



proportions ranging from approximately 9 percent to nearly 180 percent. Defendants Lorine Sweeney, the then-President and Chief Executive Officer of Quovadx, and Gary Thomas Scherping, the then-Chief Financial Officer, knew or were reckless in not knowing that Quovadx could not recognize the revenue in each of these transactions. Further, Quovadx improperly accelerated \$250,000 in software licensing revenue into the third quarter of 2002, overstating its software licensing revenue by 10 percent for that quarter. Sweeney and Scherping knowingly provided substantial assistance to Quovadx in improperly accelerating this revenue. In total, Quovadx improperly recognized more than \$12 million in software licensing revenue in 2002 and 2003.

2. In particular, in the second quarter of 2003, Quovadx fraudulently overstated its software licensing revenue by approximately 9 percent by recognizing \$570,000 in revenue from a purported sale of software licenses to Sourceworks LLC, a shell corporation created to enter into the transaction. Sweeney and Scherping knew, or were reckless in not knowing, that Sourceworks' payment of the purchase price was contingent on Quovadx providing an end-user contract for Sourceworks and that Sourceworks could not pay for the software licenses itself.

3. In the third quarter of 2003, Quovadx fraudulently recognized \$380,000 in software licensing revenue on three purported sales to a company named MicroStar, Inc., thereby causing Quovadx's software licensing revenue to be overstated by 14 percent. Sweeney and Scherping knew, or were reckless in not knowing, that the transactions with MicroStar were parking arrangements designed to accelerate revenue recognition from other deals that Quovadx could not close by the end of the quarter.

4. In the third and fourth quarters of 2003, Quovadx fraudulently recognized a total of \$11.1 million in revenue from a series of transactions with an Indian company, Infotech

Network Group, even though the sales to Infotech were based on undisclosed material contingencies and payment was not probable. Sweeney and Scherping knew, or were reckless in not knowing, about the contingencies and the improbability of payment, but nevertheless approved the recognition of \$4.6 million of this revenue in the third quarter. In the fourth quarter, Sweeney and Scherping approved the recognition of an additional \$6.5 million in software licensing revenue after having sent Infotech a default letter for its failure to pay for the third quarter transactions and having Quovadx send \$500,000 to Infotech to induce this “purchase.”

5. On March 15, 2004, when it could not collect payment from Infotech for the transactions it had previously booked as revenue, Quovadx announced that it would restate its prior results to decrease revenue by approximately \$11 million. After announcement of the restatement, the price of Quovadx stock dropped 29 percent, from \$5.03 to \$3.58 per share. The company’s audit committee retained outside counsel to conduct an internal investigation. Shortly thereafter, Sweeney and Scherping resigned.

6. On May 13, 2004, Quovadx announced that, as a result of its investigation, it was reviewing two additional contracts – which proved later to be the Sourceworks and MicroStar transactions – and that it had discontinued severance payments to Sweeney and Scherping and demanded that they return previous severance payments and other compensation. The share price dropped approximately 37 percent, from \$2.05 to \$1.29 per share, after this announcement. On August 16, 2004, the company filed an amended Form 10-K for 2003 restating its financial results to reverse the revenue from the Sourceworks and MicroStar transactions and from the improper transaction in the third quarter of 2002. The stock dropped four cents, to \$1.65 per share.

7. Sweeney and Scherping engaged in fraudulent misconduct in connection with the Sourceworks, MicroStar, and Infotech transactions. They knew or were reckless in not knowing that the MicroStar transactions were parking arrangements and that the Sourceworks and Infotech deals contained material contingencies and collection was not probable. Sweeney and Scherping also knew of or approved the improper acceleration of revenue in the third quarter of 2002, thereby knowingly providing substantial assistance to Quovadx in improperly recognizing this revenue.

8. Sweeney and Scherping also falsely represented in letters to Quovadx's outside auditing firm that they were not aware of any contingencies or side-agreements with respect to the transactions at issue. They signed false disclosure certifications in connection with the company's quarterly reports on Form 10-Q for the pertinent quarters and its annual report on Form 10-K for 2003. They knowingly circumvented internal accounting controls and falsified books and records in the course of their fraudulent misconduct.

9. By committing the acts alleged in this Complaint, Sweeney and Scherping directly and indirectly engaged in and, unless restrained and enjoined by the Court, will continue to engage in, transactions, acts, practices and courses of business that violate Sections 17(a)(1), (2) and (3) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. §77q(a)(1), (2) and (3)] and Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§78j(b) and 78m(b)(5)], and Rules 10b-5, 13b2-1 and 13b2-2 thereunder [17 C.F.R. §§ 240.10b-5, 240.13b2-1, 240.13b2-2]. Sweeney and Scherping also aided and abetted Quovadx's violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§78m(a), 78m(b)(2)(A), 78m(b)(2)(B)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, 240.13a-13]. In addition, Sweeney

and Scherping violated Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14] by signing false certifications that Quovadx's annual and quarterly reports on Forms 10-K and 10-Q did not contain any untrue statement of material fact and that the company's financial statements fairly presented its financial condition.

10. The SEC seeks a judgment from the Court: (a) finding that Sweeney and Scherping committed the violations alleged herein; (b) permanently enjoining Sweeney and Scherping from violating or aiding and abetting future violations of these provisions of the federal securities laws; (c) barring them from acting as officers or directors of a public company pursuant to Section 20(e) of the Securities Act [15 U.S.C. §77t(e)] and Section 21(d) of the Exchange Act [15 U.S.C. §78u(d)]; (d) requiring them to disgorge, with prejudgment interest, the bonuses, option awards and other payments or any other ill-gotten gain that they received as a result of Quovadx's inflated financial results and the accounting improprieties described in this Complaint; and (e) requiring them to pay civil money penalties pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act [15 U.S.C. §§ 77t(d), 78u(d)(3)].

#### **JURISDICTION AND VENUE**

11. The Court has jurisdiction of this civil enforcement action pursuant to Sections 20(b) and 22(a) of the Securities Act and Section 21(d) and (e) and Section 27 of the Exchange Act [15 U.S.C. §§ 77t(b), 77v(a), 78u(d) and (e), and 78aa]. The defendants made use of the means or instruments of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with their acts, transactions, practices and courses of business alleged in this Complaint.

12. Venue lies in the District of Colorado pursuant Section 22(a) of the Securities Act and Section 27 of the Exchange Act [15 U.S.C. §§ 77v(a), 78aa]. The defendants are found, are

inhabitants, or transact business in this District, and acts or transactions constituting the violations alleged herein occurred in this District.

### **THE PARTIES**

13. The plaintiff is the Securities and Exchange Commission, which brings this action pursuant to the authority conferred on it by Sections 20(b), (d) and (e) and 22(a) of the Securities Act [15 U.S.C. §§ 77(t)(b), (d) & (e) and 77v(a)] and Section 21(d) and (e) of the Exchange Act [15 U.S.C. § 78u(d) & (e)].

14. Defendant Lorine Sweeney, age 39, lives in Cherry Hills Village, Colorado. She was President and Chief Executive Officer of Quovadx from February 2000 until she resigned in April 2004. She certified the accuracy of the company's financial results in the quarterly reports on Form 10-Q for the third quarter of 2002 and the second and third quarters of 2003 and the annual report on Form 10-K for 2003.

15. Defendant Gary Scherping, age 46, lives in Highlands Ranch, Colorado. He was Executive Vice President of Finance and Chief Financial Officer of Quovadx from September 2000 until he resigned in April 2004. Prior to being CFO, he was the company's Controller. He worked as an auditor for KPMG LLP from 1985 to 1988. At Quovadx, he certified the accuracy of the company's financial results in the quarterly reports on Form 10-Q for the third quarter of 2002 and the second and third quarters of 2003 and the annual report on Form 10-K for 2003.

### **RELEVANT ACCOUNTING STANDARDS**

16. As a public company, Quovadx was required to file quarterly and annual reports with the Commission that presented its financial results in conformity with Generally Accepted Accounting Principles ("GAAP"). The American Institute of Certified Public Accountants' Statement of Position 97-2, *Software Revenue Recognition* ("SOP 97-2") and related

interpretations are the principal GAAP provisions governing the recognition of revenue for sales of software and software licenses. Under SOP 97-2, a company may not recognize revenue from a software sale unless there is: persuasive evidence of an arrangement; delivery of the software; a fixed and determinable seller's fee; and a probability of collecting the account receivable. If payment is substantially contingent on the buyer's success in distributing the product, either due to the terms of the deal or because the buyer is so undercapitalized that it cannot pay until it sells the product, the seller may not recognize the software license revenue at the time of the sale.

### **FACTS**

17. Quovadx, a Delaware corporation based in Englewood, Colorado, is a software company that licenses software and sells related services to the healthcare industry. The company's overall revenue for 2003, after the restatements, was approximately \$70 million, of which approximately \$20 million was software licensing revenue. It had a net loss of approximately \$16 million in 2003. It completed its initial public offering in 2000. During the period relevant to this Complaint, Quovadx's common stock was registered with the Commission under Section 12(g) of the Exchange Act [15 U.S.C. § 78l(g)] and traded on the NASDAQ. In May 2002, it filed a Form S-8 to offer stock in connection with its employee stock purchase plan. In December 2003, Quovadx filed a registration statement on Form S-4, which incorporated by reference the quarterly reports on Form 10-Q that Quovadx had filed in 2003 to that point. In March 2004, Quovadx filed a registration statement on Form S-8, which incorporated by reference Quovadx's annual report on Form 10-K for 2003 and its quarterly reports on Form 10-Q and its current reports on Form 8-K filed with the Commission during 2003.

18. In 2002 and 2003, Quovadx derived approximately one-third of its reported revenue from software licensing fees, with the remainder coming from software maintenance and service contracts. In the relevant period, the company did not report a profit. By late 2002, Sweeney and Scherping had launched a two-pronged strategy of: (a) growth through acquisitions using the company's common stock; and (b) achieving profitability through an emphasis on high-margin software licensing sales, as opposed to low-margin software maintenance agreements. Beginning in 2003, the company separately reported its software licensing revenue in its periodic filings and highlighted the growth of this segment of its revenue base in its press releases and earnings releases. In conference calls with stock analysts, Sweeney and Scherping emphasized the importance of software licensing revenue to attain profitability and underscored the continuing growth of that revenue relative to other revenue.

**I. THE FRAUDULENT REVENUE TRANSACTIONS:  
SOURCEWORKS; MICROSTAR; AND INFOTECH**

**A. SECOND QUARTER 2003:  
THE DEFENDANTS OVERSTATED REVENUE BY \$570,000  
IN A CONTINGENT TRANSACTION WITH SOURCEWORKS.**

19. In early 2003, a senior Quovadx sales person solicited the Veterans' Administration ("VA") to buy licenses for Quovadx's Insurennet software, a product for processing patient medical insurance information. The VA refused to buy the licenses outright, but expressed an interest in using the software to process eligibility requests and periodically paying Quovadx a fee based on the number of insurance transactions that it processed. Sweeney and Scherping rejected this approach, because it did not involve the sale of software licenses and they did not want to license software on a per-use basis.

20. With the defendants' approval, the Quovadx salesperson contacted a Colorado-based venture capital firm and proposed that the firm buy the Insurennet licenses from Quovadx.



In return, Quovadx would negotiate a contract for the venture capital firm to license the software on a per-use basis to the VA. As the end of the second quarter of 2003 approached, the venture capital firm agreed in principal to Quovadx's proposal. Under this proposal, Quovadx would immediately recognize revenue from the sale of Insurenent to the venture capital firm.

21. Because the venture capital firm was not a software reseller, it repeatedly said that it would not pay for the Insurenent licenses unless and until Quovadx obtained the promised user contract with the VA. The Quovadx employee expressed confidence that Quovadx would obtain the contract with the VA early in the third quarter. With that understanding, the venture capital firm created a shell company, Sourceworks USA LLC, in late June 2003 to buy the Insurenent licenses from Quovadx and enter into the user contract with the VA. However, both parties agreed that Sourceworks' payment would be contingent on Quovadx successfully negotiating a contract between the VA and Sourceworks in the following quarter.

22. On June 30, 2003 -- the last day of the second quarter -- Quovadx and Sourceworks executed a contract requiring Sourceworks to pay Quovadx \$600,000 for the Insurenent licenses. The contract, which gave Sourceworks six months to pay Quovadx, did not indicate that Sourceworks' ability to pay was contingent upon Quovadx successfully negotiating a VA deal for Sourceworks. Sweeney signed this contract on behalf of Quovadx.

23. Sweeney and Scherping knew, or were reckless in not knowing, of the payment contingency because they participated in bi-weekly Quovadx sales meetings during the course of the negotiations with Sourceworks in which the contingent nature of the transaction was described. In particular, they knew, or were reckless in not knowing, that the substance of the proposed transaction was that Quovadx would obtain a user contract with the VA on behalf of

Sourceworks so that Sourceworks could use the software to sell services to the VA. In the absence of the VA contract, Sourceworks had no use for the software licenses.

24. As part of the process of reviewing the Sourceworks transaction for revenue recognition purposes, Scherping asked for financial information from Sourceworks so that he could determine whether Sourceworks was likely to pay for the software licenses. Scherping received unaudited financial statements and cash flow projections from Sourceworks. The unaudited financial statements did not reflect an ability to pay for the licenses and, since the newly-created shell had no other business, the cash flow projections assumed the revenue from the VA, which was contingent on the success of Quovadx's negotiations with the VA.

25. Scherping sent an e-mail stating that Quovadx had to be reasonably assured that it would be paid within 6 months. He expressed concern that the amount of cash Sourceworks projected for the end of the year was insufficient to support paying Quovadx for the software licenses. He also indicated that he believed that the projections on accounts receivable were too optimistic. Finally, he noted that he had anticipated getting audited financial statements from Sourceworks, as opposed to unaudited projections.

26. Because Scherping understood that the financial projections did not support a collectibility analysis, he asked the venture capital firm to infuse approximately \$1 million into Sourceworks to guarantee payment. The venture capital firm refused, and only placed approximately \$30,000 in Sourceworks, which gave it the appearance of being more than a shell. Sourceworks also never provided audited financial statements or submitted any proof that it could pay the receivable. Despite these red flags concerning collectibility, Scherping approved Quovadx's recognition of the entire \$600,000 as revenue for the second quarter of 2003.

27. Sweeney herself told the Quovadx employee that the Sourceworks financial statements were insufficient.

28. On July 23, 2003, Quovadx issued a press release, reviewed and approved by Sweeney and Scherping, touting the company's second quarter financial results, which included the revenue from the contingent Sourceworks transaction. For the next eight months, Quovadx tried in vain to secure a contract with the VA for Sourceworks. The VA deal did not come to fruition and, other than a \$30,000 payment in August 2003, Sourceworks did not pay for the Insurennet licenses.

29. Because of the improper revenue recognition, Quovadx overstated its software revenue in the second quarter of 2003 by \$570,000, or approximately 9 percent. The company included this overstated revenue in its quarterly report on Form 10-Q for the quarter, which Quovadx filed with the Commission on August 5, 2003. Sweeney and Scherping certified the accuracy of this report. Quovadx also included the Sourceworks revenue in an earnings release, which was subsequently attached to a Form 8-K filed with the Commission on July 24, 2003. Because Sourceworks did not pay the remaining \$570,000, Quovadx's new senior management reversed the Sourceworks transaction as part of the second restatement in August 2004.

**B. THIRD QUARTER 2003:  
THE DEFENDANTS OVERSTATED REVENUE BY  
NEARLY \$ 5 MILLION IN SHAM TRANSACTIONS  
WITH MICROSTAR AND CONTINGENT  
AND UNCOLLECTIBLE TRANSACTIONS WITH INFOTECH.**

**(1) The Defendants Engaged In Parking  
Arrangements Totaling \$380,000 With MicroStar.**

30. In the third quarter of 2003, Quovadx fraudulently recognized approximately \$380,000 in software licensing revenue from three parking arrangements with MicroStar, Inc. Sweeney and Scherping knew, or were reckless in not knowing, that these purported sales to

MicroStar were part of an arrangement designed to accelerate revenue recognition from other anticipated sales that Quovadx was in the process of negotiating, but had been unable to finalize before the end of the quarter. Sweeney and Scherping approved these sham arrangements in an attempt to meet Quovadx's third quarter sales targets.

31. In each of the three parking arrangements, MicroStar agreed to hold inventory for Quovadx at the end of the quarter until Quovadx negotiated the sale of the inventory to the intended customers in the fourth quarter. MicroStar was to receive a kickback for its role in facilitating this improper revenue recognition. Quovadx's recognition of revenue from these parking arrangements did not conform with GAAP because: (a) MicroStar's obligation to pay was contingent on Quovadx selling the software to other customers; and (b) collection of the receivable from MicroStar was not probable because MicroStar could not afford to pay it.

32. In September 2003, a Quovadx subsidiary in the United Kingdom anticipated selling approximately \$250,000 worth of software licenses to one of its resellers (the "Reseller"). However, the Reseller would not enter into the transaction until it had an end-user for the software. In late September, the Reseller told Quovadx that its end-user was not ready to buy the software licenses and therefore the Reseller was unlikely to take the risk and buy the software licenses from Quovadx before the end of the quarter. On September 26, Quovadx's then Executive Vice President of Sales learned that the transaction might fall through and transmitted an e-mail to his sales staff asking if there were any distributors who would accept the \$250,000 of licenses to hold in inventory to resell to the Reseller when Quovadx closed the deal. One salesperson proposed this parking arrangement to the president of MicroStar.

33. MicroStar, which had previously done one small deal with Quovadx, agreed to park the software licenses in its inventory until Quovadx finalized the sale to the Reseller in the fourth quarter of 2003.

34. Quovadx's then Executive Vice President of Sales transmitted an e-mail to Sweeney, informing her that the sales staff would hold MicroStar in reserve in case the Reseller did not commit by the end of the third quarter. Sweeney replied that this was "good thinking." On September 29, after the Reseller gave notice of its decision not to buy the licenses from Quovadx until it had closed with its end-user, the Quovadx sales staff immediately secured an order from MicroStar. The then Executive Vice President of Sales transmitted an e-mail to Sweeney advising her of this development.

35. On September 30, the last day of the third quarter, Sweeney pressed her staff to reach the third quarter sales goal of \$8 million in software licensing revenue. She e-mailed the then Executive Vice President directly, stating that she needed to get \$8 million in software licensing revenue and expressing her confidence that he was capable of doing so. She closed the e-mail with the admonition: "Make me proud. ☺" The then Executive Vice President replied in an e-mail that he was doing every "crazy thing" he could to reach \$8 million in software revenue.

36. Shortly thereafter, Sweeney learned that two more deals worth about \$155,000 that could not close before the end of the quarter had been parked with MicroStar as well, so that MicroStar held about \$380,000 in software licenses pending their sale to the true customers.

37. Sweeney and Scherping also received a series of sales status reports that reflected that customers other than MicroStar were the true intended customers for the software licenses parked with MicroStar. Scherping nevertheless signed each of the three contracts with MicroStar on behalf of Quovadx. Before Quovadx filed its quarterly report on Form 10-Q, Scherping

signed an amendment to one of those contracts that made clear that MicroStar was not the true customer.

38. Quovadx included the revenue from the three sham transactions with MicroStar in its preliminary earnings release (which was subsequently attached to a Form 8-K filed with the Commission on October 22, 2003) and its quarterly report on Form 10-Q for the third quarter of 2003 filed with the Commission on November 3, 2003. Sweeney and Scherping certified the accuracy of this quarterly report. As a result of including the MicroStar revenue, Quovadx overstated its software licensing revenue by \$380,000 or approximately 14% in those filings with the Commission.

39. In November 2003, Sweeney and Scherping learned that MicroStar had not paid for any of the software licenses because the anticipated customers had declined to buy the licenses from MicroStar. Sweeney and Scherping did not direct Quovadx to reverse the MicroStar revenue or initiate collection efforts. Instead, with their knowledge and approval, Quovadx's sales staff was directed to find alternative customers to buy the software licenses from MicroStar. Internal e-mails reflect that, in order to avoid issuing a credit memorandum to MicroStar and reversing the revenue from the parking arrangements, Scherping considered various means to structure transactions to channel proceeds from unrelated transactions through MicroStar, which would create the appearance on Quovadx's books and records that MicroStar had paid Quovadx for the software.

40. In December 2003, the Reseller agreed to buy approximately \$257,000 of software licenses from Quovadx's U.K. subsidiary. However, as Scherping knew, or was reckless in not knowing, the software licenses that the Reseller bought were not the same as the software licenses Quovadx had parked with MicroStar in September 2003.

41. In February 2004, the Reseller finally made payment for the different software licenses. Quovadx's senior management, including Scherping, determined that they would channel this payment through MicroStar. The U.K. subsidiary reversed the sale from its books and sent the approximately \$257,000 to Quovadx's U.S. offices. Scherping knew of and approved this action despite knowing, or being reckless in not knowing, that different software licenses were involved than those parked at MicroStar and that the "sales" to MicroStar were parking arrangements in the first place.

42. With Sweeney's and Scherping's knowledge, or reckless disregard, Quovadx wired this money to MicroStar with the instruction to MicroStar to wire it back to Quovadx, less a \$10,000 payment which MicroStar could keep. MicroStar kept \$10,000 of these funds and sent the remainder to Quovadx. By "roundtripping" this unrelated payment through MicroStar and back to itself, Quovadx created the false appearance that MicroStar had paid a significant portion of its receivable. Thus, Sweeney and Scherping knew or were reckless in not knowing that Quovadx had entered into these three parking transactions with MicroStar and that Quovadx could not recognize revenue from those transactions.

43. In August 2004, Quovadx – under new management -- reversed all three of the parking arrangements with MicroStar as part of its second restatement.

**(2) The Defendants Fraudulently  
Recognized \$4.6 Million  
In Revenue from Two Transactions With Infotech.**

44. At the direction of Sweeney and Scherping, Quovadx executed two related agreements with a company called Infotech, Inc. ("Infotech") in early September 2003. Under the Distributor Agreement, Infotech agreed to buy \$5 million of software licenses from Quovadx and be the exclusive distributor of Quovadx products in India. Under the Outsourcing

Agreement, Quovadx agreed to pay Infotech up to \$2.46 million for certain outsourcing services and various research and development projects, pursuant to Statements of Work (“SOWs”) to be subsequently negotiated. Both agreements provided for payment by letters-of-credit. The Distributor Agreement required that Infotech fund a \$5.46 million letter-of-credit by no later than September 26, 2003 and before Quovadx shipped any software to it. The Outsourcing Agreement required Quovadx to fund a letter-of-credit to pay for the outsourcing services.

45. As required by the Outsourcing Agreement, Quovadx funded a letter-of-credit for \$2.46 million to pay Infotech as outsourcing services were rendered. By mid-September, however, Infotech had not funded its letter-of-credit to pay for its software license purchases. Although the letter-of-credit was not funded and thus Quovadx had no way to assure it would be paid, Quovadx -- at Sweeney’s and Scherping’s direction -- shipped the \$5 million of software licenses to Infotech anyway so that it could recognize the revenue in the third quarter.

46. In the last days of the third quarter, Quovadx was still well short of its revenue goals. At Sweeney’s direction, Quovadx asked Infotech to buy yet more software licenses. In a related e-mail to a senior Quovadx salesperson, Sweeney stated that the quarterly revenue was looking “pretty ugly” and asked about progress in getting Infotech to agree to another transaction. Sweeney emphasized that Quovadx would be in “major trouble” if it could not get Infotech to enter another transaction. Infotech agreed to buy more, but only if Quovadx guaranteed a pre-payment of over \$1 million in outsourcing funds. Sweeney agreed and, on September 30, the parties signed supplemental agreements under which Infotech was to buy an extra \$2.1 million of software and Quovadx was to pre-pay Infotech about \$1.13 million for unspecified outsourcing work. However, the agreements further specified that the prepayment



was contingent upon Infotech establishing and funding the letter-of-credit required under the Distributor Agreement.

47. Infotech was required to fund a letter-of-credit by October 15 to cover this additional third-quarter transaction. At Sweeney's and Scherping's direction, Quovadx shipped the additional \$2.1 million in software to Infotech on the last day of the quarter. Thus, by the end of the quarter, Quovadx had shipped \$7.1 million worth of software to Infotech even though Infotech had failed to fund a letter-of-credit to pay for any of the software licenses, in breach of their agreement, and it was not probable that Quovadx would collect from Infotech. Quovadx offset the \$7.1 million in software licensing revenue by its outsourcing obligation (\$2.46 million), recognizing about \$4.6 million in revenue from the Infotech transactions for the quarter. Quovadx planned to recognize the balance as Infotech performed outsourcing services.

48. In early October 2003, before Quovadx filed its third quarter report, Sweeney and Scherping learned that Infotech said that it needed \$410,000 as margin money to establish and fund its required letters-of-credit to pay for the software licenses. Sweeney had been delaying Quovadx's release of its quarterly results pending confirmation that Infotech had established and funded the letters-of-credit for the third quarter sales. Eager to release Quovadx's results, Sweeney and Scherping had \$410,000 wired to Infotech for Infotech to use as margin money to establish and fund the required letters-of credit. On October 17, Infotech gave Quovadx a letter from an Indian bank expressing confidence that Infotech's letter-of-credit would be opened (not funded) by October 21.

49. On October 21, despite the receipt of the margin monies from Quovadx, Infotech had still not established and funded either of the required letters-of-credit. Rather, it forwarded to Quovadx another letter from its bank stating that Infotech had been approved for "limits for

letters of credit” up to \$10 million, subject to meeting margin requirements. The letter noted that the bank would have to send any requests for letters-of-credit to a correspondent bank for processing. When a Quovadx salesperson forwarded this non-committal letter to Scherping by e-mail, Scherping responded: “Will you be a witness at my trial and support that I was NOT committing fraud?” Sweeney and Scherping relied on these letters as support for Infotech’s supposed ability to pay for the software licenses and recognized \$4.6 million of Infotech revenue in third quarter.

50. Sweeney and Scherping also knew, or were reckless in not knowing, that the \$410,000 payment to Infotech was falsely entered in Quovadx’s books as a prepayment under the outsourcing agreements, when in fact Infotech had not satisfied the conditions for prepayment. Further, Scherping did not inform Quovadx’s auditor that Quovadx had sent \$410,000 to Infotech in an unavailing attempt to help Infotech establish and fund the required letters-of-credit.

51. On October 22, with Sweeney’s and Scherping’s approval, Quovadx issued a press release announcing the distribution and software development agreements with Infotech and a preliminary earnings release touting a 183% increase in software licensing revenue over the third quarter of the prior year. The Infotech transactions accounted for about 60% of Quovadx’s reported third quarter software licensing revenue, which amounted to an overstatement of 164%. Quovadx’s share price increased over 25% after these announcements. In a conference call to analysts the same day, Sweeney emphasized: “our revenue growth far exceeds that of our competitors.” As well as making misleading statements about Quovadx’s growth in software license revenue compared to their industry competitors, both Sweeney and

Scherping stressed to analysts that the outsourcing agreement was projected to provide significant cost savings in the future.

52. Quovadx attached the preliminary earnings release containing the Infotech revenue to a Form 8-K that it filed with the Commission on October 22, 2003. Further, Quovadx included the Infotech revenue in the quarterly report on Form 10-Q that it filed with the Commission on November 3, 2003. Sweeney and Scherping also certified the accuracy of the quarterly report.

**C. FOURTH QUARTER 2003:  
THE DEFENDANTS FRAUDULENTLY OVERSTATED  
REVENUE BY \$6.5 MILLION FROM CONTINGENT AND  
UNCOLLECTIBLE TRANSACTIONS  
WITH INFOTECH.**

53. By mid-December 2003, Infotech had still not paid for its third quarter purchases. Despite this, Sweeney asked Infotech to buy \$6.5 million of additional software licenses in the fourth quarter. Infotech was unwilling to do so unless Quovadx immediately wired Infotech \$500,000, ostensibly as part of the \$1.13 million in outsourcing prepayment monies subject to the supplemental third quarter agreement. However, Infotech had not met its obligation under the supplemental agreement to establish and fund the letter-of-credit required under the Distributor Agreement.

54. To convince Infotech to buy more software and show Wall Street and Quovadx's investors continued growth, Sweeney and Scherping approved the \$500,000 payment, despite Infotech's failure to have funded or established the required letter-of-credit. In fact, at that point in time, Infotech had received specific statements of work for only a small amount of outsourcing, far less than necessary to justify a \$500,000 prepayment. At the same time, with Sweeney's and Scherping's knowledge and approval, Quovadx sent Infotech a default letter for

failing to pay for the third quarter sales. Thus, by mid-December, with Sweeney's and Scherping's knowledge and approval, Quovadx had sent Infotech \$910,000, yet Infotech had not paid for any of the software licenses for which it had contracted.

55. Infotech also conditioned buying more software on Quovadx committing to increase its outsourcing (which had been minimal) to \$10 million a year and agreeing to a six-month payment plan for the additional software. Sweeney and Scherping knew, or were reckless in not knowing, that Infotech had conditioned its purchase on these terms.

56. By the end of December 2004, Infotech still had not funded the required letters-of-credit for the prior third quarter sales. In an internal e-mail on December 29, Scherping was told that Quovadx could not recognize the \$6.5 million in software licensing revenue from the last-minute Infotech transaction unless Infotech had established and funded the letters-of-credit for the third quarter transactions. The e-mail warned Scherping that the lack of letters-of-credit placed the previously-recognized third quarter Infotech revenue "in danger."

57. On December 31, Infotech signed a contract to buy \$6.5 million of software. Scherping signed an agreement to outsource to Infotech up to \$1.94 million of projects through August 2004.

58. In January 2004, in connection with its 2003 audit, Quovadx's auditor learned that Infotech had not paid Quovadx for any of the third quarter transactions and that Quovadx had sold additional software to Infotech in the fourth quarter. By early February 2004, the auditor told Quovadx's audit committee and Sweeney and Scherping that Infotech had to make a significant payment or the revenue for both quarters would be in question. The auditor told Scherping that if Quovadx issued an earnings release before getting such a payment, the company would have to revise its financial results if Infotech later failed to pay.

59. On February 11, 2004, Quovadx issued its preliminary fourth quarter earnings release (attached to a Form 8-K filed with the Commission on February 12, 2004), which included the \$6.5 million in Infotech revenue. Sweeney and Scherping approved this release even though they knew, or were reckless in not knowing, that: (1) Infotech had not paid for the third quarter purchases; (2) Infotech's ability to pay for the fourth quarter purchases depended on its ability to resell the software licenses; and (3) Quovadx had an undisclosed commitment to give Infotech \$10 million annually in outsourcing projects. The earnings release stated that Quovadx's total annual software licensing revenue for 2003 had increased about 30% and that its year-over-year software licensing revenue had grown about 173%. The Infotech sales accounted for virtually the entire increase in Quovadx's software licensing revenue. After this release, Quovadx's stock price increased by about 10%, closing at \$6.66 per share on February 12.

60. In early March 2004, Quovadx's auditor advised Quovadx that it would have to reverse the Infotech revenue from both the third and fourth quarters unless Infotech made a substantial payment before Quovadx's annual report was filed. On March 8, Sweeney and Scherping authorized Infotech to draw down the \$1.94 million balance on Quovadx's outsourcing letter-of-credit with the understanding that Infotech would use these funds to arrange bank financing to pay Quovadx for the software purchases.

61. Immediately after receiving the \$1.94 million, Sweeney and Scherping were told by Infotech that it believed Infotech was entitled to the money under the outsourcing agreement and would not use it to pay for the software licenses. Sweeney and Scherping requested that the money be returned but to no avail. Further, Sweeney and Scherping knew, or were reckless in not knowing, that Quovadx had sent an additional \$100,000 to Infotech in early March 2004. Quovadx was never paid for the software licenses. In total, Sweeney and Scherping had

Quovadx send Infotech approximately \$3 million, ostensibly for outsourcing services, but in reality as inducements for Infotech to purchase software licenses and as funds for Infotech to pay Quovadx.

## **II. THE IMPROPER ACCELERATION OF REVENUE TRANSACTION IN THE THIRD QUARTER 2002**

62. In May 2002, Quovadx announced the release of QuickTrials 1.0, a software product for automating the management of clinical drug trials. In June, Quovadx entered into negotiations to sell QuickTrials 1.0 for \$250,000 to a company that managed clinical trials in the pharmaceutical industry (“the Customer”). Because the existing version of QuickTrials did not meet all of the Customer’s specifications, Quovadx and the Customer discussed developing an acceptable version of QuickTrials, to be called QuickTrials 2.0.

63. In early September 2002, Sweeney and Scherping learned that QuickTrials 2.0 would not be ready for delivery to the Customer until after the end of the third quarter. Because they wanted to recognize the revenue in the third quarter, Sweeney and Scherping proposed restructuring the transaction to the effect that the Customer would pay Quovadx the entire \$250,000 for the platform software needed to run QuickTrials, and that they enter into a partnership to develop QuickTrials 2.0. Quovadx said it would deliver the platform software in the third quarter and the first development (or beta) version of QuickTrials 2.0 in October 2002.

64. The proposal made by Sweeney and Scherping divided the form of the transaction into two parts to justify recognition of the \$250,000 purchase price as revenue in the third quarter of 2002. Sweeney and Scherping understood that the substance of the deal, and the contingency for payment, was Quovadx’s future delivery of the anticipated development versions of the QuickTrials 2.0 software. On September 30, the last day of the quarter, Quovadx and the

Customer executed a contract under which Quovadx would provide the Customer with beta versions of QuickTrials 2.0 and a commercial version of that software, if and when released.

65. Further, at the Customer's request, Quovadx agreed to extend the \$250,000 payment over eight months, which roughly corresponded to the anticipated completion of the development of QuickTrials 2.0. Notwithstanding this extended payment plan, and the promise to deliver QuickTrials 2.0 in the future if and when Quovadx released it, Sweeney and Scherping had Quovadx recognize the full \$250,000 in revenue in the third quarter of 2002.

66. Quovadx's accounting for the transaction with the Customer did not conform with GAAP. As Sweeney and Scherping knew, the value of the transaction for the Customer lay in obtaining the beta versions of QuickTrials 2.0, not the platform programs delivered in the third quarter. By prematurely recognizing this revenue, Quovadx overstated its software licensing revenue for the third quarter of 2002 by \$250,000, or approximately 10 percent. Quovadx included this inflated revenue in its quarterly report on Form 10-Q for the third quarter of 2002, and Sweeney and Scherping certified the accuracy of that report. Quovadx also included the revenue in an earnings release which it issued and subsequently included in a Form 8-K filed with the Commission on October 2, 2002.

#### **FIRST CLAIM FOR RELIEF**

#### **Violations of Sections 17(a)(1), (2) and (3) of the Securities Act [15 U.S.C. § 77q(a)]**

67. The Commission realleges and incorporates herein by reference paragraphs 1 through 66 above.

68. Section 17(a) of the Securities Act prohibits a person, in the offer or sale of any securities, from (1) employing any device, scheme, or artifice to defraud, (2) obtaining money or property by means of any untrue statement of a material fact or any omission to state a material

fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or (3) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

69. A person violates these provisions by, among other things, knowingly, recklessly, or negligently making material misstatements or omitting to state material information in Commission filings or in other statements disseminated to investors.

70. Sweeney and Scherping knowingly, recklessly, or negligently authorized the fraudulent recognition of revenue from the Sourceworks, MicroStar, and Infotech transactions. They approved the issuance of preliminary earnings releases that included this inflated revenue, and reviewed and signed quarterly and annual reports that included the fraudulent revenue. In each of these transactions, Sweeney and Scherping knew, or were reckless or negligent in not knowing, that Quovadx could not recognize the pertinent revenue because those transactions had material contingencies or were not true sales, and that it was not probable that Quovadx would collect payment from the respective customers.

71. As a result of its fraudulent recognition of revenue from these transactions, Quovadx overstated its software licensing revenue in its filings with the Commission and its releases to investors by approximately \$570,000 (or approximately 9%) for the second quarter of 2003, by almost \$5 million (or approximately 177%) for the third quarter of 2003, and by \$6.5 million (or approximately 118%) for the fourth quarter of 2003. Sweeney and Scherping signed the quarterly reports for the second and third quarters of 2003 and authorized their filing with the Commission. Sweeney and Scherping approved the preliminary earnings releases for the second, third, and fourth quarters of 2003, and they authorized the filing of the Forms 8-K with the Commission to which Quovadx had attached these preliminary earnings releases. Sweeney and



Scherping also approved a third quarter press release on October 22, 2003, which contained materially false information about the Infotech transaction.

72. Quovadx had continuously effective offerings of securities pursuant to Forms S-8 and S-4 during the period relevant to this Complaint.

73. By engaging in the conduct described above, Sweeney and Scherping violated Section 17(a)(1), (2), and (3) of the Securities Act.

### **SECOND CLAIM FOR RELIEF**

#### **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]**

74. The Commission realleges and incorporates herein by reference paragraphs 1 through 66 above.

75. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit any person, in connection with the purchase or sale of securities, from (a) employing any device, scheme, or artifice to defraud, (b) making any untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or (c) engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

76. A person violates these provisions by, among other things, knowingly or recklessly making material misstatements or omitting to state material information in Commission filings or in other statements disseminated to investors.

77. Sweeney and Scherping knowingly or recklessly authorized the fraudulent recognition of revenue from the Sourceworks, MicroStar, and Infotech transactions. They approved the issuance of preliminary earnings releases that included this inflated revenue, and reviewed and signed quarterly and annual reports that included the fraudulent revenue. In each

of these transactions, Sweeney and Scherping knew, or were reckless in not knowing, that Quovadx could not recognize the pertinent revenue because those transactions had material contingencies or were not true sales, and that it was not probable that Quovadx would collect payment from the respective customers.

78. As a result of its fraudulent recognition of revenue from these transactions, Quovadx overstated its software licensing revenue in its filings with the Commission and its releases to investors by approximately \$570,000 (or approximately 9%) for the second quarter of 2003, by almost \$5 million (or approximately 177%) for the third quarter of 2003, and by \$6.5 million (or approximately 118%) for the fourth quarter of 2003. Sweeney and Scherping signed the quarterly reports for the second and third quarters of 2003 and authorized their filing with the Commission. Sweeney and Scherping approved the preliminary earnings releases for the second, third, and fourth quarters of 2003, and they authorized the filing of the Forms 8-K with the Commission to which Quovadx had attached these preliminary earnings releases. Sweeney and Scherping also approved a third quarter press release on October 22, 2003, which contained materially false information about the Infotech transaction.

79. By engaging in the conduct described above, Sweeney and Scherping violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

**THIRD CLAIM FOR RELIEF**

**Violations of Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder  
[15 U.S.C. §78m(b)(5), 17 C.F.R. §§240.13b2-1]**

80. The Commission realleges and incorporates herein by reference paragraphs 1 through 66 above.

81. Section 13(b)(5) of the Exchange Act prohibits any person from knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record or account.

82. Exchange Act Rule 13b2-1 prohibits any person from directly or indirectly falsifying or causing to be falsified any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act.

83. Sweeney and Scherping knowingly circumvented Quovadx's internal accounting controls. For example, they knowingly approved the recognition of revenue from the contingent arrangements with Sourceworks, MicroStar, and Infotech, circumventing Quovadx's internal controls, which did not permit the recognition of revenue from such transactions. Sweeney and Scherping circumvented Quovadx's credit-worthiness controls by sending Infotech \$410,000 in October 2003, which Infotech used as a margin deposit and obtained a bank letter suggesting that Infotech had some (inconclusive) ability to have a letter-of-credit processed. They then used that bank letter to claim that Infotech was creditworthy.

84. Sweeney and Scherping directly or indirectly falsified Quovadx's books and records. For example, they authorized sending \$410,000 to Infotech in October 2003 as a margin deposit (in a failed attempt to establish and fund letters-of-credit) which was inaccurately recorded as a prepayment for outsourcing work. Sweeney and Scherping also falsified Quovadx's books and records by having a sale by Quovadx's U.K. subsidiary removed from the subsidiary's books in advance of having the payment from that sale channeled to MicroStar. Similarly, they had this payment falsely recorded as being made by MicroStar when MicroStar then forwarded it to Quovadx.

85. By engaging in the conduct described above, Sweeney and Scherping violated Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder.

**FOURTH CLAIM FOR RELIEF**  
**Violations of Exchange Act Rule 13b2-2**  
**[17 C.F.R. §§240.13b2-2]**

86. The Commission realleges and incorporates herein by reference paragraphs 1 through 66 above.

87. Exchange Act Rule 13b2-2 prohibits any director or officer of an issuer from directly or indirectly making or causing to be made misleading statements to an accountant in connection with an audit.

88. Sweeney and Scherping made materially misleading statements to Quovadx's auditor in connection with the auditor's review of Quovadx's accounting. In particular, they signed management representation letters sent to Quovadx's auditor for the second and third quarter 2003 review and the year-end 2003 audit that were misleading because they did not disclose the true facts and circumstances of the Sourceworks, MicroStar, and Infotech transactions. The letters failed to disclose, for example, that the arrangement with MicroStar to hold licenses in MicroStar's inventory had no legitimate business purpose and that MicroStar had no ability or intention to pay for the software licenses unless it could resell them in transactions to be negotiated and closed by Quovadx. The letters also failed to disclose that Quovadx had recognized more than \$11 million in revenue on software sales to Infotech, even after Sweeney and Scherping knew, or were reckless in not knowing, that it was not probable that Infotech would pay for the software. The letters failed to disclose that Sourceworks would not and could not pay for the software in that transaction unless and until Quovadx obtained a user contract with the VA on Sourceworks' behalf.

89. By engaging in the conduct described above, Sweeney and Scherping violated Exchange Act Rule 13b2-2.

**FIFTH CLAIM FOR RELIEF**  
**Violations of Exchange Act Rule 13a-14**  
**[17 C.F.R. § 240.131-14]**

90. The Commission realleges and incorporates herein by reference paragraphs 1 through 66 above.

91. As the principal executive officers of Quovadx, Sweeney and Scherping were required to, and did, certify Quovadx's annual report on Form 10-K for 2003 and its quarterly reports on Forms 10-Q for the third quarter of 2002 and the second and third quarters of 2003. Among other things, they certified that: (a) the reports did not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made not misleading; and (b) the financial statements and other financial information included in the report fairly presented in all material respects Quovadx's financial condition, results of operations, and cash flows. These certifications were materially false.

92. By engaging in the conduct described above, Sweeney and Scherping violated Exchange Act Rule 13a-14.

**SIXTH CLAIM FOR RELIEF**  
**Aiding and Abetting Violations of Section 13(a) of the Exchange Act**  
**[15 U.S.C. §78m(a)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13**  
**17 C.F.R. §§240.12b-20, 13a-1, 13a-11 and 13a-13]**

93. The Commission realleges and incorporates herein by reference paragraphs 1 through 66 above.

94. Section 13(a) of the Exchange Act and Rules 13a-1, 13a-11, and 13a-13 thereunder require that issuers with securities registered under Section 12 of the Exchange Act, such as Quovadx, file periodic reports with the Commission that are complete and accurate in all

material respects. Exchange Act Rule 12b-20 requires that, in addition to the information expressly required to be included in a statement or report, an issuer must add such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

95. Quovadx materially overstated its software revenue in the third quarter of 2002 by prematurely recognizing revenue from the QuickTrials contract with the Customer. Quovadx also materially overstated its software revenue for the second, third, and fourth quarters of 2003 by fraudulently recognizing revenue from the transactions with Sourceworks, MicroStar, and Infotech. As a result, Quovadx's quarterly reports on Form 10-Q for the third quarter of 2002 and the second and third quarters of 2003, its annual report on Form 10-K for 2003, and the earnings releases attached to its Forms 8-K for the second, third, and fourth quarters of 2003 contained materially inaccurate and misleading statements. Accordingly, Quovadx violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

96. Sweeney and Scherping intentionally engaged in misconduct to overstate Quovadx's software revenues. They also encountered significant red flags that they ignored. Accordingly, they knowingly or recklessly authorized improper revenue recognition, and reviewed and signed the company's quarterly and annual reports that materially overstated Quovadx's software licensing revenue. By their conduct in structuring, implementing, approving and, in some instances, attempting to conceal the impropriety of that revenue recognition, Sweeney and Scherping knowingly provided substantial assistance to Quovadx's reporting violations.

97. By engaging in the conduct described above, Sweeney and Scherping aided and abetted Quovadx's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1,

13a-11 and 13a-13 thereunder.

**SEVENTH CLAIM FOR RELIEF**

**Aiding and Abetting Violations of Sections 13(b)(2)(A) and 13(b)(2)(B)  
of the Exchange Act [15 U.S.C. §§78m(b)(2)(A) and 78m(b)(2)(B)]**

98. The Commission realleges and incorporates herein by reference paragraphs 1 through 66 above.

99. Section 13(b)(2)(A) of the Exchange Act requires that issuers with securities registered under Section 12 of the Exchange Act, such as Quovadx, make and keep books, records, and accounts that accurately and fairly represent the transactions of the company. Section 13(b)(2)(B) of the Exchange Act requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability of assets.

100. Quovadx's books and records were materially inaccurate during the relevant time period because they overstated software licensing revenue and did not accurately or fairly reflect the transactions of the company. Quovadx also failed to maintain internal controls sufficient to ensure that revenue recognition would occur properly and that its financial statements would be prepared in conformity with Quovadx's accounting policies and GAAP. Accordingly, Quovadx violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

101. Sweeney and Scherping knowingly or recklessly directed or approved of the improper revenue recognition reflected in Quovadx's books and records.

102. As the two most senior members of Quovadx's management, Sweeney and Scherping had responsibility for devising and maintaining Quovadx's internal accounting controls. They knowingly or recklessly failed to meet that responsibility. Indeed, they exploited

Quovadx's insufficient internal controls in order improperly to recognize revenue. For example, although Quovadx's internal controls generally required a determination that a customer was creditworthy as a prerequisite to revenue recognition, those controls did not require documentation of the steps taken in making this determination. This control was easily circumvented in recognizing revenue from the Sourceworks and MicroStar transactions. Further, Quovadx's internal controls did not prevent Sweeney and Scherping from having \$7 million of software licenses shipped to Infotech in September 2003 despite the lack of the contractually-required letters-of-credit to pay for that software.

103. By engaging in the conduct described above, Sweeney and Scherping aided and abetted Quovadx's violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

#### **PRAYER FOR RELIEF**

The Commission respectfully requests that this Court enter a final judgment against Defendants Sweeney and Scherping:

- A. finding that Defendants Sweeney and Scherping committed the violations alleged above;
- B. permanently enjoining Defendants Sweeney and Scherping from violating Sections 17(a)(1), (2) and (3) of the Securities Act [15 U.S.C. §§ 77q(a)(1), (2),(3)] and Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5, 13a-14, 13b2-1, and 13b2-2 thereunder [17 C.F.R. §§ 240.10b-5, 240.13a-14, 240.13b2-1, and 240.13b2-2] and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A), and 78m(b)(2)(B)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13];




- C. barring Defendants Sweeney and Scherping from serving as an officer or director of any issuer required to file reports with the Commission under Section 12 or 15(d) of the Exchange Act [15 U.S.C. §§ 78(l) and 78(o)(d)], pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)];
- D. disgorgement of ill-gotten gain plus prejudgment interest thereon;
- E. ordering Defendants Sweeney and Scherping to pay appropriate civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];
- F. retaining jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and
- G. granting such other equitable relief as may be appropriate or necessary for the benefit of investors pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)].

**DEMAND FOR JURY TRIAL**

The SEC hereby demands a trial by jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

Dated: July 17, 2007

  
\_\_\_\_\_  
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