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7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON

10 SECURITIES AND EXCHANGE COMMISSION, Case No.

11 Plaintiff,

12 vs.

COMPLAINT

13 C. PAUL SANDIFUR, JR., THOMAS G.
14 TURNER, ROBERT A. NESS, THOMAS R.
MASTERS, DAN W. SANDY, DAVID R. SYRE,
15 and TRILLIUM CORPORATION,

JURY DEMAND

16 Defendants.

17
18
19 Plaintiff Securities and Exchange Commission ("Commission") alleges:

20 **SUMMARY OF ALLEGATIONS**

21 1. This lawsuit involves a fraudulent scheme by several former executives and
22 business associates of Metropolitan Mortgage & Securities Co., Inc. ("Metropolitan") to mislead
23 investors about the company's financial performance. Metropolitan was a Spokane, Washington real
24 estate sales and finance company with \$2 billion in assets that collapsed into bankruptcy in February
25 2004, causing some 10,000 investors in the Pacific Northwest holding approximately \$450 million in
26 Metropolitan securities to lose all, or a substantial portion, of their investments. The Metropolitan
27 executives who carried out the fraud were defendants C. Paul Sandifur, Jr. ("Sandifur"),

1 Metropolitan's controlling shareholder and Chief Executive Officer ("CEO"); Thomas G. Turner
2 ("Turner"), a long-time senior executive; Robert Ness ("Ness"), Controller; and Thomas R. Masters
3 ("Masters") Vice President for property development.

4 2. In an effort to hide the company's deteriorating financial condition from
5 investors, from at least June through September of 2002 these Metropolitan executives engineered a
6 series of complex real estate sales designed to illegally boost the company's reported earnings. In
7 each case, Metropolitan (directly or through companies related to it) financed all, or nearly all, of the
8 buyer's purchase price. The Metropolitan executives knew or were reckless in not knowing that,
9 under Generally Accepted Accounting Principles ("GAAP"), a seller may not recognize an
10 immediate gain on the sale of undeveloped real estate unless the buyer makes an independent initial
11 investment of at least 20% of the purchase price. Despite this, these defendants each caused
12 Metropolitan to recognize a gain on one or more of the transactions described in this complaint.
13 Defendant Sandifur even referred to these deals as "rabbits"—as in, "to pull a rabbit out of the hat."

14 3. In the fourth quarter of its fiscal year 2002, ended September 30, 2002,
15 Metropolitan entered into three so-called rabbit transactions, which led the company to improperly
16 recognize total gains of approximately \$13.2 million. As a result, Metropolitan falsely reported pre-
17 tax net income for fiscal 2002 of \$6.1 million, rather than a loss. In addition, for its third quarter of
18 fiscal 2002, ended June 30, 2002, Metropolitan improperly recognized a gain of approximately
19 \$930,000 on one additional rabbit transaction, which allowed the company to falsely report pre-tax
20 net income for the quarter of \$532,460, rather than a loss.

21 4. The Metropolitan executives were aided in one fraudulent transaction by
22 defendants Trillium Corporation ("Trillium"), a property development company; David Syre,
23 Trillium's CEO and President; and Dan Sandy, a Trillium creditor. Trillium, Syre and Sandy used a
24 shell company established in the name of Sandy's 18 year-old son (who received a motorcycle in
25 return for the use of his name) to purchase property from Metropolitan, in order to conceal the fact
26 that Trillium was the real purchaser of the property, and that Metropolitan and a related company
27 were providing 100% financing for Trillium's acquisition.

1 5. The fraud began to unravel in late 2003, when Metropolitan’s auditors
 2 discovered that Metropolitan management had misrepresented or withheld material information about
 3 the Trillium transaction. Within weeks, the auditors withdrew their prior audit opinions and resigned,
 4 and Metropolitan filed for Chapter 11 bankruptcy protection.

5 6. The Commission seeks a court order directing defendants Sandifur, Turner,
 6 Ness and Masters to disgorge all benefits they received as a result of their fraud; requiring all
 7 defendants to pay monetary penalties; and enjoining all defendants from further violations of the
 8 antifraud and other provisions of the federal securities laws. In addition, the Commission seeks an
 9 order barring Sandifur, Turner and Ness from serving as officers or directors of any public company.

10 **JURISDICTION AND VENUE**

11 7. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)
 12 and 22(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §77t(b), 77t(d) and 77v(a)] and
 13 Sections 21(d), 21(e) and 27 of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C.
 14 §§78u(b), 78u(e) and 78aa]. Defendants, directly or indirectly, have made use of the means and
 15 instrumentalities of interstate commerce, or of the mails, in connection with the acts, practices and
 16 courses of business alleged in this Complaint.

17 8. Venue in this District is proper pursuant to Section 22(a) of the Securities Act
 18 [15 U.S.C. §77v(a)] and Section 27 of the Exchange Act [15 U.S.C. §78aa]. Certain of the
 19 transactions, acts, practices and courses of conduct alleged in this Complaint occurred within the
 20 Western District of Washington.

21 9. Assignment to the Seattle Division is appropriate pursuant to Local Rule 5(1)
 22 because a substantial part of the events that give rise to the claims occurred in King County and
 23 Whatcom County.

24 **DEFENDANTS**

25 10. Defendant Sandifur resides in El Centro, California. Sandifur was named CEO
 26 of Metropolitan in 1991, and Chairman of the Board in 1995; he held both posts until he resigned
 27 them in February 2004. At all relevant times, Sandifur owned, or had the power to vote, all of the

1 outstanding common stock of Metropolitan, as well that of a related company, Summit Securities,
2 Inc. ("Summit").

3 11. Defendant Turner resides in Sparks, Nevada. From 1995 until his employment
4 was terminated in January 2004, Turner was both an executive officer of Metropolitan and the
5 President of Summit. During at least fiscal year 2002, Turner reported directly to Sandifur, was paid
6 his salary as an employee of Metropolitan, and was a member of the Senior Leadership Team, a small
7 group of executives that made strategic decisions for both the Metropolitan and Summit consolidated
8 groups of companies.

9 12. Defendant Ness resides in Bellevue, Washington, and is a certified public
10 accountant. Ness was the Controller for both Metropolitan and Summit from 2001 through his
11 termination in April 2004. At the time of the transactions described in this Complaint, Ness was the
12 highest-ranking officer in Metropolitan's finance department, and reported directly to Sandifur.

13 13. Defendant Masters resides in Spokane, Washington. Masters was
14 Metropolitan's Vice President for property sales and development from March 2002 through
15 February 2003, and reported directly to Sandifur.

16 14. Defendant Syre resides in Bellingham, Washington, and is the Chairman, CEO
17 and sole shareholder of Trillium Corporation.

18 15. Defendant Trillium Corporation was founded in 1973 by Syre and is a
19 privately-held real estate development and timber harvesting company. Trillium is based in
20 Bellingham, Washington and incorporated under Washington law.

21 16. Defendant Sandy resides in Rochester, Washington. He owns several
22 privately-held companies, including a timber business, an athletic club, and some real estate ventures.

23 FACTUAL ALLEGATIONS

24 **A. Metropolitan's Business**

25 17. At all relevant times, Metropolitan was a closely-held company that invested
26 in mortgages, structured settlements and lottery payments, and also sold life insurance and annuities.
27 Sandifur inherited Metropolitan from his father in approximately 1992.

1 18. Prior to 1995, Summit was a Metropolitan subsidiary. In that year, Sandifur
2 established Summit as a separate corporation for financial reporting purposes. However,
3 Metropolitan and Summit continued to be effectively managed as one entity.

4 19. Though privately held, Metropolitan financed its operations through a series
5 of debenture and preferred stock offerings to the public. Between 1993 and 2003, Metropolitan
6 raised over \$630 million from investors throughout the Pacific Northwest, including nearly \$100
7 million from late 2002 through mid-2003 alone, after the start of the fraudulent scheme described in
8 this Complaint.

9 20. Certain series of Metropolitan's preferred shares and debentures were
10 registered with the Commission pursuant to Sections 12(b) and 12(g) of the Exchange Act [15 U.S.C.
11 §§78j(b) and 78j(g)]. Beginning in 2000, Metropolitan listed a series of its preferred stock on the
12 American Stock Exchange and a class of notes on the Pacific Stock Exchange. These securities were
13 delisted in December 2003.

14 **B. As a Result of Defendants' Fraud, Metropolitan Materially Misstated Its Net**
15 **Income for Fiscal Year 2002 and the Third Quarter of Fiscal 2002**

16 21. In the late 1990's, Metropolitan began to experience financial difficulties. In
17 its Form 10-K filed with the Commission for the fiscal year ended September 30, 1999, Metropolitan
18 disclosed that it would have to rely, in part, on future sales of its securities simply to repay its current
19 indebtedness. Beginning in early 2000, in an attempt to improve Metropolitan's performance, the
20 company focused on originating high-risk commercial real estate loans and selling real estate.
21 Despite this, Metropolitan reported a loss of \$7.6 million for the fiscal year ended September 30,
22 2000, followed by a loss of \$8.9 million for fiscal year 2001.

23 22. By the spring of 2002, Metropolitan's management was concerned that
24 another year of losses would have a negative impact on Metropolitan's ability to sell its securities.
25 As a result, Metropolitan began to look for ways to generate income through real estate sales. These
26 income-generating real estate sales were known at Metropolitan as "rabbits," (a term used by
27 Sandifur and related to the notion of "pulling a rabbit out of the hat"), and referred to the sale of real

1 estate to buyers who provided little or no cash of their own. Rather, the buyers financed their real
2 estate purchases almost entirely through loans obtained from Metropolitan or Summit, or their
3 subsidiaries.

4 23. Under GAAP, a seller of undeveloped property may not record an immediate
5 gain on the sale unless the buyer makes an independent initial investment (i.e., a down payment) of at
6 least 20% of the purchase price. In determining the initial investment amount, the seller must
7 subtract from the down payment any funds that have been or will be loaned, refunded or directly or
8 indirectly provided to the buyer by the seller. Sandifur, Turner, Ness and Masters knew, or were
9 reckless in not knowing, this accounting rule.

10 24. Despite their knowledge, these Metropolitan executives were each involved in
11 one or more "rabbit" deals in the fourth quarter of fiscal year 2002, in which Metropolitan, Summit or
12 their subsidiaries financed all, or nearly all, of the buyer's purchase price. As a result, in its fourth
13 quarter of fiscal 2002, ended September 30, 2002, Metropolitan improperly recognized total gains of
14 approximately \$13.2 million on three real estate sales. These transactions, referred to below as the
15 Trillium/Jeff Properties, Grand Hills, and Neighborhood II transactions, allowed Metropolitan to
16 falsely report pre-tax net income for the year of \$6.1 million, rather than a loss.

17 25. For its third quarter of fiscal 2002, ended June 30, 2002, Metropolitan
18 improperly recognized a gain of approximately \$930,000 on an additional rabbit transaction, referred
19 to below as Neighborhood I, which allowed Metropolitan to falsely report pre-tax net income for the
20 quarter of \$532,460, rather than a loss.

21 **I. The Fraudulent Fourth Quarter 2002 Transactions**

22 **(a) Trillium/Jeff Properties**

23 26. In early September 2002, Metropolitan reached a preliminary agreement to
24 sell two real estate properties to Trillium. Trillium lacked the funds to make a down payment on the
25 deal. Thus, the proposed terms called for Metropolitan to take a note from Trillium for 80% of the
26 purchase price, with the remaining 20% to be provided through a loan to Trillium by Old Standard
27 Life Insurance Company ("Old Standard"), a subsidiary of Summit. The deal also called for Old
28

1 Standard to loan additional funds to Trillium to provide working capital. Metropolitan expected the
2 proposed deal to generate at least a \$10 million net gain, which was necessary so that the company
3 could report net income, rather than a loss, for fiscal year 2002.

4 27. Given the size of the transaction, Metropolitan asked its outside auditors,
5 Ernst & Young, LLP ("E&Y"), whether Metropolitan would be able to recognize an immediate gain
6 on the sale. However, E&Y rejected gain treatment, and advised Turner and Ness that it would
7 violate GAAP to record a gain on a real estate sale where Metropolitan and a company related to it
8 supplied 100% of the financing.

9 28. Sandifur was informed of E&Y's advice. On or about September 10, 2002,
10 Sandifur told Trillium's CEO, defendant Syre, that E&Y had identified some "accounting snags."
11 Over the next several days, Sandifur remained in touch with Syre to try to restructure the deal.

12 29. At the same time, Turner continued to negotiate with his Trillium contacts—a
13 Trillium Vice President and defendant Sandy. Although he was not a Trillium employee, Sandy was
14 a friend and business associate of Syre, and maintained an office at Trillium where he carried out
15 certain management duties on Syre's behalf. In addition, Sandy had previously loaned Trillium
16 approximately \$6 million.

17 30. In a telephone call on or about September 13, 2002, Turner, the Trillium Vice
18 President and Sandy reached an agreement on a revised deal. Rather than have Trillium buy the
19 property directly, the parties decided to use a new shell company, to be formed by Sandy, to make the
20 purchase. The shell company would get 80% financing from Metropolitan. Meanwhile, Old
21 Standard would make a loan to Trillium, which would be funneled to the shell company so that the
22 shell could make a 20% down payment. Old Standard would also loan Trillium additional funds so
23 that Trillium could repay its \$6 million debt to Sandy.

24 31. During the September 13, 2002 call, Sandy made it clear that he would
25 purchase the property only as a favor to Trillium, and only if he could do so without ultimately
26 having to pay for it. Thus, the parties agreed that Sandy would later transfer the property to Trillium.
27 However, in order to avoid scrutiny from Metropolitan's auditors, Turner insisted that Sandy and
28

1 Trillium delay the transfer until after December 2002, when Metropolitan would file its audited
2 financial statements for fiscal 2002 with the Commission.

3 32. Sandifur, Turner and Ness discussed the restructured deal and they each knew
4 that Sandy would establish a shell company, which would hide the fact that Trillium was the real
5 purchaser of the property, and that Metropolitan and a related company were providing 100%
6 financing for Trillium's acquisition.

7 33. Shortly thereafter, Turner and Ness contacted E&Y and informed them that
8 Sandy, through the shell company, would purchase the properties. However, Turner and Ness failed
9 to inform E&Y that Sandy was only purchasing the property as a favor to Syre and would later
10 transfer the property to Trillium, or that Metropolitan and a company related to it were providing
11 100% financing for Sandy's purchase. Instead, Turner and Ness falsely stated that Sandy was
12 unrelated to Trillium and was purchasing the properties independently for his own development
13 purposes. Based on these misrepresentations, E&Y informed Turner and Ness that they would
14 approve the gain.

15 34. Sandy then incorporated a shell entity called Jeff Properties to buy the
16 properties, and installed his 18 year-old son, Jeff Sandy, as the sole shareholder and managing
17 member of the shell entity. Jeff Sandy agreed to his role after Sandy, his father, and Syre promised
18 him a motorcycle.

19 35. On or about September 27, 2002, Metropolitan and a subsidiary company,
20 Western United Life Assurance Company ("Western United"), sold two properties to Jeff Properties
21 for \$24 million, with Metropolitan taking a note from Jeff Properties for 80% of the purchase price.
22 At the same time, Trillium obtained a \$17.6 million loan from Summit subsidiary Old Standard.
23 Approximately \$5 million of the loan proceeds went to Jeff Properties, which used these funds to
24 make its 20% down payment. Thus, Metropolitan and a related company, Old Standard, supplied
25 100% of the financing for the Jeff Properties purchase, with no funds actually contributed by Jeff
26 Properties or Sandy.

1 36. Metropolitan, which consolidated the financial results of Western United,
2 reported a \$10 million gain on the transaction in its results for the fourth quarter of fiscal 2002.
3 Sandifur, Turner and Ness knew, or were reckless in not knowing, that it was improper for
4 Metropolitan to recognize this gain. In addition, Trillium, Syre and Sandy knowingly provided
5 substantial assistance to Metropolitan in improperly recognizing the gain.

6 37. Despite the nominal purchase by Jeff Properties, the parties continued to act
7 as though Trillium was the real owner of the properties. Among other things, in the fall of 2002 a
8 Trillium employee oversaw development plans for the properties, and corresponded with Turner
9 about issues concerning the properties. However, consistent with Turner's request, Jeff Properties
10 did not seek to formally transfer the property to Trillium until January 2003, after Metropolitan filed
11 with the Commission its audited financials for fiscal year 2002.

12 38. In connection with the 2002 audit, Sandifur, Turner and Ness continued to
13 make material misrepresentations and omissions concerning the Trillium/Jeff Properties transaction.
14 In or around December 2002, Turner and Ness provided E&Y with a written statement that falsely
15 represented that Jeff Properties had a successful history in commercial property development and that
16 Jeff Properties' commitment of the \$5 million down payment indicated its intent to develop the
17 properties and pay off the loan to Metropolitan.

18 39. In a letter to E&Y dated December 27, 2002, Sandifur and Ness represented
19 that Metropolitan's consolidated financial statements for fiscal 2002 were presented in conformity
20 with GAAP, and that they were not aware of fraudulent conduct by any officer or employee with a
21 significant role in the company's system of internal controls. These representations were false based
22 not only on what Sandifur and Ness knew about the Trillium/Jeff Properties transaction, but also on
23 their knowledge of each of the remaining "rabbit" transactions described in this Complaint.

24 **(b) Grand Hills**

25 40. In mid-September 2002, Grand Hills Holding ("Grand Hills"), a small
26 residential real estate developer, approached Metropolitan seeking a \$7 million loan to complete the
27 purchase of a 31-lot real estate property. Grand Hills had previously paid a non-refundable fee of

1 approximately \$700,000 to the landowner in exchange for an option to buy the property, and the
2 option was set to expire on September 27, 2002.

3 41. Rather than make the loan to Grand Hills, which would not have generated
4 any significant immediate income for Metropolitan, Sandifur and Turner looked to create another
5 “rabbit” transaction—in which they could improperly recognize a gain on a real estate sale in which
6 the buyer paid less than 20% down.

7 42. In order to do this, Sandifur and Turner arranged for two companies related to
8 Metropolitan to buy the property, rather than Grand Hills. The companies were Metropolitan
9 subsidiary Western United and Summit subsidiary Old Standard. The purchase took place on or
10 about September 27, 2002, at a price of approximately \$7.5 million, less the \$700,000 deposit that
11 Grand Hills had paid previously.

12 43. That same day, Western United resold six of the lots to Grand Hills for \$3.5
13 million. In order to finance this transaction, Western United took a note from Grand Hills for \$2.8
14 million, or 80% of the purchase price, and counted Grand Hills’ original \$700,000 deposit as the 20%
15 down payment on the sale.

16 44. However, simultaneous with the sale by Western United, Old Standard
17 granted Grand Hills an option to purchase the remaining 25 lots. Old Standard also gave Grand Hills
18 \$200,000 in cash as a purported “option rebate,” and promised Grand Hills \$279,000 in future
19 payments for infrastructure development.

20 45. The six-lot sale and 25-lot option agreement were part of a single deal, and
21 Grand Hills would not have purchased the six lots unless it was able to enter into the option
22 agreement at the same time.

23 46. Thus, in order to recognize a gain on the six-lot sale, under GAAP
24 Metropolitan was required to look not just at Grand Hills’ \$700,000 down payment, but also at any
25 amounts that Metropolitan and its related companies had given or promised to give back to Grand
26 Hills. When taking into account the \$200,000 purported option rebate and the \$279,000 in promised
27

1 future payments, Grand Hills' initial investment was not \$700,000, but rather \$221,000, far below the
2 20% required to recognize a gain on the six-lot sale.

3 47. Despite this, Metropolitan recognized a gain of \$1.8 million on the six-lot sale
4 by Western United in its fourth quarter of fiscal 2002. Sandifur and Turner knew, or were reckless in
5 not knowing, that it was improper for Metropolitan to recognize this gain.

6 (c) Neighborhood II

7 48. On or about September 30, 2002, Metropolitan and its subsidiary Western
8 United acquired 188 acres of undeveloped real estate from a third party. That same day, Western
9 United resold 130 acres of the property to developer Neighborhood, Inc. ("Neighborhood") for
10 approximately \$3.5 million. Metropolitan, through Western United, recognized a gain on the sale of
11 \$1.4 million for the fourth quarter of fiscal 2002.

12 49. It was improper for Metropolitan to recognize this gain because the sale to
13 Neighborhood was another rabbit transaction, in which the buyer did not make an independent initial
14 investment of at least 20% of the purchase price, but rather obtained 100% financing from
15 Metropolitan and its related companies.

16 50. The financing came from Summit, which lent Neighborhood the funds for the
17 20% down payment, and Western United, which financed the remaining 80%. The transaction was
18 structured by Sandifur, Turner, Ness and Masters, Metropolitan's Vice President for property
19 development.

20 51. Sandifur, Turner, Ness and Masters knew, or were reckless in not knowing,
21 that the sale to Neighborhood was to be 100% financed by Metropolitan and a related company.
22 These defendants also knew, or were reckless in not knowing, that there was no business purpose for
23 the Summit loan other than to provide Neighborhood with the funds for the 20% down payment. All
24 of these individuals knew, or were reckless in not knowing, that it was improper under GAAP for
25 Metropolitan to recognize a gain on this sale.

26 52. In order to further increase the size of the gain, Western United also
27 improperly understated its cost basis in the parcel that it resold to Neighborhood. Metropolitan and
28

1 Western United paid a total of \$4.7 million to acquire the 188 acres from the third-party owner, for an
2 average of \$25,000 per acre. However, in reselling 130 acres to Neighborhood, Metropolitan
3 reported its cost basis for this parcel at only \$10,000 per acre.

4 53. Sandifur, Turner, Ness and Masters knew, or were reckless in not knowing,
5 that Western United's cost basis in the land it resold to Neighborhood was materially higher than
6 \$10,000 per acre. Despite this, they each caused Western United to understate its cost basis and, thus
7 overstate the gain it realized when it resold the 130 acres to Neighborhood.

8
9 **II. The Fraudulent Third Quarter 2002 Neighborhood I Transaction**

10 54. For the third quarter of fiscal 2002, ended June 30, 2002, Metropolitan
11 entered into another rabbit transaction involving Neighborhood. In this case, Metropolitan sold an
12 undeveloped property to Neighborhood for approximately \$2 million, and reported a gain of
13 approximately \$930,000 on the sale. As a result of this transaction, Metropolitan reported quarterly
14 net income of \$532,460, rather than a net loss.

15 55. It was improper for Metropolitan to recognize a gain on this transaction
16 because Neighborhood did not make an independent initial investment of at least 20% of the purchase
17 price, but rather obtained 100% financing from Metropolitan and its related companies. The
18 financing came from Summit, which provided the funds for the 20% down payment, and
19 Metropolitan, which financed the remaining 80%.

20 56. Ness structured the deal, along with Turner and Sandifur. Each of them knew
21 or was reckless in not knowing that it was improper for Metropolitan to recognize revenue on the
22 transaction. Despite this, Sandifur, Turner and Ness caused Metropolitan to recognize a gain on the
23 sale for its third quarter of fiscal 2002.

24 57. In addition, Sandifur, Turner and Ness caused Metropolitan to include the
25 improper gain on the June 2002 Neighborhood transaction in Metropolitan's results for its full fiscal
26 year, which were published in Metropolitan's Form 10-K for fiscal 2002.

27 ///

1 **C. False Filings and Certifications of Metropolitan's Financial Results**

2 58. Metropolitan reported its false financial results for the third quarter in a Form
3 10-Q filed with the Commission on or about August 14, 2002. Sandifur and Ness, as Metropolitan's
4 CEO and Principal Financial Officer, respectively, signed the Form 10-Q.

5 59. Metropolitan reported its false financial results for fiscal 2002 in a Form 10-K
6 filed with the Commission on or about December 31, 2002. Turner and Masters reviewed and
7 commented on the Form 10-K prior to its filing, and Sandifur and Ness, as Metropolitan's CEO and
8 Principal Financial Officer, respectively, signed the Form 10-K.

9 60. Metropolitan's fiscal 2002 Form 10-K included a certification signed by
10 Sandifur and Ness as required by Section 302 of the Sarbanes-Oxley Act, 18 U.S.C. §7241. Among
11 other things, Sandifur and Ness certified that: (a) the report did not contain any untrue statement of a
12 material fact or omit to state a material fact necessary to make the statements made, in light of the
13 circumstances under which such statements were made, not misleading; (b) the financial statements,
14 and other financial information included in the report, fairly presented in all material respects the
15 financial condition, results of operations, and cash flows of Metropolitan as of, and for, the period
16 presented in the report; and (c) they had disclosed to Metropolitan's auditors all significant
17 deficiencies in the design or operation of Metropolitan's internal controls and any fraud, whether or
18 not material, that involved management or other employees who had a significant role in
19 Metropolitan's internal controls.

20 61. In March 2003, Metropolitan filed a Form S-2 registration statement with the
21 Commission in an effort to register the sale of \$150,000,000 worth of debentures. The registration
22 statement also incorporated Metropolitan's false financial results for fiscal 2002.

23 **CLAIMS FOR RELIEF**

24 **FIRST CLAIM**

25 *Violations of Section 17(a) of the Securities Act against Sandifur, Turner, Ness, and Masters*

26 62. The Commission re-alleges and incorporates by reference the allegations
27 contained in paragraphs 1 through 61 above.

1 63. Defendants Sandifur, Turner, Ness and Masters have, by engaging in the
2 conduct set forth above, directly or indirectly, in the offer or sale of securities, by the use of means or
3 instruments of transportation or communication in interstate commerce, or of the mails: (a) with
4 scienter, employed devices, schemes or artifices to defraud; (b) obtained money or property by means
5 of untrue statements of material fact or by omitting to state material facts necessary in order to make
6 the statements made, in the light of the circumstances under which they were made, not misleading;
7 or (c) engaged in transactions, practices or courses of business which operated or would operate as a
8 fraud or deceit upon the purchasers of such securities.

9 64. By reason of the foregoing, defendants have directly or indirectly violated
10 Section 17(a) of the Securities Act [15 U.S.C. §77q(a)] and unless enjoined will continue to violate
11 Section 17(a) of the Securities Act.

12 **SECOND CLAIM**

13 *Primary Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder*
14 *Against Sandifur, Turner, Ness, and Masters*

15 65. The Commission re-alleges and incorporates by reference the allegations
16 contained in paragraphs 1 through 61 above.

17 66. Defendants Sandifur, Turner, Masters, and Ness have, by engaging in the
18 conduct set forth above, directly or indirectly, by use of means or instrumentalities of interstate
19 commerce, or of the mails, or of a facility of a national security exchange, with scienter: (a)
20 employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or
21 omitted to state material facts necessary in order to make the statements made, in light of the
22 circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or
23 courses of business which operated or would operate as a fraud or deceit upon other persons, in
24 connection with the purchase or sale of securities.

25 67. By reason of the foregoing, defendants Sandifur, Turner, Ness and Masters
26 have directly or indirectly violated Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule
27 10b-5 [17 C.F.R. §§240.10b-5] thereunder, and unless enjoined, will continue to violate Section 10(b)
28 of the Exchange Act and Rule 10b-5 thereunder.

1 **THIRD CLAIM**

2 *Aiding and Abetting Violations of Section 10(b) of the Exchange Act and*
3 *Rule 10b-5 Thereunder Against Turner, Ness, Masters, Sandy, Syre and Trillium*

4 68. The Commission re-alleges and incorporates by reference the allegations
5 contained in paragraphs 1 through 61 above.

6 69. Through the conduct alleged above, Metropolitan directly or indirectly, by use
7 of means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national
8 security exchange, with scienter: (a) employed devices, schemes or artifices to defraud; (b) made
9 untrue statements of material fact or omitted to state material facts necessary in order to make the
10 statements made, in light of the circumstances under which they were made, not misleading; or (c)
11 engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit
12 upon other persons, in connection with the purchase or sale of securities.

13 70. Defendants Turner, Ness, Masters, Sandy, Syre and Trillium knowingly
14 provided substantial assistance to Metropolitan's violations of Section 10(b) of the Exchange Act [15
15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §§240.10b-5] thereunder.

16 71. By reason of the foregoing, defendants Turner, Ness, Masters, Sandy, Syre and
17 Trillium have aided and abetted, and unless enjoined, will continue to aid and abet, violations of
18 Section 10(b) [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §§240.10b-5] thereunder.

19 **FOURTH CLAIM**

20 *False Annual Reports – Aiding and Abetting Violations of Section 13(a) of the Exchange Act*
21 *and Rules 12b-20 and 13a-1 Thereunder Against All Defendants*

22 72. The Commission realleges and incorporates by reference Paragraphs 1 through
23 61 above.

24 73. Metropolitan filed with the Commission an annual report on Form 10-K for the
25 fiscal year ended September 30, 2002 that contained untrue statements of material fact and omitted to
26 state material information required to be stated therein or necessary in order to make the required
27 statements made, in the light of the circumstances under which they were made, not misleading, in
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1 violation of Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules 12b-20 and 13a-1
2 under the Exchange Act [17 C.F.R. §§240.12b-20 and 240.13a-1].

3 74. By engaging in the conduct described above, defendants Sandifur, Turner,
4 Ness, Masters, Syre, Sandy and Trillium each knowingly provided substantial assistance with respect
5 to Metropolitan's violations of Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules
6 12b-20 and 13a-1 under the Exchange Act [17 C.F.R. §§240.12b-20 and 240.13a-1].

7 75. By reason of the foregoing, defendants Sandifur, Turner, Ness, Masters, Syre,
8 Sandy and Trillium aided and abetted, and unless restrained and enjoined, will continue to aid and
9 abet, Metropolitan's violations of Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules
10 12b-20 and 13a-1 under the Exchange Act [17 C.F.R. §§240.12b-20 and 240.13a-1].

11 **FIFTH CLAIM**

12 *False Quarterly Reports – Aiding and Abetting Violations of Section 13(a) of the Exchange*
13 *Act and Rules 12b-20 and 13a-13 Thereunder Against Sandifur, Turner and Ness*

14 76. The Commission realleges and incorporates by reference Paragraphs 1 through
15 61 above.

16 77. Metropolitan filed with the Commission a quarterly report on Form 10-Q for
17 the third fiscal quarter ended June 30, 2002 that contained untrue statements of material fact and
18 omitted to state material information required to be stated therein or necessary in order to make the
19 required statements made, in the light of the circumstances under which they were made, not
20 misleading, in violation of Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules 12b-20
21 and 13a-13 under the Exchange Act [17 C.F.R. §§240.12b-20 and 240.13a-13].

22 78. By engaging in the conduct described above, defendants Sandifur, Turner and
23 Ness knowingly provided Metropolitan substantial assistance with respect to Metropolitan's
24 violations of Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules 12b-20 and 13a-13
25 under the Exchange Act [17 C.F.R. §§240.12b-20 and 240.13a-13].

26 79. By reason of the foregoing, defendants Sandifur, Turner and Ness aided and
27 abetted, and unless restrained and enjoined, will continue to aid and abet, Metropolitan's violations of

1 Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules 12b-20 and 13a-13 under the
2 Exchange Act [17 C.F.R. §§240.12b-20 and 240.13a-13].

3 **SIXTH CLAIM**

4 *Circumventing Internal Accounting Controls – Violations of Section 13(b)(5) of the Exchange
5 Act and Rule 13b2-1 Thereunder Against Sandifur, Turner, Ness and Masters*

6 80. The Commission realleges and incorporates by reference Paragraphs 1 through
7 61 above.

8 81. By engaging in the conduct described above, defendants Sandifur, Turner,
9 Ness and Masters knowingly circumvented or knowingly failed to implement a system of internal
10 accounting controls relating to Metropolitan or knowingly falsified any book, record, or account of
11 Metropolitan.

12 82. By reason of the foregoing, defendants Sandifur, Turner, Ness and Masters
13 have violated and, unless restrained and enjoined, will continue to violate Section 13(b)(5) of the
14 Exchange Act [15 U.S.C. §78m(b)(5)] and Rule 13b2-1 [17 C.F.R. §240.13b2-1].

15 **SEVENTH CLAIM**

16 *Inaccurate Books and Records – Aiding and Abetting Violations of Section 13(b)(2)(A) of the
17 Exchange Act Against Sandifur, Turner, Ness and Masters*

18 83. The Commission realleges and incorporates by reference Paragraphs 1 through
19 61 above.

20 84. Based on the conduct alleged above, Metropolitan violated Section 13(b)(2)(A)
21 of the Exchange Act [15 U.S.C. §78m(b)(2)(A)], which obligates issuers of securities registered
22 pursuant to Section 12 of the Exchange Act [15 U.S.C. §78l] to make and keep books, records, and
23 accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of
24 the assets of the issuer.

25 85. By engaging in the conduct described above, defendants Sandifur, Turner,
26 Ness and Masters knowingly provided substantial assistance to Metropolitan's failure to make and
27 keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the
28 transactions and dispositions of the assets of Metropolitan.

1 86. By reason of the foregoing, defendants Sandifur, Turner, Ness and Masters
 2 have aided and abetted violations by Metropolitan of Section 13(b)(2)(A) of the Exchange Act [15
 3 U.S.C. §78m(b)(2)(A)] and, unless restrained and enjoined, will continue to aid and abet such
 4 violations.

5 **EIGHTH CLAIM**

6 *Inadequate Internal Accounting Controls – Aiding and Abetting Violations of Section
 7 13(b)(2)(B) of the Exchange Act Against Sandifur, Turner, Ness and Masters*

8 87. The Commission realleges and incorporates by reference Paragraphs 1 through
 9 61 above.

10 88. Based on the conduct alleged above, Metropolitan violated Section 13(b)(2)(B)
 11 of the Exchange Act [15 U.S.C. §78m(b)(2)(B)], which obligates issuers of securities registered
 12 pursuant to Section 12 of the Exchange Act [15 U.S.C. §78l] to devise and maintain a sufficient
 13 system of internal accounting controls.

14 89. By engaging in the conduct described above, defendants Sandifur, Turner,
 15 Ness and Masters knowingly provided substantial assistance to Metropolitan’s failure to devise and
 16 maintain a sufficient system of internal accounting controls.

17 90. By reason of the foregoing, defendants Sandifur, Turner, Ness and Masters
 18 have aided and abetted violations by Metropolitan of Section 13(b)(2)(B) of the Exchange Act [15
 19 U.S.C. § 78m(b)(2)(B)] and, unless restrained and enjoined, will continue to aid and abet such
 20 violations.

21 **NINTH CLAIM**

22 *False Statements and Omissions to Accountants – Violations of Rule 13b2-2 Under the
 23 Exchange Act Against Sandifur, Turner and Ness*

24 91. The Commission realleges and incorporates by reference Paragraphs 1 through
 25 61 above.

26 92. By engaging in the conduct described above, defendants Sandifur, Turner and
 27 Ness, directly or indirectly: (a) made or caused to be made a materially false or misleading statement;
 28 or (b) omitted to state, or caused another person to omit to state, a material fact necessary in order to

1 make statements made, in light of the circumstances under which such statements were made, not
2 misleading to an accountant, in connection with an audit or examination of the financial statements of
3 Metropolitan required to be made and the preparation and filing of documents and reports required to
4 be filed with the Commission.

5 93. By reason of the foregoing, defendants Sandifur, Turner and Ness have
6 violated and, unless restrained and enjoined, will continue to violate Exchange Act Rule 13b2-2 [17
7 C.F.R. §240.13b2-2].

8 **TENTH CLAIM**

9 *False Sarbanes-Oxley Certifications – Violation of Rule 13a-14 Under the Exchange Act*
10 *Against Sandifur and Ness*

11 94. The Commission realleges and incorporates by reference Paragraphs 1 through
12 61 above.

13 95. As Metropolitan's CEO and Principal Financial Officer, respectively,
14 defendants Sandifur and Ness signed false certifications pursuant to Rule 13a-14 of the Exchange Act
15 that were included in Metropolitan's annual report on Form 10-K for the fiscal year ended September
16 30, 2002. In such certifications, defendants Sandifur and Ness falsely stated, among other things,
17 that: (a) the report did not contain any untrue statement of a material fact or omit to state a material
18 fact necessary to make the statements made, in light of the circumstances under which such
19 statements were made, not misleading; (b) the financial statements, and other financial information
20 included in the report, fairly presented in all material respects the financial condition, results of
21 operations, and cash flows of Metropolitan as of, and for, the period presented in the report; and (c)
22 they had disclosed to Metropolitan's auditors all significant deficiencies in the design or operation of
23 Metropolitan's internal controls and any fraud, whether or not material, that involved management or
24 other employees who had a significant role in Metropolitan's internal controls.

25 96. By reason of the foregoing, defendants Sandifur and Ness have violated and,
26 unless restrained and enjoined, will continue to violate Exchange Act Rule 13a-14 [17 C.F.R.
27 §240.13a-14].

ELEVENTH CLAIM

Sandifur's Liability Under Exchange Act Section 20(a) for Metropolitan's Violations

97. The Commission realleges and incorporates by reference Paragraphs 1 through 61 above.

98. By virtue of his activities and positions at Metropolitan from at least June 1, 2002 through March 2003, Sandifur was, directly or indirectly, a control person of Metropolitan for purposes of Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)].

99. As a control person, Sandifur is jointly and severally liable with Metropolitan for Metropolitan's violations of Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A), and 78m(b)(2)(B)] and Rules 10b-5, 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§ 240.10b-5, 240.12b-20 and 240.13a-13].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

A. Enjoin defendant Sandifur from, directly or indirectly, violating Section 17(a) of the Securities Act, Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B) and 13(b)(5) of the Exchange Act, and Rules 10b-5, 12b-20, 13a-1 and 13a-13, 13a-14, 13b2-1 and 13b2-2 thereunder;

B. Enjoin defendant Turner from, directly or indirectly, violating Section 17(a) of the Securities Act, Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B) and 13(b)(5) of the Exchange Act, and Rules 10b-5, 12b-20, 13a-1 and 13a-13, 13b2-1 and 13b2-2 thereunder;

C. Enjoin defendant Ness from directly or indirectly violating Section 17(a) of the Securities Act, Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B) and 13(b)(5) of the Exchange Act, and Rules 10b-5, 12b-20, 13a-1 and 13a-13, 13a-14, 13b2-1 and 13b2-2 thereunder;

D. Enjoin defendant Masters from directly or indirectly violating Section 17(a) of the Securities Act, Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B) and 13(b)(5) of the Exchange Act, and Rules 10b-5, 12b-20, 13a-1 and 13b2-1 thereunder,

1 E. Enjoin defendants Trillium Corporation, Syre, and Sandy from violating,
2 directly or indirectly, Sections 10(b) and 13(a) of the Exchange Act, and Rules 10b-5, 12b-20 and
3 13a-1 thereunder;

4 F. Order all Defendants to pay civil monetary penalties under Section 20(d) of the
5 Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)];

6 G. Order defendants Sandifur, Turner, Ness and Masters to disgorge all ill-gotten
7 gains according to proof, plus prejudgment interest;

8 H. Enjoin defendants Sandifur, Turner and Ness from serving as officers or
9 directors of any entity having a class of securities registered with the Commission pursuant to Section
10 12 of the Exchange Act [15 U.S.C. §78l] or that is required to file reports pursuant to Section 15(d) of
11 the Exchange Act [15 U.S.C. §78o(d)];

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

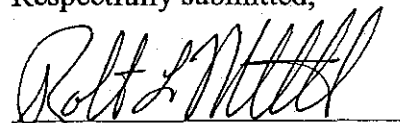
16 J. Grant such further relief as the Court may deem just, equitable, and
17 appropriate.

18 **DEMAND FOR JURY TRIAL**

19 The Commission hereby demands a jury trial.

20
21 Dated: September ²², 2005

22 Respectfully submitted,

23 

24 Helane L. Morrison

25 Robert L. Mitchell

26 Kristin A. Snyder

27 Attorneys for Plaintiff

28 SECURITIES AND EXCHANGE
COMMISSION