

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

U.S. SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
	:	
Plaintiff,	:	
	:	Case No. 04-Civ-6296
v.	:	
	:	
MARTIN FOX,	:	
	:	
Defendant.	:	COMPLAINT
	:	
	:	
	:	

Plaintiff, U.S. Securities and Exchange Commission (the “Commission or “SEC”), 450 Fifth Street, NW, Washington D.C. 20549 alleges as follows:

NATURE OF THE ACTION

1. This market manipulation case results from the conduct of Martin Fox (“Fox”) of Oradell, New Jersey. Fox was President, Co-Chief Executive Officer, and a director of Initio, Inc., a publicly traded company listed on NASDAQ’s Small-Cap Market during the relevant period. Fox participated in a scheme to manipulate Initio’s bid price by placing orders that created a false appearance of customer interest, advanced the bid price to \$1.00 or more, and caused Initio’s bid price to close at \$1.00 or more. The manipulation lasted from at least June 2002 through February 2003.

2. By engaging in that conduct, Fox violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder. Unless enjoined, Fox is likely to continue to

engage in transactions, acts, practices, and courses of business similar to those set forth in this Complaint. Accordingly, the Commission seeks injunctions against future violations and civil penalties.

3. The Commission also seeks an order permanently barring Fox from serving as an officer or director of a publicly-traded company pursuant to Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

JURISDICTION AND VENUE

4. The court has jurisdiction over this action pursuant to Sections 21(e) and Section 27 of the Exchange Act [15 U.S.C. §§ 78u, 78aa]. Certain of Fox's transactions, acts, practices and courses of business occurred within this District.

5. Fox has directly or indirectly made use of the means or instrumentalities of interstate commerce and/or of the mails in connection with the transactions described in this Complaint.

DEFENDANT

6. Martin Fox, age 69, resides in Oradell, New Jersey. Fox was President, Co-Chief Executive Officer, and a director of Initio, Inc. at all relevant times.

RELEVANT ENTITY

7. Initio, Inc. is a Nevada corporation headquartered in Rochelle Park, New Jersey. It has four employees and minimal business operations. Initio's securities were registered with the Commission under Section 12(g) of the Securities Exchange Act of 1934. The Company's independent auditor is Rogoff & Co. Initio was delisted from NASDAQ in April 2003. Initio filed a form 15 with the Commission terminating its registration on May 14, 2003.

SUBSTANTIVE ALLEGATIONS

A. Initio was a NASDAQ-Listed Shell which Mr. Fox was Attempting to Sell

8. Initio's primary business for years was run out of its wholly-owned subsidiary, Deerskin Trading Post, Inc ("Deerskin"). Deerskin operated the Deerskin catalog, which had been in business approximately sixty years, and the Junco catalog, which Initio acquired in the early 1990's.

9. Initio sold Deerskin in May of 1999.

10. Following the sale of Deerskin, Initio had minimal business operations.

11. Initio negotiated an agreement in early 2000 with a potential buyer to acquire a controlling interest in Initio, which was ultimately not executed.

12. By late summer/early fall 2002 Fox had begun talking to another potential buyer who was specifically interested in acquiring a Nasdaq listed shell.

B. Initio's Early Problems with NASDAQ's Closing Bid Price Rule

13. NASDAQ's Marketplace Rule 4310(c)(4) ("Closing Bid Price Rule") requires a Small-Cap listing to maintain a closing bid price of at least \$1.00. If the closing bid price falls below \$1.00 for more than 30 consecutive trading days, the stock may be delisted. In order to regain compliance, NASDAQ's Marketplace Rule 4310(c)(8) requires that the bid price of the Small Cap listing's common stock must close at \$1.00 or more for a minimum of 10 consecutive trading days.

14. On June 10, 2002 Initio's closing bid price had been under \$1.00 for 29 consecutive trading days when Fox entered a limit order to buy 4,000 shares of Initio at \$1.00 in the account of a friend.

15. Fox placed the order at 3:01 p.m. and it was open at the close of trading at 4:00 p.m. The order caused the closing bid price to be \$1.00 and essentially reset the clock for NASDAQ's Closing Bid Price Rule. Initio could not be held in violation of the rule for another 30 trading days.

16. In the month prior to July 25, 2002, Initio's stock had little customer interest and was thinly traded. The average daily volume was 1,417 shares and the stock traded in the \$0.80-\$0.85 range.

17. On July 22, 2002, Initio's closing bid price had been under \$1 for 27 consecutive trading days when his broker entered an order on behalf of Fox to buy 5,000 shares of Initio at \$1.01. This order was entered too late to be executed that day.

18. On July 23, 2002, Fox again tried unsuccessfully to raise Initio's closing bid price to \$1.00 or more. Fox placed a limit order at 3:27 p.m. to buy 4,500 shares at \$0.96. The order was partially executed and the inside bid was raised to \$0.98. At 3:40 p.m. Fox cancelled his order and entered a new order with a limit price of \$0.97. The order was partially executed and at 3:47 p.m. Fox cancelled the order and entered a new order with a limit price of \$1.00. The order was executed and afterward the bid price dropped by a penny and closed at \$0.99.

C. On July 25, 2002 Fox Received a Letter from Nasdaq Indicating that Initio was in Danger of Being Delisted

19. On July 25, 2002 at approximately 1:29 p.m., Fox received a letter by facsimile from NASDAQ's Listing Qualifications Department. The letter informed Mr. Fox that, for the last thirty consecutive trading days, the price of Initio's common stock had closed below the minimum \$1.00 per share requirement for continued inclusion under the Closing Bid Price Rule. Initio was given 180 calendar days, or until January 23, 2003, to regain compliance. There was no trading activity on July 25 and Initio's closing bid price was \$0.81.

20. At about 2:09 p.m. that afternoon a call was made from the offices of Initio to the offices of Fox's broker. The call lasted approximately 20 minutes.

D. Fox Manipulated Initio's Stock Price in order to Regain Compliance with the Closing Bid Price Rule

21. On July 26, the day after Fox received the letter from NASDAQ, Fox advanced Initio's bid price and marked the closing bid price at \$1.01.

22. On July 29, 2002, the next trading day, Initio's bid price remained in the \$0.84-\$0.86 range until 3:55 p.m., when Fox placed a limit order to buy Initio at \$1.01 which advanced the inside bid to \$1.01. Other orders to buy at \$1.01 came in at 3:58 p.m. and remained unexecuted at the close of trading. The resulting closing bid price was \$1.01.

23. Fox used his personal account at Ameritrade, the Ameritrade account of a friend, and an account he held with a co-trustee at Ameritrade, to place the orders to buy Initio.

24. Under Rule 11Ac1-4 of the Exchange Act [17 C.F.R. § 11Ac1-4], if a market maker receives an order that improves the inside bid he is required to display the order to the market. Fox entered limit orders at successively higher bid prices, which became the new inside bid and advanced the inside bid to the desired \$1.00 level.

25. Because Initio was thinly traded, many of Fox's orders remained unexecuted at the close and marked Initio's closing bid price at \$1.01.

26. Neither Fox nor his broker traded in Initio from July 30 through August 1. Initio's bid price closed at \$1.00 or more on those days.

27. On August 2 Initio's bid price remained below \$1.00 for most of the day. At 3:52 p.m. his broker entered an order on behalf of Fox to buy shares of Initio at \$1.01, which advanced the bid price to \$1.01. The order expired unexecuted and marked the closing bid price at \$1.01.

28. On August 7, Initio's inside bid fell below \$1.00 for the first time since August 2 and Fox entered a good til' cancelled order with his broker to purchase 10,000 shares of Initio at \$1.01. During the period August 7 through August 29 Fox's broker entered orders to purchase shares of Initio on behalf of Fox. Fox's broker entered orders to purchase shares of Initio at \$1.01 and routed them to different market makers. Several of the orders were displayed for the entire trading day. The orders often remained unexecuted at the close and marked the closing bid price at \$1.01.

E. Fox Received a Letter on August 29, 2002 Indicating that Initio had Regained Compliance with the Closing Bid Price Rule

29. From August 13 to August 29, 2002, Initio's closing bid price ranged from \$1.01 to \$1.14. On August 29, 2002, NASDAQ sent Fox a letter indicating that Initio had achieved compliance with the Closing Bid Price Rule.

F. Fox Resumed the Manipulation when it Appeared that Initio's Bid Price was in Danger of Falling Below \$1.00

30. Fox placed no orders for Initio stock during the four trading days between August 30, 2002 and September 5, 2002.

31. On September 6, 2002 at around 3:20 p.m. the market maker with the highest bid quotation lowered its bid price to \$0.94. At this point in time there was one market maker with a bid of \$1.00 or more. The market maker quoted a bid price of \$1.01, but the bid size was only 100 shares. If an order to sell as little as 100 shares was executed the bid price would likely fall below \$1.00.

32. At 3:22 p.m., his broker began placing orders on behalf of Fox. The orders advanced the bid and marked the closing bid price at \$1.01.

33. On September 11, 2002, Initio's closing bid price fell below \$1.00, after 31 consecutive trading days of being \$1.00 or above. Within minutes of the bid falling below \$1.00 Fox entered an order to buy shares of Initio at \$1.00 in a friend's Ameritrade account.

G. On October 23, 2002 Fox Received a Letter from Nasdaq Indicating that Initio was in Danger of Being Delisted

34. During the period September 11 through November 26, Initio's closing bid price remained between \$0.82 and \$0.91.

35. On September 23, 2002 NASD Market Regulation contacted Fox's broker regarding suspicious trading in Initio. On September 26, 2002, Fox's broker sent documents to NASD Market Regulation in response to its request.

36. On October 23 NASDAQ sent Fox another letter warning that Initio was in danger of being delisted. The deadline for getting Initio's closing bid price above the \$1.00 minimum for 10 consecutive days was April 21, 2003.

H. Fox and His Broker Again Manipulated Initio's Closing Bid Price

37. During the period November 2002 through December 2002, Fox's broker placed orders to buy shares of Initio for the broker's personal IRA account and the brokerage firm's proprietary account.

38. Fox's broker used the orders to advance Initio's bid price and mark the closing bid price at \$1.00 or more.

39. During the six trading day period from November 26 through December 4 the orders of Fox's broker marked the closing bid price at \$1.01 or more.

40. Fox placed orders to buy shares of Initio at \$1.01 on November 26 and December 2, 2002.

41. Fox's orders advanced Initio's closing bid price to \$1.01.

42. Neither Fox nor his broker placed orders during the period December 5 through December 12. Initio's closing bid price was \$0.93 each day.

43. Fox's broker resumed trading on December 16. For nine of the eleven trading days during the period December 16 through December 31 Fox's broker entered at least one order to buy Initio at \$1.01, and advanced the bid price when necessary. His orders marked the closing bid price on seven of these days.

44. Neither Fox nor his broker entered any orders on January 2, and the bid closed at \$0.98.

45. On January 3 Fox's broker entered an order to buy shares of Initio at \$1.01. This order advanced the bid price from \$0.92 to \$1.01. The order was left unexecuted at the close, and the closing bid price was \$1.01.

46. This would have been the tenth day the bid closed at \$1.00 or better had it not closed at \$0.98 on January 2.

CLAIM FOR RELIEF

(Violations of Section 10b and Rule 10b-5 of the Exchange Act)

47. Plaintiff, SEC, hereby incorporates ¶¶ 1 through 46 with the same force and effect as if set out here.

48. Through the conduct described above Fox intentionally manipulated Initio's closing bid price in order to achieve compliance with NASDAQ's Closing Bid Price Rule.

49. In the manner described above, Fox, in connection with the purchase or sale of Initio securities, by the use of means or instrumentalities of interstate commerce or of the mails, directly or indirectly (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts or omissions of material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon persons in connection with the purchase or sale of a security, in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

PRAYER FOR RELIEF

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

(i) Permanently enjoining defendant Fox, his agents, servants, employees, attorneys, and those in active concert or participation with them, who receive actual notice by personal service or otherwise, from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder;

(ii) Ordering defendant Fox to pay a civil money penalty under Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

(iii) Barring defendant Fox from serving as an officer or director of a publicly traded company pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)]; and

(iv) Granting such other relief as this Court may deem just and appropriate.

Dated December 23, 2004

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