**IN THE UNITED STATES DISTRICT COURT**
**FOR THE CENTRAL DISTRICT OF ILLINOIS**

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| **UNITED STATES SECURITIES AND EXCHANGE COMMISSION,** | : | |
| | : | **CIVIL ACTION** |
| | : | **FILE NO. 05-2009** |
| **Plaintiff,** | : | **The Honorable Harold Baker** |
| **v.** | : | |
| **THOMAS E. EDGAR,** | : | |
| **Defendant.** | : | |

## COMPLAINT

Plaintiff, United States Securities and Exchange Commission ("Commission"), alleges as follows:

## NATURE OF THE CASE

1. From August 1999 to October 2003, Thomas E. Edgar ("Defendant"), a full-time Internet day trader, engaged in a scheme to artificially increase and decrease the closing price of several closed-end funds. Specifically, on approximately 119 occasions, at or near the close of the trading day, the Defendant placed buy and sell orders of 100 or 200 shares of closed-end funds that resulted in increases or decreases to the closing price of the fund. This manipulative trading practice is known as "marking-the-close." Edgar engaged in his marking-the-close scheme in an attempt to sell shares at higher prices and purchase shares at lower prices.

2. By engaging in this scheme, the Defendant, directly and indirectly, has engaged in and, unless enjoined, will continue to engage in transactions, acts, practices and courses of business which constitute and will constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §77q(a)] and Sections 9(a)(2) and 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78i(a)(2), 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder.

3. Accordingly, the Commission seeks entry of a permanent injunction prohibiting the Defendant from further violations of the federal securities laws and the imposition of a civil penalty against the Defendant.

## JURISDICTION

4. The Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. §§ 77v(a)] and Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa]. Venue is also proper in this court pursuant to Section 22(a) of the Securities Act [15 U.S.C. §§ 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. §78aa].

5. The transactions, acts, practices and courses of business constituting the violations herein occurred within the jurisdiction of the United States District Court for the Central District of Illinois and elsewhere.

6. The Defendant, directly and indirectly, has made use of the mails and of the means or instrumentalities of interstate commerce in connection with the transactions, acts, practices and courses of business alleged herein.

## THE DEFENDANT

7. Thomas E. Edgar is 65 years old and resides in Urbana, Illinois. The Defendant is retired from the aerospace industry and he derives his income solely from the proceeds of his investment activity.

## FACTS

8. From August 1999 to October 2003, the Defendant carried out a fraudulent scheme to manipulate the closing price of over a dozen closed-end funds. The Defendant engaged in this scheme in an attempt to increase his profit from his trading of the closed-end funds. The closed-end funds that Edgar traded were all listed on the New York Stock Exchange.

9. Closed-end funds differ from mutual funds in that they do not issue redeemable securities and do not continuously offer their shares for sale. Rather, they sell a fixed number of shares at one time in an initial public offering, after which the shares trade on a secondary market.

10. Unlike the price of mutual fund shares, which is based on their net asset value, shares of closed-end funds trade on the secondary markets, typically at a discount to or premium over the fund's underlying net asset value.

11. Specifically, on 119 occasions, at or near the close of the trading day, the Defendant placed buy or sell orders of 100 or 200 shares of the closed-end funds that he owned for the purpose of artificially increasing or decreasing the closing price of the fund.

12. This manipulative trading practice is known as "marking-the-close." The Defendant carried out his marking-the-close scheme in two ways.

13. One way involved the Defendant engaging in marking-the-close transactions in an attempt to increase his profit from the sale of closed-end fund shares that he owned. An investor who purchases shares of a closed-end fund has established a "long" position in the fund. When

the Defendant carried a significant long position in a closed-end fund, typically 2,000 shares, he often placed an additional market order to buy approximately 100 or 200 shares of the same closed-end fund. The Defendant placed these additional market orders within a few minutes of the close of the market. The execution of these additional market buy orders resulted in an increase to the closing price of the fund.

14. Edgar entered a limit order before the open of the market on the next trading day at or near the price at which he had marked the close, thereby influencing the opening price. Edgar always tried to be, and usually was, the first trade of the day after he marked the close.

15. The Defendant's purpose in placing the additional market buy orders at the end of one trading day was to cause an increase to the price of the fund and then to profit from the higher sale price at the beginning of the next trading day. In nearly every instance when he marked the close in this fashion, Edgar sold his shares the following day at a higher price.

16. At other times, the Defendant carried out his marking-the-close scheme in an attempt to benefit "short positions" that he held in closed-end funds. An investor who borrows closed-end fund shares that he does not own in order to sell those shares that he has borrowed has established a short position. An investor who sells a short position in a closed-end fund can profit from the short position when the price of the closed-end fund goes down. In such a case, the investor can purchase shares to "cover" his short position at a lower price. In essence, an investor who covers a short position buys shares to fulfill his agreement to sell the shares he borrowed.

17. The Defendant utilized two of his trading accounts to carry out this aspect of his scheme. In one of his trading accounts, the Defendant established a short position of at least 1,000 shares in a closed-end fund. While still maintaining the short position, the Defendant then

bought approximately 100 shares of the same closed-end fund in a second trading account. Within several minutes of the close of the market, he placed a market order to sell the 100 shares that he purchased earlier in the day. The execution of these market sell orders resulted in a decrease to the closing price of the fund.

18. The Defendant's purpose in placing the trades described in Paragraph 17 on one trading day was to enable him to cover his short positions at a lower price at the beginning of the next trading day. The Defendant benefited from the decrease in the closing price of the fund caused by his end of the day sales. In nearly every instance when Edgar marked the close in this fashion, Edgar covered his short positions the following day at a lower price.

19. In 115 of the 119 times Edgar marked the close during the relevant period, he was able to sell the fund shares at a higher price than that which he paid or cover a short position at a lower price than that which he paid.

## COUNT I
## Violations of Section 17(a)(1) of the Securities Act of 1933 [15 U.S.C. § 77q(a)]

20. Paragraphs 1 through 19 are hereby realleged and incorporated by reference herein.

21. By his conduct, the Defendant, in the offer or sale of securities, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly, has employed devices, schemes or artifices to defraud.

22. Defendant knew, or was reckless in not knowing, the facts and circumstances described in this Complaint.

23. By reason of the foregoing, the Defendant violated Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

**<u>COUNT II</u>**
**Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933**
**[15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]**

24. Paragraphs 1 through 19 above are realleged and incorporated herein by reference.

25. By his conduct, the Defendant, in the offer or sale of securities, by the use of any means or instruments of transportation and communication in interstate commerce or by the use of the mails, directly or indirectly, has obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or has engaged in transactions, practices or courses of business which operates or would operate as a fraud or deceit upon purchasers of securities.

26. By reason of the foregoing, the Defendant violated Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

**<u>COUNT III</u>**
**Violations of Section 9(a)(2) of the Securities Exchange Act of 1934 [15 U.S.C. § 78i(a)(2)]**

27. Paragraphs 1 through 19 above are realleged and incorporated herein by reference.

28. By his conduct, the Defendant, by use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange, directly or indirectly, effected a series of transactions in securities registered on a national securities exchange with respect to such securities which created actual or apparent active trading in such securities, or raised or

depressed the price of such securities, for the purpose of inducing the purchase or sale of such securities by others.

29. The Defendant knew, or was reckless in not knowing, the facts and circumstances described in this Complaint.

30. By reason of the foregoing, the Defendant has violated Section 9(a)(2) of the Exchange Act [15 U.S.C. § 78i(a)(2)].

## COUNT IV

## Violations of Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]

31. Paragraphs 1 through 19 above are realleged and incorporated herein by reference.

32. By his conduct, the Defendant, in connection with the purchase or sale of securities, by the use of any means or instrumentalities of interstate commerce or by the use of the mails, directly or indirectly (a) employed a device, scheme or artifice to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made not misleading; or (c) engaged in a acts, practices, or course of business which operated or would operate as a fraud or deceit upon any person.

33. The Defendant knew, or was reckless in not knowing, the facts and circumstances described in this Complaint.

34. By reason of the foregoing, the Defendant has violated Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

## **PRAYER FOR RELIEF**

WHEREFORE, the Commission requests that the Court:

I.

Enter an Order of Permanent Injunction, in forms consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining:

(a) The Defendant, his officers, agents, servants, employees, attorneys, and those persons in active concert or participation with him who receive actual notice of the Order of Permanent Injunction by personal service or otherwise, and each of them, from directly or indirectly engaging in the transactions, practices or courses of business described above, or in conduct of a similar purport and object, in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)];

(b) The Defendant, his officers, agents, servants, employees, attorneys, and those persons in active concert or participation with him who receive actual notice of the Order of Permanent Injunction by personal service or otherwise from, directly or indirectly, using the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange to effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange with respect to such security which created actual or apparent active trading in such securities, or raised or depressed the price of such securities, for the purpose of inducing the purchase or sale of such securities by others, in violation of Section 9(a)(2) of the Exchange Act [15 U.S.C. § 77i(a)(2)]; and

(c) The Defendant, his officers, agents, servants, employees, attorneys, and those persons in active concert or participation with him who receive actual notice of the Order of Permanent Injunction by personal service or otherwise, and each of them, from directly or indirectly engaging in the acts, practices or courses of business described above, or in conduct of a similar purport and object 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], thereunder.

II.

Order the Defendant to pay a civil penalty pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act.

III.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

IV.

Grant Orders for such further relief as the Court may deem appropriate.

Respectfully submitted,

/s/______________________________
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