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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



SECURITIES AND EXCHANGE COMMISSION,  
  
Plaintiff,  
  
-against-  
  
STEVEN B. HART,  
  
Defendant.

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against defendant Steven B. Hart ("Hart" or "Defendant"), alleges as follows:

SUMMARY OF ALLEGATIONS

1. The Commission brings this action against Hart for repeated violations of the federal securities laws from 2007 to 2011. As an investment adviser to various funds, Hart engaged in two distinct trading schemes that resulted in \$831,071 in ill-gotten gains. The first scheme involved over thirty matched trades whereby Hart directed a fund controlled by his employer to buy, at inflated prices, the securities of certain thinly traded issuers from a fund controlled by Hart. In each case, Hart generated profits for his fund, and ultimately himself, and losses for his employer's fund. The second scheme involved insider trading in the securities of nineteen thinly traded issuers. Hart traded on the basis of material nonpublic information he learned after being solicited to invest in the issuers' confidentially-marketed securities offerings.

2. Hart controls and makes all investment decisions for a small private investment fund, Octagon Capital Partners, LP (“Octagon”), which, during the time of Hart’s violations, invested Hart’s, and his family’s and friends’ money. Through Octagon, Hart is an active investor in thinly traded micro and small-cap companies, including many Chinese issuers that have gained access to the U.S. capital markets via reverse merger.

3. From 2006 to 2011, Hart also was a portfolio manager at a New Jersey-based firm that served as an investment adviser for several affiliated investment funds (the “Investment Funds”). On behalf of the Investment Funds, Hart directed investments in many of the same micro-cap and small-cap companies.

4. From January 17, 2008 through June 4, 2009, Hart directed thirty-one matched trades between Octagon and one of the Investment Funds (“Fund A”) (the “matched trading scheme”), benefitting Octagon at the expense of Fund A. Generally, Hart caused Octagon to purchase tens of thousands of shares of stock of certain small, thinly traded issuers at the going market price. On the following day, in premarket trading, Hart sold the same stock to Fund A by simultaneously placing buy and sell orders respectively in the brokerage accounts of Fund A and Octagon. The trade prices, as set by Hart, were above the prevailing market prices, ranging from \$.03 to \$1.51 above the stocks’ previous days’ closing prices, and \$.06 to \$1.50 above the prices that Octagon had paid for the very same securities.

5. As a result of this matched trading scheme, Hart generated \$586,338 in ill-gotten gains for Octagon.

6. In addition, from June 19, 2007 through March 15, 2011, while in possession of material nonpublic information, Hart illegally traded ahead of the announcements of twenty confidentially-marketed securities offerings (the “insider trading scheme”).

7. Hart had been directly solicited to invest in each of the offerings, and, in the process, had learned material nonpublic information respecting each offering, including, among other things, the name of the publicly traded issuer, the anticipated size of the offering, the share price, and the closing date.

8. As part of the solicitation and as a precondition of receiving confidential information about each issuer's offering, Hart expressly agreed to go "over-the-wall," which included a prohibition on disclosing the information to third parties and trading the issuer's securities prior to public announcement of the offering.

9. Despite these agreements, Hart, on behalf of Octagon, traded the issuers' securities between the dates he was solicited and the public announcements. His trades resulted in ill-gotten gains (or losses avoided) of \$244,733 for Octagon.

10. In addition, for two of the twenty offerings, Hart signed a securities purchase agreement ("SPA") falsely representing that, after being solicited, he had not traded the issuer's securities in the days leading up to the public announcement of the transaction. Hart's representations were intentionally and knowingly false.

#### **SECURITIES LAWS VIOLATIONS**

11. By virtue of the foregoing conduct and as further alleged in this Complaint, Defendant Hart violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

12. Unless permanently restrained and enjoined, Defendant will again engage in the acts, practices, transactions, and courses of business set forth in this Complaint and in acts, practices, transactions, and courses of business of similar type and object.

13. In addition to injunctive relief, the Commission seeks a final judgment ordering disgorgement of ill-gotten gains plus prejudgment interest, civil money penalties, and such equitable and other relief as the Court deems just, appropriate, or necessary.

### **JURISDICTION AND VENUE**

14. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)], Sections 21(d) and 21A of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u-1], and Sections 209(d) and 209(e) of the Advisers Act [15 U.S.C. §§ 80b-9(d) and 80b-9(e)].

15. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), and 77v(a)], Sections 21(d), 21(e), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 78u-1, and 78aa], and Sections 209(d), 209(e), and 214(a) of the Advisers Act [15 U.S.C. §§ 80b-9(d), 80b-9(e), and 80b-14], and 28 U.S.C. § 1331.

16. Venue in this District is proper because Defendant resides, and certain of the transactions, acts, practices, and courses of business occurred, within the Southern District of New York. In addition, there are material witnesses who reside, and have their principal places of business, within the Southern District of New York.

17. Defendant, directly or indirectly, used the means or instruments of transportation or communication in, or the instrumentalities of, interstate commerce, or of the mails, or of any facility of any national securities exchange, as described in this Complaint.

## DEFENDANT

18. **Steven B. Hart**, age 40, is a resident of New York, New York. He is the president, investment manager, portfolio manager, and sole owner and employee of Octagon Capital LLC, which is the General Partner of Octagon. Hart also represented himself in a well-known financial website as a portfolio manager at a registered investment adviser, and until recently served as a senior advisor to an investor relations firm that serves the micro-cap and small-cap industry, with an emphasis on Chinese issuers. From March 2006 through April 2011, the Investment Funds' adviser employed Hart as a portfolio manager, where, among other things, Hart oversaw the investment in PIPEs (private placements of securities of already publicly-traded companies), registered direct offerings, and other confidentially marketed offerings. Hart previously held Series 7 and 63 licenses and was associated with two registered broker-dealers.

## OTHER RELEVANT ENTITY

19. **Octagon** is a limited partnership organized under the laws of New York that operates as an investment fund. Octagon is headquartered in New York, New York. Octagon is not registered with the Commission in any capacity. It is managed by its general partner, Octagon Capital LLC, a New York limited liability company wholly owned and controlled by Hart. Octagon Capital LLC also is not registered with the Commission in any capacity. Octagon's limited partners are Hart and certain of Hart's family members. Octagon currently has approximately \$3.5 million in assets under management.

## FACTS

20. From March 2006 through April 2011, Hart was employed by the Investment Funds' adviser as a portfolio manager. The combined assets of the Investment Funds exceed \$48 million.

21. Hart's duties included advising the Investment Funds and evaluating and making investment decisions concerning securities offerings, including PIPEs, registered direct offerings, and other confidentially marketed public offerings; managing and executing trading strategies; communicating with investment bankers, placement agents, research analysts, and traders; and attending analyst meetings and conferences. Consistent with his duties, Hart had trading authority over the brokerage accounts for many of the Investment Funds, including Fund A.

22. Hart operates, manages, and makes all investment decisions for Octagon. During the time of his violations, Hart, through Octagon Capital LLC, was paid annual fees of one percent of assets under management and twenty percent of fund profits.

23. According to Octagon's limited partnership agreement, the fund seeks to invest in micro and small cap securities, specifically "undiscovered, oversold, misunderstood, forgotten and deeply discounted opportunities with a long-term and patient approach." In practice, Octagon has invested in many thinly traded, U.S. listed Chinese companies through the fund's participation in PIPEs, registered direct offerings, or other confidentially marketed public offerings.

24. From 2009 through 2011, Octagon's assets under management increased eightfold, from approximately \$500,000 to approximately \$4 million, due, at least in part, to investment returns.

25. Through his control of Octagon and his role as portfolio manager to Fund A, Hart engaged in the matched trading and insider trading schemes over a nearly four-year period, netting \$831,071 in illegal profits (or losses avoided).

**I. Hart Illegally Matched Trades Between Client Accounts to Benefit His Fund.**

26. In premarket trading, from January 17, 2008 through June 4, 2009, Hart directed thirty-one matched trades between Octagon and Fund A in the securities of nine publicly traded

companies, all at above-market prices. In each trade, Hart secretly derived profit for his own fund, Octagon, at the expense of his employer's fund, Fund A.

27. The matched-trading scheme involved three steps. First, Hart purchased the securities of these issuers through Octagon's account at an online brokerage firm. Second, a day or a few days later, Hart orchestrated trading to ensure that Octagon sold the just-acquired stock to Fund A at prices from \$.03 to \$1.51 above the previous day's closing prices. Third, to prevent detection by his employer, Hart almost immediately sold the overpriced securities in Fund A's brokerage account. Although Hart generated losses in Fund A's account, the losses were masked by other trading activity and, importantly, because Hart typically bought and sold the securities for Fund A on the same day.

28. Specifically respecting the matched trades, Hart placed the sell orders for Octagon electronically in its online brokerage account and, simultaneously, placed buy orders for Fund A directly with a registered representative at another brokerage firm. Using instant messages, Hart communicated the buy orders to the registered representative for Fund A's account, who later confirmed their execution in instant messages back to Hart. The matching of the Octagon and Fund A trades was virtually certain given that: (a) the buy and sell orders were placed within seconds of each other; (b) the buy and sell orders occurred at prices significantly above the prior day's closing price; and (c) many of the issuers' securities were thinly traded and thus without active premarket trading.

29. In each instance, the simultaneous orders Hart placed resulted in sales of securities from Octagon to Fund A at inflated prices.

30. Then, on Hart's instructions, Fund A, on the same day or within a few days of purchase, typically sold on the open market the stock it had acquired through the matched trades. Each of these transactions resulted in a loss to Fund A.

31. The nine companies in which Hart conducted matched trades are:
- a. China Information Security Technology (NASDAQ: CPBY) (“CPBY”) (now known as China Information Technology, Inc. and trading under the symbol CNIT) (five matched trades);
  - b. Elixir Gaming Technologies, Inc. (NYSE MKT: EGT) (“EGT”) (now known as Entertainment Gaming Asia, Inc.) (five matched trades);
  - c. Fushi International, Inc. (NASDAQ: FSIN) (“FSIN”) (now known as Fushi Copperweld, Inc.) (two matched trades);
  - d. Harbin Electric, Inc. (NASDAQ: HRBN) (“HRBN”) (one matched trade);
  - e. M/I Homes (NASDAQ: MHO) (“MHO”) (one matched trade);
  - f. New Motion, Inc. (OTC: NWMO) (“NWMO”) (now known as Atrinsic Inc.) (two matched trades);
  - g. PharmAthene, Inc. (NYSE MKT: PIP) (“PIP”) (one matched trade);
  - h. Wave Systems, Inc. (NASDAQ: WAVX) (“WAVX”) (one matched trade); and
  - i. Zhongpin Inc. (NASDAQ: HOGS) (“HOGS”) (thirteen matched trades).

**China Information Security Technology (Five Matched Trades)**

32. On September 9, 2008, Hart purchased, on behalf of Octagon, 26,016 shares of CPBY at \$5.23 per share. The company’s stock closed at \$5.16 per share that day. On the following day, in premarket trading, Hart sold Octagon’s 26,016 shares of CPBY to fund A at \$5.95 per share, an above market price. As a result of this transaction, Octagon realized \$18,732 in profits. On the same day, Hart sold the 26,016 CPBY shares in Fund A’s account at \$4.99 per share, for a loss to Fund A.



33. On September 10, 2008, Hart purchased, on behalf of Octagon, 48,316 shares of CPBY at \$4.75 per share. The company's stock closed at \$5.00 per share that day. On September 12, Hart sold Octagon's 48,316 shares of CPBY to Fund A at \$5.50 per share, an above market price. As a result of this transaction Octagon realized \$36,237 in profits. On the same day, Hart sold the 48,316 CPBY shares in Fund A's account at \$4.85 per share, for a loss to Fund A.

34. On September 23, 2008, Hart purchased, on behalf of Octagon, 90,000 shares of CPBY at \$4.93 per share. The company's stock closed at \$5.09 per share that day. On the following day, in premarket trading, Hart sold Octagon's 90,000 shares of CPBY to Fund A at \$5.60 per share, an above market price. As a result of this transaction, Octagon realized \$60,300 in profits. On September 29, 2008, Hart sold the 90,000 CPBY shares in Fund A's account at \$4.45 per share, for a loss to Fund A.

35. On October 14, 2008, Hart purchased, on behalf of Octagon, 40,000 shares of CPBY at \$4.33 per share. The company's stock closed at \$4.44 per share that day. On the following day, in premarket trading, Hart sold Octagon's 40,000 shares of CPBY to Fund A at \$4.90 per share, an above market price. As a result of this transaction, Octagon realized \$22,800 in profits. On October 20, 2008, Hart sold the 40,000 CPBY shares in Fund A's account at \$3.79 per share, for a loss to Fund A.

36. On October 15, 2008, Hart purchased, on behalf of Octagon, 20,798 shares of CPBY at \$3.70 per share. The company's stock closed at \$3.56 per share that day. On October 20, in premarket trading, Hart sold Octagon's 20,798 shares of CPBY to Fund A at \$4.26 per share, an above market price. As a result of this transaction, Octagon realized \$11,647 in profits. On October 23, 2008, Hart sold 20,000 of the CPBY shares in Fund A's account at \$3.70 per share, for a loss to Fund A.

**Entertainment Gaming Asia (Five Matched Trades)**

37. On January 16, 2008, Hart purchased, on behalf of Octagon, 10,000 shares of EGT at \$4.08 per share. The company's stock closed at \$4.07 per share that day. On the following day, in premarket trading, Hart sold Octagon's 10,000 shares of EGT to Fund A at \$4.44 per share, an above market price. As a result of this transaction, Octagon realized \$3,600 in profits. On January 23, 2008, Hart sold the 10,000 EGT shares in Fund A's account at \$3.70 per share, for a loss to Fund A.

38. On February 13, 2008, Hart purchased, on behalf of Octagon, 15,000 shares of EGT at \$4.21 per share. The company's stock closed at \$4.15 per share that day. On February 15, in premarket trading, Hart sold Octagon's 15,000 shares of EGT to Fund A at \$4.40 per share, an above market price. As a result of this transaction, Octagon realized \$2,850 in profits. On the same day, Hart sold the 15,000 EGT shares in Fund A's account at \$4.17 per share, for a loss to Fund A.

39. On February 25, 2008, Hart purchased, on behalf of Octagon, 40,000 shares of EGT at \$3.41 per share. The company's stock closed at \$3.49 per share that day. On the following day, in premarket trading, Hart sold Octagon's 40,000 shares of EGT to Fund A at \$3.77 per share, an above market price. As a result of this transaction, Octagon realized \$14,400 in profits. Between February 27 and February 28, 2008, Hart sold the 40,000 EGT shares in Fund A's account at \$3.06 per share, for a loss to Fund A.

40. On March 19, 2008, Hart purchased, on behalf of Octagon, 55,000 shares of EGT at \$2.30 per share. The company's stock closed at \$2.30 per share that day. On the following day, in premarket trading, Hart sold Octagon's 55,000 shares of EGT to Fund A at \$2.90 per share, an above market price. As a result of this transaction, Octagon realized \$33,000 in profits.

On the same day, Hart sold the 55,000 EGT shares in Fund A's account at \$2.30 per share, for a loss to Fund A.

41. On June 16, 2008, Hart purchased, on behalf of Octagon, 22,500 shares of EGT at \$1.60 per share. The company's stock closed at \$1.68 per share that day. On the following day, in premarket trading, Hart sold Octagon's 22,500 shares of EGT to Fund A at \$1.93 per share, an above market price. As a result of this transaction, Octagon realized \$7,425 in profits. On June 18, 2008, Hart sold the 22,500 EGT shares in Fund A's account at \$1.59 per share, for a loss to Fund A.

**Fushi Copperweld, Inc. (Two Matched Trades)**

42. On December 9, 2008, Hart purchased, on behalf of Octagon, 30,000 shares of FSIN at \$3.52 per share. The company's stock closed at \$3.55 per share that day. On the following day, in premarket trading, Hart sold 25,000 of Octagon's shares of FSIN to Fund A at \$4.00 per share, an above market price. As a result of this transaction, Octagon realized \$12,000 in profits. On the same day, Hart sold the 25,000 FSIN shares in Fund A's account at \$3.63 per share, for a loss to Fund A.

43. On January 12, 2009, Hart purchased, on behalf of Octagon, 12,300 shares of FSIN at \$5.23 per share. The company's stock closed at \$5.13 per share that day. On the following day, in premarket trading, Hart sold Octagon's 12,300 shares of FSIN to Fund A at \$5.55 per share, an above market price. As a result of this transaction, Octagon realized \$3,936 in profits. On the same day, Hart sold the 12,300 FSIN shares in Fund A's account at \$5.11 per share, for a loss to Fund A.

**Harbin Electric, Inc. (One Matched Trade)**

44. On November 24, 2008, Hart purchased, on behalf of Octagon, 7,500 shares of HRBN at \$5.09 per share. The company's stock closed at \$5.42 per share that day. On the

following day, in premarket trading, Hart sold Octagon's 7,500 shares of HRBN to Fund A at \$5.55 per share, an above market price. As a result of this transaction, Octagon realized \$3,450 in profits. On the same day, Hart sold the 7,500 HRBN shares in Fund A's account at \$5.24 per share, for a loss to Fund A.

**M/I Homes (One Matched Trade)**

45. On May 7, 2009, Hart purchased, on behalf of Octagon, 13,600 shares of MHO at \$15.59 per share. The company's stock closed at \$15.49 per share that day. On the following day, in premarket trading, Hart sold Octagon's 13,600 shares of MHO to Fund A at \$17.00 per share, an above market price. As a result of this transaction, Octagon realized \$19,176 in profits. Hart did not immediately sell the MHO shares in Fund A's account.

**New Motion, Inc. (Two Matched Trades)**

46. Between April 30, 2009 and May 4, 2009, Hart purchased, on behalf of Octagon, 30,000 shares of NWMO at \$1.12 per share. On May 4, the company's stock closed at \$1.22 per share. On May 5, in premarket trading, Hart sold Octagon's 30,000 shares of NWMO to Fund A at \$1.44 per share, an above market price. As a result of this transaction, Octagon realized \$9,600 in profits. Hart did not immediately sell the NWMO shares in Fund A's account.

47. Between May 4, 2009 and June 3, 2009, Hart purchased, on behalf of Octagon, 50,000 shares of NWMO at \$.98 per share. On June 3, the company's stock closed at \$.96 per share. On the following day, in premarket trading, Hart sold Octagon's 50,000 shares of NWMO to Fund A at \$1.50 per share, an above market price. As a result of this transaction, Octagon realized \$26,000 in profits. Hart did not immediately sell the NWMO shares in Fund A's account.

**Pharmathene, Inc. (One Matched Trade)**

48. Between April 24, 2009 and April 27, 2009, Hart purchased, on behalf of Octagon, 20,000 shares of PIP at \$2.33 per share. On April 27, the company's stock closed at \$2.19 per share. On April 28, in premarket trading, Hart sold Octagon's 20,000 shares of PIP to Fund A at \$2.53 per share, an above market price. As a result of this transaction, Octagon realized \$4,000 in profits. Hart did not immediately sell the PIP shares in Fund A's account.

**Wave Systems Corp. (One Matched Trade)**

49. On May 27, 2009, Hart purchased, on behalf of Octagon, 45,000 shares of WAVX at \$0.90 per share. The company's stock closed at \$.90 per share that day. On the following day, in premarket trading, Hart sold Octagon's 45,000 shares of WAVX to Fund A at \$1.40 per share, an above market price. As a result of this transaction, Octagon realized \$22,500 in profits. On the same day, Hart sold the 45,000 WAVX shares in Fund A's account at \$0.96 per share, for a loss to Fund A.

**Zhongpin Inc. (Thirteen Matched Trades)**

50. On March 24, 2008, Hart purchased, on behalf of Octagon, 40,000 shares of HOGS at \$8.50 per share. The company's stock closed at \$8.50 per share that day. On the following day, in premarket trading, Hart sold Octagon's 40,000 shares of HOGS to Fund A at \$10.00 per share, an above market price. As a result of this transaction, Octagon realized \$60,000 in profits. On the same day, Hart sold the 40,000 HOGS shares in Fund A's account at \$9.02 per share, for a loss to Fund A.

51. On April 8, 2008, Hart purchased, on behalf of Octagon, 30,000 shares of HOGS at \$10.73 per share. The company's stock closed at \$10.67 per share that day. On the following day, in premarket trading, Hart sold Octagon's 30,000 shares of HOGS to Fund A at \$11.10 per share, an above market price. As a result of this transaction, Octagon realized \$11,100 in profits.

On April 10, 2008, Hart sold the 30,000 HOGS shares in Fund A's account at \$10.24 per share, for a loss to Fund A.

52. On October 17, 2008, Hart purchased, on behalf of Octagon, 22,500 shares of HOGS at \$8.78 per share. The company's stock closed at \$8.76 per share that day. On October 20, Hart sold Octagon's 22,500 shares of HOGS to Fund A at \$9.07 per share, an above market price. As a result of this transaction, Octagon realized \$6,525 in profits. On October 23, 2008, Hart sold the 22,500 HOGS shares in Fund A's account at \$8.44 per share, for a loss to Fund A.

53. On October 22, 2008, Hart purchased, on behalf of Octagon, 20,800 shares of HOGS at \$8.05 per share. The company's stock closed at \$8.02 per share that day. On the following day, in premarket trading, Hart sold Octagon's 20,800 shares of HOGS to Fund A at \$9.00 per share, an above market price. As a result of this transaction, Octagon realized \$19,760 in profits. On October 28, 2008, Hart sold the 20,800 HOGS shares in Fund A's account at \$8.44 per share, for a loss to Fund A.

54. On November 5, 2008, Hart purchased, on behalf of Octagon, 22,500 shares of HOGS at \$8.92 per share. The company's stock closed at \$8.78 per share that day. On the following day, in premarket trading, Hart sold Octagon's 22,500 shares of HOGS to Fund A at \$9.33 per share, an above market price. As a result of this transaction, Octagon realized \$9,225 in profits. On November 12, 2008, Hart sold the 22,500 HOGS shares in Fund A's account at \$8.44 per share, for a loss to Fund A.

55. On November 6, 2008, Hart purchased, on behalf of Octagon, 22,500 shares of HOGS at \$8.49 per share. The company's stock closed at \$8.55 per share that day. On the following day, in premarket trading, Hart sold Octagon's 22,500 shares of HOGS to Fund A at \$9.54 per share, an above market price. As a result of this transaction Octagon realized \$23,625

in profits. On November 12, 2008, Hart sold the 22,500 HOGS shares in Fund A's account at \$8.50 per share, for a loss to Fund A.

56. On November 24, 2008, Hart purchased, on behalf of Octagon, 16,500 shares of HOGS at \$8.68 per share. The company's stock closed at \$8.60 per share that day. On the following day, in premarket trading, Hart sold Octagon's 16,500 shares of HOGS to Fund A at \$9.33 per share, an above market price. As a result of this transaction, Octagon realized \$10,725 in profits. On November 26, 2008, Hart sold the 16,500 HOGS shares in Fund A's account at \$7.77 per share, for a loss to Fund A.

57. On January 5, 2009, Hart purchased, on behalf of Octagon, 20,000 shares of HOGS at \$12.09 per share. The company's stock closed at \$11.96 per share that day. On the following day, in premarket trading, Hart sold Octagon's 20,000 shares of HOGS to Fund A at \$12.77 per share, an above market price. As a result of this transaction, Octagon realized \$13,600 in profits. On the same day, Hart sold the 20,000 HOGS shares in Fund A's account at \$12.01 per share, for a loss to Fund A.

58. On January 12, 2009, Hart purchased, on behalf of Octagon, 20,000 shares of HOGS at \$10.78 per share. The company's stock closed at \$11.08 per share that day. On the following day, in premarket trading, Hart sold Octagon's 20,000 shares of HOGS to Fund A at \$11.77 per share, an above market price. As a result of this transaction, Octagon realized \$19,800 in profits. On the same day, Hart sold the 20,000 HOGS shares in Fund A's account at \$10.90 per share, for a loss to Fund A.

59. On January 27, 2009, Hart purchased, on behalf of Octagon, 45,000 shares of HOGS at \$10.50 per share. The company's stock closed at \$10.50 per share that day. On the following day, in premarket trading, Hart sold 42,500 of Octagon's shares of HOGS to Fund A at \$11.33 per share, an above market price. As a result of this transaction, Octagon realized

\$35,275 in profits. On the same day, Hart sold the 42,500 HOGS shares in Fund A's account at \$10.39 per share, for a loss to Fund A.

60. On February 23, 2009, Hart purchased, on behalf of Octagon, 32,500 shares of HOGS at \$8.59 per share. The company's stock closed at \$8.39 per share that day. On the following day, in premarket trading, Hart sold Octagon's 32,500 shares of HOGS to Fund A at \$9.15 per share, an above market price. As a result of this transaction, Octagon realized \$18,200 in profits. On the same day, Hart sold the 32,500 HOGS shares in Fund A's account at \$8.56 per share, for a loss to Fund A.

61. On March 10, 2009, Hart purchased, on behalf of Octagon, 50,000 shares of HOGS at \$7.79 per share. The company's stock closed at \$7.99 per share that day. On the following day, in premarket trading, Hart sold Octagon's 50,000 shares of HOGS to Fund A at \$8.70 per share, an above market price. As a result of this transaction, Octagon realized \$45,500 in profits. On the same day, Hart sold the 50,000 HOGS shares in Fund A's account at \$7.65 per share, for a loss to Fund A.

62. On April 16, 2009, Hart purchased, on behalf of Octagon, 22,500 shares of HOGS at \$9.71 per share. The company's stock closed at \$9.74 per share that day. On April 21, in premarket trading, Hart sold Octagon's 22,500 shares of HOGS to Fund A at \$9.77 per share, an above market price. As a result of this transaction, Octagon realized \$1,350 in profits. On the same day, Hart sold the 22,500 HOGS shares in Fund A's account at \$9.20 per share, for a loss to Fund A.

63. As a result of the matched trading scheme, as detailed in paragraphs 26 to 62 above, Hart generated \$586,338 in profits for Octagon.



## **II. Hart Engaged in a Repeated Pattern of Insider Trading to Benefit His Fund.**

64. Because Hart was the portfolio manager for the Investment Funds and Octagon, broker-dealers frequently solicited him to participate in various deals concerning many Chinese issuers.

65. These deals – PIPES, registered direct offerings, or other confidentially marketed public offerings – involved issuers offering their securities, through registered broker-dealers acting as placement agents, to a limited number of primarily institutional investors such as Octagon or the Investment Funds. The placement agents conducted the offerings on a confidential basis with restrictions on, among other things, trading the issuers' securities.

66. Typically, a placement agent would contact Hart and inquire whether Hart (sometimes through Octagon but more often through one of the Investment Funds) would be interested in investing in an upcoming offering. The placement agent would provide some general information about the company and the deal, such as the industry and the issuer's market-cap, and ask Hart whether he was interested in going "over-the-wall" or becoming "restricted."

67. Hart understood that going "over-the-wall" or becoming "restricted" meant that he had agreed to keep the information he had received confidential, and that he could not trade on an issuer's securities while the restriction remained in place, typically until the deal was publicly announced. Hart also understood that when he went "over-the-wall" and became restricted to trade an issuer's securities, that restriction applied not only to the Investment Funds but to Octagon as well.

68. Hart learned about each offering before it was publicly announced and agreed to use the confidential information provided to him solely for purposes of evaluating a potential investment.

69. The placement agent would not reveal specific information, including the name of the issuer, the amount of the offering, the share price (typically at a discount to the market price), and the closing date, until Hart agreed to go over the wall.

70. The fact that small and micro-cap issuers, as is the case here, are contemplating financings and the terms of those financings, including, among other things, which broker-dealer is running the deal, who may be investing, timing, price, discount, dilutive effect, and type of securities to be issued, is material information.

71. Moreover, the fact that broker-dealers deliberately brought potential investors “over-the-wall” before conveying even the name of the issuer, shows that the issuers and broker-dealers clearly considered the information about the offerings to be material and nonpublic.

72. The change in stock price and the spike in volume upon the offering announcements confirm that the market likewise viewed the information as material and that a reasonable investor would have considered important that the issuers were involved in securities offerings.

73. For each offering, Hart received material nonpublic information after expressly agreeing to maintain that information in confidence and to not trade on it. Hart, therefore, owed a duty of trust or confidence to the issuers and their agents. Hart breached that duty when he improperly traded each of the issuers’ securities while in possession of material nonpublic information.

74. The number of times Hart engaged in such activities and the consistent methodology that he used to do so demonstrate Hart’s state of mind.

75. From June 19, 2007 through March 15, 2011, while in possession of material nonpublic information, Hart traded, on behalf of Octagon, the securities of nineteen issuers conducting twenty separate offerings. In each case, Hart had been confidentially solicited by the

deal's placement agent to invest in an upcoming offering and had agreed to keep confidential information related to the offering.

76. In most instances, following the telephonic solicitation of Hart, the placement agent would send Hart an email confirming that Hart had agreed to be restricted – keep the offering information confidential and not trade the issuer's securities until the deal was publicly announced.

77. For example, Hart traded the stock of Hudson Technologies ("HDSN") on June 22, 2010, after agreeing to go "over-the-wall" earlier that day. The salesperson at the placement agent, solicited Hart by phone on June 22, and the firm followed-up with a confirmatory email that same day stating that:

"This email will confirm that you spoke to [the salesperson] about Hudson Technologies (HDSN) (the "Company"). Pursuant to your discussion, you have received material, non-public information that the Company is contemplating a registered direct transaction, and you have agreed to hold such information (including the fact that an Offering is being considered) and any additional non-public information that we provide you about the Offering in confidence. As such, you acknowledge your obligation not to use any material, non-public information that we provide to you in contravention of applicable securities laws."

78. The emails and communications varied from one placement agent to another, but generally confirmed that Hart had received the issuer's material nonpublic information and had agreed not to disclose or trade on the information.

79. In a few other instances where Hart was confidentially solicited and had agreed to be restricted, contemporaneous records maintained by the placement agents (all registered broker-dealers) and other email communications show that Hart agreed to be taken "over-the-wall" in connection with the proposed offerings and agreed to keep all information received confidential.

80. The nineteen issuers in which Hart traded while in the possession of material nonpublic information are:

- a. Cereplast (NASDAQ: CERP) (“CERP”);
- b. China Green Agriculture, Inc. (NYSE: CGA) (“CGA”);
- c. China Integrated Energy, Inc. (OTC: CBEH) (“CBEH”);
- d. China North East Petroleum Holdings Limited (NYSE MKT: NEP) (“NEP”);
- e. FuelCell Energy, Inc. (NASDAQ: FCEL) (“FCEL”);
- f. Fushi International, Inc. (NASDAQ: FSIN) (“FSIN”);
- g. Harris & Harris Group, Inc. (NASDAQ: TINY) (“TINY”);
- h. Headwaters Inc. (NYSE: HW) (“HW”);
- i. HQ Sustainable Maritime Industries, Inc. (OTC: HQSM.PK) (“HQSM”);
- j. Hudson Technologies (NASDAQ: HDSN) (“HDSN”);
- k. LeCroy Corporation (NASDAQ: LCRY) (“LCRY”);
- l. Metalico, Inc. (NYSE MKT: MEA) (“MEA”) (two offerings);
- m. New Generation Biofuels Holdings, Inc. (OTC: NGBF.PK) (“NGBF”);
- n. PharmAthene, Inc. (NYSE MKT: PIP) (“PIP”);
- o. QuickLogic Corp. (NASDAQ: QUIK) (“QUIK”);
- p. Raptor Pharmaceuticals Corp. (NASDAQ: RPTP) (“RPTP”);
- q. Satcon Technology Corp. (NASDAQ: SATC) (“SATC”);
- r. SinoHub, Inc. (NYSE MKT: SIHI) (“SIHI”); and
- s. Wave Systems Corp. (NASDAQ: WAVX) (“WAVX”).

81. For each of the offerings, Hart was confidentially solicited by phone and brought “over-the-wall” by one of the nine respective placement agents or broker-dealers.

82. “Broker-Dealer A” solicited Hart in connection with five offerings. “Broker-Dealer B” solicited Hart in connection with four offerings. “Broker-Dealer C” solicited Hart in connection with three offerings. “Broker-Dealer D” solicited Hart in connection with two offerings. “Broker-Dealer E” solicited Hart in connection with two offerings. “Broker-Dealer F” solicited Hart in connection with one offering. “Broker-Dealer G” solicited Hart in connection with one offering. “Broker-Dealer H” solicited Hart in connection with one offering. “Broker-Dealer I” solicited Hart in connection with one offering.

**Broker-Dealer A (Five Offerings)**

83. On October 12, 2007, Broker-Dealer A confidentially solicited Hart and brought him “over-the-wall” concerning a PIPE offering for FSIN, thereby restricting Hart’s ability to trade in FSIN securities. On October 25, 2007, Octagon sold short 700 shares of FSIN, but covered the short sale at a loss before FSIN issued a public disclosure announcing the offering on October 26, 2007.

84. On June 1, 2009, Broker-Dealer A confidentially solicited Hart and brought him “over-the-wall” concerning a confidentially marketed public offering for HQSM, thereby restricting Hart’s ability to trade in HQSM securities. On June 11, 2009, Octagon sold short 3,383 shares of HQSM, netting \$2,097 in ill-gotten gains on the transaction. HQSM publicly announced the offering on June 15, 2009.

85. On June 19, 2009, Broker-Dealer A confidentially solicited Hart and brought him “over-the-wall” concerning a confidentially marketed public offering for CGA, thereby restricting Hart’s ability to trade in CGA securities. On July 20, 2009, Octagon sold 18,167 shares of CGA, netting \$14,129 in ill-gotten gains on the transaction. The following day, July 21, 2009, CGA publicly announced the offering.

86. On June 26, 2009, Broker-Dealer A confidentially solicited Hart and brought him “over-the-wall” concerning a registered direct offering for WAVX, thereby restricting Hart’s ability to trade in WAVX securities. From July 14 to July 16, 2009, Octagon sold a total of 76,900 shares of WAVX, netting \$11,285 in ill-gotten gains on the transactions. On July 17, 2009, WAVX publicly announced the offering.

87. On November 29, 2010, Broker-Dealer A confidentially solicited Hart and brought him “over-the-wall” concerning a registered direct offering for CBEH, thereby restricting Hart’s ability to trade in CBEH securities. Following Hart’s solicitation and continuing through December 6, 2010, Octagon sold a total of 43,580 shares of CBEH, netting \$20,918 in ill-gotten gains on the transactions. On December 29, 2010, CBEH publicly announced the offering.

#### **Broker-Dealer B (Four Offerings)**

88. On June 6, 2007, Broker-Dealer B confidentially solicited Hart and brought him “over-the-wall” concerning a PIPE offering for MEA, thereby restricting Hart’s ability to trade in MEA securities. From June 19 through June 21, 2007, Octagon sold short a total of 8,500 shares of MEA, netting \$2,740 in ill-gotten gains from the transactions. MEA publicly announced the offering on June 22, 2007.

89. On March 13, 2008, Broker-Dealer B confidentially solicited Hart and brought him “over-the-wall” concerning another PIPE offering for MEA, thereby restricting Hart’s ability to trade in MEA securities. On March 27, 2008, Octagon sold short 12,500 shares of MEA, netting \$10,000 in ill-gotten gains on the transaction. The following day, on March 28, 2008, MEA publicly announced the offering.

90. On September 10, 2009, Broker-Dealer B confidentially solicited Hart and brought him “over-the-wall” concerning a registered direct offering for HW, thereby restricting

Hart's ability to trade in HW securities. On September 15, 2009, Octagon sold short 7,500 shares of HW and sold 200 HW puts, netting \$5,920 in ill-gotten gains on the transactions. Two days later, on September 17, 2009, HW publicly announced the offering.

91. On June 22, 2010, Broker-Dealer B confidentially solicited Hart and brought him "over-the-wall" concerning a registered direct offering for HDSN, thereby restricting Hart's ability to trade in HDSN securities. Later that same day, Octagon sold 19,790 shares of HDSN, netting \$6,661 in ill-gotten on the transaction. On July 1, 2010, HDSN publicly announced the offering.

#### **Broker-Dealer C (Three Offerings)**

92. On March 20, 2009, Broker-Dealer C confidentially solicited Hart and brought him "over-the-wall" concerning a confidentially marketed public offering for PIP, thereby restricting Hart's ability to trade in PIP securities. That same day, following Hart's solicitation, Octagon sold 20,000 shares of PIP, netting \$7,650 in ill-gotten gains on the transaction. On March 24, 2009, PIP publicly announced the offering.

93. On June 16, 2009, Broker-Dealer C confidentially solicited Hart and brought him "over-the-wall" concerning a registered direct offering for NEP, thereby restricting Hart's ability to trade in NEP securities. On September 15, 2009, Octagon sold 17,500 shares of NEP and netted \$4,200 in ill-gotten gains on the transaction. The following day, on September 16, 2009, NEP publicly announced the offering.

94. On March 14, 2011, Broker-Dealer C confidentially solicited Hart and brought him "over-the-wall" concerning a registered direct offering for SIHI, thereby restricting Hart's ability to trade in SIHI securities. Following Hart's solicitation and continuing through March 15, 2011, Octagon sold a total of 48,840 shares of SIHI, netting \$19,042 in ill-gotten gains on the transactions. On March 16, 2011, SIHI publicly announced the offering.

**Broker-Dealer D (Two Offerings)**

95. On September 25, 2009, Broker-Dealer D confidentially solicited Hart and brought him “over-the-wall” concerning a confidentially marketed public offering for TINY, thereby restricting Hart’s ability to trade in TINY securities. From September 30, 2009 through October 2, 2009, Octagon sold a total of 10,000 shares of TINY and 40 TINY puts, netting \$7,519 in ill-gotten gains on the transactions. On October 5, 2009, TINY publicly announced the offering.

96. On November 9, 2009, Broker-Dealer D confidentially solicited Hart and brought him “over-the-wall” concerning a confidentially marketed public offering for QUIK, thereby restricting Hart’s ability to trade in QUIK securities. Following Hart’s solicitation, Octagon sold a total of 60,000 shares of QUIK from November 12 through November 13, 2009, netting \$27,151 on the transactions. On November 17, 2009, QUIK publicly announced the offering.

**Broker-Dealer E (Two Offerings)**

97. On November 24, 2009, Broker-Dealer E confidentially solicited Hart and brought him “over-the-wall” concerning a registered direct offering for RPTP, thereby restricting Hart’s ability to trade in RPTP securities. On December 17, 2009, Octagon sold 40,200 shares of RPTP, netting \$25,073 in ill-gotten gains on the transaction. On the following day, December 18, 2009, RPTP publicly announced the offering.

98. On June 2, 2010, Broker-Dealer E confidentially solicited Hart and brought him “over-the-wall” concerning a registered direct offering for CERP, thereby restricting Hart’s ability to trade in CERP securities. On June 9, 2010, Octagon sold 25,000 shares of CERP and sold short another 5,000 shares, netting \$32,050 in ill-gotten gains on the transactions. The following day, June 10, 2010, CERP publicly announced the offering.



**Broker-Dealer F (One Offering)**

99. In early July, 2009, Broker-Dealer F confidentially solicited Hart and brought him “over-the-wall” concerning a registered direct offering for NGBF, thereby restricting Hart’s ability to trade in NGBF securities. Following Hart’s solicitation, Octagon sold 60,600 shares of NGBF on July, 22, 2009, netting \$15,738 in ill-gotten gains on the transaction. On July 23, 2009, NGBF publicly announced the offering.

**Broker-Dealer G (One Offering)**

100. In early June 2009, Broker-Dealer G confidentially solicited Hart and brought him “over-the-wall” concerning a confidentially marketed public offering for SATC, thereby restricting Hart’s ability to trade in SATC securities. Following Hart’s solicitation, Octagon sold 32,800 shares of SATC on June 9, 2009 and netted \$18,810 in ill-gotten gains on the transaction. On June 10, 2009, SATC publicly announced the offering.

**Broker-Dealer H (One Offering)**

101. On June 15, 2009, Broker-Dealer H confidentially solicited Hart and brought him “over-the-wall” concerning a registered direct offering for FCEL, thereby restricting Hart’s ability to trade in FCEL securities. On that same day, following Hart’s solicitation, Octagon sold 25,000 shares of FCEL, netting \$13,750 in ill-gotten gains on the transaction. On June 16, 2009, FCEL publicly announced the offering.

**Broker-Dealer I (One Offering)**

102. On November 2, 2010, Broker-Dealer I confidentially solicited Hart and brought him “over-the-wall” concerning a confidentially marketed public offering for LCRY, thereby restricting Hart’s ability to trade in LCRY securities. On November 3, 2010, before LCRY publicly announced the offering, Octagon sold short 25,000 shares of LCRY. Octagon covered the short sales the next day at a loss.

103. As a result of these transactions, as detailed above in paragraphs 64 through 102 above, Hart earned profits (or avoided losses) of \$244,733 for Octagon.

**III. Hart Made Materially False Representations in Two Securities Purchase Agreements.**

104. In connection with two of the deals for which Hart was solicited and traded on the basis of material nonpublic information, Hart signed SPAs representing that he had not traded the issuers' securities in the days leading up to the public announcement of the transactions.

105. Specifically, for each the HW and FSIN deals, Hart executed an SPA that falsely represented Octagon's trading in the issuer's stock. Hart represented that, since learning of the confidential deal, he had not transacted in the company's securities, when, in fact, that was not true. For example, the SPA that Hart executed in connection with the HW September 2009 registered direct offering provided:

4.5 Since the first date on which a Placement Agent contacted the Investor about the Offering, the Investor has not disclosed any information regarding the Offering to any third parties (other than its legal, accounting and other advisors) and has not engaged in any transactions involving the securities of the Company (including, without limitation, any Short Sales involving the Company's securities). . . . For purposes hereof, "Short Sales" include, without limitation, all "short sales" as defined in Rule 200 promulgated under Regulation SHO under the Exchange Act, whether or not against the box, and all types of direct and indirect stock pledges, forward sales contracts, options, puts, calls, short sales, swaps, "put equivalent positions" (as defined in Rule 16a-1(h) under the Exchange Act) and similar arrangements. . . .

106. Contrary to these representations, Hart transacted in HW securities after being contacted by the deal's placement agent on September 10, 2009. Hart sold short common stock and sold puts between September 15 and September 17. Hart executed the SPA on September 17, 2009, and made the false representation described above.

107. Hart engaged in substantially the same conduct in connection with the FSIN offering, during October of 2007. After being solicited to participate in the deal, Hart traded on

the basis of material nonpublic information, and, shortly afterwards, executed an SPA falsely representing that he had not transacted in the company's securities since the placement agent first contacted him.

## **CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF Violations of Section 17(a) of the Securities Act**

108. Paragraphs 1 through 107 are realleged and incorporated by reference as though fully set forth herein.

109. Defendant Hart, directly or indirectly, with scienter, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, in the offer or sale of securities: (1) employed devices, schemes, or artifices to defraud; (2) 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 the light of the circumstances under which they were made, not misleading; or (3) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit.

110. By reason of the foregoing, Defendant Hart violated, and unless enjoined will again violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

### **SECOND CLAIM FOR RELIEF Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

111. Paragraphs 1 through 107 are realleged and incorporated by reference as though fully set forth herein.

112. Hart, directly or indirectly, with scienter, by use of the means or instrumentalities of interstate commerce, or by use of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of securities: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state material

facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit.

113. By reason of the foregoing, Hart violated, and unless enjoined will again violate, 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.

**THIRD CLAIM FOR RELIEF**  
**Violation of Sections 206(1) and 206(2) of the Advisers Act**

114. Paragraphs 1 through 107 are realleged and incorporated as though fully set forth herein.

115. At all relevant times, Defendant Hart operated as an investment adviser to the Investment Funds as defined by Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)] and served in that capacity with respect to his clients and investors.

116. As alleged herein, Defendant Hart, while acting as an investment adviser, by use of the mails or any means or instrumentalities of interstate commerce, directly or indirectly, and with scienter: (a) employed devices, schemes, and artifices to defraud clients and prospective clients; and (b) engaged in transactions, practices, and courses of business that operated as a fraud or deceit upon clients and prospective clients.

117. By reason of the foregoing, Defendant Hart, violated, and unless enjoined will again violate, Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

**PRAYER FOR RELIEF**

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

- (a) Permanently enjoining Defendant Hart from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], 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, and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)];
- (b) Ordering Defendant to pay disgorgement, together with prejudgment interest;
- (c) Ordering Defendant to pay civil penalties under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Sections 21(d)(3) and 21A of the Exchange Act [15 U.S.C. §§ 78u(d)(3) and 78u-1], and Section 209(e) of the Advisers Act [15 U.S.C. § 80-b(9)(e)] for violations of the federal securities laws; and
- (d) Granting any additional relief the Court deems just, appropriate, or necessary.

Dated: New York, New York  
December 11, 2012



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