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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**
14

15 SECURITIES AND EXCHANGE COMMISSION,
16 Plaintiff,
17 v.
18 DOW ROCKWELL LLC AND RICHARD DOW
ROCKWELL,
19 Defendants.
20

Case No.

COMPLAINT

21 Plaintiff Securities and Exchange Commission (the “Commission”) alleges:
22

23 **SUMMARY OF THE ACTION**

24 1. From at least September 2017 through May 2020 (the “relevant period”), Dow
25 Rockwell LLC and its sole principal Richard Dow Rockwell (“Rockwell”) acted as unregistered
26 brokers on behalf of Professional Financial Investors, Inc. (“PFI”), a real estate investment and
27 management company in Marin, California. Through the actions of Rockwell, California-
28 registered investment adviser Dow Rockwell LLC raised approximately \$8 million for PFI from

1 the offer and sale of securities in unregistered transactions to their advisory clients in California,
2 Louisiana and Nevada. PFI paid Rockwell and Dow Rockwell LLC a five percent commission
3 for the investor funds they solicited. In total, over the relevant period, Rockwell and Dow
4 Rockwell LLC earned approximately \$400,000 in transaction-based commissions or “referral
5 fees” from their sales of PFI securities, which constituted nearly 40% of Dow Rockwell LLC’s
6 total revenue in 2019 and 2020, and more than 25% of Dow Rockwell LLC’s revenue in 2018.

7 2. Rockwell and Dow Rockwell LLC made false and misleading statements when
8 offering the PFI investments to their clients. For example, Rockwell and Dow Rockwell LLC
9 falsely told investors that Dow Rockwell LLC did not receive transaction-based compensation,
10 but was rather compensated solely through advisory fees that it charged its clients. In fact, as
11 Rockwell and Dow Rockwell LLC knew, PFI compensated them based on a percentage of the
12 price their clients paid to purchase the securities and that these referral fees they earned from PFI
13 were substantially higher than the management fees they charged their advisory clients for most
14 other investment types. The failure to disclose this compensation constituted an undisclosed
15 conflict of interest because the compensation Rockwell and Dow Rockwell LLC received for
16 selling PFI securities incentivized Rockwell and Dow Rockwell LLC to recommend PFI to their
17 clients instead of other possible investments.

18 3. Over the relevant period, Rockwell and Dow Rockwell LLC also failed to
19 disclose to the investors they solicited to purchase PFI securities the past criminal conviction of
20 PFI’s founder, who exerted significant control over PFI’s operations until the founder’s death in
21 May 2020. As a result, Rockwell and Dow Rockwell LLC’s clients failed to fully appreciate the
22 risks associated with their investments in PFI.

23 4. Although PFI marketed its securities to investors as safe alternatives to the stock
24 market that were secured by large cash reserves and that would yield regular returns, in reality
25 PFI operated as a fraud. PFI’s now-deceased founder and its president collectively
26 misappropriated more than \$35 million from PFI’s investors as part of a larger fraudulent scheme
27 in which hundreds of millions of dollars were raised from more than 1,300 investors.
28

1 PFI's fraudulent scheme began to unravel shortly after the death of its founder on May 6, 2020.
2 PFI is currently in Chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of
3 California, leaving many of Rockwell and Dow Rockwell LLC's clients, as well as thousands of
4 other investors, with hundreds of millions of dollars in collective losses. Many of Dow
5 Rockwell LLC's clients invested their retirement savings in PFI.

6 5. During the time they offered and sold PFI securities, neither Rockwell nor Dow
7 Rockwell LLC was registered as a broker-dealer with the Commission or associated with a
8 registered broker-dealer. Additionally, PFI did not register its securities offering with the
9 Commission, and there was no applicable exemption from registration for PFI's securities.

10 6. Defendants Rockwell and Dow Rockwell LLC have violated, and unless
11 restrained and enjoined will continue to violate, Sections 5(a) and 5(c) of the Securities Act of
12 1933 ("Securities Act") [15 U.S.C. §§ 77e(a) and 77e(c)], Section 15(a)(1) of the Securities
13 Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78o(a)(1)] and Sections 206(1), 206(2)
14 and 207 of Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1), 80b-6(2)
15 and 80b-7]. The Commission seeks an injunction against Rockwell and Dow Rockwell LLC
16 from future violations of these provisions, as well as disgorgement of ill-gotten gains,
17 prejudgment interest on disgorgement, and civil money penalties.

18 **JURISDICTION AND VENUE**

19 7. The Commission brings this action pursuant to Sections 20(b), 20(d) and 22(a) of
20 the Securities Act [15 U.S.C. §§ 77t(b), 77t(d) and 77v(a)], Sections 21(d), 21(e) and 27 of the
21 Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa] and Sections 209(d) and 209(e) of the
22 Advisers Act [15 U.S.C. §§ 80b-9(d) and 80b-9(e)].

23 8. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1)
24 and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d)(1), and 77v(a)], Sections 21(d), 21(e)
25 and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa] and Sections 209(d), 209(e)
26 and 214 of the Advisers Act [15 U.S.C. §§ 80b-9(d), 80b-9(e) and 80b-14].
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28

1 9. Defendants Rockwell and Dow Rockwell LLC, directly or indirectly, made use
2 of the means and instrumentalities of interstate commerce or of the mails in connection with the
3 acts, transactions, practices, and courses of business alleged in this complaint.

4 10. Venue is proper in this District pursuant to Section 22(a) of the Securities Act
5 [15 U.S.C. § 77v(a)], Section 27(a) of the Exchange Act [15 U.S.C. § 78aa(a)] and Section 214
6 of the Advisers Act [15 U.S.C. § 80b-14]. Acts, transactions, practices, and courses of business
7 that form the basis for the violations alleged in this complaint occurred in this District.

8 Defendants met with and solicited prospective investors in this District, and offers and sales of
9 securities took place in this District.

10 11. Under Civil Local Rule 3-2(d), this civil action should be assigned to the San
11 Francisco Division, because a substantial part of the events or omissions which give rise to the
12 claims alleged herein occurred in Marin County.

13 **DEFENDANTS**

14 12. **Dow Rockwell LLC** is a California limited liability company formed in 2005,
15 with its principal place of business in San Rafael, California. Dow Rockwell LLC has been
16 registered in California as an investment adviser since 2005. During the relevant period, Dow
17 Rockwell LLC served as an investment adviser to approximately 50 individual retail clients and
18 had approximately \$2-3 million in assets under management. Dow Rockwell LLC specialized in
19 helping its clients prepare for retirement and charged clients annual advisory fees of 0.3-0.5%
20 during the relevant period.

21 13. **Richard Rockwell**, age 62, resides in Marin, California. Since 2005, Rockwell
22 has been the principal of Dow Rockwell LLC and has managed and controlled its operations. He
23 was not registered as a broker-dealer or associated with any registered broker-dealer during the
24 time he sold PFI's securities. Rockwell has held Series 7, 24, 63 and 66 securities licenses.
25 Currently, only his Series 7 license remains active. Rockwell also holds a California insurance
26 license.

RELATED ENTITY

1
2 14. **Professional Financial Investors, Inc.** is a California corporation based in
3 Novato, California. PFI is a real estate investment and management firm specializing in multi-
4 unit residential and commercial real estate in Northern California. On July 26, 2020, PFI filed a
5 voluntary Chapter 11 bankruptcy petition in the Bankruptcy Court for the Northern District of
6 California.

FACTUAL ALLEGATIONS

7
8 **A. Background of PFI and the Securities Offered and Sold**

9 15. PFI was founded in 1990 by Kenneth J. Casey, who died on May 6, 2020. It was
10 founded as a real estate investment and management firm specializing in multi-unit residential
11 and commercial properties in Northern California.

12 16. Casey served as the sole director, officer and shareholder of PFI until 1998, when
13 he relinquished his corporate positions and Lewis Wallach took over as president of PFI.
14 Despite relinquishing his corporate positions, Casey continued to exert significant control over
15 PFI until his death. Wallach continued to serve as president of PFI until June 2020, when he was
16 forced to resign because of his role in the fraudulent scheme.

17 17. Together PFI and its related entities own a direct or indirect interest in
18 approximately 70 residential and commercial real properties in California, including equity
19 interests in limited liability companies (together, the “LLCs”) that hold either fee title or an
20 interest as tenant-in-common in various real properties and general partner interests in limited
21 partnerships (together, the “LPs”) that hold fee title to various real properties in California.

22 18. Since at least September 2017 through May 2020, at the direction of Casey and
23 Wallach, PFI raised funds from investors through the offer and sale of membership interests in
24 various LLCs. Investors were told that the interest payments and equity distributions for all of
25 the securities offered and sold by PFI were to be made based on the income generated by PFI’s
26 management of the underlying real property, including collection of rents from tenants.

B. PFI's Fraudulent Scheme

19. From at least June 2011 to May 2020, PFI raised hundreds of millions of dollars from more than 1,300 investors through the offer and sale of the securities described above. A significant portion of those investors are elderly and invested IRA or other retirement funds. Many investors relied on investment returns to pay their daily living expenses.

20. While soliciting investments, PFI's principals made numerous false and misleading statements, including falsely telling investors that their monies would be primarily used to purchase real property and make improvements to real property already owned by PFI.

21. Contrary to these representations, a substantial portion of investor funds were used in a Ponzi-like fashion to pay back previous investors or to cover operating losses at PFI and its related entities. For example, between September 2015 and May 2020 – a period in which PFI and its related entities raised approximately \$330 million from investors – over \$150 million was used to pay interest to prior investors, pay certain investors principal and cover the operating losses of PFI.

22. In addition to the Ponzi-like scheme, Casey and Wallach collectively misappropriated more than \$35 million in investor funds. Both men treated PFI's bank accounts as their personal funds, accessing them regularly to use investor monies for their own personal enrichment, including such expenses as personal tax obligations and renovations of their personal residences.

23. Casey and Wallach also misrepresented the safety and liquidity of the securities offered and sold by PFI, falsely telling investors that their investments were liquid and could be cashed out at any time, with as little as a few days' notice, and that PFI maintained substantial reserve funds for that purpose. Contrary to their representations, PFI lacked adequate cash to meet their obligations without bringing in new investor funds, let alone cash sufficient to provide liquidity to investors seeking to withdraw their investments on short notice.

1 **C. Dow Rockwell LLC and Rockwell’s Receipt of Compensation Related to PFI**
2 **Investments**

3 24. Dow Rockwell LLC has been registered in California as an investment adviser
4 since 2005. It was never registered as a broker-dealer. Rockwell was associated with various
5 registered broker-dealers from 2004 to 2005 and 2006 to 2010, but has not been associated with
6 a registered broker-dealer since then.

7 25. In approximately September 2017, Rockwell and Dow Rockwell LLC began
8 recommending their advisory clients invest in membership interests in various PFI LLCs.
9 Rockwell and Dow Rockwell LLC solicited their clients by various means, including emails,
10 telephone calls and in-person meetings.

11 26. Without doing adequate due diligence into PFI’s financial condition, Rockwell
12 and Dow Rockwell LLC repeated to prospective investors PFI’s claims that its real estate
13 offerings presented a safe and secure alternative to the stock market that would achieve high
14 returns.

15 27. Pursuant to a verbal agreement with Casey, PFI paid Rockwell a 5% commission
16 or “referral fee” based on the principal amount invested by investors he introduced to PFI.

17 28. From September 2017 through May 2020, Rockwell and Dow Rockwell LLC
18 received approximately \$400,000 in “referral fees,” or transaction-based compensation, from PFI
19 for soliciting and recommending PFI investments to their advisory clients.

20 29. The referral fees received by Rockwell and Dow Rockwell LLC were higher than
21 the typical 0.3-0.5% assets-under-management annual advisory fee that Dow Rockwell LLC
22 received based on recommending other investments to its clients. This gave Rockwell and Dow
23 Rockwell LLC an incentive to recommend PFI investments over other investment products.

24 30. During the relevant period, Rockwell and Dow Rockwell LLC solicited
25 approximately 21 clients in three states and recommended they invest approximately \$8 million
26 in PFI. PFI ultimately returned more than \$1 million of those funds because they were
27 investments in an LLC that was raising funds at the time of Casey’s death. Although, PFI
28

1 returned those funds to investors, Rockwell failed to return the more than \$50,000 in referral fees
2 that he received from PFI for soliciting those funds.

3 31. Dow Rockwell LLC's total income from referral fees related to the PFI
4 investments constituted nearly 40% of its revenue in 2019 and 2020, and more than 25% of its
5 income for 2018.

6 **D. Dow Rockwell LLC and Rockwell Failed to Disclose Their Referral**
7 **Fees and the Associated Conflict of Interest to Clients**

8 32. As investment advisers, Dow Rockwell LLC and Rockwell were obligated to
9 fully disclose all material facts relating to the advisory relationship, including any actual or
10 potential conflicts of interest that might incline Dow Rockwell LLC or Rockwell – consciously
11 or unconsciously – to render investment advice that was not disinterested. To meet this
12 obligation, Dow Rockwell LLC and Rockwell were required to provide advisory clients with
13 sufficient information about compensation received from PFI in connection with their
14 recommendations concerning PFI securities so that their clients could decide whether to give
15 informed consent to such conflicts or practices, or choose different investment products.

16 33. Dow Rockwell LLC and Rockwell did not disclose to clients the five percent
17 referral fee they received from PFI (which was significantly higher than the typical 0.3-0.5%
18 advisory fees they charged their clients) or the resulting conflict of interest they had in
19 recommending PFI investments.

20 34. Dow Rockwell LLC and Rockwell failed to satisfy the fiduciary duties they owed
21 to their clients by failing to provide written or verbal disclosures about the conflicts of interest
22 they had regarding PFI investments. Specifically, Dow Rockwell LLC and Rockwell failed to
23 inform clients that Dow Rockwell LLC received as much as ten times its typical advisory fee for
24 the first year of a client's investment in PFI, and that Dow Rockwell LLC received a material
25 amount of its compensation related to the sale of PFI securities.

1 **E. Dow Rockwell LLC and Rockwell Made False Statements and Omissions in**
2 **ADV Brochures Filed with the Commission**

3 35. As an investment adviser registered with the Commission, Dow Rockwell LLC is
4 required to file with the Commission a Form ADV, which includes Parts 1 and 2 (Part 2A is the
5 “ADV Brochure”). Rockwell was the sole individual at Dow Rockwell LLC responsible for
6 drafting, reviewing, editing and approving Dow Rockwell LLC’s Forms ADV Parts 1 and 2,
7 including the ADV Brochures that were filed with the Commission during the relevant period.
8 Dow Rockwell LLC and Rockwell also delivered ADV Brochures to their clients.

9 36. During the relevant period, Item 5 of the ADV Brochure required Dow Rockwell
10 LLC to disclose how it was compensated for its advisory services, including whether Dow
11 Rockwell LLC or any of its supervised persons accepted compensation for the sale of securities
12 or other investment products and, if so, to provide an explanation that this practice constitutes a
13 conflict of interest.

14 37. Similarly, Item 14.A of the ADV Brochure required Dow Rockwell LLC to
15 disclose information about any economic benefit provided by someone who is not a client for
16 providing investment advice, and generally to describe the arrangement, along with the resulting
17 conflicts of interest and how the investment adviser will address those conflicts of interest.

18 38. During the relevant period, Dow Rockwell LLC, through Rockwell, filed four
19 ADV Brochures that falsely stated the following:

- 20 • In response to Item 5.F: “Dow Rockwell does not buy or sell securities and
21 does not receive compensation for securities transactions in any Client account,
22 other than the Investment Advisory Fees noted above.”
23 • In response to Item 14.A: “Dow Rockwell is a fee-only advisor, who, in all
24 circumstances, is compensated solely by the Client. Dow Rockwell does not
25 receive commissions or other compensation from product sponsors, broker
26 dealers or any unrelated third party.”

27 39. These representations were false because Dow Rockwell LLC, since at least
28 September 2017, had been receiving referral fees for each investment in PFI it referred. Dow
Rockwell LLC received the compensation based on Rockwell’s advice to Dow Rockwell LLC
clients that they invest in and continue holding membership interests in various PFI LLCs.

1 Moreover, the ADV Brochures failed to disclose the conflicts of interest that Dow Rockwell
2 LLC had with respect to PFI investments, namely that Dow Rockwell LLC received more than
3 ten times its typical advisory fee for referring an investment to PFI.

4 **F. Dow Rockwell LLC and Rockwell Did Not Disclose to Clients PFI's**
5 **Founder's Past Criminal Conviction**

6 40. As investment advisers, for each investment product they recommended, Dow
7 Rockwell LLC and Rockwell were obligated to fully disclose all key risks of which they were
8 aware, including risks related to the issuers of the securities they advised their clients to
9 purchase. During the relevant period, Rockwell knew that Casey, PFI's founder, had been
10 previously convicted in 1997 of various federal felonies, including bank fraud, tax evasion and
11 filing false income tax returns. Rockwell also knew that Casey lost his accounting license as a
12 result of his felony conviction.

13 41. However, Rockwell did not disclose to his advisory clients during the relevant
14 period Casey's criminal history or the loss of his accounting license, despite the fact that
15 Rockwell knew that Casey continued to exercise complete control over the operations of PFI and
16 played a central role in raising funds from investors.

17 42. In or about November 2019, one of Dow Rockwell LLC and Rockwell's clients
18 became independently aware of information relating to Casey's criminal history and informed
19 Rockwell that he would have considered the information important to his investment decision.
20 Yet, even after that interaction, Rockwell failed to disclose Casey's conviction to subsequent
21 clients to whom he recommended PFI.

22 43. Dow Rockwell LLC and Rockwell failed to satisfy the fiduciary duties they owed
23 to their clients by failing to provide adequate written and verbal disclosures about a key risk
24 related to the PFI securities they recommended to numerous clients. Specifically, Dow Rockwell
25 LLC and Rockwell failed to inform clients that 1) Casey had been convicted in federal court of
26 multiple felonies, and 2) as a result of Casey's conviction, his accounting license had been
27 revoked by the California Board of Accountancy.

1 Advisers Act [15 U.S.C. § 80b-4] states that each amendment to the Form ADV is a “report”
2 within the meaning of Section 207 of the Advisers Act [15 U.S.C. § 80b-7].

3 57. During the relevant period, Dow Rockwell LLC and Rockwell, by use of the
4 mails, and the means and instrumentalities of interstate commerce, directly or indirectly, while
5 acting as investment advisers, willfully: (1) made untrue statements of material fact in
6 registration applications and reports filed with the Commission; or (2) omitted to state in
7 registration applications and reports filed with the Commission material facts which are required
8 to be stated therein.

9 58. By reason of the foregoing, Dow Rockwell LLC and Rockwell violated, and
10 unless enjoined will again violate, Section 207 of the Advisers Act [15 U.S.C. § 80b-7].

11 **THIRD CLAIM FOR RELIEF**

12 *Violations of Section 5(a) and 5(c) of the Securities Act*

13 59. The Commission re-alleges and incorporates by reference Paragraph Nos. 1
14 through 49.

15 60. No registration statement was filed with the Commission or otherwise in effect
16 with respect to the securities Dow Rockwell LLC and Rockwell offered and sold as described in
17 this Complaint and no exemption from registration existed with respect to these securities.

18 61. During the relevant period, Dow Rockwell LLC and Rockwell offered to sell,
19 sold and delivered after sale, the securities described in this Complaint, and directly and
20 indirectly:

- 21 a) made use of any means or instruments of transportation or
22 communication in interstate commerce or of the mails to sell such
23 securities, through the use or medium of a prospectus or otherwise;
- 24 b) carried or caused to be carried through the mails or in interstate
25 commerce, by any means or instruments of transportation, such
26 securities for the purpose of sale or delivery after sale; or
- 27 c) made use of any means or instruments of transportation or
28 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
such securities.

1 **III.**

2 Ordering Defendants Dow Rockwell LLC and Rockwell to pay civil monetary penalties
3 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d) of the
4 Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209 of the Advisers Act [15 U.S.C. § 80b-
5 9];

6 **IV.**

7 Retaining jurisdiction of this action in accordance with the principles of equity and the
8 Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and
9 decrees that may be entered, or to entertain any suitable application or motion for additional
10 relief within the jurisdiction of this Court; and

11 **V.**

12 Granting such other and further relief as this Court may determine to be just, equitable
13 and necessary.

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15
16 Dated: March 31, 2022

Respectfully submitted,

17
18 /s/ Bernard B. Smyth

19 BERNARD B. SMYTH

Attorney for Plaintiff

20 SECURITIES AND EXCHANGE COMMISSION
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CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

Table with columns for PTF and DEF for Citizen of This State, Citizen of Another State, and Citizen or Subject of a Foreign Country.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE

SIGNATURE OF ATTORNEY OF RECORD

ATTACHMENT TO CIVIL COVER SHEET

Securities and Exchange Commission, Plaintiff

v.

DOW ROCKWELL LLC and RICHARD

DOW ROCKWELL, Defendants.

I. (c) Attorneys

Attorneys for Plaintiff

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