

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
SCOTT R. SACANE, J. DOUGLAS SCHMIDT.)	3:05cv1575-SRU
DURUS CAPITAL MANAGEMENT, LLC, AND)	
DURUS CAPITAL MANAGEMENT (N.A.), LLC)	JURY TRIAL DEMANDED
)	
Defendants.)	

COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission") alleges the following against defendants Scott R. Sacane ("Sacane"), J. Douglas Schmidt ("Schmidt"), Durus Capital Management, LLC ("Durus"), and Durus Capital Management (N.A.), LLC ("Durus N.A.") (collectively, Durus and Durus N.A. be referred to as the "Durus Advisers"):

SUMMARY

1. During the period of at least November 11, 2002 through July 24, 2003, Sacane, acting through the Durus Advisers, and with the help of Schmidt, orchestrated several fraudulent schemes involving the common stock of Esperion Therapeutics, Inc. ("Esperion") and Aksys Ltd. ("Aksys"). The Durus Advisers were investment advisers to two hedge funds that owned substantial amounts of Esperion and Aksys stock. Sacane was the managing member of Durus, and the managing director of Durus N.A., and Schmidt was the chief operating officer of Durus. The defendants' schemes were designed to manipulate the markets for Esperion and Aksys stocks so as to artificially inflate the performance and value of the hedge funds managed by

Sacane through the Durus Advisers, which garnered Sacane and the Durus Advisers increased fees. Once the defendants' schemes were exposed in July 2003: Aksys' closing stock price fell 43%, from \$15.01 to \$8.49, which resulted in lost market capitalization value of approximately \$193,753,595; and, Esperion's closing stock price fell 23.5%, from \$19.88 to \$15.20, which resulted in lost market capitalization value of approximately \$137,601,201. In furtherance of the schemes, defendants: (1) manipulated the market for both Esperion and Aksys stock by making regular and substantial purchases of both stocks so as to dominate their markets and create the false appearance of real demand to drive up the stocks' price, while concealing the purchases by failing to file various forms and schedules as required by the federal securities laws, making false filings with the Commission, and making misrepresentations to third parties; (2) made misrepresentations to officers of Esperion about their purchases to prevent Esperion from implementing a stock dilution plan that would have substantially reduced the value of stock held by the hedge funds managed by defendants; (3) made misrepresentations to officers of Aksys about their purchases to prevent Aksys from implementing a similar stock dilution plan; (4) made misrepresentations to Sacane's former employer about purported non-public information Sacane possessed about both companies in order to prevent the former employer from selling Aksys and Esperion stock in an attempt to bolster the manipulation scheme; and, (5) sold stock of both companies without disclosing their ownership position as required by the federal securities laws. In addition to defrauding investors of Esperion and Aksys, the defendants breached their fiduciary duties to their advisory clients through the undisclosed manipulation, which had the end result of increasing the fees received paid by the clients and in the funds holding high concentrations of two thinly-traded stocks that defendants had manipulated. Defendants'

undisclosed purchases of Esperion and Aksys stock artificially inflated the price of both stocks. From November 2002 through July 2003, Esperion's stock price more than tripled from \$5.65 to approximately \$20, and Aksys' stock price quadrupled from \$3.65 to approximately \$15. By July 24, 2003, the defendants controlled approximately 33% of Esperion's outstanding stock and approximately 78% of Aksys' outstanding stock.

2. Through the activities alleged in this complaint: (a) Sacane and Durus violated Section 17(a) of the Securities Act of 1933 ("Securities Act"); (b) Sacane, Durus, and Durus N.A. (collectively, the "Sacane Defendants") violated Sections 10(b), 13(d), 13(f), 13(g), 16(a), and 16(c) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 10b-5, 13d-1, 13d-2, 13f-1, and 16a-3 thereunder, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"); and (c) Schmidt violated Sections 13(d) and 13(f) of the Exchange Act and Rules 13d-1, 13d-2, and 13f-1 thereunder, and aided and abetted the Sacane Defendants' violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act.

3. Accordingly, the Commission seeks: (a) entry of a permanent injunction prohibiting the defendants from further violations of the relevant provisions of the federal securities laws; (b) disgorgement of all ill-gotten gains, plus pre-judgment interest thereon, from each defendant; and (c) imposition of a civil penalty against each defendant due to the egregious nature of their violations.

JURISDICTION

4. The Commission seeks a permanent injunction and disgorgement of ill-gotten gains pursuant to Sections 20(b) and (c) of the Securities Act [15 U.S.C. § 77t(b) & (c)], Sections 21(d) and (e) of the Exchange Act [15 U.S.C. § 78u(d) & (e)], and Sections 209(d) and (e) of the Advisers Act [15 U.S.C. §§ 80b-9(d) and 80b-9(e)]. The Commission seeks imposition of civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

5. This Court has jurisdiction over this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v], Sections 21 and 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14]. The Sacane Defendants all reside in this District, and many of the acts and transactions alleged in this complaint occurred in this District.

6. In connection with the conduct described in this complaint, the defendants directly or indirectly made use of the mails or the means or instrumentalities of interstate commerce or of the mails, or of the facilities of any national securities exchange.

DEFENDANTS

7. **Sacane**, age 38, lives in Weston, Connecticut. He is the founder and managing member and/or director of the Durus Advisers. Sacane was a registered representative associated with various broker-dealers registered with the Commission and held a general securities license from 1994 through 1998. Sacane formed the Durus Advisers in 1999 and was their majority owner at all relevant times. At all relevant times, Sacane exercised complete control over all

aspects of the Durus Advisers' operations, including investment decisions. As such, Sacane had numerous responsibilities, including making the filings with the Commission on behalf of the Durus Advisers that were required by the federal securities laws. At same the time Sacane established the Durus Advisers, he was also employed by Perseus, LLC ("Perseus"), a Washington, D.C.-based money manager, as a managing director. At Perseus, Sacane managed two accounts on behalf of Perseus clients that invested in securities issued by companies involved in life sciences and related areas. Sacane left the employment of Perseus in approximately December 2002. During the Commission's investigation of this matter, Sacane asserted his Fifth Amendment privilege against self-incrimination and refused to answer questions regarding the facts underlying the allegations set forth in this complaint.

8. **Schmidt**, age 40, lives in New York, New York, and was a member of Durus and its chief operating officer and chief compliance officer at all relevant times. Schmidt owned a 7.5% interest in Durus. At all relevant times, among other things, Schmidt's duties included making the filings with the Commission on behalf of the Durus Advisers that were required by the federal securities laws. Schmidt stopped working at Durus sometime after July 2003.

9. **Durus Capital Management, LLC**, is a Delaware limited liability company whose principal place of business at all relevant times was South Norwalk, Connecticut, and whose managing member was Sacane. Sacane established Durus in November 1999. The firm was initially named Highline Capital Management, LLC and changed its name to Durus Capital Management, LLC in November 2001. Sacane established the firm for the purpose of investing investor funds in various securities through hedge funds he advised.

10. **Durus Capital Management (N.A.), LLC**, is a Delaware limited liability company whose principal place of business at all relevant times was South Norwalk, Connecticut, and whose managing director was Sacane. Sacane established Durus N.A. in November 1999. The firm was initially named Highline Capital Management (N.A.), LLC and changed its name to Durus Capital Management (N.A.), LLC in November 2001. Sacane established the firm for the purpose of investing investor funds in various securities through hedge funds he advised.

I. BACKGROUND

A. The Durus Advisers

11. At all relevant times, the Sacane Defendants were "investment advisers" within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)].

12. Durus was at all relevant times the investment adviser for a hedge fund called Durus Life Sciences Master Fund Ltd. (the "Master Fund"), a Cayman Islands limited liability company. Investors invested in the Master Fund through either a domestic feeder fund named Durus Life Sciences Fund, LLC, or an offshore feeder fund named Durus Life Sciences International Fund, Ltd. The domestic and offshore feeder funds combined comprise 100% of the total investment in the Master Fund.

13. At all times relevant to the complaint, Sacane owned a 1.036% interest in the Durus Life Sciences Fund, LLC.

14. At all times relevant to the complaint, Schmidt owned a 0.124% interest in the Durus Life Sciences Fund, LLC.

15. Durus N.A. was at all relevant times the investment adviser for the Artal Long Biotech Fund, LLC ("Artal"). Artal was first funded in early 2003, and Durus started trading on Artal's behalf on May 14, 2003. Collectively, the Master Fund and Artal will be referred to as the "Durus Funds."

16. At all relevant times, the Durus Advisers employed a third-party administrator to perform various administrative functions, including the preparation of daily spreadsheets reflecting the amounts of various stocks that the Master Fund owned.

17. At all relevant times, the Durus Advisers collectively had assets under management of at least \$100 million.

18. At all relevant times, the Sacane Defendants were required by contract to provide periodic reports to investors in the Durus Funds that included information regarding, among other things, the funds' performance and net asset values. The Master Fund received such reports, but Artal did not.

19. The Durus Advisers managed the Durus Funds in return for a monthly management fee equal to .125% of the funds' net asset value and a quarterly incentive fee equal to 20% of the profits generated in the funds during the prior quarter.

20. In 2002, the Master Fund paid Durus a management fee of approximately \$3.9 million and an incentive fee of \$1.9 million. Although Durus obtained some positive quarterly results in 2002, overall the Master Fund had a negative return of approximately -3.4% for the year.

21. For the first two quarters of 2003, however, primarily as a result of the illegal schemes alleged herein, Sacane and Durus achieved a return of more than 50% in the Master

Fund. As a result of its undisclosed illicit schemes, Durus substantially increased the fees that it received from the Master Fund during the first six months of 2003. . Durus received approximately \$2.9 million in management fees and \$40 million in performance fees from the Master Fund during the first six months of 2003.

B. Aksys and Esperion

22. Aksys, incorporated in 1991 in Delaware and based in Lincolnshire, Illinois, is in the business of providing hemodialysis products and services for patients suffering from chronic kidney failure. Its stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and is traded on the NASDAQ National Market System.

23. Esperion, incorporated in 1998 in Delaware and based in Ann Arbor, Michigan, was a biopharmaceutical company focused on development of drugs to treat acute and chronic cardiovascular disease. Its stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and was traded on the NASDAQ National Market System. On December 21, 2003, Esperion and Pfizer, Inc. announced an agreement pursuant to which Pfizer purchased all outstanding Esperion stock for \$35 per share. As a result, Esperion is now a division of Pfizer.

C. Trading of Aksys and Esperion Stock Through November 8, 2002

24. At Sacane's direction, Durus started purchasing Aksys and Esperion stock through broker-dealers in January 2002 and July 2001, respectively.

25. Between January 7, 2002 and November 8, 2002, at Sacane's direction, Durus purchased at least 4,536,886 shares of Aksys stock and sold 76,600 shares for the Master Funds on the Nasdaq National Market. This net amount (4,460,286), plus the 1,538,000 shares Durus

had purchased directly from Aksys in a private placement (for a total of 5,998,286), represented 23.5% of Aksys' outstanding stock as of November 8, 2002, which was 25,485,944.

26. Between July 6, 2001 and November 8, 2002, at Sacane's direction, Durus purchased at least 4,470,755 shares of Esperion stock and sold 55,300 shares for the Durus Funds on the Nasdaq National Market. This net amount (4,415,455), plus the 300,000 shares Durus had purchased directly from Esperion in a private placement (for a total of 4,715,455), represented 16% of Esperion's outstanding stock as of November 8, 2002, which was 29,353,416.

27. By November 8, 2002, Sacane had purchased at least 1,188,181 million shares of Aksys and at least 1,444,200 million shares of Esperion in Perseus accounts over which he had control.

28. On November 8, 2002, Durus electronically filed a Schedule 13G with the Commission reporting Sacane as the beneficial owner of 5,562,390 shares of Aksys stock (4,374,209 shares as managing member of Durus and 1,188,181 shares as portfolio manager of Perseus), which represented 21.8% of the outstanding common stock of Esperion. Sacane signed the Schedule 13G.

29. Prior to November 8, 2002, Durus filed three Schedules 13G reporting Sacane's beneficial ownership of Aksys stock.

30. On November 8, 2002, Durus filed electronically with the Commission a Schedule 13G reporting Sacane as the beneficial owner of 6,390,217 shares of Esperion stock (4,946,017 shares as managing member of Durus and 1,444,200 shares as portfolio manager of Perseus), which represented 21.8% of the outstanding common stock of Esperion. Sacane signed the Schedule 13G.

31. Prior to November 8, 2002, Durus filed four Schedules 13G reporting Sacane's beneficial ownership of Esperion stock.

II. AKSYS SCHEMES

A. Manipulation of the Market for Aksys Stock

32. From November 11, 2002 through July 24, 2003, Sacane used the Durus Advisers to purchase substantial amounts of Aksys stock every week and concealed those purchases from the market by falsely reporting holdings in two filings with the Commission and failing to make numerous other required public filings with the Commission regarding his trading in Aksys.

33. From November 11, 2002 through July 24, 2003, at Sacane's direction, Durus purchased 15,635,515 shares of Aksys stock and sold 417,137 shares on behalf of the Master Fund. At all times relative to this complaint, Aksys stock constituted one of the largest holdings in the Master Fund.

34. From May 14, 2003 through May 30, 2003, at Sacane's direction, Durus N.A. purchased an additional 498,100 shares of Aksys stock on behalf of Artal. A summary of the transactions, together with the purchases of Durus on behalf of the Master Fund are set forth in Appendix A hereto.

35. From November 11, 2002 through July 24, 2003, the Durus Advisers' Aksys trades on behalf of the Durus Funds constituted an average of approximately 40% of the daily trading volume, and they comprised approximately 41% of the total volume of Aksys traded during this period. The Durus Advisers' percentage of daily trading volume is set forth in Appendix B hereto.

36. From November 11, 2002 through July 24, 2004, due at least in part to the Durus Advisers' manipulative stock purchases, the price of Aksys stock increased approximately four-fold, from \$3.65 per share to \$15 per share.

37. From November 11, 2002 through July 24, 2003, there were no public announcements by Aksys that would explain this increase.

38. These purchases of Aksys stock, which defendants knowingly or recklessly failed to disclose as required by law, created the false impression that the market demand for Aksys stock was greater than in fact it was. The concealed market domination by the defendants was designed to manipulate the market for Aksys stock. The defendants benefitted from the manipulation by increasing the funds' performance and Durus Advisers' fees, and directly benefitted Sacane and Schmidt given their ownership interest in Durus Life Sciences Fund, LLC (the domestic feeder fund).

B. Misrepresentations to Aksys

39. At all times relevant to the allegations in this complaint, Aksys had in place a shareholder rights agreement that, among other things, contained a provision (triggered if a shareholder (the "15% Shareholder") acquired 15% or more of the company's outstanding stock) that enabled the company to issue additional stock to all shareholders other than the 15% Shareholder (the "poison pill"). The issuance of the stock would have the effect of diluting the ownership stake and decreasing the value of the shares held by the 15% Shareholder. The shareholder rights agreement also provided an exception to the poison pill if a shareholder's acquisition of more than 15% of the company's stock was "inadvertent."

40. In early April 2003, Aksys' CEO and CFO realized for the first time that Sacane had exceeded the 15% threshold in the company's shareholder rights agreement.

41. Aksys' CEO and CFO contacted Sacane to inform him that he had exceeded this 15% threshold.

42. In response, on April 10, 2003, Sacane sent Aksys' CFO an e-mail stating, "Here are a few sentences describing my role as a portfolio manager at Durus Capital and Perseus Capital Management and our current ownership of AKSYS." Sacane attached a letter to this e-mail stating, among other things, that Durus only owned 5,238,248 shares of Aksys.

43. The 5,238,248 shares that Sacane said Durus owned constituted approximately 19.5% of the outstanding stock of Aksys and was the same amount Durus reported in its latest Form 13F, filed with the Commission on February 14, 2003 (which falsely under-reported Durus' ownership of Aksys stock as of December 31, 2002 by a million shares).

44. In fact, on April 10, 2003, Durus owned over 10.5 million shares of Aksys, which constituted nearly 40% of Aksys' outstanding stock.

45. To forestall implementation of the poison pill in Aksys' shareholder rights agreement, Sacane and Aksys entered into an agreement dated April 11, 2003.

46. This agreement recited that Sacane owned 5,238,248 shares, a recitation that Sacane expressly promised in the agreement was true.

47. In fact, as of April 11, 2003, Durus owned approximately 11.1 million shares of Aksys stock, which constituted 42% of Aksys' outstanding stock.

48. Sacane knew, or was reckless in not knowing, that Durus owned significantly more Aksys stock than he reported to Aksys on April 10, 2003 and was set forth in the April 11,

2003 agreement because, at a minimum: (a) he received daily spreadsheets from Durus' trader reflecting the number of shares Durus owned of each stock in its portfolio, which, between April 1, 2003 and April 11, 2003, showed that Durus owned between 10.6 million and 11.1 million shares of Aksys stock; (b) he had regularly instructed Durus' trader to buy additional stock and had placed electronic orders to purchase Aksys stock himself beginning in January 2003; and (c) he told Schmidt to reduce by one million the number of Aksys shares reported on Durus' latest Form 13F – the same false number included in the April 11, 2003 agreement.

49. In the April 11, 2003 agreement, Sacane also promised that he would not purchase any additional shares of Aksys and that he would reduce Durus' stake below 15% of Aksys' outstanding stock within two years.

50. The April 11, 2003 agreement further provided that, "[f]or so long as the Sacane Group is in compliance with the terms of the Agreement, the Sacane Group shall not be deemed an Acquiring Person under the Company's Rights Agreement."

51. Sacane did not tell either Schmidt or Durus' trader that he had signed the April 11, 2003 agreement, nor did he establish any procedures at Durus to ensure that Durus and its representatives complied with the agreement.

52. Sacane never complied with the April 11, 2003 agreement. Notwithstanding the express terms of that agreement, which prohibited Durus and Sacane from purchasing any additional Aksys stock, Durus, at Sacane's direction, continued to purchase Aksys stock, accumulating nearly 8.9 million additional shares on behalf of the Durus Funds between April 11 and July 24, 2003, during which period Aksys' stock price more than doubled from \$7.24 per share to \$15.01 per share.

53. Sacane's scheme to hide his purchases of Aksys' stock from Aksys allowed him to continue his manipulation of the market for Aksys and avoid the loss that would have occurred if the poison pill was enforced, both from the immediate diminution in value caused by the dilution and the likely negative reaction in the market.

C. Failure to Disclose Trading of Aksys Stock

54. On July 23-24, 2003, representatives of the Durus Advisers' prime broker contacted Sacane regarding his ownership positions in Aksys. Those representatives informed Sacane that if he did not inform the company and the Commission about the Durus Defendants' ownership position, the prime broker would.

55. On July 24, 2003, Sacane told Aksys' management that he had "inadvertently" purchased 19 million shares of Aksys stock and that he thought he had directed that the Durus Advisers' purchases of Aksys stock be stopped in the Fall of 2002. These statements were false.

56. On July 25, 2003, Sacane sent a letter to Aksys in which he falsely described a purported buying program he utilized to accumulate Aksys stock. In that letter, Sacane falsely stated:

The buying program was initiated in 2001 . . . and involved the use of ECN's, particularly Lava Trading Systems, to accumulate Shares throughout the trading day based on a percentage of daily volume. Standing orders were also left in place with third party traders to accumulate Shares based on a percentage of trading volume. These two sources constituted a buying program that ran daily and were not altered on a frequent basis.... When the Standstill Agreement was entered into, Scott Sacane, the person responsible for portfolio management for [the Durus Funds], directed that the buying program be discontinued. However, the buying program inadvertently continued and that continuation when unnoticed until brought to Mr. Sacane's attention by [the Durus Advisers' prime broker] on July 23, 2003.

57. In fact, Sacane's purchases of Aksys were not inadvertent, the Durus Advisers did not utilize a "buying program" to accumulate Aksys stock, and Sacane never directed that Durus' purchases of Aksys stock be stopped in either the Fall of 2002 or April 2003. Rather, Sacane expressly instructed the Durus Advisers' trader to purchase Aksys stock throughout the period November 11, 2002 through July 24, 2003, and he made additional purchases of Aksys stock himself.

58. On July 25, 2003, Aksys issued a press release disclosing that Sacane had advised the company that "investors he represents have accumulated in excess of 20 million shares of the company's stock out of approximately 29.7 million shares currently outstanding."

59. On July 28, 2003, the defendants electronically filed a Schedule 13D with the Commission, which contained Sacane's electronic signature, regarding the Sacane Defendants' ownership position in Aksys. In response to item number 4 of Schedule 13D, which requires the "reporting person" to disclose the purpose of the reported transaction, the Sacane Defendants falsely stated, "In July 2003, [the Sacane Defendants] discovered that from April 2003 through July 24, 2003, they had inadvertently acquired additional shares of [Aksys stock], as reported herein." This statement was false because the Sacane Defendants knew about their Aksys stock purchases all along, and those purchases were not inadvertent.

60. From March 6, 2003 through July 24, 2003, Durus, at Sacane's direction, sold at least 417,137 shares of Aksys stock for a total amount of \$5,686,791 without disclosing the amount of Aksys stock of which Durus was the beneficial owner as required by the federal securities laws. (These sales do not include the short sales described below.)

61. Once their combined ownership position exceeded 20% of the outstanding common stock of Aksys, Section 13 of the Exchange Act, and relevant rules thereunder, required the Sacane Defendants to promptly amend their public filings to disclose any material change in their holdings. A material change includes any increase or decrease in holdings equal to, or larger than, 1% of the company's total outstanding stock.

62. From November 11, 2002 through July 28, 2003, the Sacane Defendants and Schmidt, who had responsibility for making such filings, failed to file with the Commission at least 43 Schedules 13D based on net cumulative purchases or sales of at least 1% of the outstanding Aksys stock.

63. Once their combined ownership position exceeded 10% of the outstanding common stock of Aksys, Section 16 of the Exchange Act, and relevant rules thereunder, required the Sacane Defendants to publically report its ownership position and other information on Form 3 and to report any transactions thereafter on Form 4. From at least November 11, 2002 through July 28, 2003, the Sacane Defendants failed to make the filings required under Section 16 of the Exchange Act, and the relevant rules thereunder with the Commission.

D. Market Effect of Disclosure of Aksys Trading

64. The disclosure of the Sacane Defendants' ownership position in Aksys in July 2003 adversely affected Aksys' ability to raise capital in the market.

65. From July 24, 2003 (the day before Aksys issued a press release disclosing the Sacane Defendants' ownership position) through July 29, 2003 (the day after the Sacane Defendants filed their Schedule 13D reporting their ownership position in Aksys), Aksys' closing

stock price fell 43%, from \$15.01 to \$8.49, which resulted in lost market capitalization value of approximately \$193,753,595.

III. ESPERION SCHEMES

A. Manipulation of the Market for Esperion Stock

66. From November 11, 2002 through July 24, 2003, Sacane used the Durus Advisers to purchase substantial amounts of Esperion stock every week and concealed those purchases from the market by falsely reporting holdings in one filing with the Commission and failing to make numerous other required public filings with the Commission regarding his trading in Esperion.

67. From November 11, 2002 through July 24, 2003, at Sacane's direction, Durus purchased 7,274,020 shares of Esperion stock and sold 3,201,175 shares on behalf of the Master Fund. A summary of the transactions together with the purchases of Durus N.A. on behalf of Artal set forth in the next paragraph, are set forth in Appendix C hereto. At all relevant times to this complaint, Esperion constituted one of the largest holdings in the Master Fund.

68. From May 16, 2003 through May 30, 2003, at Sacane's direction, Durus N.A. purchased an additional 356,900 shares of Esperion stock on behalf of Artal.

69. From November 11, 2002 through July 24, 2003, Durus Advisers' Esperion trades on behalf of the Durus Funds constituted an average of approximately 35% of the daily trading volume, and they comprised approximately 25% of the total volume of Esperion stock traded during this period. The Durus Advisers' percentage of daily trading volume is set forth in Appendix D hereto.

70. From November 11, 2002 through June 24, 2003, due at least in part to the Durus Advisers' manipulative stock purchases, the price of Esperion stock increased more than two and one-half times, from \$5.65 per share to approximately \$15 per share, and from June 25, 2003 through July 24, 2003, it increased further to approximately \$20 per share.

71. From November 11, 2002 through June 25, 2003, there were no public announcements by Esperion that would explain this increase.

72. On June 26, 2003, Esperion announced positive test results for one of the drugs it was developing, which together with the defendants' schemes likely caused its stock price to increase thereafter.

73. The Durus Advisers' purchases of Esperion stock, which defendants knowingly or recklessly failed to disclose as required by law, created the false impression that the market demand for Esperion stock was greater than in fact it was. The concealed market domination by the defendants was designed to manipulate the market for Esperion stock. The defendants benefitted from the manipulation by increasing the funds' performance and Durus Advisers' fees, and directly benefitted Sacane and Schmidt given their ownership interest in Durus Life Sciences Fund, LLC (the domestic feeder fund).

B. Misrepresentations to Esperion

74. At all times relevant to the allegations in this complaint, Esperion had in place a "shareholder rights agreement" that, among other things, contained a provision (triggered if a shareholder became an "Acquiring Person" through its beneficial ownership of 15% or more of the company's outstanding stock) that enabled the company to issue additional stock to all shareholders other than the Acquiring Person (the "poison pill"). The issuance of the stock

would have the effect of diluting the ownership stake and decreasing the value of the shares held by the Acquiring Person.

75. In November 2002, officers of Esperion communicated with Sacane orally and in writing about the fact that he had exceeded the amount of shares allowed under the company's shareholder rights agreement and the consequences if Sacane was determined to be an acquiring person under the rights agreement.

76. On November 22, 2002, Esperion's CEO sent Sacane a letter stating, in part:

[A]ny person who is the Beneficial Owner (as defined in the [Shareholders] Rights Agreement) or more than 15% of the Company's outstanding Common Stock is an Acquiring Person. When a person becomes and does not cease to be an Acquiring Person, certain provisions of the Rights Agreement are triggered, including a provision for the rights (the "Rights") issued in the Company's April 19, 2002 dividend distribution to separate from the Company's Common Stock within 10 business days after the date a person becomes an Acquiring Person. The Company and its Board of Directors want to avoid the separation of the Rights from the Common Stock, which will occur on November 26, 2002 unless the Sacane Group ceases to be an Acquiring Person before that date, and are considering their options to effect this result under the Rights Agreement

The Board of Directors may consider excluding the Sacane Group from the definition of Acquiring Person if the Sacane Group makes representations to the Company and the Board, substantially in the form attached hereto, about its current and future intent with respect to its Beneficial Ownership of the Company's Common Stock.

77. The "Rights" referred to in the above paragraph, if separated from the common stock, would enable all Esperion shareholders except an Acquiring Person to purchase additional stock from Esperion, thereby diluting the Acquiring Person's ownership interest and decreasing the value of the stock held by such person.

78. As a result of the November 2002 communications between Sacane and Esperion officers, and to forestall implementation of the poison pill in Esperion's shareholder rights

agreement, Sacane signed a "certification" dated November 22, 2002, in which he represented that he was a passive investor and promised to make all requisite filings with the Commission and to provide copies of such filings to the company. Sacane never fulfilled these promises.

79. On November 26, 2002, based upon its receipt of Sacane's representations set forth in the November 22, 2002 certification, Esperion's board of directors unanimously adopted an amendment to the rights agreement providing that Sacane, Durus, and Perseus (referred to collectively in the amendment as the "Sacane Group") would be excepted from the Rights Agreement's definition of "Acquiring Person" "until the earlier of such time as the Sacane Group ... becomes the Beneficial Owner of 25% or more of the Company's common stock then outstanding [or intends to change or influence control of the Company.]"

80. Sacane did not tell either Schmidt or Durus' trader that he had signed the November 22, 2002 certification, nor did he establish any procedures at Durus to ensure that Durus and its representatives complied with the certification.

81. Between November 22, 2002 and March 31, 2003, Durus, at Sacane's direction, bought at least 2,415,407 shares of Esperion stock and sold only 400 shares. During this time, Esperion's stock price rose from \$6.75 to \$9.95 without any public announcements by Esperion that would explain this increase.

82. Notwithstanding the certification he signed, Sacane never made the requisite filings with the Commission nor notified the company of his further purchases of Esperion stock until July 2003.

83. In March or April 2003, when Esperion was preparing its annual proxy statement, Esperion's chief executive officer ("CEO") and chief financial officer ("CFO") contacted Sacane to ask Sacane whether he was continuing to buy Esperion stock.

84. Sacane told Esperion's CEO and CFO that he "was not active" in Esperion and that his holdings hadn't changed. These statements were false.

85. Sacane knew these statements were false because he knew or was reckless in not knowing that his purchasing activity had never stopped. In fact, he received daily spreadsheets from the Durus' trader (which the trader obtained from the Durus' third-party administrator) reflecting the increasing number of shares Durus owned of Esperion stock in its portfolio, and he placed numerous electronic orders to purchase Esperion stock himself beginning in January 2003.

86. Sacane's scheme to hide his purchases of Esperion's stock from Esperion allowed him to continue his manipulation of the market for Esperion and avoid the loss that would have occurred if the poison pill was enforced, both from the immediate diminution in value caused by the dilution and the likely negative reaction in the market.

C. Failure to Disclose Trading of Esperion Stock

87. On July 23-24, 2003, representatives of the Durus Advisers' prime broker contacted Sacane regarding his ownership position in Esperion. Those representatives informed Sacane that if he did not inform the company and the Commission about Durus' ownership position, the prime broker would.

88. On July 25, 2003, Sacane told Esperion's management that he had inadvertently acquired additional Esperion stock, that he owned approximately 29% of Esperion's outstanding

stock, and that the purchases of Esperion stock occurred because "three levels of software were blown through."

89. In fact, Sacane's purchases of Esperion stock were not inadvertent, and "three levels of software" were not "blown through."

90. On July 29, 2003, the defendants filed electronically with the Commission a Schedule 13D, which contains Sacane's electronic signature, regarding its ownership position in Esperion. In response to item number 4 of Schedule 13D, which requires the "reporting person" to disclose the purpose of the reported transaction, the Sacane Defendants stated, "In July 2003, [the Durus Advisers and Sacane] discovered that from November 22, 2002 through July 24, 2003, they had inadvertently acquired additional shares of [Esperion stock], as reported herein." This statement was false because defendants knew about their Esperion stock purchases all along, and those purchases were not inadvertent.

91. From April 15, 2003 through July 24, 2003, Durus, at Sacane's direction, sold at least 3,200,775 shares of Esperion stock for a total amount of \$57,495,813 without disclosing the amount of Esperion stock of which Durus was the beneficial owner as required by the federal securities laws.

92. Once their combined ownership position exceeded 20% of the outstanding common stock of Esperion, Section 13 of the Exchange Act, and relevant rules thereunder, required the Sacane Defendants to promptly amend their public filings to disclose any material change in their holdings. A material change includes any increase or decrease in ones holdings that is equal to, or larger than 1% of the company's total outstanding stock.

93. From November 11, 2002 through July 28, 2003, the defendants failed to file with the Commission at least 22 Schedules 13D based on net cumulative purchases or sales of at least 1% of the outstanding Esperion stock.

94. Once their combined ownership position exceeded 10% of the outstanding common stock of Esperion, Section 16 of the Exchange Act and relevant rules thereunder, required the Sacane Defendants to report its ownership position and other information on Form 3 and to report any transactions thereafter on Form 4. From at least November 11, 2002 through July 28, 2003, the Sacane Defendants failed to make the filings required under Section 16 of the Exchange Act, and the relevant rules thereunder, with the Commission.

E. Effect of Disclosure of Esperion Trading

95. Prior to July 25, 2003, Esperion planned to make a secondary offering of stock. The disclosure of the Sacane Defendants' ownership position in Esperion delayed this offering and also reduced the price Esperion received for the stock.

96. From July 28, 2003 (the day before the Sacane Defendants' filed their Schedule 13D reporting its ownership position in Esperion) through July 30, 2003 (the day after that filing), Esperion's closing stock price fell 23.5%, from \$19.88 to \$15.20, which resulted in lost market capitalization value of approximately \$137,601,201.

IV. THE DURUS FUNDS

97. During the period November 11, 2002 through July 24, 2003, the Sacane Defendants misappropriated the assets of the Durus Funds to perpetrate the illegal conduct set forth above in connection with the purchase and sale of Aksys and Esperion stock.

98. During the period November 11, 2002 through July 24, 2003, the Sacane Defendants provided periodic reports to investors in the Master Fund on a monthly and quarterly basis that included information regarding, among other things, the fund's performance. The performance figures contained in such reports were inflated as a result of the manipulation of the markets of both Aksys and Esperion stock.

99. During the period November 11, 2002 through July 24, 2003, the Master Fund paid Durus inflated management fees (based on the Master Fund's net asset value) and inflated incentive fees (based on the Master Fund's performance) that were based at least in part on performance resulting from the illegal conduct set forth above in connection with the purchase and sale of Aksys and Esperion stock.

100. The defendants' illegal activities described above resulted in the Durus Funds acquiring large blocks of Aksys and Esperion stock which, when the schemes were publically disclosed, decreased significantly in value.

101. The defendants never disclosed the illegal conduct set forth above in connection with the purchase and sale of Aksys and Esperion stock to the Durus Funds prior to August 1, 2003.

102. By the conduct set forth herein, Sacane and the Durus Advisers breached their fiduciary duty to the Durus Funds.

V. SCHEME TO KEEP PERSEUS FROM SELLING SHARES

103. In late November 2002, Perseus' CFO contacted Sacane by e-mail to inquire whether Durus would be willing to purchase the Aksys and Esperion stock owned by Perseus that

Sacane had accumulated while he was a portfolio manager at Perseus. Sacane responded that he wanted to buy the stocks but had insufficient capital at the time.

104. From December 2002 through at least February 2003, even though he was buying both Aksys and Esperion stock regularly, Sacane falsely told Perseus' CFO in a series of e-mails that he was "frozen" at Durus with respect to both Aksys and Esperion stock because he possessed non-public information.

105. In December 2002, Sacane sent the Perseus CFO e-mails in which he claimed that he was (1) "over the wall on an upcoming partnering event and therefore definitely an insider," and (2) "concerned" that for Esperion and Aksys he was "potentially in possession of inside information."

106. In a series of e-mails in late January and February 2003, when he knew that Perseus wanted to sell its Aksys and Esperion stock, Sacane told the Perseus CFO that (1) Esperion would be reporting favorable drug study results and a corporate partnering agreement; and (2) Aksys would report 2002 earnings that beat estimates and would increase its earnings guidance for 2003.

107. In an e-mail exchange on February 18, 2003, the Perseus CFO wrote, "I was wondering on the info you provided me on [Esperion]; was it an educated guess or do you know for sure of a partnering deal? If the latter, we are tainted." Sacane responded, "[W]e know there is a partnering deal coming. [I] was under the impression that we were tainted and therefore [I] have been frozen in [D]urus..."

108. In fact, Sacane had fabricated this purported non-public information. At the time of the e-mails described above, Esperion had not even completed enrolling participants in the

drug study at issue and was in no meaningful discussions with any party about a partnering agreement. Further, Aksys failed to meet 2002 estimates and did not increase its 2003 guidance.

109. As a result of being "tainted" by Sacane's purported non-public information, Perseus refrained from selling the Esperion stock Sacane had purchased for Perseus accounts until May 19, 2003 (five days after Esperion filed its Form 10-Q for the quarter ended March 31, 2003), with the exception of two sales totaling 4,900 shares on January 29 and 30, 2003.

110. The effect of Sacane's conduct described above was to keep approximately 1.45 million shares of Esperion stock from being sold into the market by Perseus until May 2003, thereby reducing downward pressure on Esperion's stock price at a time when Sacane was making undisclosed purchases of the stock on a weekly basis to manipulate the market.

VI. DURUS' FALSE FORMS 13F

111. On February 14, 2003, Schmidt, on behalf of Durus and Sacane, filed electronically with the Commission a Form 13F, which contains Schmidt's electronic signature, reporting Durus' purported stock holdings as of December 31, 2002.

112. Schmidt prepared this Form 13F by obtaining a spreadsheet from Durus' third-party administrator. He then reviewed this spreadsheet with Sacane, who directed Schmidt to reduce the number of shares of Aksys stock that would be reported on the Form 13F by 1 million shares, from 6,283,248 to 5,283,248.

113. Schmidt followed Sacane's instructions and, as a result, on this Form 13F, Durus reported falsely that it owned 5,283,248 shares of Aksys stock as of December 31, 2002.

114. Schmidt and Sacane knew, or were reckless in not knowing, that Durus owned significantly more Aksys stock than Durus reported to the Commission on the February 14, 2003 Form 13F.

115. On May 8, 2003, Schmidt, on behalf of Durus, filed electronically with the Commission a Form 13F, which contains Schmidt's electronic signature, reporting Durus' purported stock holdings as of March 31, 2003.

116. Schmidt prepared the May 8, 2003 Form 13F by obtaining a spreadsheet from Durus' third-party administrator. He then reviewed this spreadsheet with Sacane, who directed Schmidt to report the same number of shares of both Aksys and Esperion stock that Durus had reported on its last Form 13F (i.e., the Form 13F Durus filed on February 14, 2003).

117. Schmidt again followed Sacane's instructions and, as a result, on the May 8, 2003 Form 13F, Durus reported falsely that it owned 5,283,248 shares of Aksys stock, when in fact Durus owned over 10 million shares of Aksys stock as of March 31, 2003, and that it owned 5,634,756 shares of Esperion stock, when in fact Durus owned over 7 million shares of Esperion stock as of March 31, 2003.

118. Schmidt and Sacane knew, or were reckless in not knowing, that Durus owned significantly more Aksys stock than Durus reported to the Commission on the May 8, 2003 Form 13F.

119. Schmidt and Sacane knew, or were reckless in not knowing, that Durus owned significantly more Esperion stock than Durus reported to the Commission on the May 8, 2003 Form 13F.

VII. SHORT SALES OF AKSYS STOCK

120. On or about March 3, 2003, at Sacane's direction, Durus sold short 25,000 shares of Aksys stock.

121. On or about March 4, 2003, at Sacane's direction, Durus sold short 10,000 shares of Aksys stock.

122. On or about March 5, 2003, at Sacane's direction, Durus sold short 10,000 shares of Aksys stock.

123. On or about March 10, 2003, at Sacane's direction, Durus sold short 20,000 shares of Aksys stock.

124. On or about July 2, 2003, at Sacane's direction, Durus sold short 100,000 shares of Aksys stock.

125. At the time of each of the short sales described above, Durus and Sacane were the beneficial owners of more than 10% of Aksys' common stock.

126. As of July 24, 2003, Durus did not deliver Aksys common stock against any of the short sales set forth above, nor did it deposit Aksys common stock in the mails or other usual channels of transportation within five days after such sales, as required by the federal securities laws.

VIII. SACANE ATTEMPTS TO CONCEAL HIS KNOWLEDGE OF TRADING ACTIVITY

127. Sometime after July 24, 2003, Sacane asked the Durus Advisers' trader to lie about the fact that the trader gave Sacane a copy of the daily spreadsheet reflecting the number of shares the Durus Advisers owned of each stock in its portfolio. He asked the trader to say that he

(the trader) only printed out one copy of the portfolio, rather than the two the trader in fact printed (one for himself and one for Sacane).

128. Approximately two weeks later, Sacane asked the Durus Advisers' trader to lie again. He asked the trader to say that he (the trader) used Sacane's computer to place trades electronically when in fact the trader never used either Sacane's computer or Sacane's username to place electronic trades.

129. These requests were an attempt by Sacane to conceal that: (1) he knew how much Aksys and Esperion stock the Durus Funds owned every single day; and (2) he purchased numerous shares of Aksys and Esperion himself between November 2002 and July 2003.

FIRST CLAIM FOR RELIEF
(Violations of Section 10(b) of the Exchange Act and
Rule 10b-5 by the Durus Advisers and Sacane)

130. The allegations in paragraphs 1 through 129 above are incorporated herein by reference.

131. In connection with the purchase or sale of Aksys securities, the Durus Advisers and Sacane, directly or indirectly, intentionally, knowingly or recklessly, used the means or instrumentalities of interstate commerce or the mails, directly or indirectly: (1) to employ a device, scheme, or artifice to defraud; (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (3) to engage in an act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in violation of §10(b) of the Exchange Act [15 U.S. C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

132. The conduct of the Durus Advisers and Sacane involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements, and resulted in substantial loss or significant risk of substantial loss to other persons, within the meaning of Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

SECOND CLAIM FOR RELIEF
(Violations of Section 10(b) of the Exchange Act and
Rule 10b-5 by the Durus Advisers and Sacane)

133. The allegations in paragraphs 1 through 129 above are incorporated herein by reference.

134. In connection with the purchase or sale of Esperion securities, the Durus Advisers and Sacane, directly or indirectly, intentionally, knowingly or recklessly, used the means or instrumentalities of interstate commerce or the mails, directly or indirectly: (1) to employ a device, scheme, or artifice to defraud; (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (3) to engage in an act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in violation of §10(b) of the Exchange Act [15 U.S. C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

135. The conduct of the Durus Advisers and Sacane involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements, and resulted in substantial loss or significant risk of substantial loss to other persons, within the meaning of Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

THIRD CLAIM FOR RELIEF
(Violations of Section 17(a) of the Securities Act by Durus and Sacane)

136. The allegations in paragraphs 1 through 129 above are incorporated herein by reference.

137. Defendants Durus and Sacane, directly and indirectly, acting intentionally, knowingly or recklessly, in the offer or sale of Aksys securities by the use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails: (1) have employed or are employing devices, schemes or artifices to defraud; (2) have obtained or are obtaining money or property by means of untrue statements of material fact or omissions to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (3) have engaged or are engaging in transactions, practices or courses of business which operate as a fraud or deceit upon purchasers of the securities in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

138. The violations of Section 17(a) of the Securities Act by Durus and Sacane involved fraud, deceit or deliberate or reckless disregard of regulatory requirements and resulted in substantial losses or significant risk of substantial losses to other persons, within the meaning of Section 20(d) of the Securities Act [15 U.S.C. §77t(d)].

FOURTH CLAIM FOR RELIEF
(Violations of Section 17(a) of the Securities Act by Durus and Sacane)

139. The allegations in paragraphs 1 through 129 above are incorporated herein by reference.

140. Defendants Durus and Sacane, directly and indirectly, acting intentionally, knowingly or recklessly, in the offer or sale of Esperion securities by the use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails: (1) have employed or are employing devices, schemes or artifices to defraud; (2) have obtained or are obtaining money or property by means of untrue statements of material fact or omissions to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (3) have engaged or are engaging in transactions, practices or courses of business which operate as a fraud or deceit upon purchasers of the securities in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

141. The violations of Section 17(a) of the Securities Act by Durus and Sacane involved fraud, deceit or deliberate or reckless disregard of regulatory requirements and resulted in substantial losses or significant risk of substantial losses to other persons, within the meaning of Section 20(d) of the Securities Act [15 U.S.C. §77t(d)].

FIFTH CLAIM FOR RELIEF
(Violations of Sections 206(1) and 206(2) of the Advisers
Act by the Durus Advisers and Sacane)

142. The allegations in paragraphs 1 through 129 above are incorporated herein by reference.

143. The Durus Advisers and Sacane, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, acting intentionally, knowingly or recklessly: (a) employed devices, schemes, or artifices to defraud; or (b) engaged in transactions, practices, or courses of business which operate as a fraud or deceit upon a client or prospective

client in violation of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2)].

144. The violations of Sections 206(1) and 206(2) of the Advisers Act by the Durus Advisers and Sacane involved fraud, deceit or deliberate or reckless disregard of regulatory requirements and resulted in substantial losses or significant risk of substantial losses to other persons, within the meaning of Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

SIXTH CLAIM FOR RELIEF
(Violations of Section 13(d) of the Exchange Act and Rules 13d-1
and 13d-2 Thereunder by the Durus Advisers, Sacane, and Schmidt)

145. The allegations in paragraphs 1 through 129 above are incorporated herein by reference.

146. Sections 13(d) and 13(g) of the Exchange Act [15 U.S.C. § 78m(d), (g)] and Rules 13d-1 and 13d-2 [17 C.F.R. § 240.13d-1] thereunder require any person that has acquired, directly or indirectly, beneficial ownership of more than five percent of a class of registered equity security to file a statement on a Schedule 13D or 13G with the Commission no later than ten business days following the more than five percent accumulation, and such Schedules 13D or 13G must be promptly amended to disclose any material change in the facts set forth in the Schedule 13D (including the acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of the class of securities).

147. From at least November 11, 2002 through July 31, 2003, the Durus Advisers and Sacane were the beneficial owners of more than 20 percent of the common stock of Aksys.

148. From at least November 11, 2002 through July 31, 2003, Sacane and Schmidt were both responsible for ensuring that the Durus Advisers made the filings required by Sections 13(d) and 13(g) of the Exchange Act.

149. Despite having beneficial ownership of more than 20 percent of the common stock of Aksys by at least November 11, 2002, neither the Durus Advisers nor Sacane nor Schmidt made the required filings with the Commission disclosing the Durus Advisers' and Sacane's respective beneficial ownership or change in beneficial ownership of Aksys stock until July 28, 2003 and July 29, 2003, respectively, in violation of Sections 13(d) and 13(g) of the Exchange Act [15 U.S.C. § 78m(d), (g)] and Rules 13d-1 and 13d-2 [17 C.F.R. § 240.13d-1] thereunder .

SEVENTH CLAIM FOR RELIEF
(Violations of Section 13(d) of the Exchange Act and Rules 13d-1
and 13d-2 Thereunder by the Durus Advisers, Sacane, and Schmidt)

150. The allegations in paragraphs 1 through 129 above are incorporated herein by reference.

151. Sections 13(d) and 13(g) of the Exchange Act [15 U.S.C. § 78m(d), (g)] and Rules 13d-1 and 13d-2 [17 C.F.R. § 240.13d-1] thereunder require any person that has acquired, directly or indirectly, beneficial ownership of more than five percent of a class of registered equity security to file a statement on a Schedule 13D or 13G with the Commission no later than ten business days following the more than five percent accumulation, and such Schedules 13D or 13G must be promptly amended to disclose any material change in the facts set forth in the Schedule 13D (including the acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of the class of securities).

152. From at least November 11, 2002 through July 31, 2003, the Durus Advisers and Sacane were the beneficial owners of more than 20 percent of the common stock of Esperion.

153. From at least November 11, 2002 through July 31, 2003, Sacane and Schmidt were both responsible for ensuring that the Durus Advisers made the filings required by Sections 13(d) and 13(g) of the Exchange Act.

154. Despite having beneficial ownership of more than 20 percent of the common stock of both Aksys and Esperion by at least November 11, 2002, neither the Durus Advisers nor Sacane nor Schmidt made the required filings with the Commission disclosing the Durus Adviser' and Sacane's respective beneficial ownership or change in beneficial ownership of Esperion stock until July 28, 2003 and July 29, 2003, respectively, in violation of Sections 13(d) and 13(g) of the Exchange Act [15 U.S.C. § 78m(d), (g)] and Rules 13d-1 and 13d-2 [17 C.F.R. § 240.13d-1] thereunder .

EIGHTH CLAIM FOR RELIEF
(Violations of Section 13(f) of the Exchange Act and
Rule 13f-1 Thereunder by Durus, Sacane, and Schmidt)

155. The allegations in paragraphs 1 through 129 above are incorporated herein by reference.

156. Section 13(f) of the Exchange Act [15 U.S.C. § 78m(f)] and Rule 13f-1 [17 C.F.R. § 240.13f-1] thereunder require every institutional money manager which exercised investment discretion with respect to accounts holding certain securities having an aggregate fair market value on the last trading day of any month of any calendar year of at least \$100,000,000 to file a Form 13F with the Commission within 45 days of the final day of the calendar year and each of the first three quarters of the subsequent calendar year, which reports shall include,

among other things, the number of shares held of each security over which the institutional investment manager exercises investment discretion.

157. From at least November 11, 2002 through July 31, 2003, Durus and Sacane were institutional investment managers within the definition of Section 13(f) of the Exchange Act and Rule 13f-1 thereunder.

158. From at least November 11, 2002 through July 31, 2003, Aksys and Esperion were securities subject to reporting on Form 13F.

159. From at least November 11, 2002 through July 31, 2003, Sacane and Schmidt were both responsible for ensuring that Durus made the filings required by Section 13(f) of the Exchange Act and Rule 13f-1 thereunder.

160. On February 14, 2003 Durus, Sacane, and Schmidt filed electronically with the Commission a false Form 13F that underreported the amount of Aksys stock over which Durus and Sacane exercised investment discretion in violation of Section 13(f) of the Exchange Act [15 U.S.C. § 78m(f)] and Rule 13f-1 [17 C.F.R. § 240.13f-1].

161. On May 8, 2003 Durus, Sacane, and Schmidt filed electronically with the Commission a false Form 13F that underreported the amount of Aksys stock and Esperion stock over which Durus and Sacane exercised investment discretion in violation of Section 13(f) of the Exchange Act [15 U.S.C. § 78m(f)] and Rule 13f-1 [17 C.F.R. § 240.13f-1].

NINTH CLAIM FOR RELIEF
(Violations of Section 16(a) of the Exchange Act and Rule
16a-3 Thereunder By Durus and Sacane)

162. The allegations in paragraphs 1 through 129 above are incorporated herein by reference.

163. Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] requires any person who is the beneficial owner of more than ten percent of a class of registered equity security to file a statement with the Commission. Rule 16a-3 [17 C.F.R. §240.16a-3] provides that Section 16(a) disclosures be made by filing a Form 3 for initial statements of beneficial ownership and a Form 4 for statements of changes in beneficial ownership.

164. From at least November 11, 2002 through July 31, 2003, Durus and Sacane were the beneficial owners of more than 10 percent of the common stock of Aksys.

165. Despite having beneficial ownership of more than 10 percent of the common stock of Aksys by at least November 11, 2002, neither Durus nor Sacane made the required filings with the Commission disclosing their respective beneficial ownership or change in beneficial ownership of Aksys stock until July 31, 2003 in violation of Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Rule 16a-3 [17 C.F.R. §240.16a-3] thereunder.

TENTH CLAIM FOR RELIEF
(Violations of Section 16(a) of the Exchange Act and Rule
16a-3 Thereunder By Durus and Sacane)

166. The allegations in paragraphs 1 through 129 above are incorporated herein by reference.

167. Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] requires any person who is the beneficial owner of more than ten percent of a class of registered equity security to file a

statement with the Commission. Rule 16a-3 [17 C.F.R. §240.16a-3] provides that Section 16(a) disclosures be made by filing a Form 3 for initial statements of beneficial ownership and a Form 4 for statements of changes in beneficial ownership.

168. From at least November 11, 2002 through July 31, 2003, Durus and Sacane were the beneficial owners of more than 10 percent of the common stock of Esperion.

169. Despite having beneficial ownership of more than 10 percent of the common stock of Esperion by at least November 11, 2002, neither Durus nor Sacane made the required filings with the Commission disclosing their respective beneficial ownership or change in beneficial ownership of Aksys and/or Esperion stock until July 31, 2003 in violation of Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Rule 16a-3 [17 C.F.R. §240.16a-3] thereunder.

**ELEVENTH CLAIM FOR RELIEF
(Violations of Section 16©) of the Exchange Act by Durus and Sacane)**

170. The allegations in paragraphs 1 through 129 above are incorporated herein by reference.

171. Durus and Sacane, when they were the beneficial owners of more than ten percent of Aksys common stock, sold Aksys common stock without delivering Aksys common stock they owned against such sales within 20 days thereafter nor deposited Aksys common stock they owned in the mails or other usual channels of transportation within five days of such sale in violation of Section 16©) of the Exchange Act [15 U.S.C. § 78p©)].

TWELFTH CLAIM FOR RELIEF
(Aiding and Abetting the Durus Advisers' and Sacane's Violations of Section 10(b)
of the Exchange Act and Rule 10b-5 Thereunder by Schmidt)

172. The allegations in paragraphs 1 through 129 above are incorporated herein by reference.

173. Schmidt knew or recklessly disregarded that the Durus Advisers' and Sacane's conduct was improper, and he rendered knowing and substantial assistance to Durus and Sacane in their commission of the foregoing securities law violations.

174. By reason of the foregoing, Schmidt aided and abetted violations of Sections 10(b) of the Exchange Act and Rule 10b-5 thereunder by the Durus Advisers and Sacane and therefore is liable pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78(e)].

175. The conduct of Schmidt involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements, and resulted in substantial loss or significant risk of substantial loss to other persons, within the meaning of Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

THIRTEENTH CLAIM FOR RELIEF
(Aiding and Abetting the Durus Advisers' Violations of the
Advisers Act by Sacane and Schmidt)

176. The allegations in paragraphs 1 through 129 above are incorporated herein by reference.

177. Based upon the foregoing, the Durus Advisers violated Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2)].

178. Sacane and Schmidt knew or recklessly disregarded that the Durus Advisers' conduct was improper, and they rendered knowing and substantial assistance to Durus in its commission of the foregoing violations of the Advisers Act.

179. By reason of the foregoing, Sacane (as an alternative to the Fourth Claim for Relief above) and Schmidt aided and abetted the Durus Advisers' violations of Sections 206(1) and 206(2) of the Advisers Act and therefore are liable pursuant to Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)].

180. The conduct of Sacane and Schmidt involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements, and resulted in substantial loss or significant risk of substantial loss to other persons, within the meaning of Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that this Court:

A. Enter a permanent injunction restraining Durus and Sacane, and each of their respective agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q].

B. Enter a permanent injunction restraining the Durus Advisers, Sacane, and Schmidt, and each of their respective agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service,

from directly or indirectly engaging in, or aiding and abetting, violations of 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].

C. Enter a permanent injunction restraining the Durus Advisers, Sacane, and Schmidt, and each of their agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in, or aiding and abetting, violations of Sections 13(d) and 13(g) of the Exchange Act [15 U.S.C. § 78m(d)] and Rules 13d-1 and 13d-2 thereunder [17 C.F.R. §§ 240.13d-1, 13d-2].

D. Enter a permanent injunction restraining the Durus Advisers, Sacane, and Schmidt, and each of their agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in, or aiding and abetting, violations of Section 13(f) of the Exchange Act [15 U.S.C. § 78m(f)] and Rule 13f-1 thereunder [17 C.F.R. § 240.13f-1].

E. Enter a permanent injunction restraining the Durus Advisers and Sacane, and each of their agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in violations of Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Rule 16a-3 thereunder [17 C.F.R. § 240.16a-3].

F. Enter a permanent injunction restraining the Durus Advisers and Sacane, and each of their agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in violations of Section 16(c) of the Exchange Act [15 U.S.C. § 78p(c)].

G. Enter a permanent injunction restraining The Durus Advisers, Sacane, and Schmidt, and each of their agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in, or aiding and abetting, violations of Section 206(1) and 206(2) of the Advisers Act [15 U.S.C. § 80b-6(1)].

H. Order The Durus Advisers, Sacane, and Schmidt to disgorge their ill-gotten gains, plus pre-judgment interest;

I. Order each defendant to pay an appropriate civil penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)] and order the Durus Advisers and Sacane to pay an appropriate penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)].

J. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

K. Award such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ R. Daniel O'Connor
R. Daniel O'Connor
Senior Trial Counsel
Connecticut Federal Bar No. phv _____
oconnord@sec.gov

/s/ Kevin M. Kelcourse
Kevin M. Kelcourse
Senior Counsel
Connecticut Federal Bar No. phv0063
kelcoursek@sec.gov

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
73 Tremont Street, 6th Floor
Boston, Massachusetts 02108
(617) 573-8979 (Direct dial: O'Connor)
(617) 424-5940 (Facsimile)

Local Counsel:
John B. Hughes
Connecticut Federal Bar No. ct05289
Assistant United States Attorney
Chief, Civil Division
United States Attorney's Office
Connecticut Financial Center
157 Church Street, 23rd Floor
New Haven, CT 06510
(203) 821-3700
(203) 773-5373 (Facsimile)

Dated: October 12, 2005