UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	**12 Civ. 5027 (PAC)** **ECF Case**
-against-	
PHILIP A. FALCONE, HARBINGER CAPITAL PARTNERS OFFSHORE MANAGER, L.L.C., HARBINGER CAPITAL PARTNERS SPECIAL SITUATIONS GP, L.L.C.,	
Defendants.	

SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	**12 Civ. 5028 (PAC)** **ECF Case**
-against-	
HARBINGER CAPITAL PARTNERS LLC; PHILIP A. FALCONE; and PETER A. JENSON,	
Defendants.	

CONSENT OF DEFENDANTS PHILIP A. FALCONE; HARBINGER CAPITAL PARTNERS LLC; HARBINGER CAPITAL PARTNERS OFFSHORE MANAGER, L.L.C.; AND HARBINGER CAPITAL PARTNERS SPECIAL SITUATIONS GP, L.L.C.

1. Defendants Philip A. Falcone ("Falcone"), Harbinger Capital Partners Offshore Manager, L.L.C. ("HCP Offshore Manager"), Harbinger Capital Partners Special Situations GP, L.L.C ("HCP Special Situations GP"), and Harbinger Capital Partners LLC (collectively, the

"Harbinger Defendants") acknowledge having been served with the complaints in these actions, enter general appearances, and admit the Court's jurisdiction over the Harbinger Defendants and over the subject matter of these actions.

2. The Harbinger Defendants hereby admit the facts contained in Annex A attached hereto and the allegations in the complaints as to personal and subject matter jurisdiction and consent to the entry of a final judgment in the form attached hereto (the "Final Consent Judgment") and incorporated by reference herein, which, among other things:

(a) enjoins Defendant Falcone from acting as or associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

(b) orders the appointment of an Independent Monitor;

(c) orders the Harbinger Defendants to pay disgorgement in the amount of $6,507,574, plus prejudgment interest thereon in the amount of $1,013,140; and

(d) orders the Harbinger Defendants to pay civil penalties in the amount of $10,500,000 under Section 20 of the Securities Act of 1933 [15 U.S.C. § 77t], Section 21(d) of the Securities Exchange Act of 1934 [15 U.S.C. § 78u(d)], and Section 209 of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-9].

3. The Harbinger Defendants agree that they shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including, but not limited to, payment made pursuant to any insurance policy, with regard to any civil penalty amounts that each Harbinger Defendant pays pursuant to the Final Consent Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. The Harbinger Defendants further agree that they shall not claim, assert,

or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that any of the Harbinger Defendants pays pursuant to the Final Consent Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

4. The Harbinger Defendants waive the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. The Harbinger Defendants waive the right, if any, to a jury trial and to appeal from the entry of the Final Consent Judgment.

6. The Harbinger Defendants enter into this Consent voluntarily and represent that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce the Harbinger Defendants to enter into this Consent.

7. The Harbinger Defendants agree that this Consent shall be incorporated into the Final Consent Judgment with the same force and effect as if fully set forth therein.

8. The Harbinger Defendants will not oppose the enforcement of the Final Consent Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

9. The Harbinger Defendants waive service of the Final Consent Judgment and agree that entry of the Final Consent Judgment by the Court and filing with the Clerk of the Court will constitute notice to the Harbinger Defendants of its terms and conditions. The Harbinger Defendants further agree to provide counsel for the Commission, within thirty days after the Final Consent Judgment is filed with the Clerk of the Court, with an affidavit or

declaration stating that the Harbinger Defendants received and read a copy of the Final Consent Judgment.

10. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against the Harbinger Defendants in these civil proceedings. The Harbinger Defendants acknowledge that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. The Harbinger Defendants waive any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. The Harbinger Defendants further acknowledge that the Court's entry of a bar and an injunction against Defendant Falcone from acting as or associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization permanent injunction, may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the orders and/or injunctions entered in this action, the Harbinger Defendants understand that they shall not be permitted to contest the factual allegations of the complaints in these actions.

11. The Harbinger Defendants understand and agree to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaints or order for proceedings." As part of the Harbinger Defendants' agreement to comply with the terms of Section 202.5(e), the Harbinger Defendants: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaints or creating the impression that the complaints are without factual basis; (ii) will not make or permit to be made any public statement to the effect that the Harbinger Defendants do not admit the allegations of the complaints, or that this Consent contains no admission of the allegations; and (iii) upon the filing of this Consent, the Harbinger Defendants hereby withdraw any papers filed in this action to the extent that they deny any allegation in the complaints. If the Harbinger Defendants breach this agreement, the Commission may petition the Court to vacate the Final Consent Judgment and restore this action to its active docket. Nothing in this paragraph affects the Harbinger Defendants': (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

12. The Harbinger Defendants hereby waive any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by the Harbinger Defendants to defend against this action. For these purposes, the Harbinger Defendants agree that the Harbinger Defendants are not the prevailing party in this action since the parties have reached a good faith settlement.

13. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, the Harbinger Defendants (i) agree to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints the Harbinger Defendants' undersigned attorneys as agents to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waive the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses the Harbinger Defendants' travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consent to personal jurisdiction over the Harbinger Defendants in any United States District Court for purposes of enforcing any such subpoena.

14. The Harbinger Defendants agree that the Commission may present the Final Consent Judgment to the Court for signature and entry without further notice.

15. The Harbinger Defendants agree that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Consent Judgment.

Dated: 8-16-2013

Philip A. Falcone, individually and on behalf of Harbinger Capital Partners Offshore Manager, L.L.C., Harbinger Capital Partners Special Situations GP, L.L.C and Harbinger Capital Partners LLC

On August 16, 2013, Philip Falcone, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

Notary Public
Commission expires:

KATHARINE HAYDOCK
NOTARY PUBLIC-STATE OF NEW YORK
No. 01HA6272817
Qualified In New York County
My Commission Expires November 26, 2016

Approved as to form:

Dontzin Nagy & Fleissig LLP
980 Madison Avenue
New York, New York 10075
Telephone: (212) 717-2900
Attorney for the Harbinger Defendants

ANNEX A

The 5028 Action: Overview

1. Defendants Falcone and Harbinger (collectively, the "5028 Harbinger Defendants") engaged in the following conduct in connection with two funds they advised, Harbinger Capital Partners Special Situation Fund ("SSF") and Harbinger Capital Partners Fund I ("HCP Fund I"): (a) Falcone improperly borrowed $113.2 million from SSF, at an interest rate less than SSF was paying to borrow money, to pay his personal tax obligation, at a time when Falcone had barred other SSF investors from making redemptions, and did not disclose the loan to investors for approximately five months; and (b) Falcone and Harbinger granted favorable redemption and liquidity terms to certain large investors in HCP Fund I who voted in favor of more restrictive redemption terms, and did not disclose certain of these arrangements to the fund's board of directors and the other fund investors.

The Use of SSF Fund Assets

2. On October 14, 2009, without seeking or obtaining investor consent, Falcone borrowed $113.2 million from SSF to pay Falcone's state and federal taxes. At the time, and since late 2008, Falcone had prohibited other investors from redeeming their investments in SSF due to possible claims arising from the bankruptcy of SSF's prime broker.

3. On April 14, 2009, defendant Peter A. Jenson ("Jenson") received an email from Falcone's personal accountants informing him that "[b]ased on current calculation Philip [Falcone] is still showing a significant balance due" of approximately $70 million on his personal taxes. By July 2009, the amount due had risen to more than $100 million.

4. On September 4, 2009, Jenson emailed Falcone to report on discussions that Jenson had with a bank "with regard to a facility on your total assets as a potential avenue to

covering the tax obligation." Jenson told Falcone that no bank would accept Falcone's hedge fund interests as collateral. As a result, Jenson proposed that Falcone proceed with appraisals of Falcone's two Manhattan townhouses and artwork, and raised the possibility of borrowing against other assets, including Falcone's interest in a National Hockey League team and an estate on the island of St. Barts.

5. On September 15, 2009, Falcone responded to Jenson's proposal about a bank loan using Falcone's hard assets as collateral by saying "lets discuss later this week if you have some free time."

6. Although the proposed bank loan, combined with Falcone's available cash, provided a potential avenue for Falcone to pay his personal tax obligation, Falcone did not pursue this option. Instead, Falcone directed Jenson to pursue a loan from SSF, an option Jenson presented to Falcone following discussions with another outside law firm, Sidley Austin LLP ("Sidley"). On September 15, 2009, Jenson emailed Sidley regarding the loan proposal, stating "[P]hil [Falcone] loves the idea . . . Need a term sheet asap."

7. On October 8, 2009, Jenson emailed a 14-page PowerPoint presentation to Falcone prepared by Sidley, and asked Falcone to take a "careful read" of it. The next day, Jenson and Harbinger's in-house counsel reviewed a revised version of the PowerPoint with Falcone in a brief meeting.

8. The PowerPoint that Falcone reviewed at the October 9 meeting−which stated the "[g]eneral [r]ule" of "[n]o borrowings by any 'insider' from any fund"−contained numerous incorrect assumptions – based on information that the law firm had been provided by Harbinger personnel – that should have demonstrated to Falcone that Sidley's legal advice could not be relied upon. For example, the PowerPoint represented: (a) that the loan "must only be made as a

'last resort,'" when Falcone knew that he had other potential options; and (b) that the loan would be "in the best interests of the lender," when Falcone knew that SSF did not have separate representation to protect SSF's interests.

9. Despite these red flags in the PowerPoint, Falcone asked no questions during the October 9 meeting and gave final approval for the loan transaction.

10. After Falcone's approval, Sidley, in consultation with Jenson, finalized the loan agreement. The interests of SSF as the lender were not represented during the negotiation and drafting of the loan agreement. In addition, the SSF limited partnership agreement provided for an investor committee to review such related party transactions; the 5028 Harbinger Defendants failed to constitute such a committee.

11. The Loan and Security Agreement dated October 14, 2009 (the "Loan Agreement") was signed by Falcone as borrower and Jenson, based on Falcone's approval, on behalf of SSF as the lender. The only pledged collateral for the loan was Falcone's interest in SSF.

12. The Loan Agreement provided that "[t]he Lender's counsel shall have provided advice to the Lender to the effect that the making of the Loan . . . would not be inconsistent with the Borrower's fiduciary obligation to the Lender." The 5028 Harbinger Defendants, however, did not ensure that SSF as lender had separate counsel and, as a result, this provision of the Loan Agreement was not met.

13. The Loan Agreement also provided that the interest rate to be paid on the loan was "the higher of" (1) the Applicable Federal Rate, which at the time was 2.66 percent, plus 1 percent; or (2) "the Lender's actual cost of funds as determined by the Lender in its reasonable discretion plus one percent." At the time, SSF was paying 7 percent on an outstanding loan.

Notwithstanding this fact, Falcone paid an interest rate of 3.66 percent on this loan.

14. Falcone also knew from his review of the PowerPoint that the loan was required to be at an "[a]bove-market interest rate." It was not.

15. The Loan Agreement also stated that the loan must be accelerated "to avoid any adverse effect" on the other SSF investors, and, upon notice to Falcone, the SSF could declare the loan immediately due and payable.

16. The day after the execution of the Loan Agreement, $113.2 million was transferred from an SSF account, and Falcone used these funds to pay his personal tax liability.

17. Five months after the loan, Falcone and Harbinger disclosed the transaction for the first time in a footnote to SSF's audited financial statements dated March 12, 2010. At that time, Falcone still owed a principal balance of approximately $98 million.

18. On May 12, 2010, Falcone wrote to SSF investors regarding a restructuring proposal. Falcone reported that greater than 80 percent of SSF investors chose to receive distributions rather than merge with HCP Fund I. Falcone further stated that "[a]s a consequence of this vote, we are beginning the process of an orderly reduction to cash" of the SSF portfolio and that Harbinger was "assessing other sources of liquidity" for SSF. The 5028 Harbinger Defendants, however, failed to accelerate the repayment of the loan.

19. In addition, in an email dated September 29, 2010, Falcone told an investor representative that, among other things, the loan "was collateralized by all my holdings, essentially 14x." In actuality, the pledged collateral for the loan was limited to Falcone's interest in SSF, which was less than two times the principal amount of the loan.

20. In the same e-mail, Falcone stated that the "[o]utside counsel structured the [loan] as an investment for the fund with terms advantageous to the fund like any other investment."

However, the 5028 Harbinger Defendants did not treat the loan as a fund investment and did not disclose it to investors in monthly portfolio holdings reports for approximately five months.

21. Falcone made his final loan repayment in March 2011, after becoming aware of the SEC's investigation.

The Preferential Redemptions

22. In early 2009, HCP Fund I experienced a sharp decline in assets under management. As a result of investment losses in 2008, many investors were seeking to redeem their interests.

23. To try to stabilize the situation, Falcone and Harbinger proposed a change to the fund's "gate," which limited the amount of money that an investor could redeem on any of its quarterly redemption dates. Until March 2009, HCP Fund I had a "fund-level gate," which allowed the fund to limit redemption requests if the total redemptions sought by all investors exceeded 20 percent of the fund's total net assets on a given redemption date.

24. In a letter dated March 9, 2009, Falcone and Harbinger sought to change this term to a more restrictive investor-level gate. The investor-level gate would limit redemptions to 25 percent of each redeeming investor's total investment in the fund per quarter, regardless of the total redemptions sought on that redemption date. The potential effect of the change from a fund-level gate to an investor-level gate would be to deny many investors the ability to access all of their funds at the next available redemption date.

25. The proposed change in investors' redemption rights required investor consent. As the date of the vote drew closer, there was concern that investors might not consent. A Harbinger employee emailed that she was "very concerned about the timing of these changes [because] we need a bunch of [other investors] to say yes. The [investor relations personnel]

(who are always optimistic) are telling me that it will be near impossible to get the 2/3 votes offshore unless we threaten suspension …. If we don't get the votes, it will look bad."

26. To secure consent, the 5028 Harbinger Defendants made side deals with some of their largest investors, providing those investors with preferential liquidity. These side deals were with "sponsors" – large banks and investment firms that acted as representatives and intermediaries with Falcone and Harbinger on behalf of the sponsors' clients. Harbinger made these side deals in oral agreements and side letters between Falcone and Harbinger and at least three large sponsors.

27. In entering into these side deals, Harbinger did not disclose certain terms that would have been significant to the HCP Offshore Fund I board of directors to the HCP Offshore Fund I board of directors and failed to honor Most Favored Nation ("MFN") provisions with certain investors. In addition, the 5028 Harbinger Defendants did not disclose certain terms that would have been significant to investors to the other non-favored investors.

28. For example, Harbinger entered into two side letters with Sponsor A, signed by Falcone, providing preferential redemption rights not available to other investors Neither agreement was approved by the board of directors, as required by the HCP Fund I documents, nor disclosed to other investors. Sponsor A-affiliated investors received approximately $65 million pursuant to the undisclosed preferential rights agreements.

The 5027 Action: Overview

29. The 5027 Action involves market conduct that occurs when a trader constricts the supply of a security with the intention of forcing settlement from short sellers at elevated prices. Defendant Falcone engaged in such conduct in connection with purchases of a series of distressed high-yield bonds issued by MAAX Holdings, Inc. ("MAAX"), through two unregistered investment managers he controls, co-Defendants HCP Offshore Manager and HCP Special Situations GP (collectively, the "5027 Harbinger Defendants").

Early Transactions

30. Between April and June 2006, Falcone and the other Defendants purchased 108 million MAAX junior discount bonds (the "MAAX zips"), which constituted about 63% of the issue, for Harbinger Capital Partners Master Fund I ("Master Fund").

31. During the summer of 2006, Falcone heard rumors that Goldman Sachs, & Co. (the "Financial Services Firm"), a Wall Street financial services firm that provided prime brokerage services to the Master Fund, was shorting the bonds and encouraging its customers to do the same. Prime brokers provide a special group of services to certain clients, often hedge funds, including services such as securities lending, leveraged trade execution, cash management, and margin arrangements.

Defendants' Actions

32. In September and October 2006, Falcone retaliated against the Financial Services Firm for shorting the MAAX Zips by causing the Master Fund and the newly created Harbinger Capital Partners Special Situations Fund ("Special Situations Fund") to purchase all of the remaining outstanding MAAX zips in the open market. (The Master Fund and the Special Situations Fund are collectively referred to hereinafter as the "Harbinger funds.")

33. By October 24, 2006, the Harbinger funds had purchased more than the available supply of bonds—its position stood at 174 million notes in a 170 million note issue.

34. Contemporaneously with these purchases, Falcone and the other Defendants arranged for the transfer of the 5027 Harbinger Defendants' MAAX positions from its prime brokerage accounts to a custodial account in a bank in Georgia. The principal purpose and effect of this was that it prevented the bonds from being lent out or used to cover short positions.

35. Falcone and the other Defendants then demanded that the Financial Services Firm settle its outstanding MAAX transactions and deliver the securities it owed. Defendants did not disclose at the time that it would be virtually impossible for the Financial Services Firm to acquire any bonds to deliver, as nearly the entire supply was locked up in the Harbinger funds' custodial account and the Harbinger funds were not offering them for sale.

36. Even though he had already purchased more than the available supply of bonds, Falcone and the other Defendants continued to cause the Harbinger funds to purchase the MAAX zips from apparent short sellers—taking the long side of short sales in the open market. By late January 2007, the Harbinger funds had acquired another 18 million MAAX notes, increasing their holdings to 113% of the issue. By this point, the Harbinger funds had purchased 22 million more bonds than had ever been issued. The total cost of the MAAX position was approximately $90.7 million.

37. Due to Falcone's and the other Defendants' interference with the normal interplay of supply and demand, the bonds more than doubled in price during this period.

38. In the spring of 2007, Falcone and the other Defendants ratcheted up the pressure on the Financial Services Firm by paying off the Harbinger funds' margin debt to the firm and demanding the return of any securities, including the MAAX zips, which it had borrowed. In an

effort to meet its obligations to the Harbinger funds, the Financial Services Firm bid daily for the bonds, but could not find any to purchase.

39. In May 2007, the Financial Services Firm approached the 5027 Harbinger Defendants and asked if it had any MAAX zips to sell. Defendants replied that the Harbinger funds had such bonds and that the Financial Services Firm could have them at the price of 100, or par, despite the fact that the bonds had been selling at a deep discount to par. At the time of the offer, MAAX was in a dire financial condition, and the Harbinger funds were carrying the notes on its books at a price of 65.

40. On July 31, 2007, Defendants sold a block of the Harbinger funds' MAAX zips in the open market, effecting settlement from a short seller at 95—a price that resulted from the Harbinger funds' ownership of more than 100% of the issue. The same day, Falcone directed that the price of Harbinger funds' MAAX zip bonds be marked down from 55 so that they were carried on the funds' books at a price of 40.

41. In late September 2007, the Financial Services Firm called Falcone to try to resolve the MAAX situation. During that conversation, Falcone claimed that a price at or above par for the MAAX bonds was reasonable and tried to induce the Financial Services Firm to buy-in the outstanding MAAX short positions at a price of 105. At the end of the conversation, Falcone informed the Financial Services Firm—for the first time—of the material fact that the Harbinger funds had acquired more than the whole issue of the MAAX zips. This was the first time anyone outside of the 5027 Harbinger Defendants knew the size of the funds' MAAX position. Several days later, the Financial Services Firm informed Falcone that the firm could make no further bids for the MAAX zips as long as the Harbinger funds' position in the MAAX

zips was larger than the number of bonds issued. The Financial Services Firm refused to pay the prices asked by the 5027 Harbinger Defendants.

42. On December 24, 2007, in response to the Financial Services Firm's concerns about the size of the Harbinger funds' position in the bonds, Falcone and the other Defendants directed the funds to sell 25 million face amount of MAAX zips for $0.01 per $100 face amount (for a total of $2,500) to an off-shore retail account at a brokerage firm through a trader at an inter-dealer broker. The trader, who had a longstanding relationship with Falcone, executed the trade using trading discretion he had over the off-shore account. The brokerage firms involved in the transaction did not report it. For the next year, the trader made no effort to sell the bonds in the open market. Thus, the 25 million in MAAX zips were effectively unavailable to cover short positions in the bonds. As a result, while the sale of the 25 million in MAAX zips allowed Defendants to argue that they had reduced the Harbinger funds' ownership position below the total issue of MAAX zips, the sale did not diminish the impact of their ownership of MAAX zips.

43. At the end of the month, Falcone directed the Harbinger funds' investment adviser to write off the MAAX position as worthless. Falcone and the other Defendants, however, continued to press the Financial Services Firm to deliver the securities it owed.

44. In the first week of January 2008, Falcone informed the Financial Services Firm that the Harbinger funds had sold some of the MAAX notes and that their ownership position was below the total issue size. Falcone refused to identify the party to whom the Harbinger funds had sold the 25 million notes or give the Financial Services Firm any details of the transaction. The Financial Services Firm resumed bidding for the notes, but again could find none to deliver.

45. On January 11, 2008, the Financial Services Firm learned of two transactions in the MAAX zips at prices in the $60 range. In order to cover outstanding short positions, the Financial Services Firm purchased one million MAAX zips in the $60 range. When the Financial Services Firm subsequently learned that it had purchased the notes from the Harbinger funds, it became concerned that the $60 price was the product of the 5027 Harbinger Defendants' control of the position and again suspended the firm's trading in the security.

46. Between March and November 2008, the 5027 Harbinger Defendants adjusted or cancelled all of its unsettled MAAX trades.

Conclusion

47. The above-described conduct by Falcone, Harbinger, HCP Offshore Manager and HCP Special Situations GP was undertaken in connection with the purchase, offer, or sale of a security.

48. In connection with the violations described in the Harbinger Defendants' Admissions, Falcone, Harbinger, HCP Offshore Manager and HCP Special Situations GP acted recklessly.