

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

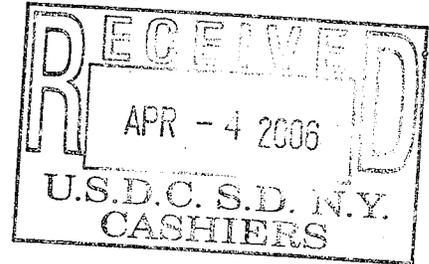
PLAINTIFF,

v.

ANDREAS BADIAN, JACOB SPINNER,  
MOTTES DRILLMAN, JEFFREY "DANNY"  
GRAHAM, POND SECURITIES CORPORATION  
d/b/a POND EQUITIES, EZRA BIRNBAUM  
and SHAYE HIRSCH,

DEFENDANTS.

Civil Action No.



COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission") alleges:

NATURE OF THE ACTION

1. This action involves fraudulent and manipulative trading in the common stock of Sedona Corporation (Sedona), a Pennsylvania software company. Defendant Andreas Badian and others, acting for Rhino Advisors, Inc. (Rhino), an unregistered investment adviser firm, used "short" selling to manipulate Sedona's stock price downward to favor the financial interest of Rhino's client, Amro International, S.A. (Amro). Under an agreement with Sedona, Amro loaned Sedona \$2.5 million, which was consideration for Sedona's promise to pay Amro \$3 million approximately four months later. The agreement permitted Amro to convert Sedona's debenture debt to shares of Sedona's stock when pre-established conversion dates occurred. The agreement operated to give Amro more shares of Sedona the lower its share price around the times of the

conversion dates. To preclude Amro from manipulating Sedona's share price, the agreement prohibited Amro from short selling<sup>1</sup> Sedona's stock. Notwithstanding this prohibition, Badian engaged in a scheme of extensive short selling of Sedona's shares in violation of this agreement and federal securities laws. This conduct operated as a fraud on Sedona and the market for Sedona's shares. Defendants Jacob Spinner, Mottes Drillman and Jeffrey "Danny" Graham assisted Badian in carrying out this scheme. They executed manipulative trades through accounts they controlled at Defendant Pond Equities and another broker, Refco Securities.

2. Badian illegally directed defendants Spinner, Drillman and Graham to sell short massive amounts of Sedona stock with "unbridled levels of aggression," intending to "clobber" Sedona's stock price until it "collapsed." These three individuals concealed Amro's identity from the market, which permitted them to create the false appearance that individual investors were selling large amounts of Sedona's stock. During March 2001, Badian directed trading in Sedona that comprised approximately 40% of all trading in the stock. During that period, Sedona's share price dropped from an average of \$1.43 a share before March 1, 2001, to an average of \$.75 per share by March 23, 2001.

3. Defendant Pond Equities violated the anti-fraud and certain record-keeping requirements of the federal securities laws in connection with its trading in Sedona's shares. Pond, its president defendant Ezra Birnbaum and its compliance officer defendant Shaye Hirsch failed to supervise Spinner and Drillman adequately to detect red

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<sup>1</sup> A "short sale" is a sale of a security by an investor who does not actually own the stock. The short seller has three days from the date of the sale to deliver the security to the purchaser and typically borrows the security for delivery. The short seller later closes out the position by returning the security to the lender, usually by purchasing securities on the open market. At the time the defendants were selling shares for Amro, Amro owned no Sedona stock and consistently failed to deliver Amro stock by the day it was due.

flags relating to the traders' illegal activities or to prevent them from violating federal securities laws. Moreover, Pond failed to adopt adequate supervisory and compliance policies and procedures or systems to detect or prevent the manipulative trading in which Spinner and Drillman engaged.

### **JURISDICTION AND VENUE**

4. This Court possesses jurisdiction over this action pursuant to Sections 20 and 22 of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77t and 77v] and Sections 21(d), 21(e) and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d) and (e) and 78aa].

5. Venue lies in this district under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27(a) of the Exchange Act [15 U.S.C. § 78a(a)] because substantial conduct, giving rise to this action, occurred in this district.

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

7. Unless the Court restrains and enjoins them, Defendants will continue to engage in the acts, practices and courses of business alleged herein, or in similar transactions, acts, practices and courses of business.

### **DEFENDANTS**

8. Andreas Badian, age 32, is an Austrian national who resides in New York, New York. At all times relevant to this complaint, Badian worked for Rhino Advisors, Inc., an unregistered investment adviser.

9. Jacob Spinner, age 35, resides in Cedarhurst, New York. Spinner was a registered representative associated with Refco Securities and is currently a registered representative associated with Pond. He was simultaneously associated with Pond and Refco at all relevant times.

10. Mottes Drillman, age 35, resides in Lawrence, New York. Drillman was a registered representative associated with Refco Securities and is currently a registered representative associated with Pond. He was simultaneously associated with Pond and Refco at all relevant times.

11. Pond Securities Corp. d/b/a Pond Equities, is a broker-dealer registered with the Commission since in or around December 1992. Pond maintains an office in Brooklyn, New York. The NASD has censured and fined Pond on several occasions.

12. Ezra Birnbaum, age 40, resides in Lawrence, New York. Birnbaum is Pond's president.

13. Shaye Hirsch, age 32, resides in Cedarhurst, New York. Hirsch is Pond's chief compliance officer and its Financial and Operations Principal.

14. Jeffrey "Danny" Graham, age 27, resides in New York, New York. Graham was a registered representative associated with Refco at all relevant times. While Graham was not associated with Pond in any capacity and never registered with the NASD as a Pond representative, he regularly executed trades at Pond.

#### **OTHER ENTITIES AND PERSONS**

15. Sedona is a Pennsylvania corporation headquartered in King of Prussia, Pennsylvania. It produces and distributes software for managing customer resources to small and mid-size businesses. Sedona has registered its stock pursuant to Section 12(g)

of the Exchange Act. During the relevant period, Sedona had listed its stock for trading on the Nasdaq SmallCap Market.

16. During the relevant period, Rhino was an unregistered investment adviser located in New York, New York.

17. Amro is a Panamanian corporation, headquartered in Zurich, Switzerland. It provides convertible and equity line financing to companies in need of capital.

18. Refco Securities, LLC (Refco) is a broker-dealer that first registered with the Commission in or about September 1981. Refco maintains offices in New York, New York and Jersey City, New Jersey. Refco is currently winding down its operations in connection with Refco Inc.'s bankruptcy pending in the United States Bankruptcy Court for the Southern District of New York (*In re: Refco Inc.*, Case No. 05-60006).

19. Thomas Badian, age 34, is an Austrian national, who now resides in Austria, but formerly resided in New York, New York. Thomas Badian was Rhino's president and controlled its operations. His brother, defendant Andreas Badian, assisted Thomas Badian with its operations.

20. On February 27, 2003, the Commission filed a settled civil action in this Court against Rhino Advisors and Thomas Badian for their roles in the scheme to manipulate the price of Sedona stock.

21. On March 7, 2003, this Court entered a final judgment against Rhino and Thomas Badian. The judgment enjoined them from further violations of the anti-fraud provisions of federal securities laws; it required them to pay a penalty of \$1 million dollars; it required Rhino to respond to an order that the Commission issued to it pursuant to Section 21(a) of the Exchange Act; it required Rhino to hire an independent consultant

to review its compliance policies and procedures; and it required Rhino to implement the independent consultant's recommendations.

## **RELEVANT FACTS**

### **Background**

22. In the spring of 2001, defendant Andreas Badian worked for Rhino, a New York-based unregistered investment adviser that managed investments for overseas entities. He reported to his brother, Thomas Badian, Rhino's president at the time.

23. Rhino, through the Badian brothers, arranged for its clients to provide financing to public companies that had difficulty securing more conventional financing due to their financial condition. In these financings, commonly referred to as "private investment in public equities," or PIPEs, a public company typically would issue a debenture to Rhino's client, which the client could later convert to the issuer's stock.

24. In November 2000, Rhino helped its client Amro enter into a Convertible Debentures and Warrants Purchase Agreement (the "Agreement") with Sedona. Under the Agreement, Amro provided Sedona with \$2.5 million in financing, and Sedona issued to Amro a \$3 million 5% Convertible Debenture (the "Debenture"). The Debenture obligated Sedona to pay Amro \$3 million, a 20% return, on March 22, 2001. It also gave Amro the right to convert all or any portion of the Debenture into Sedona common stock at a price that equaled 85% of "the volume weighted average price of the Common Stock on the [Nasdaq Small Cap Market] during the five trading days immediately prior to the [Agreement's] Closing Date or Conversion Date, as the case may be," an additional 15% return. Thus, the lower Sedona's stock price during the five-day period prior to Amro's exercise of its conversion rights, the more shares Amro would receive on conversion.

25. To preclude Amro from enriching itself at Sedona's expense, the Agreement specifically prohibited Amro from making any short sales of Sedona's stock as long as the Debenture remained "issued and outstanding." The Agreement was filed with the Commission and disclosed to investors. It was also provided to defendants Badian, Spinner, Drillman and Graham.

**Badian, Spinner, Drillman and Graham Engaged in Short Selling  
to Depress the Price of Sedona's Stock**

26. Spinner, Drillman and Graham operated as a unit at Refco. During the relevant period, they were physically situated within a few feet of each other at Refco's trading desk. While Spinner and Drillman were partners and shared equally in the profits they generated, Graham was a Refco employee who worked at their direction. Spinner, Drillman and Graham each took orders from Badian and knew of his intention to manipulate Sedona's stock price downward. Spinner and Drillman each executed the purchase and sale of Sedona shares at Refco and Pond either by executing the orders themselves or by directing Graham or others to do so. Graham executed the purchase and sale of Sedona shares at Refco and Pond himself or by directing others to do so. Spinner and Drillman each mismarked order tickets by filling out the tickets themselves or by directing Graham or others to do so. Graham mismarked order tickets by filling out the tickets himself or by directing others to do so.

27. In early March 2001, Badian and others directed Spinner, Drillman and Graham to execute numerous short sales of Sedona stock through a proprietary account at Pond, which Spinner and Drillman controlled.<sup>2</sup> Consistent with his scheme, Badian

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<sup>2</sup> In a proprietary account, the broker-dealer trades as a principal for its own account and it assumes the risk of any financial gain or loss.

typically placed orders with Graham before the markets opened. Badian directed Graham to trade Sedona's stock to depress its price, to "clobber" the stock, to sell Sedona shares with "unbridled levels of aggression," and to be "merciless" in selling it.<sup>3</sup>

28. Spinner, Drillman and Graham each made sales throughout the day in small amounts, and they routinely placed those orders through various electronic communication networks (ECNs) linked to the Pond proprietary account. Although Spinner, Drillman and Graham were physically located at Refco, they each executed the Sedona trades through Pond. Either they called the trading desk at Pond to direct a particular trade, or they used a computer terminal at Refco to execute trades in the Pond proprietary account through the ECN's facilities. Just after the market closed, Spinner, Drillman and Graham typically sold the Sedona shares from Amro's customer account at Refco to the Pond proprietary account. These sales would be at a price slightly below the average price of Pond's daily sales of Sedona stock. Spinner, Drillman and Graham each falsely described the stock sales at Refco as long sales. This was designed to disguise Amro's short sales.

29. Defendants' short selling of Sedona stock made up a significant percentage of the volume of Sedona trading reported to the public. From March 1, 2001 through March 29, 2001, Spinner, Drillman and Graham collectively were responsible for over 40% of the total reported trading volume in Sedona's shares. They sold short, on behalf of Badian, over 843,000 shares, which was double reported as over 1.6 million shares due to the method in which they traded.

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<sup>3</sup> Refco maintained a telephone taping system, which are the source of the quoted phrases in this complaint.

30. Defendants' short selling depressed Sedona's stock price. Between January 26 and March 1, 2001, Sedona's average closing price was \$1.43 per share. By March 23, 2001, after three weeks of defendants' manipulative short selling, Sedona's stock had fallen to \$.75 per share.

31. On or about March 21, 2001, Badian called Graham to congratulate him for his efforts that led to the "collapse[d]" of Sedona's stock price. Two days later, Badian called Graham and said, "On Sedona, keep on wailing away, this is very good."

32. Spinner, Drillman and Graham knew that their trading was causing Sedona's stock price to plummet. Drillman acknowledged that they had managed to "drive the stock SDNA down to three quarters." Graham remarked that "we ran it down for weeks" and that Andreas Badian had them "killing SDNA down to seventy-five cents." Spinner told a colleague, "Want to short something illegally for twelve months? You got my number."

33. After Spinner, Drillman and Graham completed their sales of Sedona stock, Spinner asked Badian whether he was concerned that Sedona's stock price would begin to rise now that they had ceased their selling pressure on the stock. Badian remarked he was not concerned because he had a particular market maker "in the way" to keep the price from rising.

34. Defendants' sustained sell pressure on Sedona's stock increased the number of conversion shares that Amro received from Sedona under the terms of the Debenture. Between March 27 and April 16, 2001, Amro exercised its conversion rights under the Debenture on four occasions and received over 1.6 million shares of Sedona stock in repayment of \$1.1 million due under the terms of the Agreement.

35. Rhino deposited the conversion shares that Amro received from Sedona into another account at a second U.S. broker-dealer designated to receive the conversion shares (the "Conversion Shares Account"). In the majority of these conversions, Spinner, Drillman and Graham used these shares to close the open and undelivered short positions they had created in Amro's account at Refco by purchasing the shares from Amro's Conversion Shares Account.

36. Instead of delivering the shares directly to broker-dealers that had handled the short sales, Spinner, Drillman and Graham each executed wash sales and matched orders from the Conversion Shares Account to the accounts where they had engaged in short selling. This gave the appearance that the accounts with short positions were purchasing shares in the open market, not covering their short positions with shares obtained through the debenture conversion. On at least ten occasions during April 2001, Badian directed Spinner, Drillman and Graham to process transactions which involved no change in beneficial ownership of shares of Sedona stock.

**Other Unlawful Acts by Spinner, Drillman, Graham  
and Their Brokerage Firms**

37. For their sales of Sedona's shares at Refco, Spinner, Drillman and Graham intentionally marked all of the order tickets as "long" although they actually sold those shares "short." Furthermore, in violation of the record retention rules, Spinner, Drillman, Graham and their brokerage firms failed to preserve records of their trading, including correspondence and e-mail.

38. Several of Spinner and Drillman's clients, including Amro, sold stock into the U.S. markets from retail accounts held at Refco Capital Markets ("RCM"), Refco's offshore affiliate. They executed these trades through a cash account in RCM's name

maintained at Refco Securities, the entity registered with the Commission pursuant to Section 15 of the Exchange Act. Many of the transactions that originated at RCM and that Refco Securities executed were short sales in violation of Regulation T, which prohibits such short sales in cash accounts.

**Pond Failed to Keep and Maintain Its Books and Records Properly**

39. Broker-dealers must make and keep certain records relating to their business. Those records include the following three categories of items: (i) blotters or other records of original entry that contain an itemized daily record of all purchases and sales of securities; (ii) a memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted; and (iii) a summary of each associated person's compensation arrangement or plan with the broker-dealer.

40. At all relevant times, Pond failed to make and keep such records. First, it did not retain copies of correspondence sent and received in connection with its business, including e-mails. Second, Pond failed to maintain a trading blotter. Third, Pond maintained no records of Birnbaum's compensation.

**Pond, Birnbaum and Hirsch Failed to Supervise Spinner and Drillman**

41. Pond's supervisory policies and procedures failed to detect and prevent Spinner and Drillman's violations of the federal securities laws. Pond's policies and procedures did not require its supervisors to make regular reviews of trades that its associated persons executed. Pond kept no trading blotter or similar record of the details of trades. In fact, its policies and procedures did not require one. That failure in Pond's policies and procedures effectively precluded it from supervising the trading activities of

its associated persons. Pond's policies and procedures on monitoring outside business activities of its registered representatives, especially those who held affiliations with other brokerage firms, failed to prevent or detect the manipulative trading that occurred between the Pond proprietary account and the customer account at Refco.

42. Birnbaum and Hirsch bore responsibility for supervising Spinner and Drillman. They knew that Spinner and Drillman simultaneously held registrations with Refco and Pond, an unusual arrangement that substantially increased the potential for abuse. Moreover, during March 2001, they knew that at the end of the trading day, Spinner, Drillman and Graham executed transactions between Amro's account at Refco and Pond's proprietary account. They also knew that these transactions eliminated Pond's short position in Sedona. Although these "red flags" were or should have been obvious to Birnbaum and Hirsch, they did not inquire about the trading in Sedona shares. By ignoring these red flags, Birnbaum and Hirsch failed to provide reasonable supervision.

**Pond Failed to Respond Adequately to a Commission Order**

43. On June 17, 2002, pursuant to Section 21(a)(1) of the Exchange Act, the Commission issued an order requiring Pond to file a statement under oath as to all the facts and circumstances concerning its trading in Sedona stock. Pond failed to respond fully and accurately to that order. In its response, Pond described the coordinated trading between itself and Refco as an agency relationship by which Pond could obtain superior execution from Refco for its Sedona trades. In fact, Pond used this approach for trading in Sedona stock to allow Amro, through Rhino, to compensate Spinner and Drillman for the anonymity they provided in the marketplace by generating guaranteed trading profits.

In addition, Pond stated that one Pond trader executed all of the short sales in Sedona stock. In fact, Spinner, Drillman and Graham each executed those trades while they were physically located at Refco's New York offices.

**FIRST CLAIM FOR RELIEF**

**Violations of Section 10(b) of the Exchange Act and  
Exchange Act Rule 10b-5  
[15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]  
By Defendants Badian, Spinner, Drillman, Graham and Pond**

44. The Commission realleges and incorporates by reference all preceding paragraphs.

45. From at least March 2001 through May 2001, Defendants Badian, Spinner, Drillman, Graham and Pond, directly or indirectly, by use of the means and instrumentalities of interstate commerce and of the mails, in connection with the purchase or sale of the securities, as described in this Complaint, have knowingly, willfully or recklessly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices and courses of business which operated, are now operating, and will operate as a fraud upon the purchasers of such securities.

46. Defendant Pond is liable for the actions of Defendants Spinner and Drillman pursuant to the doctrine of respondeat superior because they conducted the above-described trading within the scope of their employment by Pond.

47. By reason of the activities described above, Defendants Badian, Spinner, Drillman, Graham and Pond have violated and, unless enjoined, will continue to violate,

Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5.

**SECOND CLAIM FOR RELIEF**

**Violations of Section 17(a)(1) of the Securities Act  
[15 U.S.C. § 77q(a)]  
By Defendants Badian, Spinner, Drillman, Graham and Pond**

48. The Commission realleges and incorporates by reference all preceding paragraphs.

49. From at least March 2001 through May 2001, Defendants Badian, Spinner, Drillman, Graham and Pond, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce, and by use of the mails, in the offer or sale of securities, as described in this Complaint, have knowingly, willfully, or recklessly employed devices, schemes or artifices to defraud.

50. Defendant Pond is liable for the actions of Defendants Spinner and Drillman pursuant to the doctrine of respondeat superior because they conducted the above-described trading within the scope of their employment by Pond.

51. By reason of the activities described in the paragraphs above, Defendants Badian, Spinner, Drillman, Graham and Pond have violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

**THIRD CLAIM FOR RELIEF**

**Aiding and Abetting Violations of Section 7 of the Exchange Act and  
Section 220.8 of Regulation T  
[15 U.S.C. § 78g(c) and 12 C.F.R. § 220.8(a)]  
By Defendants Spinner, Drillman and Graham**

52. The Commission realleges and incorporates by reference all preceding paragraphs.

53. From at least March 2001 through May 2001, Refco and its personnel permitted numerous short sales of Sedona stock in a cash account held at Refco in violation of Section 7 of the Exchange Act and Section 220.8 of Regulation T, 12 C.F.R. § 220.8.

54. From at least March 2001 through May 2001, Defendants Spinner, Drillman and Graham knew, or were reckless in not knowing, that the sales in Sedona stock that they were executing on behalf of Amro were short sales and that the trades all flowed through a cash account at Refco Securities.

55. By reason of the activities described in the paragraphs above, Defendants Spinner, Drillman and Graham aided and abetted violations of, and, unless enjoined, will continue to aid and abet violations of Section 7 of the Exchange Act and Section 220.8 of Regulation T.

#### **FOURTH CLAIM FOR RELIEF**

**Aiding and Abetting Violations of Section 17(a) of the Exchange Act and  
Exchange Act Rule 17a-3  
[15 U.S.C. § 78q(a) and 17 C.F.R. § 240.17a-3(a)]  
By Defendants Spinner, Drillman and Graham**

56. The Commission realleges and incorporates by reference all preceding paragraphs.

57. From at least March 2001 through May 2001, Refco and its personnel created order tickets that were materially inaccurate in that they described transactions by Amro as long sales when they were actually short sales.

58. From at least March 2001 through May 2001, Defendants Spinner, Drillman and Graham knew, or were extremely reckless in not knowing, that they were creating order tickets or assisting in the preparation of order tickets at Refco that were

materially inaccurate in that they described transactions by Amro as long sales when, in fact, they were short sales.

59. By reason of the activities described in the paragraphs above, Defendants Spinner, Drillman and Graham aided and abetted violations of and, unless enjoined, will continue to aid and abet violations of Section 17(a) of the Exchange Act and Exchange Act Rule 17a-3.

**FIFTH CLAIM FOR RELIEF**

**Violations of Section 15(b) of the Exchange Act and  
Exchange Act Rule 15b7-1  
[15 U.S.C. § 78o(b) and 17 C.F.R. § 240.15b7-1]  
By Defendant Pond**

60. The Commission realleges and incorporates by reference all preceding paragraphs.

61. From at least March 2001 through May 2001, Defendant Graham executed trades in a proprietary account at Pond through certain ECNs and directed certain personnel at Pond to execute trades in proprietary accounts as well. Graham was not associated with Pond, an NASD member firm, in any capacity. Similarly, Pond had not registered him with the NASD as one of its representatives.

62. By reason of the activities described in the paragraphs above, Defendant Pond has violated and, unless enjoined, will continue to violate Section 15(b) of the Exchange Act and Exchange Act Rule 15b7-1.

**SIXTH CLAIM FOR RELIEF**

**Violations of Section 17(a) of the Exchange Act and  
Exchange Act Rules 17a-3 and 17a-4  
[15 U.S.C. § 78q(a) and 17 C.F.R. § 240.17a-3(a) and § 240.17a-4(b)]  
By Defendant Pond**

63. The Commission realleges and incorporates by reference all preceding paragraphs.
64. Pond did not maintain a blotter or other records of original entry containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities, all receipts and disbursements of cash and all other debits and credits.
65. Pond did not maintain a summary of the compensation arrangement or plan for each of its associated persons.
66. Pond did not retain e-mail messages received and generated by its associated persons.
67. By reason of the activities described in the paragraphs above, Defendant Pond has violated and, unless enjoined, will continue to violate Section 17(a) of the Exchange Act and Exchange Act Rules 17a-3 and 17a-4.

**SEVENTH CLAIM FOR RELIEF**

**Violations of an Order Issued by the Commission  
Pursuant to Section 21(a)(1) of the Exchange Act  
[15 U.S.C. § 78u(a)(1)]  
By Defendant Pond**

68. The Commission realleges and incorporates by reference all preceding paragraphs.

69. On June 17, 2002, pursuant to Section 21(a)(1) of the Exchange Act, the Commission issued an Order to Pond that required it to file a statement under oath as to all the facts and circumstances concerning its trading in Sedona stock. Pond failed to respond fully and accurately to the Order.

70. By reason of the activities described in the paragraphs above, Defendant Pond has violated and, unless enjoined, will continue to violate Commission orders.

#### **EIGHTH CLAIM FOR RELIEF**

##### **Violations of NASD Conduct Rule 3010 By Defendants Pond, Birnbaum and Hirsch**

71. The Commission realleges and incorporates by reference all preceding paragraphs.

72. The NASD Conduct Rules requires members and their associated persons, among other things, to establish and maintain a system to supervise the activities of its registered representatives and associated persons and to establish, maintain and enforce written supervisory procedures designed to achieve compliance with applicable securities laws and regulations.

73. Pond's supervisory policies and procedures were inadequate to prevent and detect Spinner and Drillman's violations of the federal securities laws. The firm's policies and procedures did not require regular review of trades by its associated persons. Pond kept no trading blotter or other records of trading, and the firm's policies and procedures did not require it to maintain these, rendering impracticable its supervision of trading activities. In addition, the firm had inadequate policies and procedures for monitoring outside business activities of registered representatives.

74. Birnbaum and Hirsch had the duty to supervise Spinner and Drillman. Birnbaum and Hirsch failed to respond to red flags that Spinner and Drillman were engaging in prearranged, manipulative trading between Pond's proprietary account and a customer account at Refco.

75. Because of the activities described in the paragraphs above, Defendants Pond, Birnbaum and Hirsch have violated and, unless enjoined, will continue to violate, NASD Conduct Rule 3010.

### **PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that this Court enter a judgment that:

(i) Permanently enjoins Defendants Andreas Badian, Jacob Spinner, Mottes Drillman and Jeffrey Graham from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5];

(ii) Permanently enjoins Defendants Andreas Badian, Jacob Spinner, Mottes Drillman and Jeffrey Graham from violating Section 17(a)(1) of the Securities Act of 1933 [15 U.S.C. § 77q(a)];

(iii) Permanently enjoins Defendants Jacob Spinner, Mottes Drillman and Jeffrey Graham from aiding and abetting violations of Section 7 of the Exchange Act [15 U.S.C. § 78g(c)] and Section 220.8 of Regulation T [12 C.F.R. § 220.8(a)];

(iv) Permanently enjoins Defendants Jacob Spinner, Mottes Drillman and Jeffrey Graham from aiding and abetting violations of Section 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and Exchange Act Rule 17a-3 [17 C.F.R. § 240.17a-3(a)];

(v) Permanently enjoins Defendant Pond Securities Corp. from violating Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)] and Exchange Act Rule 15b7-1 [17 C.F.R. § 240.15b7-1];

(vi) Permanently enjoins Defendant Pond Securities Corp. from violating Section 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and Exchange Act Rules 17a-3 [17 C.F.R. § 240.17a-3(a)] and 17a-4 [17 C.F.R. § 240.17a-4(b)];

(vii) Permanently enjoins Defendant Pond Securities Corp. from violating Commission Orders issued pursuant to Section 21 of the Exchange Act [15 U.S.C. § 78];

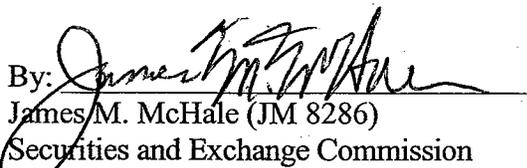
(viii) Permanently enjoins Defendants Pond Securities Corp., Ezra Birnbaum, and Shaye Hirsch from violating NASD Conduct Rule 3010;

(ix) Orders Defendants to pay appropriate civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

(x) Orders Defendants to disgorge all profits or proceeds that they have received as a result of their conduct as described in this complaint, with prejudgment interest; and

(xi) Grants such other relief as this Court may deem just and appropriate.

Respectfully submitted,  
Securities and Exchange Commission

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