UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 50588 / October 26, 2004

ADMINISTRATIVE PROCEEDING
File No. 3-11718

In the Matter of	:	
	:	ORDER INSTITUTING ADMINISTRATIVE
JOHN JOSLYN,	:	AND CEASE-AND-DESIST PROCEEDINGS,
JOSEPH MARSH,	:	MAKING FINDINGS, AND IMPOSING
P. DAVID LUCAS,	:	REMEDIAL SANCTIONS AND A
STEVEN SYBESMA,	:	CEASE-AND-DESIST ORDER
STANLEY THOMAS, and	:	PURSUANT TO SECTIONS 15(b) AND
JON THOMPSON	:	21C OF THE SECURITIES EXCHANGE
	:	ACT OF 1934
Respondents.	:	
	:	

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against John Joslyn ("Joslyn"), Joseph Marsh ("Marsh"), P. David Lucas ("Lucas"), Steven Sybesma ("Sybesma"), Stanley Thomas ("Thomas") and Jon Thompson ("Thompson") (collectively, "Respondents"), and, additionally, deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Exchange Act against Thomas.

II.

In anticipation of the institution of these proceedings, Respondents have each submitted an Offer of Settlement (the "Offers"), which the Commission has determined to accept.[1] Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission or to which the Commission is a party, and without admitting or denying the

[1] Simultaneously with this proceeding, the Commission has filed the following settled actions: *SEC v. Arnold Geller, et al.*, 1:04 CV01858 (October 26, 2004 D.D.C.); and *SEC v. John Joslyn, et al.*, 1:04 CV01857 (October 26, 2004 D.D.C.).

findings, except as to the Commission's jurisdiction over Respondents and the subject matter of these proceedings, which are admitted, Respondents consent to the issuance of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (the "Order"), as set forth below.

III.

On the basis of this Order and the Respondents' Offers, the Commission finds[2] that:

Respondents

1. John Joslyn, age 57, resides in Toluca Lake, California, and is the sole officer, director and shareholder of Westgate Entertainment Corp. ("Westgate"), a private corporation.

2. Joseph Marsh, age 50, resides in Akron, Ohio, and is currently self-employed.

3. P. David Lucas, age 57, resides in Carmel, Indiana, and is currently the president and co-chief executive officer of a division of Clear Channel Entertainment.

4. Steven Sybesma, age 53, resides in McCordsville, Indiana, and is currently pursuing business opportunities.

5. Stanley Thomas, age 34, resides in Akron, Ohio, and is currently a sales representative for a motorcycle company. Thomas was a registered representative in the securities industry from 1992 until April 2003, and was associated with Corporate Securities Group, Inc., a registered broker-dealer, during the relevant period.

6. Jon Thompson, age 63, resides in Germantown, Tennessee, and is currently retired. In 1996, Thompson was a director of RMS Titanic, Inc. ("RMS").

Relevant Entity

7. RMS Titanic, Inc. is a Florida corporation with its principal executive offices in Atlanta, Georgia. In 1994, the United States District Court for the Eastern District of Virginia granted RMS sole salvor-in-possession rights to the wreck of *R.M.S. Titanic*. The company's stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and trades on the NASDAQ OTC Bulletin Board.

Facts

[2] The findings herein are made pursuant to the Respondents' Offers and are not binding on any other person or entity in this or any other proceeding.

Summary

8. This action involves the making of materially false and misleading statements in Schedule 13D filings, the failure to file and timely amend Schedules 13D, and the failure to comply with certain proxy rules under the Exchange Act. These violations occurred in connection with a plan by a group of insurgent RMS shareholders, including Joslyn, Marsh, Lucas, Sybesma, Thomas and Thompson, to remove four RMS directors and two RMS officers, and to install Arnold Geller ("Geller") and G. Michael Harris ("Harris") as officers.

9. Between May and November 1999, without disclosure to the Commission and RMS shareholders, the Respondents secured a majority of outstanding RMS common stock. Ultimately, on November 26, 1999, the Respondents, along with Geller and Harris filed a Schedule 13D ("November 1999 Schedule 13D"). That filing, in addition to being untimely, also contained materially false and misleading statements. As a result of the Respondents' actions, RMS shareholders and investors could not assess the potential for changes in corporate control and adequately evaluate the company's worth. RMS shareholders and investors did not receive the facts necessary for informed investment decisions. Because these shareholders and investors did not learn of the Respondents' plan to acquire control of the company until the Respondents had acquired a majority position, they were powerless to prevent the change of control once they received the news.

10. Joslyn, Marsh, Lucas, Sybesma, Thomas and Thompson, as signatories to the November 1999 Schedule 13D, each made materially false and misleading statements in that filing, and failed to timely file the Schedule 13D. In the November 1999 Schedule 13D, the Respondents identified November 16, 1999 as the date when the filing obligation was triggered. However, that statement was materially false and misleading because a group actually had formed as early as May 1999, and, at that time, held well over 5% of the outstanding RMS stock. Moreover, the Respondents represented in the November 1999 Schedule 13D that the group had engaged in a consent solicitation in which it solicited 10 RMS shareholders, thereby obviating the need to file proxy materials. However, this statement was materially false and misleading because each Respondent knew, directly or indirectly, that more than 10 shareholders had been solicited. As a result, Joslyn, Marsh, Lucas, Sybesma, Thomas and Thompson also should have filed proxy materials in connection with the consent solicitation.

11. In addition, in the November 1999 Schedule 13D, Joslyn, Marsh and Thomas failed to disclose certain arrangements they had made to obtain the RMS stock held by friends and business associates and to vote those shares in the removal action. They also failed to file certain documents executed in connection with the transfer of such shares from these shareholders. Moreover, Marsh failed to disclose that a business associate helped finance the purchase of RMS stock from a major shareholder ("the Shareholder"), which the group voted in the removal action.

12. Further, Marsh filed a materially false and misleading Schedule 13D on October 21, 1999 ("October 1999 Schedule 13D"). In that filing, Marsh stated he acquired 883,950 shares of RMS stock for "investment purposes." This statement was materially false and misleading because Marsh acquired these shares as part of the group's effort to remove management. Moreover, Marsh failed to disclose that he was a member of a group, and failed to disclose the members of the group. Also, Marsh did not timely file the October 1999 Schedule 13D because he beneficially owned more than 5% of RMS stock by September 14, 1999, and did not file a Schedule 13D within 10 days of attaining that position.

13. Finally, Joslyn, Marsh and Thompson failed to amend, or timely amend, Schedules 13D. Joslyn failed to amend a Schedule 13D he had filed on October 29, 1998 ("October 1998 Schedule 13D"), to reflect the formation of a group, increases in the group's beneficial ownership of RMS common stock, and the addition of new group members. Marsh failed to timely amend both his October 1999 Schedule 13D and the November 1999 Schedule 13D to reflect that, after the removal action, he returned to his friends and business associates the shares he obtained from them for use in the removal action. Thompson failed to amend the November 1999 Schedule 13D to reflect that, as of December 25, 1999, he no longer had beneficial ownership of nearly 12% of outstanding RMS stock.

Background

14. In August 1997, the RMS board of directors, including Geller and Harris, along with Westgate, the company Joslyn controlled, agreed to vote their shares to re-elect the incumbent board; they also agreed to certain restrictions on the transfer or sale of RMS stock ("1997 Voting Agreement"). This agreement was set to expire on August 31, 1999. In September 1997, Geller, Harris, Westgate and others filed a Schedule 13D announcing the 1997 Voting Agreement ("September 1997 Schedule 13D").

15. In the October 1998 Schedule 13D, which was an amendment to the September 1997 Schedule 13D, Joslyn, Geller and Harris disavowed the 1997 Voting Agreement. They also stated that they were "contemplating forming or becoming part of a group that will acquire additional securities of [RMS] for the purpose of effecting a change in control in the present Board of Directors and management."

16. In March 1999, Joslyn and Harris entered into a stipulated judgment ("March 1999 Stipulated Judgment") in which they agreed, and Geller agreed in an April 1999 side letter, to support the 1997 Voting Agreement and vote their shares to re-elect the incumbent board. Joslyn and Harris agreed to withdraw the statements made in the October 1998 Schedule 13D. Geller agreed to withdraw all notices of termination of the 1997 Voting Agreement, which would include the notice in the October 1998 Schedule 13D. Harris and Joslyn, however, did not withdraw the statements they made in the October 1998 Schedule 13D, and Geller did not withdraw his revocation of the 1997 Voting Agreement.

17. As a result of the March 1999 Stipulated Judgment and the April 1999 side letter, Joslyn, Geller and Harris could no longer continue to "contemplate" forming or joining a group to effect a change in control at RMS. On April 21, 1999, RMS announced that Geller, Harris and three others were elected as directors, and the action became final on May 26, 1999.

Respondents' Participation in the Removal Action

May to June 1999

18. Contrary to the March 1999 Stipulated Judgment and the April 1999 side letter, Joslyn, along with Geller and Harris, within weeks of reaching those agreements, began to act to change control of RMS.

19. Beginning no later than May 1999, Joslyn, together with Geller and Harris, acted together in support of the common objective to remove certain officers and directors of RMS and/or for the purpose of acquiring RMS common stock. At the time, Geller alone held approximately 1,600,000 shares of RMS stock and, collectively with Joslyn and Harris, held just over 2 million shares of the stock, or approximately 13% of outstanding shares. Also in May 1999, Marsh, Lucas and Sybesma joined the group with Joslyn, Geller and Harris. Marsh, Lucas and Sybesma owned approximately 325,000, 100,000 and 350,000 shares of RMS stock, respectively, or approximately 4.75% of outstanding shares. In fact, Sybesma had begun buying RMS stock in October 1998 after Harris informed him that RMS management was incompetent. Lucas had begun buying the stock in January 1999 after speaking to Sybesma.

20. Beginning in May 1999, Geller and Harris had discussions with Lucas, Marsh and Sybesma, among others, concerning their dissatisfaction with management, the removal of management at RMS, and methods by which they would accumulate enough shares to bring about such a change. Moreover, around May 1999, in support of the group's common objective to remove RMS management, Geller, Harris and Joslyn solicited the Shareholder for his approximately 4 million shares of RMS stock, nearly 25% of the outstanding shares. Joslyn, Geller and Harris sought funds for the purchase from Marsh, Lucas and Sybesma, among others; however, the purchase of the Shareholder's stock did not occur at that time.

21. At the end of May 1999, Lucas, Marsh and Sybesma, at Geller's suggestion, opened securities accounts to acquire stock that would be used in removing RMS management. Beginning in June 1999, Lucas, Marsh and Sybesma began making large and coordinated open market purchases of RMS stock for this purpose. Generally, their broker bought blocks of stock and distributed it equally and at the same price among Lucas, Marsh and Sybesma.

22. By June 1999, the group consisted of Joslyn, Marsh, Lucas, Sybesma, Geller and Harris, and owned nearly 2.9 million shares of RMS common stock, or nearly 18% of the outstanding shares.

July to August 1999

23. In the summer of 1999, the group continued its effort to remove management. Around June 1999, Geller and Harris, at Joslyn's recommendation, retained counsel ("Counsel") to advise them on issues related to RMS' upcoming August 1999 shareholders meeting.

24. In late July 1999, Joslyn spoke to the Shareholder's nephew to see if he could convince the Shareholder to sell his RMS shares as part of the effort to remove RMS management. Joslyn, Geller and Harris, through Counsel, sent a term sheet to the Shareholder which sought to secure the rights to vote the Shareholder's stock for five months. On August 2, 1999, the Shareholder rejected the offer.

25. From June 1999 through August 1999, Lucas, Marsh and Sybesma purchased on the open market about 1.2 million shares of RMS common stock, approximately 7% of outstanding RMS shares. These purchases were in support of the group's common objective to remove certain officers and directors of RMS. Moreover, because the group had not filed a Schedule 13D announcing its effort to remove management, Lucas, Marsh and Sybesma bought these shares more cheaply than they could have had the market been aware of their group and its activities. By mid-August, Lucas, Marsh and Sybesma held 1.87 million shares of RMS stock, or 11.5% of outstanding shares. When combined with the positions held by Joslyn, Geller and Harris, the group owned nearly 4 million shares, more than 24% of the outstanding shares.

Events After the August 1999 Shareholders Meeting

26. At the August 9, 1999 shareholders meeting, Geller and Harris, among others, were elected as directors of RMS. On August 31, 1999, the 1997 Voting Agreement expired. Joslyn, Geller and Harris were now free to vote their shares – and any shares they accumulated by acquisition, proxy, or otherwise – as they wished.

27. After the August 1999 shareholders meeting, Joslyn, Geller and Harris considered calling a new shareholders meeting for September 1999, in order to vote for the removal of the newly elected RMS directors. On August 14, 1999, Harris prepared a list of shareholders who could be solicited to vote at such a meeting, and faxed it to Joslyn.

28. In August 1999, Counsel gave a "Strategy Memo" to Joslyn, Geller and Harris that addressed restrictions on proxy solicitations and Schedule 13D requirements. The memo stated "[e]xtreme care must be exercised" to avoid violating the proxy laws; that the SEC "defines 'solicitation' very broadly" to include any communication which could be viewed "as being reasonably calculated to influence a shareholder to give, deny or revoke a proxy"; and, other than the 10 shareholders who can be solicited pursuant to the 10-count exemption, "we should limit communications to: 'I encourage you to attend the shareholders meeting.'" As to Exchange Act Section 13(d), the memo advised that beneficial ownership "may arise out of unwritten agreements or arrangements relating to acquisition or voting"; and, "[w]hen two or more persons

agree to act together for the purpose of acquiring, holding, voting, or disposing of an issuer's equity securities, the group thus formed is deemed to be a 'person' and to have acquired beneficial ownership, for purposes of Section 13(d), as of the date of the agreement."

29. In August 1999, Counsel also advised Joslyn, Geller and Harris that the "best practice" would be to amend the October 1998 Schedule 13D to disclose the group's current intentions. Joslyn, Geller and Harris did not file an amendment to the October 1998 Schedule 13D.

30. In August 1999, Harris advised Thompson, an RMS shareholder and a friend of the Shareholder, that he and Geller wanted to take control of RMS and replace its then-president. Harris also told Thompson that he and Geller had unsuccessfully sent Joslyn to secure the Shareholder's proxy, and that if they could obtain this proxy, they could replace this officer. Harris asked Thompson to secure the Shareholder's proxy, and Thompson agreed to talk to the Shareholder.

September through October 1999

31. Ultimately, the group moved away from calling a new shareholders meeting, and decided to remove management by a written consent of the majority of RMS shareholders. In late August 1999 or early September 1999, Thompson called the Shareholder to acquire his proxy. The Shareholder said he would grant the proxy, but would not let Thompson vote the shares unless someone bought a majority of his position in RMS stock. Thompson reported this information to Harris. Joslyn, Harris and Geller then tried to find buyers for the Shareholder's stock.

32. On September 20, 1999, Harris faxed draft proxies to Counsel. Harris asked Counsel to review the forms quickly because Thompson would be meeting with the Shareholder that day.

33. On September 24, 1999, the Shareholder granted irrevocable proxies in favor of Thompson for a total of 1,963,321 shares, or approximately 12% of the outstanding shares of RMS stock. The proxies stated that Thompson had the power to vote "in favor of the removal and/or election of one or more members of the Company's Board of Directors." The proxies were set to expire on December 25, 1999. As a result of the grant of proxies by the Shareholder, Thompson held a beneficial interest in roughly 12% of outstanding RMS common stock.

34. During October 1999, the group continued its efforts to remove RMS management. Harris contacted Thomas, Marsh's former broker. Because Harris knew that Thomas' clients held RMS common stock, he asked Thomas to secure voting proxies from his clients for purposes of changing management of RMS. Thomas told Marsh about Harris' request, and Marsh advised him to secure the proxies.

35. On October 21, 1999, Marsh filed the October 1999 Schedule 13D. However, this filing regarding his individual holdings was untimely because, by September 14, 1999, Marsh already

had acquired beneficial ownership of at least 5% of outstanding RMS common stock. In the October 1999 Schedule 13D, Marsh reported that he had acquired 883,950 shares of RMS stock for "investment purposes." However, Marsh had acquired those shares as part of the group's effort to remove management. Marsh also failed to disclose his membership in a group and the other members of the group.

36. Notwithstanding their activities from May through October 1999, and their beneficial ownership of more than 5% of RMS stock, the group, comprised of the Respondents, as well as Geller and Harris, did not file a new Schedule 13D at any time during that time period announcing: they had formed a group in support of the common objective to remove certain officers and directors of RMS and/or for the purpose of acquiring RMS common stock; they had increased their beneficial ownership of RMS common stock; and they had added new members to the group. In addition, because each of these facts was a material change from the October 1998 Schedule 13D, Joslyn should have filed an amendment to that Schedule 13D, but did not do so.

November 1999

37. In early November, and prior to November 16, 1999, Thomas solicited and verbally secured from nine clients the right to vote 157,324 shares of RMS stock. The clients executed written proxies in favor of Thomas which purported to affirm proxies that had been granted to Thomas on November 2, 1999. Marsh was aware that Thomas solicited three of these nine clients.

38. In November 1999, Harris arranged for the purchase of the Shareholder's stock. Harris, through TAG Acquisition, LLC ("TAG"), an entity he owned and controlled, agreed to buy 1,634,384 shares of stock from the Shareholder for $3 per share. TAG obtained the funds for this purchase from Marsh, Sybesma and an individual who was a Marsh business associate and Thomas client (the "Associate"). Around November 11, 1999, Marsh, Sybesma and the Associate began transferring a total of $4.9 million into an escrow account so that TAG could purchase the shares. On November 16, 1999, the parties signed an agreement drafted by Counsel for TAG to buy the stock, thereby clearing the way for Thompson to vote the proxies granted by the Shareholder in connection with the transaction.

39. In November 1999, Marsh, directly or through others, solicited and obtained 827,000 shares of RMS stock from at least seven friends and acquaintances in support of the group's common objective to remove certain RMS management. Marsh never purchased this stock; instead, he acquired the shares through borrowing arrangements with these shareholders. In each case, Marsh transferred the shares back to the individuals after the takeover. Marsh's stock borrowing arrangements were a direct or indirect solicitation of a proxy to vote the borrowed shares in the removal action. Marsh ultimately voted the 827,000 shares in the removal action.

40. In November 1999, Harris solicited an RMS shareholder for his stock, which had been pledged as collateral for a loan (the "Pledgor"). The Pledgor agreed to sell the stock if someone would pay off the loan. At the time, the Pledgor understood that Joslyn, Geller and Harris

wanted to remove RMS management. Joslyn paid the loan but realized he could not buy the shares due to restrictions placed on him under a 1996 stipulated judgment. Instead, Joslyn placed the stock with Marsh to vote in the removal action. Around November 18, 1999, the Pledgor instructed the transfer agent to transfer the shares to Marsh. Marsh ultimately voted the shares in the removal action.

The November 1999 Schedule 13D

41. On November 26, 1999, the Respondents, Geller and Harris filed a Schedule 13D, in which they stated that they were part of a group that "intend[ed] to consent and seek to solicit the consents and/or proxies" of certain shareholders in order to remove the incumbent directors, some of whom were also officers, and to install Geller and Harris as officers. The Respondents claimed to have just over 50% of the outstanding shares of RMS. Each Respondent signed the filing, attesting that, "[a]fter reasonable inquiry and to the best knowledge and belief of each of the undersigned, each of the undersigned certifies that the information set forth in this Schedule 13D with respect to such person is true, complete and correct." After the filing, the price of RMS stock increased to nearly $4.00, a 25% increase from the previous day's close of $3.16.

42. The filing named Joslyn, Geller and Harris as members of the group, and as "solicitors" for purposes of the removal action. As such, they were not counted towards the 10-count. The filing identified those members of the group considered solicited for purposes of the takeover, which included Marsh, Sybesma, Lucas, Thompson and Thomas. In total, the filing reported that 10 RMS shareholders had been solicited for purposes of the removal action.

43. The Respondents made materially false and misleading statements in their Schedule 13D. Specifically, the Respondents stated that the obligation to file a Schedule 13D did not arise until November 16, 1999. However, the group actually formed as early as May 1999 and, at that time, held well over 5% of outstanding RMS stock. Moreover, the Respondents represented that they had solicited 10 RMS shareholders, thereby obviating the need to file proxy materials. However, the Respondents solicited, directly or indirectly, or were aware of the solicitation of, RMS shareholders in addition to the 10 identified in the November 1999 Schedule 13D.

44. After filing the Schedule 13D, the group removed the incumbent officers and directors, and, in their place, installed Geller as president and chief executive officer, and Harris as vice president and chief operating officer.

45. Between May and November 26, 1999, the Respondents, along with the other members of the group, secured a majority of outstanding RMS common stock. The Respondents failed to timely disclose their accumulation of RMS stock and their true purposes for such accumulation. In addition, because these facts were material changes from the October 1998 Schedule 13D, Joslyn should have filed an amendment to that Schedule 13D, but did not do so. As a result, RMS shareholders and investors could not assess the potential for changes in corporate control and adequately evaluate the company's worth. RMS shareholders and investors did not receive the

facts necessary for informed investment decisions. Because these shareholders and investors did not learn of the Respondents' plan to acquire control of RMS until the Respondents had acquired over 50% of RMS stock, they were powerless to prevent the change of control once they received the news.

Legal Analysis

I. The Respondents Violated Section 13(d)(1) of the Exchange Act and Exchange Act Rules 12b-20 and 13d-1(a)

Section 13(d)(1) of the Exchange Act, and Exchange Act Rule 13d-1(a), require persons or groups that acquire, directly or indirectly, the beneficial ownership of more than 5% of the outstanding shares of a class of voting equity securities to file with the Commission a Schedule 13D within 10 days of the date on which their beneficial ownership exceeded 5%. The purpose of Section 13(d) is to alert the marketplace to "large, rapid aggregation or accumulation of securities, regardless of technique employed, which might represent a potential shift in corporate control." *SEC v. Savoy Indus.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978), *cert. denied*, 440 U.S. 913 (1979). Section 13(d) acts as the "pivot" of a regulatory scheme that permits corporations and their shareholders to evaluate possible effects of a change in control. *SEC v. First City Financial Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989). In that regard, Item 4 of Schedule 13D requires disclosure of a purpose to acquire control of a company even when the plan for taking such action is indefinite. *See, e.g, Dan River, Inc. v. Unitex Ltd.*, 624 F.2d 1216, 1226 (4th Cir. 1980), *cert. denied*, 449 U.S. 1101 (1981); *Todd Shipyards Corp. v. Madison Fund, Inc.*, 547 F. Supp. 1383, 1388 (S.D.N.Y. 1982).

The filing requirement pursuant to Exchange Act Section 13(d)(1) applies to individuals and to groups. Section 13(d)(3) of the Exchange Act defines a group as an aggregation of persons or entities that "act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer." Such a group need not be formally organized, nor memorialize its intentions in writing; all that is required is that its members combine in furtherance of a common objective. *SEC v. Levy*, 706 F. Supp. 61, 69 (D.D.C. 1989); *see also Wellman v. Dickinson*, 682 F.2d 355, 362-63 (2d Cir. 1982), *cert. denied*, 460 U.S. 1069 (1983).

Group activity may be demonstrated by circumstantial evidence, *Savoy*, 587 F.2d at 1162, such as: (1) the presence of a common plan or goal, *Financial General Bankshares, Inc. v. Lance*, 1978 WL 1082, at *9 (D.D.C. 1978); (2) "considerable dissatisfaction" with certain officers and a "desire to reduce" those officers' role in company management, Id. at *10; (3) strategy meetings with, among others, attorneys, *Levy*, 706 F. Supp. at 70; (4) a pattern of coordinated stock purchases, *Hallwood Realty Partners, LP v. Gotham Partners, LP*, 286 F.3d 613, 618 (2d Cir. 2002); (5) the solicitation of others to join the group, *Wellman*, 682 F.2d at 363-364; and (6) the existence of communications between and among group members. *General Aircraft Corp. v. Lampert*, 556 F.2d 90, 95 (1st Cir. 1977).

Exchange Act Sections 13(d)(1) and 13(d)(3) "create the duty to file truthfully and completely." *Savoy*, 587 F.2d at 1165. Scienter is not required to prove a violation of Section 13(d). *Id*. at 1167. Exchange Act Rule 12b-20 provides that, in addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

A. The Respondents' Statement in the November 1999 Schedule 13D Regarding the Date When the Filing Obligation Was Triggered

The Respondents' representation in the November 1999 Schedule 13D – that the obligation to file the Schedule 13D arose on November 16, 1999 – was materially false and misleading. As early as May 1999, Joslyn had formed a group with Geller and Harris in support of the common objective to remove RMS management and/or for the purpose of acquiring RMS stock. At the time, the group beneficially owned more than 5% of outstanding shares of RMS stock. Thus, Joslyn should have filed a Schedule 13D as early as June 1999, but failed to do so. Similarly, as early as May 1999, Lucas, Marsh and Sybesma joined the group with Joslyn, Harris and Geller in support of the group's common objective. Thus, Lucas, Marsh and Sybesma should have filed a Schedule 13D as early as June 1999, but failed to do so.

In addition, as early as August 1999, Thompson joined the group with Joslyn, Lucas, Marsh, Sybesma, Harris and Geller in support of the group's common objective to remove RMS management. Thus, Thompson should have filed a Schedule 13D as early as September 1999, but failed to do so. Finally, as early as October 1999, Thomas joined the group with Joslyn, Lucas, Marsh, Sybesma, Thompson, Harris and Geller in support of the group's common objective. Thus, Thomas should have filed a Schedule 13D as early as October 1999, but failed to do so.

By reason of the foregoing, Joslyn, Marsh, Lucas, Sybesma and Thompson violated, and Thomas willfully violated, Section 13(d)(1) of the Exchange Act and Exchange Act Rules 12b-20 and 13d-1(a).[3]

B. The Respondents' Statement in the November 1999 Schedule 13D Regarding the Number of Shareholders Solicited by the Group

Section 14(a) of the Exchange Act and rules thereunder generally require persons soliciting proxies to file with the Commission, and provide to shareholders being solicited, a

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[3] "Willfully" as used in this Order means intentionally committing the act which constitutes the violation, *see* *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000); *Tager v. SEC*, 344 F.2d 5, 8(2d Cir. 1965). There is no requirement that the actor also be aware that he is violating one of the Rules or Acts.

proxy statement containing the information required by Schedule 14A. The purpose of Section 14(a) "is to prevent management or others from obtaining authorization for corporate action by means of deceptive or inadequate disclosure in proxy solicitation." *J.I. Case Co. v. Borak*, 377 U.S. 426, 431 (1964). Scienter is not an element of a Section 14(a) violation. *SEC v. Wills*, 472 F. Supp. 1250, 1268 (D.D.C. 1978); *see also Bond Opportunity Fund v. Unilab Corp.*, 2003 WL 21058251, at *4 (S.D.N.Y. 2003), *aff'd*, 2004 WL 249583 (2d Cir., Feb 10, 2004).

Exchange Act Rule 14a-2(b)(2) provides, in part, that certain of the proxy rules do not apply to a "solicitation … where the total number of persons solicited is not more than ten." The terms "proxy," "consent," and "solicitation" are interpreted broadly. *See, e.g., Greater Iowa Corp. v. McLendon*, 378 F.2d 783, 796 (8th Cir. 1967). Under Rule 14a-1(f), "proxy" includes "every proxy, consent or authorization" within the meaning of Section 14(a). Rule 14a-1(l) defines the terms "solicit" and "solicitations" to include: "(i) any request for a proxy whether or not accompanied by or included in a form of proxy; (ii) any request to execute or not to execute, or to revoke, a proxy; or (iii) the furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy."

"[T]he proxy rules apply to any person seeking to influence the voting of proxies, regardless of whether the person is seeking authorization to act as a proxy." SEC Release No. 34-29315 (June 17, 1991). The rules apply not only to direct requests to furnish, revoke or withhold proxies, but also to communications that may indirectly accomplish such a result or constitute a step in a chain of communications designed ultimately to accomplish such a result. *SEC v. Okin*, 132 F.2d 784, 786 (2d Cir. 1943). The issue is whether the challenged communication, seen in the totality of circumstances, is "reasonably calculated" to influence the shareholders' votes. *Trans. World Corp. v. Odyssey Partners*, 561 F. Supp. 1311, 1320 (S.D.N.Y. 1983).

The Respondents' representation in the November 1999 Schedule 13D – that the group had solicited 10 persons in their consent solicitation – was materially false and misleading. Joslyn solicited the Shareholder and the Pledgor for proxies for purposes of the takeover. The November 1999 Schedule 13D, however, did not identify either of these individuals as having been solicited (although the Shareholder is listed as having granted a proxy). Thus, Joslyn knew that the group solicited 12 shareholders – the 10 shareholders identified in the filing, along with the two shareholders he solicited. Marsh solicited seven friends and associates who were RMS shareholders. He also knew that Thomas had solicited at least three of his clients and that the Shareholder had been solicited for proxies for purposes of the takeover. None of these individuals was identified in the November 1999 Schedule 13D as having been solicited. Thus, Marsh knew that the group solicited at least 21 shareholders. Thompson solicited and secured a proxy from the Shareholder, and Lucas and Sybesma were aware that the Shareholder had been solicited for a proxy for purposes of the takeover. Thus, Lucas, Sybesma and Thompson knew that the group solicited 11 shareholders. Finally, Thomas solicited and verbally secured from nine clients the right to vote shares of RMS stock. None of these individuals was identified in the

November 1999 Schedule 13D as having been solicited. Thus, Thomas knew that the group solicited 19 shareholders.

By reason of the foregoing, Joslyn, Marsh, Lucas, Sybesma and Thompson violated, and Thomas willfully violated, Section 13(d)(1) of the Exchange Act and Exchange Act Rules 12b-20 and 13d-1(a).

C. The Respondents' Failure to File and/or Timely File Schedules 13D

As described above, as early as May 1999, Joslyn formed a group with Harris and Geller, and Lucas, Marsh and Sybesma joined the group, in support of the common objective to remove certain directors and officers at RMS and/or for the purpose of acquiring RMS common stock. At that time, the group beneficially owned more than 5% of outstanding shares of RMS stock. Thus, Joslyn, Marsh, Lucas and Sybesma were required to file a Schedule 13D as early as June 1999, but failed to do so.

In August 1999, Thompson joined the group with Joslyn, Marsh, Lucas, Sybesma, Geller and Harris in support of the group's common objective to remove RMS management. At that time, the group beneficially owned more than 5% of outstanding shares of RMS stock. Thus, Thompson was required to file a Schedule 13D as early as September 1999, but failed to do so. Also, after the Shareholder executed proxies in favor of Thompson on September 24, 1999, Thompson became the beneficial owner of more than 5% of RMS' outstanding common stock. Thus, Thompson was required to file an individual Schedule 13D by October 1999, which he failed to do. In October 1999, Thomas joined the group with Joslyn, Marsh, Lucas, Sybesma, Thompson, Geller and Harris in support of the group's common objective, and, at that time, the group beneficially owned more than 5% of outstanding shares of RMS stock. Thus, Thomas was required to file a Schedule 13D as early as October 1999, but failed to do so.

Finally, Marsh did not timely file his October 1999 Schedule 13D. He beneficially owned more than 5% of RMS stock by September 14, 1999, but did not file a Schedule 13D within 10 days of attaining that position.

By reason of the foregoing, Joslyn, Marsh, Lucas, Sybesma and Thompson violated, and Thomas willfully violated, Section 13(d)(1) of the Exchange Act and Exchange Act Rule 13d-1(a).

D. Marsh's, Thomas' and Joslyn's Failure to Disclose Contracts, Arrangements and Understandings in, and to File Required Documents with, the November 1999 Schedule 13D

In the November 1999 Schedule 13D, Marsh failed to disclose, as required by Item 6 of Schedule 13D, the contracts, arrangements or understandings he made with his friends and business associates to obtain and vote their shares of RMS stock in the removal of management.

He also failed to file, as required by Item 7 of Schedule 13D, the contracts, agreements and/or promissory notes he had executed in connection with the transfer of such shares. Moreover, Marsh failed to disclose, as required by Item 3 of Schedule 13D, that the Associate helped finance the purchase of RMS stock from the Shareholder, which the group voted in the removal action.

In the November 1999 Schedule 13D, Thomas failed to disclose, as required under Item 6 of Schedule 13D, that he had solicited and secured proxies from his clients for use in the removal action, and failed to file these proxies, as required under Item 7. In that same filing, Joslyn failed to disclose, as required under Item 6 of Schedule 13D, the arrangement he had made with the Pledgor to acquire his RMS stock and the arrangement to transfer the stock to Marsh to vote in the removal action. Moreover, Joslyn failed to file, as required under Item 7 of Schedule 13D, the documents he had executed to acquire the Pledgor's shares.

By reason of the foregoing, Marsh and Joslyn violated, and Thomas willfully violated, Section 13(d)(1) of the Exchange Act and Exchange Act Rules 12b-20 and 13d-1(a).

E. Marsh's Statement in His October 1999 Schedule 13D Regarding Investment Purpose, and Failures to Disclose Group Membership and Affiliations

In his October 1999 Schedule 13D, Marsh stated he acquired 883,950 shares of RMS stock for "investment purposes." This statement was materially false and misleading because Marsh acquired these shares as part of the group's effort to remove management. Moreover, in his October 1999 Schedule 13D, Marsh failed to disclose that he was a member of a group, and failed to disclose the members of the group. By reason of the foregoing, Marsh violated Section 13(d)(1) of the Exchange Act and Exchange Act Rules 12b-20 and 13d-1(a).

II. Joslyn, Marsh and Thompson Violated Section 13(d)(2) of the Exchange Act and Exchange Act Rule 13d-2(a)

Section 13(d)(2) of the Exchange Act provides that, if any material change occurs in the facts set forth in the Schedule 13D filed with the Commission, the filer must promptly file an amendment disclosing the change. Exchange Act Rule 13d-2(a) provides that an acquisition or disposition of one percent or more of the filer's position is deemed "material" for purposes of triggering the duty to amend.

Joslyn did not amend the October 1998 Schedule 13D to reflect the formation of a group in support of the common objective to remove RMS management and/or for the purpose of acquiring RMS common stock, the increase in the group's beneficial ownership of RMS common stock, and the addition of Marsh, Lucas, Sybesma, Thomas and Thompson to the group.

After the removal action, Marsh returned to his friends and business associates the 827,029 shares he had borrowed from them for use in the removal action. This amounted to approximately 5% of outstanding RMS stock. Marsh failed to timely amend both his October

1999 Schedule 13D and the November 1999 Schedule 13D to reflect that he no longer had beneficial ownership of these shares.

In December 1999, the proxies granted to Thompson by the Shareholder expired. As a result, Thompson no longer had beneficial ownership of nearly 12% of outstanding RMS stock. Thompson failed to amend the November 1999 Schedule 13D to reflect that he no longer had beneficial ownership of these shares.

By reason of the foregoing, Joslyn, Marsh and Thompson violated Section 13(d)(2) of the Exchange Act and Exchange Act Rule 13d-2(a).

III. The Respondents Violated Section 14(a) of the Exchange Act and Exchange Act Rules 14a-3, 14a-4, 14a-5 and 14a-6

Section 14(a) of the Exchange Act prohibits any person from soliciting any proxy or consent in contravention of rules and regulations promulgated by the Commission. The rules require, among other things, that persons soliciting proxies file with the Commission, and provide to shareholders being solicited, a proxy statement containing the information required by Schedule 14A, Exchange Act Rule 14a-3; that the form of proxy adhere to certain requirements, Exchange Act Rule 14a-4; that information included in the proxy statement be presented clearly and in a certain format, Exchange Act Rule 14a-5; and that proxy statements and other materials meet certain filing requirements, Exchange Act Rule 14a-6. Exchange Act Rule 14a-2(b)(2), however, provides that certain proxy rules do not apply to "[a]ny solicitation made otherwise than on behalf of the registrant where the total number of persons solicited is not more than ten."

Joslyn, Marsh, Lucas, Sybesma, Thomas and Thompson solicited, directly or indirectly, or were aware of the solicitation of, more than 10 RMS shareholders in connection with the removal of RMS management. The Respondents failed to provide proxy materials to shareholders who were solicited and failed to file such proxy materials with the Commission.

By reason of the foregoing, Joslyn, Marsh, Lucas, Sybesma and Thompson violated, and Thomas willfully violated, Section 14(a) of the Exchange Act, and Exchange Act Rules 14a-3, 14a-4, 14a-5 and 14a-6.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in the Offers of Respondents Joslyn, Marsh, Lucas, Sybesma, Thomas and Thompson.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act:

1. Respondent Joslyn shall cease and desist from committing or causing any violations, and any future violations, of Sections 13(d)(1), 13(d)(2) and 14(a) of the Exchange Act and Exchange Act Rules 12b-20, 13d-1(a), 13d-2(a), 14a-3, 14a-4, 14a-5 and 14a-6;

2. Respondent Marsh shall cease and desist from committing or causing any violations, and any future violations, of Sections 13(d)(1), 13(d)(2) and 14(a) of the Exchange Act and Exchange Act Rules 12b-20, 13d-1(a), 13d-2(a), 14a-3, 14a-4, 14a-5 and 14a-6;

3. Respondent Lucas shall cease and desist from committing or causing any violations, and any future violations, of Sections 13(d)(1) and 14(a) of the Exchange Act and Exchange Act Rules 12b-20, 13d-1(a), 14a-3, 14a-4, 14a-5 and 14a-6;

4. Respondent Sybesma shall cease and desist from committing or causing any violations, and any future violations, of Sections 13(d)(1) and 14(a) of the Exchange Act and Exchange Act Rules 12b-20, 13d-1(a), 14a-3, 14a-4, 14a-5 and 14a-6;

5. Respondent Thomas shall cease and desist from committing or causing any violations, and any future violations, of Sections 13(d)(1) and 14(a) of the Exchange Act and Exchange Act Rules 12b-20, 13d-1(a), 14a-3, 14a-4, 14a-5 and 14a-6; and

6. Respondent Thompson shall cease and desist from committing or causing any violations, and any future violations, of Sections 13(d)(1), 13(d)(2) and 14(a) of the Exchange Act and Exchange Act Rules 12b-20, 13d-1(a), 13d-2(a), 14a-3, 14a-4, 14a-5 and 14a-6;

B. It is further ordered that, pursuant to Section 15(b)(6) of the Exchange Act, Respondent Thomas be, and hereby is, suspended from association with any broker or dealer for a period of nine months, effective on the second Monday following the issuance of this Order;

C. It is further ordered that Respondent Thomas shall pay a civil money penalty in the amount of $20,000 to the United States Treasury. Thomas shall satisfy this obligation by making payments in the following manner: Thomas shall pay $5,000 within thirty (30) days of the issuance of this Order; $5,000 within one hundred eighty (180) days of the issuance of this Order; $5,000 within two hundred seventy (270) days of the issuance of this Order; and $5,000, plus post judgment interest, within three hundred sixty (360) days of the issuance of this Order. Such payments shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Thomas as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Antonia Chion, Division of Enforcement, Securities and Exchange Commission, 450 5th Street N.W., Washington, D.C. 20549-0801. Thomas agrees that if any payment described above is not made within ten (10) days following the date the payment is required by this Order, the entire amount of civil money penalty, $20,000, plus post judgment interest, is due and required to be paid in full;

D. It is further ordered that Respondent Marsh shall, within thirty (30) days of the issuance of this Order, pay disgorgement and prejudgment interest in the total amount of $35,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (b) made payable to the Securities and Exchange Commission; (c) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Joseph Marsh as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549-0810;

E. It is further ordered that Respondent Lucas shall, within thirty (30) days of the issuance of this Order, pay disgorgement and prejudgment interest in the total amount of $20,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (b) made payable to the Securities and Exchange Commission; (c) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies P. David Lucas as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549-0810; and

F. It is further ordered that Respondent Sybesma shall pay disgorgement and prejudgment interest in the total amount of $20,000 to the United States Treasury in the following manner: Sybesma shall pay $5,000 within thirty (30) days of the issuance of the Order; $5,000 within one hundred eighty (180) days of the issuance of this Order; $5,000 within two hundred seventy (270) days of the issuance of this Order; and $5,000, plus post judgment interest, within three hundred sixty (360) days of the issuance of this Order. Such payments shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letters that identify Sybesma as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letters and money orders or checks shall be sent to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549-0801. Sybesma agrees that if any payment described above is not made within ten (10) days following the date the payment is required by this Order, the entire amount of disgorgement and prejudgment interest, $20,000, plus post judgment interest, is due and required to be paid in full

By the Commission.

Jonathan G. Katz
Secretary