders for its video teleconferencing equipment.

CLAIM

DEFENDANTS VIOLATED SECTIONS 5(a) AND 5(c) OF THE SECURITIES ACT WHEN THEY RESOLD SOE SECURITIES IN UNREGISTERED, NON-EXEMPT TRANSACTIONS

27. Sections 5(a) and 5(c) of the Securities Act prohibit persons, directly or indirectly, from using any means or instruments of transportation or communication in interstate commerce or of the mails to sell, offer to sell, or offer to buy any security unless: (i) a registration statement has been filed with the Commission and is in effect, or (ii) an exemption from registration applies.

SOE Issues Hundreds of Thousands of Shares to WSMG, Ciofalo and Moore to Induce Them to Bribe Brokers to Push SOE Stock

28. On January 11, 1996, SOE issued 500,000 shares to WSMG pursuant to an agreement negotiated by Sotnikow. The shares were originally issued to WSMG to induce Ciofalo, WSMG's principal, and Moore to "promote" SOE. The shares issued to WSMG were received in unregistered, non-exempt transactions. Nevertheless, immediately after receiving them, Ciofalo directed the resale of 250,000 of the shares through an account at H.J. Meyers, where Mark Moore, Calvin Moore's brother, was the account representative. WSMG's resales were not made pursuant to registered transactions, nor were they made pursuant to an exemption. The proceeds of WSMG's unregistered resales, \$115,885, were immediately wired to WSMG's bank account at Chemical Bank, with Ciofalo ultimately receiving a portion of the proceeds.

29. WSMG's quick sale of 250,000 shares caused a dispute between WSMG, Moore and Kraft. Sotnikow and Kraft intended for WSMG to use the shares to bribe

brokers to push SOE stock on unsuspecting investors. Ciofalo and Moore were to show order tickets as proof that their efforts had generated retail sales before they would get the stock. Kraft became angry once he learned that Sotnikow delivered the shares without first waiting for that proof. He attempted, without success, to rescind the transaction by directing the transfer agent not to transfer the remaining 250,000 shares and then submitting forged documents directing that they be transferred to Huttoe nominees.

30. After an extended dispute with Ciofalo and Moore, Kraft agreed that SOE would issue 125,000 shares (half of the 250,000 shares he had caused the transfer agent to hold) to WSMG to "settle" the dispute, provided that Kraft would control the timing of the sales through an account opened at Kraft's brokerage firm, M.H. Meyerson ("Meyerson"). Those 125,000 shares were received and resold in unregistered, non-exempt transactions. With Kraft's approval, Ciofalo then resold the remaining 125,000 SOE shares through WSMG's Meyerson account in late May 1996 and wired the proceeds, \$231,232, to WSMG's Chemical Bank account in July 1996.

31. At the time she instructed SOE to issue shares to WSMG, Sotnikow also instructed SOE to issue 50,000 shares in the name of Carmen Pena, Moore's mother-in-law. Moore designated Pena as his nominee to receive the SOE stock. Moore's nominee never performed, or agreed to perform, any services for SOE and was unaware of the issuance of shares to her. These 50,000 SOE shares were sold through Pena's account with Mark Moore at H.J. Meyers in late January 1996 for proceeds of \$23,215. The proceeds of this trade were sent to a bank account in Carmen Pena's name and from there a check for \$17,400 was written on February 7, 1996 to Calvin Moore and his wife, also named Carmen Pena.

**SOE Issues Hundreds of Thousands of Shares
to Clines and DeConde in Exchange for Purported Consulting Services**

32. SOE issued Clines 195,000 consulting shares in early 1996 and his then girlfriend; now wife, Heidi DeConde Clines, 150,000 consulting shares in January 1996. Clines and DeConde received these shares for “consulting” on the merger of ICMX and SOE.

33. Clines’ consulting primarily consisted of introducing Kraft and Huttoe to ICMX with the help of his friends, Jerry and Kathleen Connell. DeConde’s consulting amounted to fielding phone calls regarding the merger, organizing a meeting between the parties, and hosting a party for potential SOE investors at her house.

34. In a series of unregistered, non-exempt transactions, Clines resold 126,000 of his consulting shares between April and September 1996 for \$209,288.

35. In a series of unregistered, non-exempt transactions, DeConde resold all 150,000 of unregistered consulting shares in January 1996 for \$90,371.

36. Clines also invested \$50,000 in SOE through a private placement in early 1996 and received 194,828 unregistered SOE shares in return. Plaintiff does not seek any disgorgement for Clines’ unregistered resale of private placement shares because those sales did not generate a net trading profit.

**SOE Issues Hundreds of Thousands of Shares to Connell
in a Private Placement and in Exchange for Purported Consulting Services**

37. In or about December 1995, as a means of raising capital and of maintaining the appearance that SOE had substance, Huttoe arranged for SOE to make an offering of \$1 million (with an option to increase the total amount offered to \$1.5 million) through a private placement of SOE stock. These SOE shares were offered and sold to

investors pursuant to a Confidential Private Placement Memorandum ("CPPM").

38. Pursuant to the CPPM, investors were offered combination stock and loan "Units," with a minimum \$25,000 purchase. For the purchase of their units, each investor received: (i) a one-year note in the amount of their investment plus 10% interest (per annum) payable semi-annually and (ii) SOE shares at no additional cost. The number of shares was calculated by dividing the dollar amount of the note by 120 percent of the closing bid price as of December 20, 1995, or \$.29 per share. Accordingly, for every \$25,000 invested, SOE issued 86,207 shares of "free" stock.

39. The CPPM also contained the following warning against the resale of SOE securities obtained under the terms of the CPPM:

ALL INVESTORS WILL BE REQUIRED TO UNDERTAKE THAT THEY WILL NOT RESELL THE UNITS EXCEPT IN A TRANSACTION WHICH IS PURSUANT TO REGISTRATION UNDER THE 1933 ACT OR WHICH DOES NOT REQUIRE REGISTRATION UNDER THE 1933 ACT.

40. Purchasers were required to complete a Subscription Agreement and Questionnaire ("Subscription Agreement"). Paragraph 3(b) of the Subscription Agreement expressly stated:

Investor understands that the Units being purchased hereunder have not been registered under the Securities Act of 1933, as amended (the "Act") or any state securities laws. Investor agrees not to sell the Units without compliance with the terms of the Act and any applicable securities laws.

In completing the Subscription Agreement, purchasers represented, among other things, that they had read and understood the CPPM, that they understood that the Units had not been registered under the Securities Act, and that the Units were not being acquired with a view to distribution.

41. Pursuant to the CPPM, Connell invested \$25,000 and was issued 209,484 facially-unrestricted SOE shares and resold 120,000 of them in unregistered, non-exempt transactions between April and September 1996, for net profits of \$136,106. Upon information and belief, Connell received 123,277 of these shares in exchange for bringing other investors into the private placement.

42. SOE also issued Connell another 150,000 shares in January 1996 in exchange for her consulting. Connell's "consulting" primarily consisted of introducing Kraft and Huttoo to ICMX with the help of her husband's friend, Clines.

43. Connell resold all 150,000 of her SOE consulting shares in unregistered, non-exempt transactions between January and February 1996.

**SOE Causes its Transfer Agent
to Issue Facially-Unrestricted Share Certificates to Defendants**

44. The 1,129,484 SOE consulting and private placement shares that the transfer agent issued to Defendants were not registered with the Commission nor were they exempt from registration. In spite of this fact, the share certificates failed to carry the proper "restricted" legend.

45. As SOE received money from private placement investors or as individuals performed alleged "consulting" services, it periodically caused its transfer agent to issue facially-unrestricted share certificates by presenting the transfer agent with bogus Form S-8 registration statements, and misrepresenting that the Forms S-8 had been filed with the Commission. In each instance, no registration statement, on a Form S-8 or otherwise, had been filed with the Commission.

46. Despite the explicit restrictions on resale spelled out in both the CPPM and the Subscription Agreement, when Connell received facially-unrestricted share

certificates from SOE, she took no steps to correct what was, at best, a mistake. Instead, Connell soon resold those shares in the open market, reaping \$136,106 in ill-gotten profit.

47. When Defendants WSMG, Ciofalo and Moore received facially-unrestricted share certificates from SOE, they took no steps to correct what was, at best, a mistake, despite the fact that they were in the securities industry. Instead, in each instance, Defendants soon resold those shares in the open market, collectively reaping hundreds of thousands of dollars in ill-gotten profit.

CONCLUSION

48. Since at least January 1996 and continuing through October 4, 1996, Defendants WSMG, Ciofalo, Moore, Clines, DeConde, and Connell 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 prospectus or otherwise;

(b) 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 any security, as described herein;

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

49. By reason of the foregoing, and because no exemption from registration was applicable to their resales, Defendants WSMG, Ciofalo, Moore, Clines, DeConde,

and Connell violated the strict liability registration provisions of Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

RELIEF REQUESTED

WHEREFORE, the SEC respectfully requests that the Court issue an Order:

- A. permanently enjoining and restraining Defendants WSMG, Ciofalo, Moore, Clines, DeConde, and Connell, their officers, agents, servants, employees, nominees, attorneys, and all persons in active concert or participation with them, and each of them, from violating Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)];
- B. requiring WSMG and Ciofalo to jointly and severally disgorge \$347,117, representing all profits that they received as a result of the acts and/or courses of conduct complained of herein, together with prejudgment interest thereon;
- C. requiring Moore to disgorge \$23,215, representing all profits that Moore received as a result of the acts and/or courses of conduct complained of herein, together with prejudgment interest thereon;
- D. requiring Clines to disgorge \$209,288, representing all profits that he received as a result of the acts and/or courses of conduct complained of herein, together with prejudgment interest thereon;
- E. requiring DeConde to disgorge \$90,371, representing all profits that she received as a result of the acts and/or courses of conduct complained of herein, together with prejudgment interest thereon;

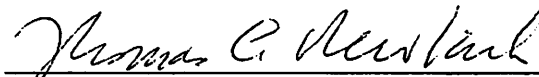
F. requiring Connell to disgorge \$190,086, representing all profits that she received as a result of the acts and/or courses of conduct complained of herein, together with prejudgment interest thereon;

G. directing Defendants WSMG, Ciofalo, Moore, Clines, DeConde, and Connell to pay civil penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d);

H. appointing a receiver to collect and marshal monies and others assets that are ordered by the Court to be disgorged by Defendants WSMG, Ciofalo, Moore, Clines, DeConde, and Connell; and

I. granting such other and further relief as may be necessary and appropriate.

Respectfully submitted,



THOMAS C. NEWKIRK (TN7271)
JOHN D. WORLAND, JR. (JW1962)
MARK K. BRASWELL
BERNARD A. MCDONOUGH
Attorneys for Plaintiff
SECURITIES AND EXCHANGE
COMMISSION
450 Fifth Street, N.W.
Mail Stop 8-8
Washington, DC 20549-0808
Telephone: (202) 942-4522 (Worland)
Facsimile: (202) 942-9639

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Local Counsel :
Robert B. Blackburn (RB1545)
Northeast Regional Office
Securities and Exchange Commission
7 World Trade Center
Suite 1300
New York, New York 10048
Tel: (212) 748-8185