

1 HELANE L. MORRISON (Cal. Bar No. 127752)
MARC J. FAGEL (Cal. Bar No. 154425)
2 MICHAEL S. DICKE (Cal. Bar No. 158187)
SAHIL W. DESAI (Cal. Bar No. 197358)

3 Attorneys for Plaintiff
4 SECURITIES AND EXCHANGE COMMISSION
44 Montgomery Street, Suite 2600
5 San Francisco, California 94104
Telephone: (415) 705-2500
6 Facsimile: (415) 705-2501

E-filing
ORIGINAL
FILED

JAN 10 2005

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

JCS

C 05 00135

11 SECURITIES AND EXCHANGE COMMISSION,

Case No.

12 Plaintiff,

COMPLAINT

13 vs.

14 THOM CALANDRA,

15 Defendant.
16

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

19 SUMMARY OF THE ACTION

20 1. Defendant Thom Calandra, a journalist and former chief commentator for the popular
21 Internet website CBS.MarketWatch.com, made over \$400,000 in illegal profits by secretly selling
22 ahead of the public stocks that he promoted in his prominent investment newsletter, *The Calandra*
23 *Report* ("TCR"). Calandra defrauded investors by engaging in a practice known as "scalping"—
24 buying shares of predominantly thinly-traded, small-cap companies, writing highly favorable
25 newsletter profiles recommending the companies to his subscribers, and then selling the majority of
26 his shares when the increased demand that he generated drove up the stock price. From March to
27 December 2003, Calandra reaped more than \$400,000 in profits by scalping 23 different stocks.
28

1 2. In addition, Calandra received undisclosed consideration from a stock promoter
2 affiliated with two Canadian mining companies that he promoted in *TCR*. Calandra failed to inform
3 his readers that he recommended these investments after receiving heavily-discounted shares in the
4 two companies from a stock promoter—shares which he sold at a substantial profit after driving up
5 the stock prices through his newsletter write-ups.

6 3. By his conduct, Defendant committed securities fraud. The Commission seeks,
7 among other relief, a permanent injunction, disgorgement of Calandra's illegal trading profits, plus
8 prejudgment interest, and the imposition of a civil money penalty.

9 **JURISDICTION AND INTRADISTRICT ASSIGNMENT**

10 4. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(c), and 22(a)
11 of the Securities Act [15 U.S.C. §§ 77t(b), 77t(c), and 77v(a)] and Sections 21(d), 21(e), and 27 of the
12 Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa]. Defendant, directly or indirectly, has made
13 use of the means and instruments of transportation or communication in interstate commerce or of the
14 means and instrumentalities of interstate commerce or of the mails or of the facilities of a national
15 securities exchange in connection with the acts, transactions, practices, and courses of business
16 alleged in this Complaint.

17 5. Assignment to the San Francisco Division of this Court is proper because a substantial
18 part of the events or omissions that give rise to the claim occurred in San Francisco and Marin
19 counties.

20 **AUTHORITY TO BRING THIS ACTION**

21 6. The Commission brings this action pursuant to Sections 20(b) and 20(c) of the
22 Securities Act [15 U.S.C. §§ 77t(b) and 77t(c)] and Sections 21(d) and 21(e) of the Exchange Act
23 [15 U.S.C. §§ 78u(d) and 78u(e)].

24 **DEFENDANT**

25 7. Thom Calandra, age 48, lives in Sausalito, California. He has spent over 20 years as a
26 financial journalist, including stints with *The San Francisco Examiner* and *Bloomberg News*. Most
27 recently, Calandra was the original editor-in-chief and co-founder of CBS.MarketWatch.com. In
28 March 2003, MarketWatch, Inc. ("MarketWatch") began publication of *TCR*, written by Calandra. In

1 January 2004, following the initiation of the Commission's investigation, Calandra resigned from
2 MarketWatch.

3 FACTUAL ALLEGATIONS

4 Calandra Creates The Calandra Report

5 8. Beginning in 1996, Calandra, the chief commentator on CBS.MarketWatch.com,
6 began writing a regular financial column for the website called "Thom Calandra's StockWatch"
7 ("StockWatch"). StockWatch, which was a free column, offered readers Calandra's views on the
8 securities and commodities markets.

9 9. In early 2003, MarketWatch initiated a newsletter written by Calandra that went
10 beyond StockWatch's general market analysis. The proposed newsletter would provide in-depth
11 reviews of specific companies, with detailed recommendations on many of these securities.

12 10. In March 2003, the new product was launched as an investment newsletter called *The*
13 *Calandra Report*. It targeted a select audience willing to pay a subscription fee of as much as \$299
14 per year. From March to December 2003, Calandra generally wrote weekly or bi-weekly issues of
15 *TCR*, discussing the prospects of a number of companies, particularly small-cap, thinly-traded
16 companies in the mining industry.

17 11. At its peak, *TCR* had approximately 6,500 subscribers. MarketWatch collected
18 subscription fees and edited and assembled the newsletter.

19 Calandra's Pattern of Scalping

20 12. Beginning soon after the launch of *TCR* in March 2003, Calandra started a pattern of
21 purchasing stock in the companies he planned to profile in his newsletter, and selling the shares soon
22 after his write-ups caused a bump in the stock price, a deceptive practice known as "scalping." This
23 pattern generally followed three steps.

24 13. First, Calandra identified companies that he believed were attractive candidates for his
25 newsletter, usually focusing on small-cap mining companies that were thinly-traded, and purchased
26 large numbers of shares in those companies.

27 14. Second, Calandra wrote favorably in *TCR* about the companies he owned, often
28 without full and accurate disclosure of his ownership of stock in the companies.

1 15. Finally, Calandra sold into the rise in price created by his *TCR* recommendations,
2 without fully disclosing to his newsletter readers that he was doing so. Calandra did this despite his
3 knowledge that *TCR* typically generated enough interest in the companies he profiled to cause a
4 noticeable increase in stock price.

5 16. Calandra, using variations on this "Buy-Write-Sell" pattern, made over 100 different
6 scalping transactions in over 20 different securities from March to December 2003. This illegal
7 trading netted Calandra profits of approximately \$405,878.95.

8 *Pacific Minerals—An Example of Calandra's Illegal Trading*

9 17. Pacific Minerals, Inc. is one example of a company in which Calandra illegally
10 profited by trading on his *TCR* recommendations, using his "Buy-Write-Sell" pattern to amass over
11 \$50,000 in profits from undisclosed trades in Pacific Minerals stock.

12 18. First, Calandra purchased a large block of shares in the company. Then, in mid-
13 September 2003, Calandra wrote about Pacific Minerals in *TCR*. He recommended the stock to his
14 readers on September 19th and again on September 22nd, when he predicted large gains.

15 19. Calandra cashed out of his investment in Pacific Minerals the very next day, on
16 September 23rd, without disclosure to his readers that he intended to sell. Thus, Calandra in effect
17 sold into the rise created by his rosy predictions as demonstrated in the following chart:

18

Buy	Write	Sell
19 20 21 22 23 24 25 26 27 28 9/16/2003: Calandra bought 6,000 shares of Pacific Minerals at \$0.69 per share.	9/19/2003: Calandra wrote in <i>TCR</i> that Pacific Minerals will be a "certain beneficiar[y] of [owner Robert] Friedland's growing political and financial connections in China, Mongolia, and across Asia." 9/22/2003: "The more immediate gains almost surely will be in Pacific Minerals, whose shares, even after rising sharply last week after [being mentioned in the September 19 th <i>TCR</i>], are still worth less than \$40 million Canadian ..."	9/23/2003: Price of Pacific Minerals rose to \$1.06 per share. Calandra sold all 6,000 shares.

20. In late October 2003, Calandra bought an even larger amount of stock in the company and orchestrated another rise in its share price:

Buy	Write	Sell
<p>10/22/2003: Calandra bought 25,000 shares of Pacific Minerals at \$1.22 per share.</p>	<p>10/28/2003: Pacific Minerals, which "is only at the beginning of its meteoric stock rise"... "even after a considerable run-up this past week," ... "is close to revealing stunning results."</p>	<p>10/28/2003: Price of Pacific Minerals rose to \$1.95 per share. Calandra sold 7,000 shares.</p>
<p>10/23/2003: Calandra bought 10,000 shares of Pacific Minerals at \$1.35 per share.</p>	<p>10/29/2003: "The floodgates are opening. ... Shares of ... Pacific Minerals are star performers."</p>	<p>10/29/2003: Price of Pacific Minerals rose to \$2.68 per share. Calandra sold 30,000 shares.</p>
<p>10/27/2003: Calandra bought 7,000 shares of Pacific Minerals at \$1.74 per share.</p>		<p>10/31/2003: Price of Pacific Minerals rose to \$2.80. Calandra sold 5,000 shares.</p>

21. In total, Calandra made nearly \$53,000 in illegal profits (an 89% return) by scalping Pacific Minerals stock.

Calandra's Receipt of Undisclosed Consideration from Goldmarca and IMC Ventures

22. In addition to his scalping transactions, Calandra received undisclosed consideration in the form of substantially-discounted stock from two companies that he profiled in *TCR*, Goldmarca and IMC Ventures.

23. Calandra purchased discounted shares in Goldmarca and IMC Ventures from a Canadian stock promoter that Calandra knew was associated with both companies. On October 28, 2003, Calandra purchased 155,000 shares of Goldmarca at \$0.23 per share, a 39% discount from the market price of \$0.38 per share. Similarly, he purchased 70,000 shares of IMC Ventures on the same day, at the discounted price of \$0.37 per share, a 59% discount off of the company's market price of \$0.91 per share.

24. Calandra then provided the companies with positive publicity in *TCR*. He wrote on multiple occasions about both Goldmarca and IMC Ventures, but never disclosed his receipt of discounted shares to his readers.

1 25. As in his other scalping transactions, Calandra sold the majority of his shares of
2 Goldmarca and IMC Ventures immediately after touting the companies in *TCR*, making total profits
3 of \$52,022.75 and \$61,496, respectively.

4 **FIRST CLAIM FOR RELIEF**

5 **(Violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)])**

6 26. The Commission hereby incorporates Paragraphs 1 through 25 by reference.

7 27. By engaging in the conduct described above, Defendant, directly or indirectly, in the
8 offer or sale of securities, by the use of the means or instruments of transportation or communication
9 in interstate commerce or by use of the mails:

- 10 (a) with scienter, employed devices, schemes, or artifices to defraud;
11 (b) obtained money or property by means of untrue statements of a material fact or
12 omissions to state a material fact necessary in order to make the statements
13 made, in the light of the circumstances under which they were made, not
14 misleading; and
15 (c) engaged in transactions, practices, or courses of business which operated or
16 would operate as a fraud or deceit upon purchasers of securities.

17 28. By reason of the foregoing, Calandra has violated and, unless restrained and enjoined,
18 will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

19 **SECOND CLAIM FOR RELIEF**

20 **(Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)]**

21 **and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder)**

22 29. The Commission incorporates by reference Paragraphs 1 through 25.

23 30. By knowingly encouraging purchases of thinly-traded, small-cap securities with an
24 intent to gain personally, Calandra assumed a duty to his *TCR* readers to disclose fully his stock
25 ownership and his intent to sell when the market price in those stocks rose. Defendant breached that
26 duty when he repeatedly failed to disclose his intent to sell over 100 times in 23 different securities,
27 from March to December 2003.

28 31. Defendant, by engaging in the conduct described above, with scienter, directly or

1 indirectly, in connection with the purchase or sale of securities, by the use of means or
2 instrumentalities of interstate commerce or of the mails, or of facilities of a national securities
3 exchange:

- 4 (a) employed devices, schemes, or artifices to defraud;
- 5 (b) made untrue statements of a material fact or omitted to state a material fact
6 necessary in order to make the statements made, in the light of the
7 circumstances under which they were made, not misleading; and
- 8 (c) engaged in acts, practices, or courses of business which operated or would
9 operate as a fraud or deceit upon other persons, including purchasers and
10 sellers of securities.

11 32. By reason of the foregoing, Calandra has violated and, unless restrained and enjoined,
12 will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17
13 C.F.R. § 240.10b-5] thereunder.

14 **THIRD CLAIM FOR RELIEF**

15 **(Violations of Section 17(b) of the Securities Act [15 U.S.C. § 77q(b)])**

16 33. The Commission hereby incorporates Paragraphs 1 through 25 by reference.

17 34. Defendant, by engaging in the conduct set forth above, by the use of means or
18 instruments of transportation or communication in interstate commerce or of the mails, published,
19 gave publicity to, or circulated notices, circulars, advertisements, newspapers, articles, letters,
20 investment services, or communications which describe such security for a consideration received,
21 directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt,
22 whether past or prospective, of such consideration and the amount thereof.

23 35. By reason of the foregoing, Defendant has violated, and unless restrained and enjoined
24 will continue to violate, Section 17(b) of the Securities Act [15 U.S.C. § 77q(b)].

25 **PRAYER FOR RELIEF**

26 WHEREFORE, the Commission respectfully requests that the Court:
27
28

I.

Permanently enjoin Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the judgment by personal service or otherwise from violating, directly or indirectly, Sections 17(a) and 17(b) of the Securities Act [15 U.S.C. § 77q], 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];

II.

Enter an Order requiring Defendant to disgorge an amount equal to his illegal trading profits from the securities transactions complained of herein, plus prejudgment interest;

III.

Enter an Order requiring Defendant to pay civil penalties under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]; and

IV.

Grant such other and further relief as the Court may deem just, equitable, and appropriate.

Dated: January 10, 2005

Respectfully submitted,

By: 

Helane L. Morrison
Marc J. Fagel
Michael S. Dicke
Sahil W. Desai

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION