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9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 SECURITIES AND EXCHANGE  
12 COMMISSION,

13 Plaintiff,

14 vs.

15 TODD M. FICETO, FLORIAN HOMM,  
16 COLIN HEATHERINGTON, HUNTER  
WORLD MARKETS, INC., AND  
17 HUNTER ADVISORS, LLC,

18 Defendants,

19 AND TODD M. FICETO AS  
CUSTODIAN FOR HIS MINOR  
20 CHILDREN,

21 Relief Defendant.

Case No.

**COMPLAINT FOR VIOLATIONS OF  
THE FEDERAL SECURITIES LAWS**

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1 Plaintiff Securities and Exchange Commission (the “Commission” or the  
2 “SEC”) alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This Court has jurisdiction over this action pursuant to Sections 20(b),  
5 20(d)(1), 20(e), 20(g) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15  
6 U.S.C. §§ 77t(b), 77t(d)(1), 77t(e), and 77v(a), Sections 21(d)(1), 21(d)(2),  
7 21(d)(3)(A), 21(d)(6), 21(e), and 27 of the Securities Exchange Act of 1934  
8 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1), 78u(d)(2), 78u(d)(3)(A), 78u(e) and  
9 78aa, and Sections 209(d), 209(e), and 214 of the Investment Advisers Act of 1940  
10 (“Advisers Act”), 15 U.S.C. §§ 80b-9, 80b-14. Defendants have directly or  
11 indirectly made use of the means or instrumentalities of interstate commerce, of the  
12 mails, or of the facilities of a national securities exchange in connection with the  
13 transactions, acts, practices and courses of business alleged in this Complaint.

14 2. Venue is proper in this district pursuant to Section 22(a) of the Securities  
15 Act, 15 U.S.C. § 77v(a), Section 27 of the Exchange Act, 15 U.S.C. § 78aa, Section  
16 214 of the Advisers Act, 15 U.S.C. § 80b-14, and 28 U.S.C. § 1331, because  
17 Defendants reside and/or transact business within this district and certain of the  
18 transactions, acts, practices and courses of conduct constituting violations of the  
19 federal securities laws alleged in this Complaint occurred within this district.

20 **SUMMARY**

21 3. From at least September 2005 through September 2007 (the “relevant  
22 period”), Todd M. Ficeto (“Ficeto”), Florian Homm (“Homm”), Colin  
23 Heatherington (“Heatherington”), Hunter World Markets, Inc. (“HWM”) and  
24 Hunter Advisors, LLC (“Hunter Advisors”) (collectively, “the Defendants”)  
25 engaged in a fraudulent scheme to manipulate the markets of various thinly-traded  
26 U.S. microcap stocks in connection with an ancillary scheme to defraud investors  
27 in several now defunct hedge funds managed by Absolute Capital Management  
28 Holdings Limited (“ACMH”).

1           4.     During the relevant period, HWM was a registered broker-dealer  
2 located in Beverly Hills, California, and co-owned by Ficeto and Homm. Homm  
3 was also the co-founder and the chief or co-chief investment adviser for ACMH, a  
4 London-based hedge fund management company and SEC-registered investment  
5 adviser that managed eight equity hedge funds (the “Absolute funds”) and  
6 purportedly had \$2.1 billion in assets under management as of August 31, 2007.  
7 Using his position as the principal investment adviser of the Absolute funds, and as  
8 a co-owner of HWM, Homm misused the assets of the Absolute funds to allow  
9 him, Ficeto, Heatherington and HWM to manipulate upward the prices of a  
10 number of domestic microcap issuers whose stock was publicly traded in the  
11 United States. Homm, Ficeto, and their mutual friend and ACMH employee,  
12 Heatherington, made tens of millions of dollars as a result of that manipulative  
13 trading activity. When Homm abruptly resigned on September 18, 2007, the same  
14 day that ACMH’s new chief executive officer was to meet with Homm to discuss  
15 increased oversight of Homm’s investment decisions and bonus payments, the  
16 Absolute funds and their investors were left holding between \$440 and \$530  
17 million in “illiquid positions.” Most of those “illiquid positions” were, in fact,  
18 U.S. microcap stocks purchased and traded by the Absolute funds through HWM.

19           5.     The U.S. microcap issuers (collectively the “Issuers”) that were the  
20 subject of the Defendants’ manipulative activities consisted of at least six U.S.-  
21 domiciled microcap companies quoted and traded in the United States on the Over-  
22 the Counter Bulletin Board (“OTCBB”) and/or the Pink Sheets operated by OTC  
23 Markets Group Inc. (“Pink Sheets”).

24           6.     Rather than allow the markets to set the price of the Issuers’ securities  
25 through the natural interplay of supply and demand, the Defendants knowingly or  
26 recklessly rigged the market by participating in and furthering a market  
27 manipulation scheme to drive upward the prices of these thinly-traded microcap  
28 stocks. In conducting their market manipulation scheme, the Defendants used a

1 number of classic manipulative techniques, including: placing matched orders;  
2 placing orders that marked the close or otherwise set the closing price for the day;  
3 and conducting wash sales, all of which were done for the principal purpose and  
4 effect of artificially affecting the Issuers' stock prices.

5         7. Matched orders are orders for the purchase or sale of a security that  
6 are entered with the knowledge that orders of substantially the same size, at  
7 substantially the same time and price, have been or will be entered by the same or  
8 different persons for the sale or purchase of such security. As detailed within,  
9 Defendants executed hundreds of such orders in the Issuers' securities through  
10 HWM, either by trading between and among the brokerage accounts maintained by  
11 the Absolute funds at HWM, or between the brokerage accounts maintained by the  
12 Absolute funds at HWM and the Defendants' individual brokerage accounts at  
13 HWM, all for the principal purpose and effect of raising or stabilizing the prices of  
14 the Issuers' securities.

15         8. Marking the close or last-trade-of-the day transactions, or other  
16 transactions conducted for the purpose of setting the day's closing price for a  
17 stock, involve the practice of repeatedly executing the last transaction of the day in  
18 a security in order to affect its closing price. Defendants' conduct included making  
19 extensive and successive purchases in an attempt to move the price of a stock and  
20 to lock in the higher price at the close of the market. As detailed within,  
21 Defendants executed and caused to be executed scores of end-of-day transactions  
22 for the purpose and effect of marking the close and to thereby artificially set the  
23 closing price of the Issuers' stock for the day.

24         9. Wash trades involve the sale of securities made at about the same time  
25 as a purchase of the same securities resulting in no change of beneficial ownership  
26 of the stock. As detailed within, Defendants conducted at least eight wash sales  
27 that had no legitimate economic purpose and were conducted for the purpose of  
28 manipulating the prices of the Issuers' stock and/or to generate massive sale credits

1 (*i.e.*, the amount added to the sale or purchase price of a security for compensation  
2 to the dealer) and commissions to HWM.

3 10. The Defendants' intent to manipulate the markets in the Issuers'  
4 securities is demonstrated not only through their multi-year manipulative trading  
5 activity, but also through hundreds of instant messages ("IMs") between ACMH's  
6 and HWM's principal traders which were recorded on a secret, alternate messaging  
7 system that allowed ACMH's and HWM's traders to freely talk without fear that  
8 their scheme would be discovered by the Commission or the Financial Industry  
9 Regulatory Authority ("FINRA"). As reflected in those secret IMs, ACMH's  
10 trader, typically Heatherington, acting at the direction and with the knowledge and  
11 consent of Homm, instructed HWM's trader, Tony Ahn, acting under the direction  
12 and with the knowledge and consent of Ficeto -- or Ficeto himself -- to place  
13 matched orders, transactions that marked the close, and wash sales in the Issuers'  
14 stock, for the purpose of artificially raising or stabilizing the Issuers' stock prices.

15 11. The Defendants' manipulation of the Issuers' stock prices allowed  
16 Ficeto, Homm and Heatherington to generate enormous profits through Ficeto's  
17 and Homm's co-ownership of HWM, and through their sale of the Issuers' shares  
18 to the Absolute funds at inflated prices. The Defendants' manipulation of the  
19 Issuers' stock prices also allowed Homm and ACMH to materially overstate the  
20 Absolute funds' performance and net asset values ("NAVs") in a fraudulent  
21 practice known as "portfolio pumping." As a result of their fraudulent conduct,  
22 Ficeto, Homm, and Heatherington collectively made at least \$63.7 million in illicit  
23 proceeds.

#### 24 **THE DEFENDANTS**

25 12. **Todd M. Ficeto** is a resident of Malibu, California, and is currently  
26 the sole owner of HWM. He was also a registered representative, trader, branch  
27 manager and general securities principal for HWM. Ficeto was also the principal  
28 of Hunter Advisors, which directed the investment activities of a "fund of funds"

1 that also participated in the stock manipulation. Ficeto was also a director of  
2 MicroMed Cardiovascular, Inc., from December 2005 to March 2007, during  
3 which time MicroMed's share price was manipulated by Ficeto, Homm,  
4 Heatherington and HWM. Ficeto has a lengthy regulatory disciplinary history. In  
5 December 2004, Ficeto was censured, fined \$40,000, and suspended for 15 days  
6 from association with any National Association of Securities Dealers ("NASD")  
7 member in any supervisory capacity for failure to supervise; in June 2002, he was  
8 censured and fined \$12,500 for failing to report customer complaints; and in 1996,  
9 he was censured, fined \$2,500, required to repay \$7,155.75 in commissions, and  
10 suspended from recommending penny stocks for two years for failing to provide  
11 customers with adequate information. Ficeto was under heightened regulatory  
12 supervision from November 2004 until June 2006.

13       13. **Florian Homm** was a resident of Majorca, Spain during at least part  
14 of the relevant period. Homm was the co-founder, the original chief investment  
15 officer and, from January to September 2007, the co-chief investment officer of  
16 ACMH. He was also a co-owner and director of HWM during the relevant period.  
17 While he has no U.S. regulatory disciplinary history, he was fined €70,000 by  
18 German securities regulators in August 2004 for publishing false statements about  
19 a company and was fined €50,000 and placed on two years' probation in December  
20 2005 by a German court for failing to declare his self-interest in research reports.  
21 The reports included a sell recommendation for a stock in which the Absolute  
22 Return Europe Fund, a fund Homm managed, had taken a short position. Homm's  
23 current whereabouts are unknown.

24       14. **Colin Heatherington** is a resident of Victoria, British Columbia,  
25 Canada. During the relevant period he was a trader for ACMH, located in Spain,  
26 and held the title "Risk Management/Execution." Heatherington reported directly  
27 to Homm. Heatherington also partially owned and controlled a British Virgin  
28 Islands entity called CIC Global Capital Limited ("CIC Global"), which made

1 numerous trades with the Absolute funds through CIC Global's brokerage account  
2 at HWM. Heatherington asserted his Fifth Amendment right against self-  
3 incrimination during his testimony before the Commission.

4 15. **Hunter World Markets, Inc.**, a California corporation, was a  
5 Beverly Hills-based broker-dealer registered with the Commission. The firm was  
6 founded by Ficeto in 1995. During the relevant period Ficeto and Homm co-  
7 owned HWM.

8 16. **Hunter Advisors, LLC**, a California limited liability company, is  
9 managed and controlled by Ficeto, who owns 99% of the company. Hunter  
10 Advisors was the investment adviser to the Hunter Fund, Ltd. (the "Hunter Fund"),  
11 a British Virgin Islands hedge fund incorporated in August 2002 whose sole three  
12 investors were three of the Absolute funds. Hunter Advisors directed securities  
13 trades through the Hunter Funds brokerage account at HWM.

#### 14 **RELIEF DEFENDANT**

15 17. **Todd Ficeto, as Custodian for his Minor Children.** Two of Ficeto's  
16 minor children maintained accounts at HWM, for which Ficeto was the custodian.  
17 On behalf of his children, Ficeto transferred Issuer shares to them and then sold  
18 their shares to the Absolute funds as part of Defendants' manipulative scheme for a  
19 \$177,000 profit.

#### 20 **OTHER RELEVANT ENTITIES AND PERSONS**

21 18. **Absolute Capital Management Holdings Limited ("ACMH")** is a  
22 London-based hedge fund management company organized under the laws of the  
23 Cayman Islands. ACMH was an investment adviser registered with the  
24 Commission from January 30, 2006 to September 10, 2007.

25 19. **ACMH Funds** (collectively, the "Absolute funds" or the "funds")  
26 were eight equity hedge funds formerly managed by ACMH, all of which were  
27 domiciled in the Cayman Islands. The names of the funds were: the European  
28 Catalyst Fund Limited; the Absolute Return Europe Fund Limited; the Absolute

1 Germany Fund Limited; the Absolute Octane Fund Limited; the Absolute East  
2 West Fund Limited; the Absolute Large Cap Fund Limited; the Absolute India  
3 Fund Limited; and the Absolute Activist Value Fund Limited. Following the  
4 discovery of the Defendants' fraudulent activities, the funds were liquidated and/or  
5 their assets merged with a different fund managed by a different investment  
6 adviser. Individuals, entities, hedge funds and funds of funds invested in the  
7 Absolute funds. During the relevant period, each of the Absolute funds maintained  
8 brokerage accounts at HWM. U.S. individuals and entities also held investments  
9 in the Absolute funds. As of January 31, 2008, U.S.-based shareholders had  
10 invested approximately \$40 million in the Absolute funds.

11       20.   **Hunter Fund, Ltd.** was a British Virgin Islands hedge fund  
12 incorporated in August 2002. Ficeto was the portfolio manager for the Hunter  
13 Fund through Hunter Advisors. Three of the Absolute funds were the sole  
14 investors in the Hunter Fund and cumulatively invested approximately \$34.5  
15 million. The Hunter Fund has since been dissolved.

16       21.   **The Issuers** that were the subject of Defendants' manipulative  
17 scheme were a number of U.S.-domiciled microcap companies (*i.e.*, companies  
18 with low or "micro" capitalizations) whose shares were registered with the  
19 Commission during the relevant period and traded in the United States on the  
20 Over-the-Counter Bulletin Board ("OTCBB") or quoted in the Pink Sheets. The  
21 OTCBB is an electronic quotation system, whose servers are located and  
22 maintained in the United States, that displays real-time quotes, last-sale prices, and  
23 volume information for many OTC securities that are not listed on the Nasdaq  
24 Stock Market or a national securities exchange. Broker-dealers who subscribe to  
25 the system can use the OTCBB to look up prices or enter quotes for OTC  
26 securities. The Pink Sheets — named for the color of paper on which they had  
27 historically been printed — are listings of price quotes for companies that trade in  
28 the over-the-counter market ("OTC market"), whose servers are located and

1 maintained in the United States. Market makers — the brokers who commit to  
 2 buying and selling the securities of OTC issuers, such as HWM — can use the  
 3 Pink Sheets to publish bid and ask prices. A company named OTC Markets Group  
 4 Inc., formerly known as Pink OTC Markets Inc. and the National Quotation  
 5 Bureau, publishes the Pink Sheets in electronic format. The following chart lists  
 6 the Issuers and relevant details concerning those companies and their common  
 7 stock:

| Issuer Name and Trading Symbol   | State of Incorporation | Principal Place of Business | Market Where Traded | Date Became Public |
|--|------------------------|-----------------------------|---------------------|--------------------|
| ProElite, Inc.<br>(PETE or PELE)   | New Jersey             | Los Angeles, California     | Pink Sheets         | 5/14/07            |
| Berman Center, Inc.<br>(BRMC)  | Delaware               | Chicago, Illinois           | Pink Sheets         | 4/28/06            |
| NuRx Pharmaceuticals, Inc. (formerly known as Quest Group International, Inc.)<br>(QSTG) | Nevada                 | Irvine, California          | OTCBB               | 6/8/06             |
| MicroMed Cardiovascular, Inc.<br>(MMCV)  | Delaware               | Houston, Texas              | OTCBB               | 8/9/05             |
| Java Detour, Inc.<br>(JVDT)  | Delaware               | Davis, California           | Pink Sheets         | 6/20/07            |
| Logistical Support, Inc.<br>(LGSL)   | Utah                   | Chatsworth, California      | OTCBB               | 6/19/03            |

22. **Tony Ahn** (“Ahn”) is a resident of Fullerton, California, and was

1 HWM's trader. On January 10, 2011, Ahn consented to the entry of an  
2 administrative and cease-and-desist order relating to his employment at HWM,  
3 ordering him, among other things: (i) to cease-and-desist from committing or  
4 causing any violations of Sections 10(b), 15(c)(1) and 17(a) of the Exchange Act  
5 and Rules 10b-5 and 17a-4(b)(4) thereunder; (ii) to pay a \$40,000 civil monetary  
6 penalty; and (iii) barring him from association with any broker and dealer, with the  
7 right to apply for association after five years.

8 23. **Elizabeth Pagliarini** ("Pagliarini") is a resident of Mission Viejo,  
9 California, and was HWM's chief compliance officer. Pagliarini resigned from  
10 HWM in May 2008. On January 10, 2011, Pagliarini consented to the entry of an  
11 administrative and cease-and-desist order relating to her employment at HWM,  
12 ordering her, among other things: (i) to cease-and-desist from committing or  
13 causing any violations of 17(a) of the Exchange Act and Rules 17a-8 thereunder;  
14 (ii) to pay a \$20,000 civil monetary penalty; and (iii) suspending her from acting in  
15 a supervisory capacity with any broker or dealer for a period of twelve months.

## 16 FACTS

### 17 **A. Background**

18 24. Homm co-founded ACMH in August 2004. The company's primary  
19 function, through its wholly-owned subsidiary Absolute Capital Management  
20 (UK), Ltd., was to provide investment advisory services to the Absolute funds.  
21 ACMH received a management fee of 2% per year as well as an incentive fee of  
22 20% of new profits.

23 25. Although each of the Absolute funds purportedly had a portfolio  
24 manager and one or more investment analysts, Homm had de facto control over  
25 each of the funds and had free rein to make investment decisions on their behalf.  
26 On numerous occasions, Homm directed ACMH's traders, including  
27 Heatherington, to place buy or sell orders for the Issuers' securities on behalf of the  
28 funds. In addition, while providing investment advice with respect to securities in

1 his role as chief investment officer, Homm engaged in self-dealing by misusing  
2 investor monies invested in the Absolute funds to purchase Issuers' shares at  
3 artificially inflated prices from HWM, Ficeto, CIC Global and Ficeto's children,  
4 resulting in millions of dollars in stock trading proceeds to the Defendants, as well  
5 as millions of dollars in sales credits and commissions to HWM, of which he was a  
6 co-owner.

7         26. HWM conducted investment banking and brokerage operations, both  
8 of which furthered Ficeto's, Homm's and Heatherington's fraudulent scheme. On  
9 its investment banking side, Ficeto and HWM identified U.S. microcap companies,  
10 which were then capitalized using money from the Absolute funds. HWM and  
11 Ficeto then brought the companies public, if their shares were not already publicly  
12 traded. Most of the microcap stocks manipulated by the Defendants, such as  
13 ProElite, Berman, and Quest, began as privately-held companies, had minimal  
14 assets and had little, if any, value. Ficeto presented these companies to Homm as  
15 potential opportunities for market manipulation and together, Ficeto and Homm  
16 worked out the structure by which they and/or the Absolute funds would provide  
17 financing and/or invest in the Issuers in exchange for large blocks of the Issuers'  
18 stock and warrants for additional stock. HWM acted as the placement agent in  
19 connection with those transactions, in exchange for which it received placement  
20 fees, shares of common stock, and warrants to purchase additional shares. In many  
21 instances, HWM, Ficeto, and CIC Global received restricted shares, or warrants for  
22 restricted shares, for free or for a de minimus amount of money. In addition, in an  
23 attempt to control and dominate the volume of shares in the market, Ficeto  
24 negotiated lock-up agreements with the Issuers' directors, executive officers and/or  
25 then-existing shareholders to withhold their shares from the market.

26         27. In total, from September 2005 through October 2007, the Absolute  
27 funds invested, through private placements, in each of the six Issuers, and Ficeto  
28 with Homm, through their co-ownership of HWM, received over \$8 million in

1 placement, consulting and other fees, as well as warrants and shares of stock.

2 28. On its brokerage side, HWM, as a market-maker, made a market in  
3 the Issuers' securities, in that it stood ready to buy and sell the Issuers' stock on a  
4 regular and continuous basis at a publicly quoted price it submitted. HWM was  
5 also a member of FINRA and a FINRA-approved market maker. HWM was also a  
6 subscriber with Pink Sheets, which allowed HWM to see and place quotes with  
7 Pink Sheets. In its capacity as a market maker, HWM was responsible for  
8 executing the trades at issue in this Complaint. The execution of these securities  
9 transactions was a multi-step process, with each step occurring in the United  
10 States. In particular, HWM, acting through its trader Ahn, or through Ficeto  
11 himself, would receive buy or sell orders in the Issuers' stock from the Absolute  
12 funds, acting through its trader, Heatherington, and from HWM, Ficeto and  
13 Ficeto's children, and Heatherington's company, CIC Global. HWM would then  
14 execute those buy or sell orders, either internally by identifying a buyer or seller at  
15 HWM, thereby brokering both sides of the transaction, or externally, with another  
16 broker-dealer, through the domestic inter-dealer quotation system, such as OTC  
17 Link. HWM would then report the trade, which would then clear and settle.  
18 Broker-dealers, such as HWM, are required to report their trades to FINRA within  
19 90 seconds of the trade's execution. This information, including trading price and  
20 volume, is then publicly disseminated by FINRA to the market. HWM also  
21 caused the trades at issue in this Complaint to be cleared, using RBC Dain  
22 Rauscher, which was located in St. Paul, Minnesota during the relevant period,  
23 which specializes in clearing, custody and execution services. HWM would then  
24 cause journal entries to be made in the brokerage accounts that the Absolute funds  
25 and the Defendants maintained at HWM, reflecting the exchange of cash and  
26 securities, to settle the trades.

27 29. As part of Defendants' manipulative scheme, HWM accounted for  
28 the largest percentage of the trading volume in each of the Issuers' securities. For

1 example, during portions of the relevant period, for ProElite, Berman and Quest,  
2 HWM's trades accounted for over 94% of the trading volume of their respective  
3 stocks. HWM also dominated the market, executing trades representing the  
4 greatest volume percentage of trades, in the remaining issuers, handling over 43%  
5 in Java Detour; over 40% in MicroMed; and over 29% in Logistical Support.

6 **B. Defendants' Matched Orders**

7 30. As set forth in detail in Appendix 1 to this Complaint, which is  
8 attached hereto and incorporated herein by reference, Defendants executed and  
9 caused to be executed matched orders between Absolute fund accounts held at  
10 HWM, as well as between HWM accounts controlled by the Defendants and  
11 Absolute fund accounts, whose orders were routed through other U.S. broker-  
12 dealers, including Knight Securities and Morgan Stanley. The matched orders were  
13 made with the intent to artificially raise or stabilize the closing market price of the  
14 Issuers' stocks in the Absolute funds' portfolios for the purpose of positively  
15 impacting the Absolute funds' NAVs, which were calculated at the end of the  
16 month. On multiple occasions, the performance of the Issuers' stock, as  
17 manipulated by the Defendants, allowed some of the Absolute funds to generate  
18 positive returns in months that otherwise would have had negative returns.  
19 Defendants' manipulative activity also enriched the Defendants either through their  
20 sales of the Issuers' stock to the funds at inflated prices and/or through transaction  
21 fees paid to HWM as a result of the trades.

22 **C. Defendants' Marking the Close**

23 31. Ficeto, Homm, Heatherington and HWM also executed or caused to  
24 be executed numerous trades of the Issuers' common stock to be made in the  
25 names of the Absolute funds for the purpose of setting the day's closing price for a  
26 stock, in a manipulative practice known as "marking the close." Many of those  
27 trades occurred at or near the close of the trading day.

28 32. As detailed in the Appendix 2 to this Complaint, which is attached

1 hereto and incorporated herein by reference, Ficeto, Homm, Heatherington and  
2 HWM marked the close, or otherwise executed last-trade-of-the-day transactions in  
3 the Issuers' stock either through the purchase of shares in the open market or  
4 through the use of matched orders.

5 33. Ficeto also executed an additional manipulative cross trade between  
6 two Absolute funds at 16:00 on February 28, 2007, for 100,000 shares of a non-  
7 Issuer company, Columbia Goldfields, Ltd., which trade marked the close for that  
8 day, after making purchases at increasing prices during the day. The total volume  
9 for the day was 3,171,250, of which 1,150,850 were purchases made by Ficeto for  
10 the Absolute East West Fund.

11 **D. Defendants' Wash Trades**

12 34. Ficeto, Homm, Heatherington, and HWM also executed, or caused to  
13 be executed, a number of manipulative trades between two accounts held by the  
14 same fund, thus effecting at least eight wash trades. As with the matched orders,  
15 the purpose of these transactions was to manipulate the prices of the Issuers' stock  
16 and/or generate sales credits to HWM.

| 17 <b>ACMH Fund</b>    | 18 <b>Trade Date</b> | 19 <b>Issuer</b> | 20 <b>Shares sold between Fund accounts</b> | 21 <b>HWM sales credit</b> |
|------------------------|----------------------|------------------|---|----------------------------|
| 22 East West Fund      | 23 6/18/07           | 24 ProElite      | 25 500,001                                  | 26 \$20,000                |
| 27 Activist Value Fund | 28 6/26/07           | ProElite         | 250,000                                     | \$20,000                   |
| Octane Fund            | 9/13/07              | Quest            | 4.5 million                                 | \$450,000                  |
| Octane Fund            | 9/13/07              | ProElite         | 2.5 million                                 | \$125,000                  |
| <b>Total</b>           |                      |                  |   | <b>\$615,000</b>           |

35. In addition, the wash trades in ProElite constituted all of the trades on  
those three days in ProElite, and accordingly set the closing stock price. The wash  
trade in Quest artificially inflated its stock price since later trades in Quest stock  
were at a higher price than trades that had been made before the HWM matched

1 order.

2 **E. Defendants' Secret Instant Messaging System**

3 36. To communicate with purchasers and sellers, most broker-dealers,  
4 including HWM, use e-mail and IM services provided and hosted by Bloomberg,  
5 L.P. Section 17(a) of the Exchange Act, 15 U.S.C. § 78q(a), and Rule 17a-4(b)(4)  
6 thereunder, 17 C.F.R. § 240.17a-4(b)(4), and FINRA Rules 3010 & 3110, require  
7 electronic business communications, including Bloomberg e-mails and IMs, to be  
8 archived and monitored for compliance purposes. Unlike conventional e-mail  
9 systems such as Microsoft Exchange, Bloomberg messages do not reside on a  
10 server on the user's premises. Instead, each user's workstation accesses a central  
11 server farm managed by Bloomberg. E-mails and IMs are stored on the  
12 Bloomberg servers and are viewed through Bloomberg's proprietary terminals. In  
13 order to comply with Section 17(a), Rule 17a-4(b)(4) and FINRA Rules 3010 &  
14 3110, and enable companies to archive those communications, Bloomberg allows  
15 its clients to access messages for archival purposes through daily Internet  
16 downloads.

17 37. In order to circumvent Section 17(a), Rule 17a-4 and FINRA Rules 3010  
18 & 3110, ACMH's and HWM's principal traders used a secret, alternate IM  
19 messaging system, in addition to their Bloomberg terminals, that allowed them to  
20 speak freely with each other without fear that their communications relating to their  
21 market manipulation scheme would be discovered by the Commission or FINRA. In  
22 numerous IMs between HWM's trader Ahn and ACMH's trader Heatherington, Ahn  
23 and Heatherington openly discussed manipulating the Issuers' stock prices. On  
24 multiple days, Heatherington stated the price at which he wanted an Issuer's stock to  
25 close that day, and Ahn would execute the orders to achieve that price. Appendix 3  
26 to this Complaint, attached hereto and incorporated herein by reference, contains a  
27 representative sample of the IMs discussing Defendants' manipulation of the Issuers'  
28 stock prices.

1           38. The IMs also demonstrate that Ficeto knew of the Defendants' secret  
2 IM system and that he knew and approved of Ahn's fraudulent trading techniques  
3 and strategies. When Heatherington communicated proposed trade prices,  
4 Heatherington frequently asked Ahn to obtain Ficeto's approval before executing  
5 the trade. Ficeto knew, or was reckless in not knowing, of all of the manipulative  
6 orders based on the fact that he frequently stood behind Ahn at the HWM trading  
7 desk in Beverly Hills, California, observed Ahn's activities on behalf of the funds  
8 and discussed the trades with him. Moreover, on February 28, 2007 (when Ahn  
9 was absent), Ficeto executed all of the trades himself, including the  
10 aforementioned matched orders in MicroMed and Java Detour.

11           **F. Defendants' Back-Dated Trades**

12           39. Ficeto, Homm, Heatherington and HWM also back-dated a number of  
13 trades. As detailed in certain IMs, Heatherington asked Ahn to revise the trade  
14 date of certain transactions to reflect a date that was prior to month's end. For  
15 example, on September 4, 2007, Heatherington asked Ahn if a matched trade for  
16 400,000 shares of ProElite traded among three of the ACMH funds could be back-  
17 dated to the previous Friday, the last trading day of August. Ahn responded that he  
18 would need to call Ficeto to obtain approval. Ficeto approved the trade which was  
19 entered with an "as of" date of August 31, 2007.

20           40. In another exchange between Heatherington and Ahn on July 30,  
21 2007, Heatherington proposed a matched order between Absolute accounts held at  
22 HWM at such a high price for the day that Ahn responded that it would "be a red  
23 flag to print [*i.e.*, be reported] a lot above the high of the day." To avoid raising  
24 the red flag triggered by Heatherington's proposed price, Ahn suggested back-  
25 dating the trade to the prior week, but noted that he would need to obtain Ficeto's  
26 approval before so doing. After obtaining Ficeto's approval, Ahn proceeded to  
27 enter the trade as of July 23, 2007, when the stock was trading closer to  
28 Heatherington's initial proposed price.

**G. Defendants’ Sales of the Issuers’ Stock to the Absolute Funds**

41. As reflected in the chart below, as a result of their manipulation of the Issuers’ stock through matched orders, orders marking the close, and wash sales through the brokerage accounts held by the Absolute funds at HWM, the Defendants reaped significant profits from their sales of the Issuers’ stock to the Absolute funds, and through sales credits and commissions, all at the expense of the Absolute funds’ investors.

| <b>Issuer Name</b> | <b>HWM sales to Absolute funds (Ficeto and Homm)</b> | <b>HWM Sales to Hunter Fund</b> | <b>HWM commissions and sales credits (Ficeto and Homm)</b> | <b>Ficeto individual/children sales to Absolute funds</b> | <b>CIC Global sales to Absolute funds (Heatherington)</b> |
|--------------------|--|---------------------------------|--|---|---|
| ProElite           | \$14.2 million                                       | \$2.8 million                   | \$1.1 million  | \$2.4 million   | \$8.7 million   |
| Logistical Support | \$988,000  |                                 | \$73,989   | \$634,958   | -----   |
| Berman             | \$2.3 million  |                                 | \$2.6 million  | \$888,789   | \$1.7 million   |
| MicroMed           | \$8.0 million  |                                 | \$323,298  | \$243,580   | \$870,230   |
| Quest              | \$1.8 million  |                                 | \$1.1 million  | -----   | \$364,989   |
| Java Detour        | \$2.3 million  |                                 | \$7,700  | -----   | -----   |
| <b>Total</b>       | <b>\$29,588,000</b>                                  | <b>\$2,800,000</b>              | <b>\$5,204,987</b>   | <b>\$4,167,327</b>  | <b>\$11,635,219</b>                                       |

**H. Defendants Profited from the Fraud**

42. Ficeto made approximately \$27.3 million as a result of Defendants’ fraudulent scheme, including stock sales, sales credits, commissions and other fees.

43. Homm made approximately \$24.9 million through HWM as a result

1 of Defendants' fraudulent scheme, including stock sales, sales credits,  
2 commissions and other fees.

3 44. Heatherington made approximately \$11.6 million as a result of  
4 Defendants' fraudulent scheme.

5 45. HWM made approximately \$32.5 million as a result of Defendants'  
6 fraudulent scheme, which was allocated equally to Ficeto and Homm as a result of  
7 their co-ownership of HWM.

8 46. Hunter Advisors made approximately \$1.1 million as a result of  
9 Defendants' fraudulent scheme.

10 47. In addition, Ficeto, in his capacity as a custodian for his minor  
11 children, made at least \$177,000 as a result of Defendants' fraudulent activity,  
12 based on sale of the Issuers' stock which Ficeto transferred to his children and later  
13 sold to the funds on his children's behalf. Some of Ficeto's sales on behalf of his  
14 minor children involve some of the most egregious examples of matched orders  
15 and price manipulation. For example, on May 15, 2007, following the effective  
16 date of the Form SB-2 registration statement for ProElite, the Defendants began  
17 executing matched orders between the Absolute funds after the close of trading  
18 using the funds' accounts at HWM. After driving the price up from \$3.20 to \$7.99  
19 and then to \$12.99, all within a span of minutes, the Defendants sold portions of  
20 their stock holdings in ProElite to the funds at those artificially inflated prices.  
21 There were no significant announcements by the ProElite, or other news that day,  
22 which would explain the rapid rise in ProElite's stock price. The chart below  
23 summarizes this trading activity:

24 ///

25 ///

26 ///

27 ///

28 ///

| Trade date | Account name                               | Buy or sale | Execution time | HWM Reported volume | Price   | Total Proceeds |
|------------|--|-------------|----------------|---------------------|---------|----------------|
| 5/15/07    | Activist Value Fund                        | S           | 16:36          | (500,000)           | \$3.20  | \$1,600,000    |
| 5/15/07    | Octane Fund                                | B           | 16:36          | 500,000             | \$3.30  | \$1,650,000    |
| 5/15/07    | Large Cap Fund                             | S           | 16:36          | (600,000)           | \$3.20  | \$1,920,000    |
| 5/15/07    | East West Fund                             | B           | 16:36          | 600,000             | \$3.30  | \$1,980,000    |
| 5/15/07    | European Catalyst Fund                     | S           | 16:36          | (3,000,000)         | \$3.20  | \$9,600,000    |
| 5/15/07    | Absolute Return Europe Fund                | B           | 16:36          | 3,000,000           | \$3.30  | \$9,900,000    |
| 5/15/07    | CIC Global (Heatherington)                 | S           | 16:38          | (140,000)           | \$7.99  | \$1,118,600    |
| 5/15/07    | HWM  | S           | 16:38          | (800,000)           | \$7.99  | \$6,392,000    |
| 5/15/07    | Absolute Return Europe Fund                | B           | 16:38          | 940,000             | \$8.05  | \$7,567,000    |
| 5/15/07    | Ficeto as custodian for his minor son      | S           | 16:40:00       | (5,000)             | \$11.99 | \$59,950       |
| 5/15/07    | Ficeto as custodian for his minor daughter | S           | 16:40:00       | (5,000)             | \$11.99 | \$59,950       |
| 5/15/07    | Absolute Return Europe Fund                | B           | 16:40:00       | 10,000              | \$12.05 | \$120,500      |

**I. Ficeto's Concealment Of Material Information in Issuer Registration Statements**

48. Generally, after the Absolute funds invested in one or more of the Issuers through a private placement, HWM orchestrated a reverse merger to bring the companies public by merging the entity with a publicly traded shell company. As part of Defendants' fraudulent scheme, following the reverse merger, the Issuers prepared a Form SB-2 registration statement to be filed with the Commission to register for resale the shares held by HWM, Ficeto, CIC Global, Himm, the Hunter Fund, and/or the Absolute funds. Drafts of the SB-2 registration statements were circulated to the Issuer and its auditors, as well as to Ficeto for his review, comment and approval.

49. Ficeto provided materially misleading information to the Issuers'

1 counsel who prepared the Form SB-2 registration statements for the Issuers  
2 identified in paragraph 52 below. Specifically, Ficeto provided the information  
3 contained in the Forms SB-2 for the aforementioned microcap companies  
4 identifying who the control persons were for the various Absolute funds, which  
5 were some of the selling shareholders whose shares were being registered. The  
6 tables listing the entity selling shareholders failed to mention Homm's de facto  
7 control over the investment decisions for all of the Absolute funds. For example,  
8 in the Form SB-2 for ProElite, Inc., the selling shareholders listed included six of  
9 the Absolute Funds. For all but one of the funds, Ficeto named other persons,  
10 other than Homm, as the person controlling the fund. In fact, Ficeto knew that  
11 Homm, as Absolute's chief and/or co-chief investment officer, controlled the  
12 investment decisions for all of the Absolute funds.

13         50. By ascribing control of the various Absolute funds to different  
14 individuals other than Homm, investors could be misled into believing that more  
15 than one person or entity, other than Homm, controlled the investment decisions of  
16 the Absolute funds. Accurate disclosure of the control person of each of the  
17 Issuers would have been material information to potential and actual investors in  
18 the Issuers, as it would have been important for a reasonable investor to know: (i)  
19 who the control person was behind each selling shareholder; (ii) the regulatory  
20 disciplinary history, if any, of such control person; (iii) the relationship between  
21 the fund's control person and the placement agent, underwriter and broker-dealer  
22 involved in the sale of the Issuer's securities; and (iv) whether the different funds  
23 were, in fact, under common control, so as to properly assess the risks associated  
24 with purchasing the Issuers' shares, and whether the offering was legitimate or,  
25 rather, as was the case here, part of a fraudulent stock manipulation scheme.

26         51. Ficeto was responsible for the misleading disclosures in the Form  
27 SB-2 registration statements for the Issuers identified in paragraph 52 below, each  
28 of which concealed Homm's de facto control over the Absolute funds. For

1 example, ProElite’s counsel routinely forwarded drafts of the Forms SB-2 for  
 2 Ficeto’s comment, and in at least one instance for ProElite, counsel informed  
 3 individuals, including Ficeto, in an e-mail that the company would not file the  
 4 Form SB-2 until they received “**actual approval**” (emphasis in original) from  
 5 Ficeto. Ficeto was the only one from whom Issuers’ counsel could have gotten the  
 6 misleading information stated in the footnotes in the Issuers’ Form SB-2  
 7 registration statements regarding the identity of the control person for each of the  
 8 Absolute fund.

9 52. The Issuers and registration statements as to which Ficeto concealed  
 10 information concerning the identity of the control person for each of the funds are  
 11 as follows:

| <b>Issuer</b> | <b>SEC Filing</b>  | <b>Date of Filing</b> |
|---------------|--|-----------------------|
| Berman        | Amendment No. 4 to Form SB-2 (Registration No. 333-126387) | April 28, 2006        |
| MicroMed      | Form SB-2 (Registration No. 333-127938)                    | August 29, 2005       |
| MicroMed      | Form SB-2 (Registration No. 333-136457)                    | December 21, 2005     |
| MicroMed      | Amendment No. 1 to Form SB-2 (Registration No. 333-136457) | October 13, 2006      |
| Java Detour   | Amendment No. 5 to Form SB-2 (Registration No. 333-139731) | June 20, 2007         |
| Java Detour   | Amendment No. 1 to Form SB-2 (Registration No. 333-144437) | July 24, 2007         |

24 **J. HWM’s Broker-Dealer Obligations**

25 53. In serving as the vehicle to execute the manipulative trading, HWM  
 26 also violated the federal securities laws applicable to broker-dealers.

27 **1. HWM Failed to Preserve Required Books and Records**

28 54. Broker-dealers must make and keep certain records relating to their

1 business. Those records include originals of a memorandum of each brokerage  
2 order, and of any other instruction, given or received for the purchase or sale of  
3 securities, whether executed or unexecuted, and all communications received and  
4 copies of all communications sent (and any approvals thereof) relating to the  
5 broker-dealer's business. 17 C.F.R. §§ 240.17(a)(6)(i) and 240.17a-4(b)(4).

6 55. In violation of those record retention rules, HWM and Ficeto failed to  
7 retain either the original or copies of IMs from an alternate IM system that related  
8 to HWM's business. Specifically, HWM and Ficeto failed to retain IM transcripts  
9 when Ficeto or Ahn communicated with Heatherington through their secret,  
10 alternate IM system about the manipulation of the Issuers' stock prices.

## 11 **2. HWM's Failure to File SARs**

12 56. The Bank Secrecy Act ("BSA"), 12 U.S.C. §§ 1829(b), 1951-1959 and  
13 31 U.S.C. §§ 5311-5330, as amended by the USA Patriot Act, Pub. L. No. 107-56,  
14 115 Stat. 296 (2001), and implemented under rules promulgated by the U.S.  
15 Treasury Department's Financial Crimes Enforcement Network ("FinCEN"),  
16 requires broker-dealers to file suspicious activity reports ("SARs") with FinCEN to  
17 report a transaction involving or aggregating to at least \$5,000 that the broker-  
18 dealer knows, suspects or has reason to suspect: (1) involves funds derived from  
19 illegal activity or were conducted to disguise funds derived from illegal activities;  
20 . . . (3) had no business or apparent lawful purpose; or (4) involved use of the  
21 broker-dealer to facilitate criminal activity. 31 C.F.R. § 103.19. Section 17(a) of  
22 the Exchange Act and Rule 17a-8 thereunder, requires broker-dealers to comply  
23 with the recordkeeping, retention and reporting obligations of 31 C.F.R. § 103.19.

24 57. To ensure compliance with these obligations, HWM's procedures  
25 required that SARs be filed for transactions that may be indicative of money  
26 laundering or other reportable events. HWM designated the firm's compliance  
27 officer, Pagliarini, with responsibility to file SARs on the firm's behalf.

28 58. HWM failed to file a SAR regarding suspicious money transfers out

1 of Homm's brokerage account at HWM. Although Homm conducted minimal  
 2 securities trading in that account, large amounts of cash, of at least \$5,000, were  
 3 routinely transferred during the relevant period into that account from HWM's  
 4 operations account, and soon thereafter transferred out of that account to various  
 5 bank accounts, including accounts in Switzerland. The dates and amounts of the  
 6 suspicious transfers out of Homm's HWM brokerage account for which SAR's  
 7 should have been filed are as follows:

| <b>Date Transferred in</b>   | <b>Amount</b>  | <b>Date Transferred out</b> | <b>Amount</b> | <b>Transferred to</b>              |
|------------------------------|----------------|-----------------------------|---------------|------------------------------------|
| Cash in account as of 1/1/06 | \$1,891,745.31 |                             |               |                                    |
|                              |                | 1/4/06                      | \$1,790,000   | Banque SCS Alliance SA Switzerland |
| 7/13/06                      | \$1,950,000    |                             |               |                                    |
| 8/15/06                      | \$1,780,000    |                             |               |                                    |
|                              |                | 8/22/06                     | \$2,000,000   | Banque SCS Alliance SA Switzerland |
| 9/18/06                      | \$250,000      |                             |               |                                    |
| 10/6/06                      | \$500,000      |                             |               |                                    |
|                              |                | 10/27/06                    | \$75,000      | Banque SCS Alliance SA Switzerland |
|                              |                | 10/31/06                    | \$425,000     | Banque SCS Alliance SA Switzerland |
| 12/1/06                      | \$600,000      |                             |               |                                    |
|                              |                | 12/8/06                     | \$800,000     | Banque SCS Alliance SA Switzerland |

59. In addition to the above suspicious cash transfers routed through

1 Homm's account at HWM, for which no SAR was filed, HWM also failed to file a  
2 SAR regarding a transaction from Heatherington's CIC Global account at HWM.  
3 On or about April 21, 2008, Ficeto wired \$4.6 million from Heatherington's CIC  
4 Global account, which represented ill-gotten stock sale proceeds from Defendants'  
5 scheme, to a Canadian bank account in the name of a different company. HWM  
6 should have filed a SAR for that transaction as well, but failed to do so.

7 60. The information available to HWM and HWM's chief compliance  
8 officer, namely, the matched orders, orders marking the close, and wash sales in  
9 the Issuers' stock, and the enormous trading profits, sales credits and commissions  
10 generated thereby, should have given HWM and its chief compliance officer  
11 reason to suspect that the transfers of cash to overseas bank accounts involved  
12 funds derived from Defendants' illegal market manipulation scheme, were  
13 designed to evade the requirements of the BSA, had no business or apparent lawful  
14 business purpose, and involved the use of HWM to facilitate criminal activity.

15 **K. Ficeto's, Homm's and Hunter Advisors' Abuse As Investment**  
16 **Advisers**

17 61. Homm provided investment advice with respect to securities in his  
18 role as the chief investment officer for ACMH, an SEC-registered investment  
19 adviser. While directing the investment activities of the Absolute funds, Homm  
20 misused investor money to purchase Issuer shares from himself, HWM, Ficeto,  
21 CIC Global and Ficeto's children. Through his self-dealing, he caused the  
22 Absolute funds to purchase Issuer shares from entities he owned and/or controlled,  
23 and reaped millions of dollars of sales credits through his co-ownership of HWM.  
24 Additionally, Homm defrauded the Absolute funds by effecting manipulative  
25 trades in the Issuers' securities between the funds which resulted in the funds  
26 incurring unnecessary costs, including sales credits and commissions, and paying  
27 inflated prices for the Issuers' securities.

28 62. Ficeto, Heatherington and HWM knowingly and substantially assisted

1 Homm in abuse of his position as an investment advisor to the funds. In particular,  
2 Ficeto understood that Homm was the funds' chief investment officer and dealt  
3 directly with Homm with respect to the funds' investments in several of the  
4 Issuers. HWM helped bring the Issuers public through reverse mergers and once  
5 the Issuers' shares were registered for re-sale, Ficeto, Heatherington and HWM  
6 executed hundreds of manipulative orders among the Absolute funds' accounts at  
7 HWM. Many of those orders occurred with respect to shares of ProElite, an issuer  
8 in which HWM and Ficeto owed a considerable stake. One of the matched orders  
9 was a back-dated trade in ProElite that Ficeto approved, the purpose of which was  
10 to affect the NAV for an ACMH fund. Additionally, Ficeto and HWM (along with  
11 Heatherington's company, CIC Global) sold their shares of Issuers' stock to the  
12 Absolute funds through matched orders at artificially high prices resulting from  
13 Defendants' market manipulative scheme.

14 63. Hunter Advisors, which was managed and controlled by Ficeto, was  
15 the investment adviser for the Hunter Fund. While directing the investment  
16 activities of the Hunter Fund, Ficeto caused the Hunter Fund to purchase shares of  
17 ProElite stock at inflated prices from HWM and Ficeto personally. In December  
18 2006, Ficeto also approved the sale of Hunter Fund's 1,000,000 shares of a non-  
19 Issuer company, Clinovel Pharmaceuticals Limited, to CIC Global at a price  
20 substantially below the market price. Two months later, CIC Global sold those  
21 shares to an Absolute fund for over three times the price it had paid to the Hunter  
22 Fund.

### **FIRST CLAIM FOR RELIEF**

#### **FRAUD IN THE OFFER OR SALE OF SECURITIES**

##### **Violation of Section 17(a) of the Securities Act**

##### **(Against Defendant Ficeto)**

27 64. The Commission realleges and incorporates by reference ¶¶ 1 through  
28 63 above.



1 national securities exchange, with scienter:

- 2 a. employed devices, schemes, or artifices to defraud;
- 3 b. made untrue statements of a material fact or omitted to state a  
4 material fact necessary in order to make the statements made,  
5 in the light of the circumstances under which they were made,  
6 not misleading; or
- 7 c. engaged in acts, practices, or courses of business which  
8 operated or would operate as a fraud or deceit upon other  
9 persons.

10 69. By engaging in the conduct described above, Defendants Ficeto,  
11 Homm, Heatherington and HWM violated, and unless restrained and enjoined will  
12 continue to violate Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and  
13 Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

14 **THIRD CLAIM FOR RELIEF**

15 **FRAUD BY BROKER-DEALER IN CONNECTION WITH THE PURCHASE**  
16 **OR SALE OF SECURITIES**

17 **Violation of Section 15(c)(1) of the Exchange Act**

18 **(Against Defendant HWM)**

19 **(Aiding and Abetting Against Defendants Ficeto, Homm and Heatherington)**

20 70. The Commission realleges and incorporates by reference ¶¶ 1 through  
21 63 above.

22 71. Defendant HWM engaged in the business of effecting transactions in  
23 securities for the accounts of others, and therefore was a broker within the meaning  
24 of Section 3(a)(4) of the Exchange Act, 15 U.S.C. § 78c(a)(4).

25 72. Defendant HWM, while a broker, by engaging in the conduct  
26 described above, directly or indirectly, by the use of the mails or the means or  
27 instrumentalities of interstate commerce, effected transactions in and attempted to  
28 induce the purchase or sale of securities by means of manipulative, deceptive, or

1 other fraudulent devices or contrivances, including acts, practices, and courses of  
2 business that operated or would have operated as a fraud or deceit upon any  
3 person, including persons to whom HWM, through its associated persons, offered  
4 and/or sold securities.

5 73. By engaging in the conduct described above, Defendant HWM  
6 violated, and unless restrained and enjoined will continue to violate, 15(c)(1) of the  
7 Exchange Act, 15 U.S.C. §§ 78j(b) and 78o(c)(1).

8 74. Defendants Ficeto, Homm and Heatherington knowingly provided  
9 substantial assistance to HWM in its violation of Section 15(c)(1) of the Exchange  
10 Act, 15 U.S.C. § 78o(c)(1).

11 75. By reason of the foregoing, Ficeto, Homm and Heatherington aided  
12 and abetted, and unless enjoined, will continue to aid and abet HWM's violations  
13 of Section 15(c)(1) of the Exchange Act, 15 U.S.C. § 78o(c)(1).

14 **FOURTH CLAIM FOR RELIEF**

15 **BROKER-DEALER FAILURE TO MAINTAIN REQUIRED RECORDS**

16 **Violation of Section 17(a) of the Exchange Act**

17 **and Rules 17a-4(b)(4) and 17a-8 thereunder;**

18 **(Against Defendant HWM)**

19 **(Aiding and Abetting Violation of Section 17(a) of the Exchange Act**

20 **and Rules 17a-4(b)(4) by Defendant Ficeto)**

21 76. The Commission realleges and incorporates by reference ¶¶ 1 through  
22 63 above.

23 77. Defendant HWM by engaging in the conduct described above,  
24 particularly by failing to archive and maintain the communications relating to its  
25 business made through an instant message system, violated Section 17(a) of the  
26 Exchange Act, 15 U.S.C. § 78q(a), and Rule 17a-4(b)(4) thereunder, 17 C.F.R. §  
27 240.17a-4(b)(4).

28 78. Defendant HWM by engaging in the conduct described above,

1 particularly by failing to comply with the reporting and record keeping  
2 requirements of Part 103 of Title 31 of the Code of Federal Regulations by failing  
3 to file required SARs, violated Section 17(a) of the Exchange Act, 15 U.S.C. §  
4 78q(a), and Rule 17a-8 thereunder, 17 C.F.R. § 240.17a-8.

5 79. By engaging in the conduct described above, Defendant HWM  
6 violated, and unless restrained and enjoined will continue to violate, Section 17(a)  
7 of the Exchange Act, 15 U.S.C. § 78q(a), and Rules 17a-4(b)(4) and 17a-8  
8 thereunder, 17 C.F.R. §§ 240.17a-4(b)(4) and 240.17a-8.

9 80. Defendant Ficeto knowingly provided substantial assistance to HWM  
10 in its violation of Section 17(a) of the Exchange Act, 15 U.S.C. § 78q(a), and Rule  
11 17a-4(b)(4) thereunder, 17 C.F.R. § 240.17a-4(b)(4).

12 81. By engaging in the conduct described above and pursuant to Section  
13 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), Ficeto aided and abetted HWM's  
14 violations, and unless restrained and enjoined will continue to aid and abet  
15 violations, of Section 17(a) of the Exchange Act, 15 U.S.C. § 78q(a), and Rule  
16 17a-4(b)(4) thereunder, 17 C.F.R. § 240.17a-4(b)(4).

## 17 **FIFTH CLAIM FOR RELIEF**

### 18 **INVESTMENT ADVISOR FRAUD**

#### 19 **Violation of Sections 206(1) and 206(2) of the Advisors Act**

#### 20 **(Against Defendant Homm)**

#### 21 **(Aiding and Abetting Against Defendants Ficeto, Heatherington and HWM)**

22 82. The Commission realleges and incorporates by reference ¶¶ 1 through  
23 63 above.

24 83. Since at least September 2005 through September 2007, Defendant  
25 Homm acted as an investment adviser to the Absolute funds for purposes of  
26 Section 202(a)(11) of the Advisors Act, 15 U.S.C. § 80b-2(a)(11), because he was  
27 the chief and/or co-chief investment adviser for ACMH and made investment  
28 decisions for the Absolute funds.



1 commerce, directly or indirectly: (i) employed devices, schemes or artifices to  
2 defraud his clients or prospective clients; and (ii) engaged in transactions, practices  
3 and courses of business which operated as a fraud or deceit upon his clients or  
4 prospective clients.

5 90. By engaging in the conduct described above, Defendants Ficeto and  
6 Hunter Advisors violated, and unless enjoined will continue to violate,  
7 Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-  
8 6(2).

9 **PRAYER FOR RELIEF**

10 WHEREFORE, the Commission respectfully requests that the Court:

11 **I.**

12 Issue findings of fact and conclusions of law that Defendants committed the  
13 alleged violations.

14 **II.**

15 Issue a judgment, in a form consistent with Fed. R. Civ. P. 65(d),  
16 permanently enjoining Defendant Ficeto and his agents, servants, employees,  
17 attorneys, and those persons in active concert or participation with any of them,  
18 who receive actual notice of the order by personal service or otherwise, from  
19 violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a); Section 10(b) of  
20 the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §  
21 240.10b-5; and Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. § 80b-  
22 6(1) and (2); and from aiding and abetting violations of Sections 15(c)(1) and 17(a)  
23 of the Exchange Act, 15 U.S.C. § 78o(c)(1), and Rule 17a-4(b)(4) thereunder, 17  
24 C.F.R. § 240.17a-4(b)(4); and from aiding and abetting violations of Sections  
25 206(1) and 206(2) of the Advisers Act, 15 U.S.C. § 80b-6(1) and (2).

26 **III.**

27 Issue a judgment, in a form consistent with Fed. R. Civ. P. 65(d),  
28 permanently enjoining Defendant Homm and each of his agents, servants,

1 employees, attorneys, and those persons in active concert or participation with any  
2 of them, who receive actual notice of the order by personal service or otherwise,  
3 from violating Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule  
4 10b-5 thereunder, 17 C.F.R. § 240.10b-5; and Sections 206(1) and 206(2) of the  
5 Advisers Act, 15 U.S.C. § 80b-6(1) and (2); and from aiding and abetting  
6 violations of Section 15(c)(1) of the Exchange Act, 15 U.S.C. § 78o(c)(1).

#### 7 **IV.**

8 Issue a judgment, in a form consistent with Fed. R. Civ. P. 65(d),  
9 permanently enjoining Defendant Heatherington and each of his agents, servants,  
10 employees, attorneys, and those persons in active concert or participation with any  
11 of them, who receive actual notice of the order by personal service or otherwise,  
12 from violating Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule  
13 10b-5 thereunder, 17 C.F.R. § 240.10b-5; and from aiding and abetting violations  
14 of Section 15(c)(1) of the Exchange Act, 15 U.S.C. § 78o(c)(1); and from aiding  
15 and abetting violations of Sections 206(1) and 206(2) of the Advisers Act, 15  
16 U.S.C. § 80b-6(1) and (2).

#### 17 **V.**

18 Issue a judgment, in a form consistent with Fed. R. Civ. P. 65(d), permanently  
19 enjoining Defendant HWM and its agents, servants, employees, attorneys, and those  
20 persons in active concert or participation with any of them, who receive actual notice  
21 of the order by personal service or otherwise, from violating Sections 10(b), 15(c)(1)  
22 and 17(a) of the Exchange Act, 15 U.S.C. §§ 15 U.S.C. 78j(b) and 78(q)(a), and  
23 Rules 10b-5, 17a-4(b)(4) and 17a-8 thereunder, 17 C.F.R. §§ 240.10b-5, 240.17a-  
24 4(b)(4) and 240.17a-8 and from aiding and abetting violations of Sections 206(1)  
25 and 206(2) of the Advisers Act, 15 U.S.C. § 80b-6(1) and (2).

#### 26 **VI.**

27 Issue a judgment, in a form consistent with Fed. R. Civ. P. 65(d),  
28 permanently enjoining Defendant Hunter Advisors, LLC and each of its agents,

1 servants, employees, attorneys, and those persons in active concert or participation  
2 with any of them, who receive actual notice of the order by personal service or  
3 otherwise, from violating Sections 206(1) and 206(2) of the Advisers Act, 15  
4 U.S.C. § 80b-6(1) and (2).

5 **VII.**

6 Enter an order, pursuant to Section 20(e) of the Securities Act, 15 U.S.C. §  
7 77t(e), and/or 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), prohibiting  
8 Defendant Ficeto from acting as an officer or director of any issuer that has a class  
9 of securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. §  
10 78l, or that is required to file reports pursuant to Section 15(d) of the Exchange  
11 Act, 15 U.S.C. § 78o(d).

12 **VIII.**

13 Order Defendants to disgorge all ill-gotten gains from their illegal conduct,  
14 together with prejudgment interest thereon.

15 **IX.**

16 Order Defendants to pay civil penalties under Section 20(d)(1) of the  
17 Securities Act, 15 U.S.C. § 77t(d)(1), Section 21(d)(3) of the Exchange Act, 15  
18 U.S.C. § 78u(d)(3), and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e).

19 **X.**

20 Enter a Final Judgment imposing a penny stock bar against Ficeto pursuant  
21 to Section 20(g) of the Securities Act, 15 U.S.C. § 77t(g), and Section 21(d)(6) of  
22 the Exchange Act, 15 U.S.C. § 77u(d)(6).

23 **XI.**

24 Order Relief Defendants to disgorge all ill-gotten gains from Defendants'  
25 illegal conduct together with prejudgment interest thereon.

26 **XII.**

27 Retain jurisdiction of this action in accordance with the principles of equity  
28 and the Federal Rules of Civil Procedure in order to implement and carry out the

1 terms of all orders and decrees that may be entered, or to entertain any suitable  
2 application or motion for additional relief within the jurisdiction of this Court.

3 **XIII.**

4 Grant such other and further relief as this Court may determine to be just and  
5 necessary.

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7 DATED: February 24, 2011

Respectfully submitted,

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DONALD W. SEARLES  
11 Attorney for Plaintiff  
Securities and Exchange Commission  
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## APPENDIX 1

### DEFENDANTS' MANIPULATIVE MATCHED TRADES

| Symbol | TradeDate | Account Name                         | Buy/Sell | Quantity | Previous Price | HWM Price | Closing Price |
|--------|-----------|--------------------------------------|----------|----------|----------------|-----------|---------------|
| BRMC   | 20051229  | MS (P/B) ARE Fund 8400               | B        | 500      | 2.00           | 2.35      | 2.35          |
| BRMC   | 20051229  | MS (P/B) EUROPEAN CATALYST FUND 2810 | S        | (500)    | 2.00           | 2.35      | 2.35          |
| BRMC   | 20060119  | CORPORATE ADVISORS EUROPE 2183       | S        | (500)    | 3.00           | 2.50      | 2.50          |
| BRMC   | 20060119  | MS (P/B) EUROPEAN CATALYST FUND 2810 | B        | 500      | 3.00           | 2.50      | 2.50          |
| BRMC   | 20060130  | MS (P/B) ARE Fund 8400               | S        | (500)    | 2.00           | 2.50      | 2.50          |
| BRMC   | 20060130  | MS (P/B) EUROPEAN CATALYST FUND 2810 | B        | 500      | 2.00           | 2.50      | 2.50          |
| BRMC   | 20060131  | MS (P/B) EUROPEAN CATALYST FUND 2810 | S        | (500)    | 2.50           | 3.00      | 3.00          |
| BRMC   | 20060131  | MS (P/B) ARE Fund 8400               | B        | 500      | 2.50           | 3.00      | 3.00          |
| BRMC   | 20060330  | MS (P/B) ARE Fund 8400               | S        | (500)    | 2.00           | 3.00      | 3.00          |
| BRMC   | 20060330  | MS (P/B) EUROPEAN CATALYST FUND 2810 | B        | 500      | 2.00           | 3.00      | 3.00          |
| BRMC   | 20060524  | MS (P/B) EUROPEAN CATALYST FUND 2810 | S        | (500)    | 5.00           | 3.00      | 3.00          |
| BRMC   | 20060524  | MS (P/B) ARE Fund 8400               | B        | 500      | 5.00           | 3.00      | 3.00          |
| BRMC   | 20060526  | MS (P/B) ARE Fund 8400               | S        | (500)    | 1.50           | 3.00      | 3.00          |
| BRMC   | 20060526  | MS (P/B) EUROPEAN CATALYST FUND 2810 | B        | 500      | 1.50           | 3.00      | 3.00          |
| BRMC   | 20060530  | MS (P/B) ARE Fund 8400               | S        | (500)    | 1.50           | 3.00      | 3.00          |
| BRMC   | 20060530  | MS (P/B) EUROPEAN CATALYST FUND 2810 | B        | 500      | 1.50           | 3.00      | 3.00          |
| BRMC   | 20060626  | MS (P/B) EUROPEAN CATALYST FUND 2810 | S        | (500)    | 2.50           | 3.00      | 3.00          |
| BRMC   | 20060626  | MS (P/B) ARE Fund 8400               | B        | 500      | 2.50           | 3.00      | 3.00          |
| BRMC   | 20060630  | MS (P/B) EUROPEAN CATALYST FUND 2810 | S        | (1000)   | 3.25           | 3.095     | 3.00          |
| BRMC   | 20060630  | MS (P/B) ARE Fund 8400               | B        | 1000     | 3.25           | 3.155     | 3.00          |
| BRMC   | 20060711  | MS (P/B) EUROPEAN CATALYST FUND 2810 | S        | (500)    | 4.99           | 3.00      | 3.00          |
| BRMC   | 20060711  | MS (P/B) ARE Fund 8400               | B        | 500      | 4.99           | 3.00      | 3.00          |
| BRMC   | 20060714  | MS (P/B) ARE Fund 8400               | S        | (500)    | 2.00           | 3.00      | 3.00          |
| BRMC   | 20060714  | MS (P/B) EUROPEAN CATALYST FUND 2810 | B        | 500      | 2.00           | 3.00      | 3.00          |
| BRMC   | 20060717  | MS (P/B) EUROPEAN CATALYST FUND 2810 | S        | (600)    | 2.00           | 3.00      | 3.00          |
| BRMC   | 20060717  | MS (P/B) ARE Fund 8400               | B        | 600      | 2.00           | 3.00      | 3.00          |
| BRMC   | 20060720  | MS (P/B) ARE Fund 8400               | S        | (500)    | 2.00           | 3.00      | 3.00          |
| BRMC   | 20060720  | MS (P/B) EUROPEAN CATALYST FUND 2810 | B        | 500      | 2.00           | 3.00      | 3.00          |
| BRMC   | 20060724  | MS (P/B) ARE Fund 8400               | S        | (500)    | 3.00           | 2.50      | 2.50          |

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| Symbol | TradeDate | Account Name                         | Buy/Sell | Quantity | Previous Price | HWM Price | Closing Price |
|--------|-----------|--------------------------------------|----------|----------|----------------|-----------|---------------|
| BRMC   | 20060724  | MS (P/B) EUROPEAN CATALYST FUND 2810 | B        | 500      | 3.00           | 2.50      | 2.50          |
| BRMC   | 20060725  | MS (P/B) EUROPEAN CATALYST FUND 2810 | S        | (500)    | 2.50           | 2.25      | 2.50          |
| BRMC   | 20060725  | MS (P/B) ARE Fund 8400               | B        | 500      | 2.50           | 2.25      | 2.50          |
| BRMC   | 20060726  | MS (P/B) ARE Fund 8400               | S        | (500)    | 2.25           | 2.00      | 2.00          |
| BRMC   | 20060726  | MS (P/B) EUROPEAN CATALYST FUND 2810 | B        | 500      | 2.25           | 2.00      | 2.00          |
| BRMC   | 20060727  | THE HUNTER FUND LTD 8843             | S        | (400000) | 2.00           | 1.97      | 2.00          |
| BRMC   | 20060727  | TODD M FICETO CUST 2846              | S        | (10000)  | 2.00           | 1.97      | 2.00          |
| BRMC   | 20060727  | TODD M FICETO CUST 8586              | S        | (10000)  | 2.00           | 1.97      | 2.00          |
| BRMC   | 20060727  | MS (P/B) ARE Fund 8400               | B        | 420000   | 2.00           | 2.03      | 2.00          |
| BRMC   | 20060728  | MS (P/B) EUROPEAN CATALYST FUND 2810 | S        | (500)    | 2.00           | 1.75      | 1.75          |
| BRMC   | 20060728  | MS (P/B) ARE Fund 8400               | B        | 500      | 2.00           | 1.75      | 1.75          |
| BRMC   | 20060825  | MS (P/B) ARE Fund 8400               | S        | (5000)   | 3.80           | 1.75      | 1.75          |
| BRMC   | 20060825  | MS (P/B) EUROPEAN CATALYST FUND 2810 | B        | 5000     | 3.80           | 1.75      | 1.75          |
| BRMC   | 20060831  | MS (P/B) EUROPEAN CATALYST FUND 2810 | S        | (500)    | 1.75           | 2.50      | 2.50          |
| BRMC   | 20060831  | MS (P/B) ARE Fund 8400               | B        | 500      | 1.75           | 2.50      | 2.50          |
| BRMC   | 20060928  | MS (P/B) ARE Fund 8400               | S        | (500)    | 2.50           | 3.00      | 3.00          |
| BRMC   | 20060928  | MS (P/B) EUROPEAN CATALYST FUND 2810 | B        | 500      | 2.50           | 3.00      | 3.00          |
| BRMC   | 20061012  | MS (P/B) EUROPEAN CATALYST FUND 2810 | S        | (500)    | 1.75           | 3.00      | 3.00          |
| BRMC   | 20061012  | MS (P/B) ARE Fund 8400               | B        | 500      | 1.75           | 3.00      | 3.00          |
| BRMC   | 20061020  | MS (P/B) ARE Fund 8400               | S        | (500)    | 4.00           | 3.00      | 3.00          |
| BRMC   | 20061020  | MS (P/B) EUROPEAN CATALYST FUND 2810 | B        | 500      | 4.00           | 3.00      | 3.00          |
| BRMC   | 20061030  | MS (P/B) EUROPEAN CATALYST FUND 2810 | S        | (1000)   | 1.75           | 3.00      | 3.00          |
| BRMC   | 20061030  | MS (P/B) ARE Fund 8400               | B        | 1000     | 1.75           | 3.00      | 3.00          |
| BRMC   | 20061120  | MS (P/B) ARE Fund 8400               | S        | (500)    | 5.00           | 3.00      | 3.00          |
| BRMC   | 20061120  | MS (P/B) EUROPEAN CATALYST FUND 2810 | B        | 500      | 5.00           | 3.00      | 3.00          |
| BRMC   | 20061226  | MS (P/B) EUROPEAN CATALYST FUND 2810 | S        | (500)    | 1.75           | 3.00      | 3.00          |
| BRMC   | 20061226  | MS (P/B) ARE Fund 8400               | B        | 500      | 1.75           | 3.00      | 3.00          |
| BRMC   | 20061229  | MS (P/B) ARE Fund 8400               | S        | (1500)   | 3.15           | 3.1667    | 3.20          |
| BRMC   | 20061229  | MS (P/B) EUROPEAN CATALYST FUND 2810 | B        | 1500     | 3.15           | 3.1667    | 3.20          |
| BRMC   | 20070131  | MS (P/B) ARE Fund 8400               | S        | (100000) | 3.20           | 3.25      | 3.30          |
| BRMC   | 20070131  | MS (P/B) ABSOLUTE East West 2256     | B        | 100000   | 3.20           | 3.35      | 3.20          |
| BRMC   | 20070227  | MS (P/B) EUROPEAN CATALYST FUND 2810 | S        | (10000)  | 2.75           | 3.45      | 3.50          |
| BRMC   | 20070227  | MS (P/B) ARE Fund 8400               | B        | 10000    | 2.75           | 3.55      | 3.50          |
| BRMC   | 20070228  | MS (P/B) ARE Fund 8400               | S        | (600000) | 3.75           | 3.45      | 3.50          |

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| Symbol | TradeDate                     | Account Name                         | Buy/Sell | Quantity  | Previous Price | HWM Price | Closing Price |
|--------|-------------------------------|--------------------------------------|----------|-----------|----------------|-----------|---------------|
| BRMC   | 20070228                      | CIC GLOBAL CAPITAL LIMITED 7358      | S        | (400000)  | 3.75           | 3.45      | 3.50          |
| BRMC   | 20070228                      | ABSOLUTE OCTANE FUND 1613            | B        | 1000000   | 3.75           | 3.55      | 3.50          |
| BRMC   | 20070330                      | MS (P/B) ARE Fund 8400               | S        | (10000)   | 3.25           | 3.55      | 3.60          |
| BRMC   | 20070330                      | ABSOLUTE OCTANE FUND 1613            | B        | 10000     | 3.25           | 3.65      | 3.60          |
| BRMC   | 20070423                      | ABSOLUTE INDIA FUND 1663             | S        | (200000)  | 3.00           | 2.95      | 3.00          |
| BRMC   | 20070423                      | MS (P/B) EUROPEAN CATALYST FUND 2810 | B        | 200000    | 3.00           | 3.05      | 3.00          |
| BRMC   | 20070905                      | MS (P/B) EUROPEAN CATALYST FUND 2810 | S        | (2083203) | 4.00           | 3.96      | 4.00          |
| BRMC   | 20070919<br>as of<br>20070905 | ABSOLUTE OCTANE FUND 1613            | B        | 2083161   | 4.00           | 4.04      | 4.00          |
| BRMC   | 20070919<br>as of<br>20070905 | ABSOLUTE OCTANE FUND 1613            | B        | 42        | 4.00           | 4.04      | 4.00          |
|        |                               |                                      |          |           |                |           |               |
| LGSL   | 20051020                      | MS (P/B) EUROPEAN CATALYST FUND 2810 | S        | (500)     | 1.30           | 1.40      | 1.40          |
| LGSL   | 20051020                      | MS (P/B) ARE Fund 8400               | B        | 500       | 1.30           | 1.40      | 1.40          |
| LGSL   | 20051024                      | MS (P/B) ARE Fund 8400               | S        | (500)     | 1.25           | 1.40      | 1.40          |
| LGSL   | 20051024                      | MS (P/B) EUROPEAN CATALYST FUND 2810 | B        | 500       | 1.25           | 1.40      | 1.40          |
| LGSL   | 20051103                      | THE HUNTER FUND LTD 8843             | S        | (2500)    | 1.31           | 1.40      | 1.40          |
| LGSL   | 20051103                      | MS (P/B) EUROPEAN CATALYST FUND 2810 | B        | 2500      | 1.31           | 1.40      | 1.40          |
| LGSL   | 20060726                      | MS (P/B) EUROPEAN CATALYST FUND 2810 | S        | (5000)    | 0.25           | 0.20      | 0.20          |
| LGSL   | 20060726                      | MS (P/B) ARE Fund 8400               | B        | 5000      | 0.25           | 0.20      | 0.20          |
| LGSL   | 20060731                      | MS (P/B) ARE Fund 8400               | S        | (2500)    | 0.13           | 0.25      | 0.25          |
| LGSL   | 20060731                      | MS (P/B) EUROPEAN CATALYST FUND 2810 | B        | 2500      | 0.13           | 0.25      | 0.25          |
| LGSL   | 20060918                      | FLORIAN HOMM 8121                    | S        | (22500)   | 0.17           | 0.17      | 0.17          |
| LGSL   | 20060918                      | CORPORATE ADVISORS EUROPE 2183       | B        | 22500     | 0.17           | 0.17      | 0.17          |
| LGSL   | 20060921                      | ABSOLUTE INDIA FUND 1663             | S        | (800000)  | 0.17           | 0.2475    | 0.25          |
| LGSL   | 20060921                      | MS (P/B) EUROPEAN CATALYST FUND 2810 | B        | 800000    | 0.17           | 0.2525    | 0.25          |
| LGSL   | 20061026                      | MS (P/B) EUROPEAN CATALYST FUND 2810 | S        | (5000)    | 0.40           | 0.25      | 0.25          |
| LGSL   | 20061026                      | MS (P/B) ARE Fund 8400               | B        | 5000      | 0.40           | 0.25      | 0.25          |
|        |                               |                                      |          |           |                |           |               |
| MMCV   | 20051110                      | TODD M FICETO CUST 8586              | S        | (5000)    | 2.50           | 3.75      | 3.75          |
| MMCV   | 20051110                      | CORPORATE ADVISORS EUROPE 2183       | B        | 5000      | 2.50           | 3.75      | 3.75          |
| MMCV   | 20051230                      | ABSOLUTE OCTANE FUND 1613            | S        | (10000)   | 3.75           | 3.75      | 3.75          |

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| Symbol | TradeDate | Account Name                         | Buy/Sell | Quantity  | Previous Price | HWM Price | Closing Price |
|--------|-----------|--------------------------------------|----------|-----------|----------------|-----------|---------------|
| MMCV   | 20051230  | CORPORATE ADVISORS EUROPE 2183       | B        | 10000     | 3.75           | 3.75      | 3.75          |
| MMCV   | 20060626  | MS (P/B) EUROPEAN CATALYST FUND 2810 | S        | (500)     | 3.50           | 3.75      | 3.75          |
| MMCV   | 20060626  | CIC GLOBAL CAPITAL LIMITED 7358      | S        | (1000)    | 3.50           | 3.75      | 3.75          |
| MMCV   | 20060626  | MS (P/B) ARE Fund 8400               | B        | 500       | 3.50           | 3.75      | 3.75          |
| MMCV   | 20060626  | MS (P/B) ARE Fund 8400               | B        | 1000      | 3.50           | 3.75      | 3.75          |
| MMCV   | 20060703  | ABSOLUTE OCTANE FUND 1613            | S        | (500)     | 5.00           | 4.20      | 4.20          |
| MMCV   | 20060703  | MS (P/B) EUROPEAN CATALYST FUND 2810 | B        | 500       | 5.00           | 4.20      | 4.20          |
| MMCV   | 20060717  | THE HUNTER FUND LTD 8843             | S        | (205750)  | 3.90           | 3.97      | 4.00          |
| MMCV   | 20060717  | MS (P/B) EUROPEAN CATALYST FUND 2810 | B        | 205750    | 3.90           | 4.03      | 4.00          |
| MMCV   | 20061214  | ABSOLUTE LARGE CAP FUND 1653         | S        | (400000)  | 3.40           | 3.95      | 4.00          |
| MMCV   | 20061214  | MS (P/B) ARE Fund 8400               | B        | 400000    | 3.40           | 4.05      | 4.00          |
| MMCV   | 20070228  | Accounts at HWM INC                  | S        | (11500)   | 4.25           | 4.40      | 4.40          |
| MMCV   | 20070228  | Accounts at HWM INC                  | B        | 11500     | 4.25           | 4.40      | 4.40          |
| MMCV   | 20070427  | ABSOLUTE LARGE CAP FUND 1653         | S        | (390000)  | 0.40           | 0.38      | 0.40          |
| MMCV   | 20070427  | MS (P/B) ARE Fund 8400               | B        | 390000    | 0.40           | 0.42      | 0.40          |
|        |           |                                      |          |           |                |           |               |
| QSTG   | 20070831  | ABSOLUTE OCTANE FUND 1613            | B        | 3000000   | 1.30           | 0.775     | 1.50          |
| QSTG   | 20070831  | HWM, INC Invest acct. #2 - 1378      | S        | (2500000) | 1.30           | 0.74      | 1.50          |
| QSTG   | 20070831  | CIC GLOBAL CAPITAL LIMITED 7358      | S        | (500000)  | 1.30           | 0.74      | 1.50          |
| QSTG   | 20070913  | ABSOLUTE OCTANE FUND 1693            | S        | (4500000) | 1.05           | 1.45      | 1.07          |
| QSTG   | 20070913  | ABSOLUTE OCTANE FUND 1613            | B        | 4500000   | 1.05           | 1.55      | 1.07          |
|        |           |                                      |          |           |                |           |               |
| PELE   | 20070531  | ABSOLUTE LARGE CAP FUND 1653         | S        | (150000)  | 12.00          | 13.95     | 14.00         |
| PELE   | 20070531  | MS (P/B) EUROPEAN CATALYST FUND 2810 | B        | 150000    | 12.00          | 14.05     | 14.00         |
| PELE   | 20070606  | HWM, INC Invest acct. #2 - 1378      | S        | (200000)  | 14.00          | 13.99     | 14.00         |
| PELE   | 20070606  | CIC GLOBAL CAPITAL LIMITED 7358      | S        | (100000)  | 14.00          | 13.99     | 14.00         |
| PELE   | 20070606  | THE HUNTER FUND LTD 8843             | B        | 300000    | 14.00          | 14.01     | 14.00         |
| PELE   | 20070615  | HWM, INC Invest acct. #2 - 1378      | S        | (120000)  | 15.00          | 14.99     | 15.00         |
| PELE   | 20070615  | CIC GLOBAL CAPITAL LIMITED 7358      | S        | (60000)   | 15.00          | 14.99     | 15.00         |
| PELE   | 20070615  | MS (P/B) ARE Fund 8400               | B        | 60000     | 15.00          | 15.05     | 15.00         |
| PELE   | 20070615  | ABSOLUTE OCTANE FUND 1613            | B        | 60000     | 15.00          | 15.05     | 15.00         |

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| Symbol | TradeDate | Account Name                                | Buy/Sell | Quantity | Previous Price | HWM Price | Closing Price |
|--------|-----------|---|----------|----------|----------------|-----------|---------------|
| PELE   | 20070615  | MS (P/B) EUROPEAN CATALYST FUND 2810        | B        | 60000    | 15.00          | 15.05     | 15.00         |
| PELE   | 20070618  | ABSOLUTE EAST WEST FUND 2899                | S        | (500001) | 15.00          | 11.98     | 12.00         |
| PELE   | 20070618  | MS (P/B) ABSOLUTE East West 2256            | B        | 500001   | 15.00          | 12.02     | 12.00         |
| PELE   | 20070626  | ABSOLUTE ACTIVIST VALUE MASTER 2738         | S        | (250000) | 12.00          | 11.98     | 12.00         |
| PELE   | 20070626  | MS (P/B) ABSOLUTE ACTIVIST VAL MSTR FD 2577 | B        | 250000   | 12.00          | 12.02     | 12.00         |
| PELE   | 20070627  | HWM, INC Invest acct. #2 - 1378             | S        | (100000) | 15.00          | 14.995    | 15.00         |
| PELE   | 20070627  | CIC GLOBAL CAPITAL LIMITED 7358             | S        | (50000)  | 15.00          | 14.995    | 15.00         |
| PELE   | 20070627  | MS (P/B) ARE Fund 8400                      | B        | 150000   | 15.00          | 15.02     | 15.00         |
| PELE   | 20070629  | MS (P/B) ABSOLUTE Large Cap 1673            | S        | (225000) | 15.00          | 14.98     | 15.00         |
| PELE   | 20070629  | MS (P/B) ARE Fund 8400                      | B        | 225000   | 15.00          | 15.02     | 15.00         |
| PELE   | 20070713  | HWM, INC Invest acct. #2 - 1378             | S        | (100000) | 15.00          | 14.995    | 15.00         |
| PELE   | 20070713  | CIC GLOBAL CAPITAL LIMITED 7358             | S        | (50000)  | 15.00          | 14.995    | 15.00         |
| PELE   | 20070713  | ABSOLUTE OCTANE FUND 1613                   | B        | 50000    | 15.00          | 15.02     | 15.00         |
| PELE   | 20070713  | MS (P/B) ABSOLUTE ACTIVIST VAL MSTR FD 2577 | B        | 50000    | 15.00          | 15.02     | 15.00         |
| PELE   | 20070713  | MS (P/B) EUROPEAN CATALYST FUND 2810        | B        | 50000    | 15.00          | 15.02     | 15.00         |
| PELE   | 20070731  | CIC GLOBAL CAPITAL LIMITED 7358             | S        | (75000)  | 15.00          | 14.995    | 15.00         |
| PELE   | 20070731  | TODD FICETO 7107                            | S        | (75000)  | 15.00          | 14.995    | 15.00         |
| PELE   | 20070731  | MS (P/B) ABSOLUTE East West 2256            | B        | 150000   | 15.00          | 15.02     | 15.00         |
| PELE   | 20070815  | MS (P/B) ARE Fund 8400                      | S        | (250000) | 15.00          | 14.95     | 14.90         |
| PELE   | 20070815  | MS (P/B) EUROPEAN CATALYST FUND 2810        | B        | 250000   | 15.00          | 15.05     | 14.90         |
| PELE   | 20070816  | MS (P/B) ARE Fund 8400                      | S        | (250000) | 14.90          | 14.95     | 15.00         |
| PELE   | 20070816  | MS (P/B) EUROPEAN CATALYST FUND 2810        | S        | (250000) | 14.90          | 14.95     | 15.00         |
| PELE   | 20070816  | ABSOLUTE OCTANE FUND 1613                   | B        | 500000   | 14.90          | 15.05     | 15.00         |
| PELE   | 20070817  | MS (P/B) ARE Fund 8400                      | S        | (250000) | 15.00          | 14.95     | 15.00         |
| PELE   | 20070817  | MS (P/B) EUROPEAN CATALYST FUND 2810        | S        | (250000) | 15.00          | 14.95     | 15.00         |
| PELE   | 20070817  | ABSOLUTE OCTANE FUND 1613                   | B        | 500000   | 15.00          | 15.05     | 15.00         |
| PELE   | 20070820  | MS (P/B) EUROPEAN CATALYST FUND 2810        | S        | (250000) | 15.00          | 14.95     | 15.00         |
| PELE   | 20070820  | ABSOLUTE OCTANE FUND 1613                   | B        | 250000   | 15.00          | 15.05     | 15.00         |
| PELE   | 20070823  | ABSOLUTE OCTANE FUND 1613                   | S        | (500000) | 15.00          | 14.95     | 15.00         |

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| Symbol | TradeDate | Account Name                                | Buy/Sell | Quantity | Previous Price | HWM Price | Closing Price |
|--------|-----------|---|----------|----------|----------------|-----------|---------------|
| PELE   | 20070823  | MS (P/B) ABSOLUTE ACTIVIST VAL MSTR FD 2577 | B        | 250000   | 15.00          | 15.05     | 15.00         |
| PELE   | 20070823  | MS (P/B) EUROPEAN CATALYST FUND 2810        | B        | 250000   | 15.00          | 15.05     | 15.00         |
| PELE   | 20070824  | ABSOLUTE OCTANE FUND 1613                   | S        | (750000) | 15.00          | 14.95     | 15.00         |
| PELE   | 20070824  | MS (P/B) ARE Fund 8400                      | B        | 250000   | 15.00          | 15.05     | 15.00         |
| PELE   | 20070824  | MS (P/B) ABSOLUTE ACTIVIST VAL MSTR FD 2577 | B        | 250000   | 15.00          | 15.05     | 15.00         |
| PELE   | 20070824  | MS (P/B) EUROPEAN CATALYST FUND 2810        | B        | 250000   | 15.00          | 15.05     | 15.00         |
| PELE   | 20070828  | EUROPEAN CATALYST FUND LTD                  | B        | 75000    | 15.00          | 15.015    | 15.00         |
| PELE   | 20070828  | HWM, Inc. 2572                              | S        | (50000)  | 15.00          | 15.00     | 15.00         |
| PELE   | 20070828  | CIC Global                                  | S        | (25000)  | 15.00          | 15.00     | 15.00         |
| PELE   | 20070830  | CIC Global                                  | S        | (25000)  | 15.00          | 14.97     | 15.00         |
| PELE   | 20070830  | HWM, Inc. 2572                              | S        | (50000)  | 15.00          | 14.97     | 14.97         |
| PELE   | 20070830  | EUROPEAN CATALYST FUND LTD                  | B        | 75000    | 15.00          | 15.015    | 14.97         |
| PELE   | 20070831  | MS (P/B) ABSOLUTE East West 2256            | S        | (150000) | 15.00          | 14.95     | 15.00         |
| PELE   | 20070831  | MS (P/B) EUROPEAN CATALYST FUND 2810        | B        | 150000   | 15.00          | 15.05     | 15.00         |
| PELE   | 20070907  | EUROPEAN CATALYST FUND LTD                  | B        | 75000    | 15.00          | 15.0150   | 15.00         |
| PELE   | 20070907  | ABSOLUTE ACTIVIST VALUE                     | B        | 75000    | 15.00          | 15.0150   | 15.00         |
| PELE   | 20070907  | Ficeto                                      | S        | (75000)  | 15.00          | 15.00     | 15.00         |
| PELE   | 20070907  | CIC Global                                  | S        | (75000)  | 15.00          | 15.00     | 15.00         |
|        |           |   |          |          |                |           |               |
| JVDT   | 20070227  | MS (P/B) EUROPEAN CATALYST FUND 2810        | S        | (1000)   | 2.10           | 2.45      | 2.50          |
| JVDT   | 20070227  | MS (P/B) ARE Fund 8400                      | B        | 1000     | 2.10           | 2.55      | 2.50          |
| JVDT   | 20070228  | MS (P/B) ARE Fund 8400                      | S        | (1000)   | 2.50           | 2.95      | 3.00          |
| JVDT   | 20070228  | MS (P/B) EUROPEAN CATALYST FUND 2810        | B        | 1000     | 2.50           | 3.05      | 3.00          |
| JVDT   | 20070730  | MS (P/B) EUROPEAN CATALYST FUND 2810        | S        | (50000)  | 2.97           | 2.95      | 3.00          |
| JVDT   | 20070730  | MS (P/B) ARE Fund 8400                      | B        | 50000    | 2.97           | 3.05      | 3.00          |
| JVDT   | 20070731  | MS (P/B) EUROPEAN CATALYST FUND 2810        | S        | (25000)  | 3.00           | 3.45      | 3.50          |
| JVDT   | 20070731  | MS (P/B) ARE Fund 8400                      | B        | 25000    | 3.00           | 3.55      | 3.50          |

**APPENDIX 2**

**DEFENDANTS' MARKING THE CLOSE/LAST TRADE  
TRANSACTIONS**

**ProElite**

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| <b>Trade Date</b> | <b>Number of Shares Purchased</b> | <b>Last Execution</b> | <b>Execution Price</b> | <b>Closing Price</b> | <b>Total Volume</b> |
|-------------------|-----------------------------------|-----------------------|------------------------|----------------------|---------------------|
| 9/29/06           | 10,000                            | 15:52:13              | .0045                  | .0045                | 10,000              |
| 11/10/06          | 500                               | 14:47:00              | 2.5                    | 2.5                  | 500                 |
| 11/29/06          | 5000                              | 10:39:00              | 2.75                   | 2.75                 | 5000                |
| 12/28/06          | 100                               | 12:09:00              | 3.25                   | 3.25                 | 100                 |
| 4/30/07           | 217                               | 15:55:33              | 12                     | 12                   | 217                 |
| 5/31/07           | 700,000                           | 14:16:00              | 14                     | 14                   | 700,000             |
| 6/6/07            | 300,000                           | 15:59:00              | 15                     | 15                   | 300,000             |
| 6/15/07           | 181,087                           | 15:35:21              | 15                     | 15                   | 181,100             |
| 6/18/07           | 501,252                           | 15:32:00              | 12                     | 12                   | 501,252             |
| 6/26/07           | 250,000                           | 15:36:00              | 12                     | 12                   | 250,000             |
| 6/29/07           | 225,000                           | 15:27:00              | 15                     | 15                   | 225,000             |
| 7/13/07           | 150,000                           | 15:38:00              | 15                     | 15                   | 150,000             |
| 7/31/07           | 150,000                           | 15:58:00              | 15                     | 15                   | 150,000             |
| 8/15/07           | 251,100                           | 15:26:54              | 15                     | 14.90                | 251,100             |
| 8/17/07           | 500,000                           | 11:10:00              | 15                     | 15                   | 500,000             |
| 8/20/07           | 250,000                           | 11:15:00              | 15                     | 15                   | 250,000             |
| 8/23/07           | 500,000                           | 11:38:00              | 15                     | 15                   | 500,000             |
| 8/28/07           | 75,000                            | 11:33:00              | 15                     | 15                   | 75,000              |
| 8/31/07           | 225,000                           | 12:23:00              | 15                     | 15                   | 225,000             |
| 9/7/07            | 150,000                           | 11:24:22              | 15                     | 15                   | 150,000             |
| 9/13/07           | 2,500,199                         | 13:42:00              | 15                     | 15                   | 2,500,199           |

**MicroMed**

| <b>Trade Date</b> | <b>Number of Shares Purchased</b> | <b>Last Execution</b> | <b>Execution Price</b> | <b>Closing Price</b> | <b>Total Volume</b> |
|-------------------|-----------------------------------|-----------------------|------------------------|----------------------|---------------------|
| 1/31/06           | 4300                              | 15:47:45              | \$4.00                 | \$4.00               | 6800                |
| 2/28/06           | 4000                              | 15:47:16              | \$3.50                 | \$3.50               | 9800                |
| 3/31/06           | 5000                              | 15:52:30              | \$3.50                 | \$3.50               | 9148                |
| 4/28/06           | 5343                              | 15:59:26              | \$3.90                 | \$3.90               | 6743                |
| 5/31/06           | 3000                              | 15:56:47              | \$3.25                 | \$3.25               | 4000                |
| 6/30/06           | 3200                              | 15:54:49              | \$4.20                 | \$4.20               | 3200                |
| 7/31/06           | 2,307,571                         | 15:50:33              | \$3.80                 | \$3.80               | 2,308,571           |
| 8/31/06           | 12,000                            | 15:59:33              | \$4.30                 | \$4.30               | 20,500              |
| 10/31/06          | 10,000                            | 15:53:15              | \$4.15                 | \$4.15               | 7500                |
| 11/7/06           | 3300                              | 15:49:06              | \$4.00                 | \$4.00               | 4300                |
| 11/30/06          | 240,000                           | 15:48:29              | \$4.40                 | \$4.40               | 8182                |
| 12/29/06          | 2500                              | 15:58:37              | \$4.30                 | \$4.30               | 4538                |
| 1/31/07           | 2038                              | 15:47:56              | \$4.30                 | \$4.30               | 3538                |
| 2/28/07           | 30,000                            | 15:46:29              | \$4.40                 | \$4.40               | 40,300              |
| 3/30/07           | 2500                              | 15:49:30              | \$4.40                 | \$4.40               | 5134                |

**Berman**

| <b>Trade Date</b> | <b>Number of Shares Purchased</b> | <b>Last Execution</b> | <b>Execution Price</b> | <b>Closing Price</b> | <b>Total Volume</b> |
|-------------------|-----------------------------------|-----------------------|------------------------|----------------------|---------------------|
| 1/30/06           | 500                               | 15:59:10              | \$2.50                 | \$2.50               | 600                 |
| 5/30/06           | 500                               | 15:49:12              | \$3.00                 | \$3.00               | 800                 |
| 6/30/06           | 1000                              | 15:53:53              | \$3.00                 | \$3.00               | 1000                |
| 7/28/06           | 500                               | 15:55:25              | \$1.75                 | \$1.75               | 500                 |
| 9/28/06           | 500                               | 15:25:33              | \$3.00                 | \$3.00               | 500                 |
| 10/12/06          | 500                               | 13:51:38              | \$3.00                 | \$3.00               | 686                 |
| 12/26/06          | 500                               | 14:34:00              | \$3.00<br>(\$1.75)     | \$3.00               | 600                 |
| 1/31/07           | 2,600,000                         | 15:25:00              | \$3.30                 | \$3.30               | 2,600,000           |
| 2/27/07           | 10,000                            | 15:43:00              | \$3.50<br>(\$1.40)     | \$3.50               | 10,000              |
| 3/30/07           | 240,000                           | 15:57:52              | \$3.60                 | \$3.60               | 330,571             |
| 7/31/07           | 208,500                           | 15:50:50              | \$3.50                 | \$3.50               | 258,285             |

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### Java Detour

| Trade Date | Number of Shares Purchased | Last Execution | Execution Price | Closing Price | Total Volume |
|------------|----------------------------|----------------|-----------------|---------------|--------------|
| 1/8/07     | 500                        | 12:04:00       | \$2.10          | \$2.10        | 1000         |
| 2/27/07    | 1000                       | 15:51:00       | \$2.50          | \$2.50        | 1000         |
| 2/28/07    | 1000                       | 15:16:33       | \$3.00          | \$3.00        | 1000         |
| 7/30/07    | 50,000                     | 15:33:00       | \$3.00          | \$3.00        | 50,000       |
| 7/31/07    | 25,000                     | 15:48:00       | \$3.50          | \$3.50        | 25,000       |

### Logistical Support

| Trade Date | Number of Shares Purchased | Last Execution | Execution Price | Closing Price | Total Volume |
|------------|----------------------------|----------------|-----------------|---------------|--------------|
| 10/20/05   | 500                        | 9:40:22        | \$1.40          | \$1.40        | 500          |
| 7/26/06    | 5000                       | 13:39:45       | \$.20           | \$.20         | 5000         |
| 3/31/06    | 762,500                    | 15:52:00       | \$.25           | \$.25         | 762,500      |
| 1/31/07    | 56,000                     | 15:53:54       | \$.25           | \$.25         | 69,200       |

### Quest

| Trade Date | Number of Shares Purchased | Last Execution | Execution Price | Closing Price | Total Volume |
|------------|----------------------------|----------------|-----------------|---------------|--------------|
| 4/30/07    | 60,500                     | 15:56:17       | \$1.25          | \$1.25        | 112,500      |
| 5/31/07    | 14,800                     | 15:49:49       | \$1.25          | \$1.25        | 27,571       |
| 6/28/07    | 10,500                     | 15:46:20       | \$1.25          | \$1.25        | 10,500       |

1 APPENDIX 3

2 Instant Messaging Excerpts

- 3
- 4 • **September 20-21, 2006** – Heatherington instructed Ahn to sell 800,000  
5 shares of Logistical Support to the India Fund because “AIF [the India Fund]  
6 needs a bit of performance.” Heatherington also asked Ahn to post the trade  
7 after the close of trading, and Ahn agreed, noting that he would post it “30  
8 minutes after the close to make it less conspicuous.” The India Fund sold  
9 these shares the next day to the European Catalyst Fund for a \$60,000 profit.

10 Heatherington: need a booking please

11 Ahn: yes, how can i help

12 Heatherington: ARE sells 800K LGSL 0.17, AIF buys  
13 AIF needs a bit of performance

14 ...

15 Ahn: should I put this is up now, or after the close?

16 Heatherington: after ok with you?

17 Ahn: absolutely, I'll put it after 30 minutes after the  
18 close to make it less conspicuous

19 Heatherington: thanks! Much appreciated!

20 ....

21 Heatherington: pls buy lgsl up to 0.25 and we will do the cross  
22 tonight at 0.25

23  
24  
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26  
27  
28 Ahn: should I do this near the end of the day, or take it  
up there now?

1  
2 Heatherington: take it up now is fine and cross after market again  
3 pls

4 The price of LGSL on September 18, 2006 was \$0.17 (there were no trades  
5 during market hours on September 20, 2006). On September 21, 2006, HWM  
6 executed purchases at increasing prices starting at \$0.20 and next at \$0.25. A non-  
7 HWM trade was then executed at \$0.17. HWM then executed a matched order for  
8 1000 shares between AIF and Catalyst at 15:45:00 at \$0.25 which was the  
9 last trade of the market day. The closing price for that day is \$0.25.

- 10 • **November 30, 2006** – Heatherington listed for Ahn his proposed closing  
11 prices for several stocks, including \$2.75 for ProElite, \$3.00 for Berman,  
12 and \$4.40 for MicroMed. Later that day, Heatherington wrote Ahn asking  
13 him to enter a cross trade for Berman at \$1.50 after the close of the market,  
14 then changing that order, noting that “Todd is going to kill me.” MicroMed  
15 closed at \$4.40, the last traded price for Berman before that date was \$3.00,  
16 and a later cross trade in Berman Center given by Heatherington was entered  
17 after the close of the market.

18 Heatherington: MMCV 4.40 today pls  
19 DUVT 0.51...  
20 BRMC 3.00  
21 PELE 2.75  
22 can you pls put a cross up in PSPR at the open,  
23 bloomberg is not pulling a price

24 Ahn: yes, at what price?

25 Heatherington: 0.35 last...  
26 I would like to cross 700K BRMC at 1.50 after the  
27 market, ECF sells, AOF buys...  
28 wait  
Todd is going to kill me, pls have him call...  
pls cancel the BRMC trade for now...  
AOF buys 1,500,000 BRMC 1.50, ARE sells 1,000,000,  
ECF sells 500,000  
MMCV 4.40

1 The following were the closing prices and the previous prices for some of  
2 these stocks on 11/30/06:

|   | Closing Price | Previous Price        |
|---|---------------|-----------------------|
| 3 |               |                       |
| 4 | MMCV          | 4.40                  |
| 5 | BRMC          | \$4.00                |
| 6 | PELE          | no trades on that day |
| 7 |               | \$3.00                |
| 8 |               | no trades on the day  |
| 9 |               | \$2.75                |

- 10
- 11 • **January 8, 2007** – HWM executed trades in Java Detour so that a price  
12 would be reported by Bloomberg either by using Absolute accounts held at  
13 HWM or through matched orders with another broker. For example, on  
14 January 8, 2007, Ahn told Heatherington that a price for Java Detour wasn't  
15 available on Bloomberg. In order to have a trade execute and the price show  
16 up at current levels, Ahn suggested having Heatherington put in an order to  
17 buy shares with another broker, with HWM then selling shares to that  
18 broker. Ahn even suggested a price, which was changed by Ficeto, and the  
19 trade was executed at Ficeto's price. The European Catalyst Fund was the  
20 selling fund, as well as the buying fund.

21 Ahn: jvdt – prices are coming in as unavailable on part of  
22 bloomberg and Arca  
23 apparently the price never adjusted after the split

24 Heatherington: ok

25 Ahn: we have a suggestion if you want to put a print at the  
26 current levels

27 Heatherington: ok

28 Ahn: if you can put a buy order through another broker, like  
2.10 bid  
we can go and hit that bid

Heatherington: ok Spy

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Ahn: just another way to do a cross for you, but at the same time it puts another broker in this name

Heatherington: 500 ok?

Ahn that's fine, I'll be on the lookout is the order with Hudson?

...

Heatherington: RBC

...

Ahn: its fine, sorry for the hassle, I'll just put a cross myself what price do you want this baby at?

Heatherington: same as before I suppose, ask Todd

Ahn: you can cancel the buy order with RBC, I'll put up the cross here

Ahn: just spoke with todd he suggests using a 2.25 limit and they'll go 2.10 bid

Heatherington: ok

Ahn: done, sold 500 shares at 2.10

The only trades in Java Detour on January 8, 2007 were the trades executed by HWM and the other broker, for a closing price of \$2.10, and the preceding price of \$2.25, the price Ficeto had suggested.

- 1 • **January 31, 2007** – Heatherington gave Ahn a number of proposed closing  
2 prices, including \$3.30 for Berman. Ahn said that he executed the Berman  
3 trade at \$3.30, and would “do the others after the bell.” Most of the stocks  
4 closed at the prices specified by Heatherington, with another closing a few  
5 pennies below the target price, and for another Ahn saying he wouldn’t get  
6 one of them to the price Heatherington wanted.

6 Ahn: brmc cross is up to get it to 3.30, will do the others after  
7 the bell  
8 I put it up now, so with the delay you can see it too...

8 Heatherington: closing prices  
9 CGDF 1.38  
10 CSSV 3.80  
11 EDNE 1.15  
12 MMCV 4.30  
13 BRMC 3.30

14 Ahn: how many shares can i use for each

15 Heatherington: LGSL 0.25  
16 whatever you need  
17 DUVT 0.38  
18 CSSV 4.00 now pls  
19 ok with EDNE?

20 Ahn: EDNE is tough  
21 won’t get it there [sic]

22 The following were the closing prices and the previous prices for some of  
23 these stocks on January 31, 2007:

|    | Closing Price | Previous Price |        |
|----|---------------|----------------|--------|
| 24 |               |                |        |
| 25 |               |                |        |
| 26 | MMCV          | 4.30           | \$4.00 |
| 27 | BRMC          | 3.30           | \$3.20 |
| 28 | LGSL          | 0.25           | \$0.23 |

- 1 • **March 30, 2007** – Heatherington gave Ahn “Tony’s Hit List,” with Berman  
2 set to close at \$3.60. To increase the price, Ahn continuously bought shares,  
3 and asked Heatherington if he could purchase 200,000 shares of Berman  
4 stock. Heatherington responded that Ahn could buy whatever he had to so  
5 long as Berman closed at \$3.60 per share, which was the price at which it  
6 ultimately closed that day (the previous price was \$3.60, with the first trade  
7 of the day at 2.75). Ahn purchased approximately \$820,000 worth of  
8 Berman for the Octane Fund on that day.

9 Heatherington: “Tony’s Hit List”

10 Ahn: hahah

11 Heatherington: MMCV 4.40  
12 BRMC 3.60

13 Ahn: brmc – Hill is selling 2k...  
14 I have bought a total of 10k already

15 Heatherington: keep buying  
16 need 3.60

17 ....

18 Ahn: I have bought additional 20k, how  
19 much can I buy up to, we are  
20 short on time...

21 Heatherington: whatever you have to need 3.60  
22 200k  
23 I don’t care

- 24 • **July 31, 2007** – Heatherington listed “the prices for today” for a number of  
25 issuers, including \$3.50 for Berman, the price at which it closed that day due  
26 to cross trades between the Absolute funds. Heatherington wrote Ahn that  
27 he could “buy whatever it takes” and that it is ““TOTALLY FINE IF THEY  
28 GO HIGHER :D.” With one exception, the closing prices specified by  
Heatherington were reached and two were exceeded.

1 Heatherington: ok, here are the prices for today  
2 MMCV 0.90  
3 DUVT 0.37  
4 JVDT 3.50  
5 QSTG 1.50  
6 IMTO 2.00  
7 BRMC 3.50  
8 LGSL 0.20

9 Ahn: thanks

10 Heatherington: you can buy whatever it takes

11 Ahn: is it ok if these stocks go higher than these prices listed

12 ...

13 Heatherington: TOTALLY FINE IF THEY GO HIGHER :D

14  
15  
16 The following were the closing prices and the previous prices for some of  
17 these stocks on 7/31/07:

|    | Closing Price | Previous Price                        |
|----|---------------|---------------------------------------|
| 18 |               |                                       |
| 19 |               |                                       |
| 20 | MMCV .90      | .95 (first trade of the day at .70)   |
| 21 | JVDT 3.50     | 3.00                                  |
| 22 | QSTG 1.50     | 1.50 (first trade of the day at 1.05) |
| 23 | BRMC 3.50     | 3.50 (first trade of the day at 3.08) |
| 24 | LGSL 0.20     | 0.2 (first trade of the day at 0.10)  |
| 25 |               |                                       |
| 26 |               |                                       |
| 27 |               |                                       |
| 28 |               |                                       |