

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 2374 / April 6, 2005**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-11882**

<b>In the Matter of</b>	<b>:</b>	<b>ORDER INSTITUTING</b>
	<b>:</b>	<b>ADMINISTRATIVE AND CEASE-</b>
<b>Michael T. Jackson and</b>	<b>:</b>	<b>AND-DESIST PROCEEDINGS,</b>
<b>EGM Capital,</b>	<b>:</b>	<b>MAKING FINDINGS, AND</b>
	<b>:</b>	<b>IMPOSING REMEDIAL SANCTIONS</b>
<b>Respondents.</b>	<b>:</b>	<b>AND A CEASE-AND-DESIST ORDER</b>
_____	<b>:</b>	<b>PURSUANT TO SECTIONS 203(f) and</b>
	<b>:</b>	<b>203(k) OF THE INVESTMENT</b>
	<b>:</b>	<b>ADVISERS ACT OF 1940</b>

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Michael T. Jackson (“Jackson”) and EGM Capital, a California corporation (“EGM Capital”) (collectively, “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted a joint Offer of Settlement (“Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, Respondents consent to the entry 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 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Order”), as set forth below.

### III.

On the basis of this Order and Respondents' Offer, the Commission finds that:

#### **Nature of Proceeding**

1. This proceeding concerns an investment adviser's wrongful conduct in passing the losses from the adviser's trading error along to its clients. In late 2000, San Francisco-based investment adviser EGM Capital made an inadvertent stock trading error resulting in a loss of approximately \$400,000. Rather than have the firm absorb the loss, then-chief executive officer and chairman of the board Michael T. Jackson improperly took steps that led to the allocation of the loss to several client hedge fund accounts.

2. By making its clients pay for its trade error, EGM Capital willfully violated Sections 206(1) and 206(2) of the Advisers Act. Jackson willfully aided and abetted and was a cause of EGM Capital's violations of Sections 206(1) and 206(2).

#### **Respondents**

3. Michael T. Jackson, 68, is a resident of Belvedere, California. Jackson founded EGM Capital in 1987, and served as its Chief Executive Officer, Chairman of the Board, and majority shareholder during the relevant period.

4. EGM Capital, incorporated in California in 1991, was an investment adviser registered with the Commission beginning in 1987 (when it was known as Emerging Growth Management) until June 2003. EGM Capital's principal place of business was San Francisco, California. As of November 2000, EGM Capital had assets under management of \$1.1 billion, including both individually managed accounts and investment limited partnerships (hedge funds). EGM Capital provided investment management services to individuals as well as entities such as corporations and qualified retirement accounts. In April 2003, EGM Capital sold its assets to EGM Capital, LLC, a separate entity which is not involved in this proceeding, and in June 2003 withdrew its registration as an investment adviser. Jackson is no longer involved in the operations or investment decisions of EGM Capital, LLC.

#### **Facts**

5. In mid-November 2000, the portfolio managers responsible for managing certain EGM Capital client accounts made a determination to liquidate their clients' holdings of Ivax Corporation, a biotechnology stock. At the time, a total of approximately 122,000 shares of the stock were held by four EGM Capital hedge funds and two individually managed hedge fund accounts.

6. On November 21 and 22, 2000, pursuant to the instructions of the portfolio managers, the senior trader at EGM Capital's trading desk sold all 122,000 shares of Ivax. Due to human or possibly computer error, a second trader at EGM Capital's trading desk failed to

realize that the position had been liquidated. Between November 24 and November 27, 2000, the second trader sold an additional 100,000 shares of Ivax. These sales resulted in an unintended short position of 100,000 shares spread over the four EGM Capital hedge funds and two individual hedge fund accounts.

7. By November 28, 2000, personnel in EGM Capital's operations department discovered the trade error. EGM Capital's trading desk covered the short position. Because the price of Ivax shares had increased in the interim, a loss of approximately \$404,000 was incurred.

8. The inadvertent oversell of Ivax shares was brought to Jackson's attention. EGM Capital had no policy or procedure specifying how trade errors were to be handled. Nonetheless, it was known to EGM Capital and Jackson that, consistent with industry practice and an investment adviser's fiduciary duty to its clients, losses caused by an investment adviser's own trade error were the responsibility of the adviser and should not be borne by clients. Jackson, however, took the position internally that the accounts in which the shares were oversold should bear the losses incurred by covering the inadvertent short position. Based on his recommendation, EGM Capital treated the erroneous trade as a normal transaction, and assigned the loss to the EGM Capital hedge fund accounts and the individual client hedge fund accounts that held the Ivax stock.

9. In order to conceal the trade error, EGM Capital created records that gave the false impression that the firm had intentionally sold Ivax short on behalf of its clients. EGM Capital personnel prepared trade tickets backdated to November 24 and November 27, 2000, purporting to show that the portfolio managers had instructed the trading desk to sell the stock short on those dates. In reality, as described above, the portfolio managers had provided no such instructions to the trading desk on those dates.

10. Of the \$404,000 loss the trade error caused, the net loss to EGM Capital clients was \$326,000. During the course of an inquiry into these events by the Commission staff, EGM Capital repaid the full \$326,000 lost by its clients, plus interest.

### **Legal Discussion**

11. Section 206 of the Advisers Act provides, in pertinent part, that "[i]t shall be unlawful for any investment adviser . . . to employ any device, scheme, or artifice to defraud any client or prospective client" or "engage in any transaction, practice or course of conduct, which operates as a fraud or deceit upon any client or prospective client." Under the Advisers Act, investment advisers owe a fiduciary duty of good faith to their clients.

12. As a result of the conduct described above, EGM Capital willfully violated Sections 206(1) and (2) of the Advisers Act, and Jackson willfully aided and abetted and was a cause of EGM Capital's violations of Sections 206(1) and 206(2) of the Advisers Act.

#### IV.

In the view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offer.

Accordingly, pursuant to Sections 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

- A. Respondent Jackson shall cease and desist from committing or causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act;
- B. Respondent EGM Capital shall cease and desist from committing or causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act;
- C. Respondent Jackson be, and hereby is, suspended from association with any investment adviser for a period of nine months, effective on the second Monday following the entry of this Order;
- D. IT IS FURTHER ORDERED that Jackson shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$75,000 to the United States Treasury. Such payment shall be: (1) made by United States postal money order, certified check, bank cashier's check or bank money order; (2) made payable to the Securities and Exchange Commission; (3) 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 (4) submitted under cover letter that identifies Jackson and EGM Capital as Respondents in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Helane L. Morrison, District Administrator, San Francisco District Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, CA 94104.

By the Commission.

Jonathan G. Katz  
Secretary