

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. **08-80130-CIV-DIMITROULEAS/ROSENBAUM**

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 )  
 SECURITIES AND EXCHANGE COMMISSION, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 DEAN A. ESPOSITO, FREDERICK J. )  
 BIRKS, JOSEPH DeVITO, THEODORE )  
 B. HOLBROOK and WALTER A. TYE, )  
 )  
 Defendants. )  
 )  
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FILED by <b>VK</b> D.C. ELECTRONIC
<b>FEB. 07, 2008</b>
CLARENCE MADDOX CLERK U.S. DIST. CT. S.D. OF FLA. - MIAMI

COMPLAINT

Plaintiff Securities and Exchange Commission (the "SEC") alleges as follows:

NATURE OF THE ACTION

1. The SEC brings this civil action against Dean A. Esposito, Frederick J. Birks, Joseph DeVito, Theodore B. Holbrook and Walter A. Tye (collectively "Defendants"), a group of Florida-based brokers who violated the federal securities laws in a number of ways between at least January 2004 and April 2005.
2. From approximately late January until early May 2004, Defendants sold approximately \$3 million worth of SCL Ventures Ltd. securities to approximately 78 investors while working out of the company's offices. Defendants

were not registered with the SEC or associated with a registered broker or dealer during this period. Defendants received undisclosed commissions of between 10%-and-20% for selling SCL Ventures stock.

3. From approximately June 2004 through April 2005 (the "Manipulation Period"), Esposito and Birks manipulated - and dominated and controlled - the market price for the common stock of SCL Ventures' successor company, Weida Communications, Inc., to approximately \$5 per share, in part to facilitate the sale of Weida stock in private transactions at approximately \$3 per share by Defendants.

4. Approximately 165 investors paid at least \$9.2 million for Weida's near-worthless securities during the Manipulation Period.

5. During the Manipulation Period, Esposito, Birks and Holbrook were registered representatives in the Florida branch of GlobalVest Group, Inc., a registered broker-dealer with a branch office in the same building as Weida, and DeVito and Tye were unregistered brokers. Defendants received excessive undisclosed commissions of between 10% and 20% for selling Weida stock.

6. Defendants Esposito and Birks were involved in the planning of the manipulation and understood that the goal was to maintain the stock price above \$5 per share.

Esposito solicited several customers to buy Weida stock in order to help maintain the company's stock price at artificially high levels and to create the appearance of an active and liquid market. Birks participated in at least four marking-the-close transactions, the timing of which indicates that he was coordinating efforts with two stock promoters in order to support the price of Weida stock in the open market at artificially high levels around \$5.00 per share. Marking-the-close is the practice of executing the last transaction of the day for a security in order to affect its closing price. With the stock trading on the OTC Bulletin Board, the last executed transaction of the day would, under the rules then in effect, set the stock's closing price for the day, which would then be reported to the investing public as a matter of course.

7. By engaging in such conduct, Esposito and Birks violated, and unless enjoined will continue to violate, Section 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") [15 U.S.C §§ 77e(a) and 77e(c)] and Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) and 78o(a)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10B-5], and DeVito, Holbrook and Tye violated, and unless enjoined will continue to violate, Section 5(a) and 5(c) of the

Securities Act [15 U.S.C §§ 77e(a) and 77e(c)] and Section 15(a) of the Exchange Act [15 U.S.C § 78o(a)].

8. The SEC stopped this fraud in its tracks when it instituted a trading suspension on April 25, 2005 [*Matter of Weida Communications*, 34 Act. No. 51603 (April 25, 2005)]. The SEC subsequently filed related civil charges against two stock promoters, Anthony F. Giordano and Joseph Y. Zumwalt, both of whom pleaded guilty to parallel criminal charges and were sentenced to 10 and 5 years in prison, respectively, and paid millions of dollars in restitution. See *SEC v. Giordano*, No. 06-cv-60033 (S.D. Fla.); *SEC v. Zumwalt*, No. 06-cv-61407 (S.D. Fla.); *United States v. Giordano et al.*, No. 05-cr-80061 (S.D. Fla.).

#### JURISDICTION

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

10. Defendants have, directly or indirectly, made use of the means or instrumentalities of interstate commerce and/or of the mails in connection with the transactions described in this Complaint.

**DEFENDANTS**

11. **Dean A. Esposito** ("Esposito") was a registered representative with the Florida branch of GlobalVest during the Manipulation Period. Esposito asserted his Fifth Amendment Rights in lieu of providing testimony during the SEC investigation preceding the filing of this Complaint.

12. **Frederick J. Birks** ("Birks") was a registered representative with the Florida branch of GlobalVest during the Manipulation Period. Birks was the nominal head of the branch but Esposito ran the office. Birks initially testified and then asserted his Fifth Amendment Rights in lieu thereof during the SEC investigation preceding the filing of this Complaint.

13. **Theodore B. Holbrook** ("Holbrook") was a registered representative in the Florida branch of GlobalVest during the Manipulation Period.

14. **Joseph DeVito** ("DeVito") was an unregistered broker working at GlobalVest during the Manipulation Period, but was not licensed or registered with the firm. DeVito asserted his Fifth Amendment Rights in lieu of providing testimony during the SEC investigation preceding the filing of this Complaint.

15. **Walter A. Tye** ("Tye") was an unregistered broker working at Weida during the Manipulation Period. Tye used to be registered as a broker but he was suspended in 2003 for failure to pay an arbitration award. Tye made three payments on the arbitration award during the relevant time period. Tye asserted his Fifth Amendment Rights in lieu of providing testimony during the SEC investigation preceding the filing of this Complaint.

**RELEVANT ENTITIES**

16. **Weida Communications, Inc.** ("Weida") is a bankrupt New Jersey corporation formerly headquartered in Fort Lauderdale, Florida. Weida marketed itself as providing ground-based transmitters and receivers that allow corporate and government customers to use satellite communications in China. In reality Weida had no effective interest in those overseas operations.

17. Weida's common stock was registered with the Commission under Section 12(g) of the Exchange Act and quoted on the OTC Bulletin Board under the symbol "WDAC" during the relevant period. The average price of Weida common stock was \$5.29 per share with an average daily trading volume of under 6,000 shares during that time.

18. **GlobalVest Group, Inc.** ("GlobalVest") is a registered broker-dealer headquartered in Irvine, California.

GlobalVest operated a branch office in Fort Lauderdale, Florida located in the same building as Weida from May 2004 until May 2005, when the branch was closed. The principal activity of GlobalVest's Fort Lauderdale branch was selling Weida stock.

## SUBSTANTIVE ALLEGATIONS

### SALE OF SCL VENTURES SECURITIES

19. From approximately late January until early May 2004, Esposito, Birks, DeVito, Holbrook and Tye sold stock privately in SCL Ventures, Ltd. These stock sales predated the opening of GlobalVest's branch office in May 2004 and the manipulation of the market for the common stock of SCL Ventures' successor company, Weida Communications, Inc., which began in June 2004.

20. During this earlier period, Esposito, DeVito, Birks, Holbrook and Tye were not registered with the SEC as broker-dealers or associated with a registered broker or dealer. They nevertheless sold approximately \$3 million worth of unregistered SCL Ventures securities to approximately 78 investors while working out of the company's offices, earning substantial commissions on the sales. No registration statement was filed with the SEC in connection with these securities offerings.





21. Esposito sold at least \$900,000 worth of SCL Ventures stock to approximately 24 investors in 29 separate transactions, thereby generating commissions of at least \$180,000.

22. DeVito received approximately \$85,000 from a company controlled by Esposito and DeVito for selling SCL Ventures stock.

23. Birks sold at least \$500,000 worth of SCL Ventures stock to 21 investors in 18 separate transactions, thereby generating commissions of at least \$80,000.

24. Holbrook sold at least \$1 million worth of SCL Ventures stock to 29 investors in 21 separate transactions, thereby generating commissions of at least \$100,000 for himself and \$50,000 for Tye.

25. Tye sold approximately \$450,000 worth of SCL Ventures stock to 4 investors in 4 separate transactions, thereby generating commissions of at least \$70,000.

#### **OVERVIEW OF THE WEIDA MANIPULATION**

##### **The 4-to-1 Reverse Stock Split Raised Weida's Stock Price to \$5 Per Share**

26. The market price for Weida common stock was manipulated in a number of ways from at least June 2004 through April 2005. Weida common stock began trading at

over \$5 per share on June 16, 2004 after a 4-to-1 reverse stock split.

27. On June 15, 2004 - the day before the split - Giordano bought 95,000 shares of Weida common stock on the open market at prices ranging from \$1.15 to \$1.30 per share. One purpose of Giordano's stock transactions on June 15, 2004 was to condition the market for the reverse split. Giordano's trading activity that day increased the market price of Weida common stock to over \$1.25 so that after the split it began trading at approximately \$5 per share on June 16, 2005.

28. There were a number of reasons for manipulating the stock price to above \$5 per share, including facilitating the sale of Weida stock in private transactions at approximately \$3 per share by Defendants and attempting to satisfy the listing requirements of the NASDAQ National Market (now known as NASDAQ Global Market).

**Numerous Marking-The-Close Transactions Kept Weida's Stock Price at Around \$5 per Share**

29. Beginning June 17, 2005, Weida's stock price was maintained at artificially inflated levels through numerous "marking-the-close" transactions. Marking-the-close is the practice of executing purchase or sale orders at or near

the close of the market with the intent to affect its closing price.

30. Esposito and Birks, together with Giordano and Zumwalt, caused numerous purchases of Weida common stock to be made in accounts in their names and in the names of their clients, associates and relatives at or near the end of the day (16:00). These included at least thirty-five (35) marking-the-close transactions. A significant and overarching purpose of these trades was to maintain the closing price of Weida common stock at artificially high levels, generally \$5 per share or above. Twenty-six (26) of these marking-the-close transactions were executed in brokerage accounts at GlobalVest.

**Artificial Buy Volume Helped Create the False Appearance of an Active and Liquid Market for Weida Common Stock**

31. In addition to manipulating the company's stock price, Esposito and Birks, together with Giordano and Zumwalt, engineered the false appearance of an active and liquid market for Weida common stock.

32. During the relevant period, buying activity by this group accounted for approximately 57% of the customer buy volume and for 100% of the customer buy volume on 43 of the 201 trading days (there was no customer buy volume for 46 of the 201 trading days).

33. This was accomplished in a number of ways, including convincing investors who had purchased Weida stock in the private placements to buy stock on the open market in order to help support the stock price and maintain the appearance of an active and liquid market.

34. In this way, Esposito and Birks, together with Giordano and Zumwalt, dominated and controlled the price of Weida stock.

35. The artificial prices, and the artificial appearance of an active and liquid market, were materially false and fraudulent.

36. Esposito and Birks each knew, or were reckless in not knowing, that his transactions and conduct with respect to Weida stock supported a materially false and fraudulent price for the stock, and created a materially false and fraudulent appearance of an active and liquid market in the stock.

**Defendants Sold Weida Stock Privately For \$3 per Share**

37. During the Manipulation Period, Defendants were busy selling Weida common stock at approximately \$3 per share in private transactions. The manipulation of the market for Weida stock operated as a fraud and deceit upon investors because it made it appear that they were buying stock

privately for \$3 that was worth \$5 in an active and liquid public market. Those appearances were false and misleading, however, because the market was being manipulated by Esposito and Birks, among others.

38. The deception was aggravated by the filing of a Form S-1 on behalf of Weida in the fall of 2004 with the SEC, which made it appear to investors that the stock they were acquiring privately for \$3 would be available for sale in the open market at \$5 once the registration statement was declared effective. That never happened.

39. In this way, the GlobalVest brokers sold approximately \$9.2 million worth of Weida stock to approximately 165 investors between June 2004 and April 2005. No registration statement was filed with the SEC in connection with these securities offerings.

**GlobalVest Brokers Received Undisclosed Commissions of 10-to-20 Percent**

40. Unbeknownst to investors, the GlobalVest brokers were paid excessive commissions of 10%-to-20% for selling Weida stock in private transactions, e.g., a \$10,000 sale would generate a \$2,000 commission. As a group, Defendants received at least \$2 million in excessive undisclosed commissions during the Manipulation Period. Defendants also received free Weida stock and sales contest prizes.

41. None of this was disclosed in the private placement memorandum ("PPM") that was sent to investors. In fact, Weida's PPM affirmatively misrepresented that "net proceeds" from the offering would be used to "fund [an] acquisition" and for "general corporate purposes."

**The Price for Weida Common Stock Collapsed  
When The Manipulation Ended**

42. The Weida manipulation came to an end on April 25, 2005, when the Commission suspended trading in the company's stock for ten (10) days and Giordano and Zumwalt were charged criminally. Once the manipulation ended and trading resumed, the Weida stock price collapsed. For the balance of the calendar year, without the manipulative activity, there was no trading on most days and the price declined to \$0.15 per share.

**CONDUCT OF DEFENDANTS DURING THE MANIPULATION PERIOD**

**Dean A. Esposito**

43. Esposito was involved in the planning of the manipulation, a significant portion of which occurred at a Fort Lauderdale bar called the "Samba Room" located near the GlobalVest offices.

44. Esposito also met with Giordano and Zumwalt, among others, in Giordano's office before the 4-to-1 reverse

split when Weida's stock price was around \$1.20. Giordano told the group that he was going to buy shares in the open market to get the stock price over \$5 after the split.

45. After the split, Giordano and Zumwalt telephoned Esposito periodically and told him to find persons to buy Weida stock at the end of the trading day.

46. Most of Esposito's customer accounts held only Weida stock during the relevant period. Out of twenty-four accounts at GlobalVest listing Esposito as the account representative, six were opened by investors in their 60s, seven in their 70s, and two in their 80s.

47. Esposito solicited several customers to buy Weida stock in order to help maintain the stock price and the appearance of an active and liquid market. These included at least four customers who had invested in one or more of the private placements.

48. Esposito explained to one customer that the public market for Weida stock was thinly traded and a relatively small purchase could help keep the price up and show some activity. This customer responded by buying 1,000 shares on the open market on or about 6/25/04 for \$5.70 per share.

49. Esposito explained to a second customer that the market price of Weida's common stock was going down and that the stock needed some trades to support the price in

the market. This customer responded by buying 500 shares on the open market on or about 9/16/04 for \$5.70 per share.

50. Esposito explained to a fourth customer that investors needed to help show volume in the stock. This customer responded by buying 2,000 shares on the open market on 6/22/04 for \$5.60 and 2,000 shares on 10/14/04 for \$5.15 per share.

51. Esposito sold millions of dollars worth of Weida stock in private transactions and received approximately \$582,000 in undisclosed commissions during the Manipulation Period.

52. One of Esposito's reasons for engaging in the manipulation was to support a lavish lifestyle which included, among other purchases with investor funds, approximately \$2,500 at the Samba Room, \$6,700 at a steak house, \$19,500 on his bookie, and over \$33,000 at strip clubs.

**Frederick J. Birks**

53. Birks was involved in the planning of the manipulation, including participating in discussions at the Samba Room. Birks was the nominal head of GlobalVest because he had the only series 24 securities license in the group which was a necessary pre-requisite to head the office.



54. Birks knew Giordano bought stock in the open market so that the stock price would open at over \$5 per share after the 4-to-1 reverse split. After the split, Giordano called Birks periodically and told him to buy shares of Weida stock on the open market.

55. Birks instructed Holbrook to wait until the close of the market to place buy orders from a customer for Weida stock.

56. Birks participated in at least four marking-the-close transactions using an account in the name of Weida's outside counsel (who kept an office at Weida) that was secretly controlled by Zumwalt. In each instance Zumwalt placed buy orders with a broker at GlobalVest, usually Birks, to execute trades in the outside counsel's account. Zumwalt then gave the outside counsel a check to cover the purchase price, and the outside counsel cut a corresponding check on behalf of GlobalVest.

57. Birks executed at least four of these trades late in the day, thereby marking-the-close at \$5.30 on October 4, 2004, at \$5.20 on October 5, 2004, at \$5.55 on November 19, 2004 and at \$5.30 on November 29, 2004.

58. The timing of the trading activity in the outside counsel's account indicates Birks was coordinating his efforts with Giordano and Zumwalt in order to support the

price of Weida stock in the open market at artificially high levels around \$5.00 per share.

59. On October 4, 2004, Giordano bought 15,000 shares of Weida common stock on the open market. Giordano started buying about 15 minutes after the price fell below \$5 and kept buying until it reached \$5 again. Late that day, 1,500 shares were purchased in the outside counsel's account at GlobalVest, which marked the close at \$5.30.

60. On October 6, 2004, the market price for Weida common stock dipped below \$5 occasionally throughout the day. Shortly after a couple of trades were executed at \$4.95, 1,500 shares were purchased in the outside counsel's account at \$5.20. Late that day, Giordano bought 1,000 shares to mark the close at \$5.20.

61. On November 19, 2004, the inside bid dropped to \$5.05 in the afternoon. Shortly thereafter, Giordano bought 2,000 shares of Weida common stock on the open market at \$5.60. Late that day, 5,000 shares were bought in the outside counsel's account to mark the close at \$5.55.

62. Birks received approximately \$100,000 in undisclosed commissions during the Manipulation Period for the sale of Weida stock in private transactions.

**Theodore B. Holbrook**

63. Holbrook sold millions of dollars worth of Weida stock privately to a group of family members and friends. These included his grandmother and a number of pilots who worked for Federal Express.

64. Holbrook received approximately \$400,000 in undisclosed commissions during the Manipulation Period.

65. Holbrook supported a lavish lifestyle with these investor funds, which included, among other purchases, approximately \$45,000 on a Mercedes Benz, \$1,300 at strip clubs, \$7,000 on automatic weapons and another \$11,000 on other guns and gun-related items.

**Joseph DeVito**

66. DeVito worked with Esposito at GlobalVest without a proper securities license and he also received commission payments from Weida during part of the manipulation period. DeVito shared an office with Esposito at GlobalVest while he sold Weida's unregistered securities. Esposito and DeVito were 50/50 partners and many customers who dealt with him over the phone thought DeVito was Esposito.

67. DeVito received approximately \$390,000 in undisclosed commissions during the Manipulation Period. From accounts that were controlled by Esposito and DeVito, approximately

\$14,000, often \$1,100 or more a day, was spent on strip clubs.

**Walter A. Tye**

68. Tye was originally supposed to help Esposito run GlobalVest, but the NASD suspended Tye's license for nonpayment of fines, and he was also charged with cocaine trafficking shortly before the relevant Manipulation Period. As a result, Tye worked out of an office at Weida selling unregistered securities.

69. Tye also received a portion of Holbrook's commissions because Tye brought Holbrook down to Florida and introduced him to Giordano. Tye received approximately \$300,000 in undisclosed commissions during the Manipulation Period.

**CLAIMS FOR RELIEF**

**FIRST CLAIM**

**(Violations of Section 10(b) and  
Rule 10b-5 of the Exchange Act  
by Esposito and Birks)**

70. Plaintiff SEC hereby incorporates ¶¶ 1 through 69 with the same force and effect as if set out here.

71. Esposito and Birks were involved in the planning of the manipulation and understood that the goal was to maintain the stock price above \$5 per share.

72. Esposito solicited several customers to buy Weida stock on the open market in order to help maintain the

company's stock price at artificially high levels and to create the false appearance of an active and liquid market.

73. Birks directly participated in at least four marking-the-close transactions in the account of Weida's outside counsel. The timing of the trading activity in the outside counsel's account indicates Birks was coordinating his efforts with Giordano and Zumwalt in order to support the price of Weida stock in the open market at artificially high levels around \$5.00 per share.

74. In the manner described in ¶¶ 1 through 73, Esposito and Birks, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or of the mails, directly or indirectly (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts or omissions of material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon persons.

75. By reason of the foregoing, Esposito and Birks violated, and unless enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder.

**SECOND CLAIM**

**(Aiding and Abetting Violations of  
Section 10(b) and Rule 10b-5 of the Exchange Act)**

76. Plaintiff SEC hereby incorporates ¶¶ 1 through 75 with the same force and effect as if set out here.

77. By engaging in the conduct described above in ¶¶ 1 through 76, Giordano and Zumwalt violated Exchange Act Section 10(b) and Rule 10b-5 thereunder.

78. By reason of the foregoing, Esposito and Birks aided and abetted violations of the antifraud provisions of Exchange Act Section 10(b) and Rule 10b-5 thereunder in violation of Exchange Act Section 20(e) [15 U.S.C § 78j(b)].

**THIRD CLAIM**

**(Violations of Section 15(a)  
of the Exchange Act by Esposito, Birks,  
DeVito, Holbrook and Tye)**

79. Plaintiff SEC hereby incorporates ¶¶ 1 through 78 with the same force and effect as if set out here.

80. Esposito, Birks, Holbrook, DeVito and Tye acted as unregistered brokers from approximately late January until early May 2004. As a group, they sold approximately \$3 million worth of unregistered securities in SCL Ventures approximately 78 investors while working out of the company's offices and earning substantial commission. Each

was acting as a broker within the meaning of the Exchange Act, and none was associated with a broker or dealer that was registered with the Commission during this period.

81. DeVito further acted as an unregistered broker from June 2004 through April 2005 by selling Weida securities out of an office he shared at GlobalVest with Esposito.

82. Tye further acted as an unregistered broker from June 2004 through April 2005 by selling Weida securities out of an office at the company after the other brokers had moved to GlobalVest.

83. In the manner described in ¶¶ 1 through 82, Esposito, Birks, Holbrook, DeVito and Tye made use of the means and instrumentalities of interstate commerce and of the mails to effect, induce, and attempt to induce the purchase and sale of securities without being registered with the SEC as a broker or dealer in accordance with Section 15(b) of the Exchange Act [15 U.S.C § 78o(a)] and when no exemption from registration was available.

84. By reason of the foregoing, Esposito, Birks, Holbrook, DeVito and Tye violated, and unless enjoined will continue to violate, Section 15(a) of the Exchange Act [15 U.S.C § 78o(a)].

FOURTH CLAIM

(Violations of Section 5(a) and 5(c)  
of the Exchange Act by Esposito, Birks,  
DeVito, Holbrook and Tye)

85. Plaintiff SEC hereby incorporates ¶¶ 1 through 84 with the same force and effect as if set out here.

86. Esposito, Birks, Holbrook, DeVito and Tye sold approximately \$3 million worth of securities in SCL Ventures to approximately 78 investors between late January and early May 2004 and approximately \$9.2 million of Weida securities to 165 investors between June 2004 and April 2005. Those securities transactions were not registered with the SEC, and the transactions did not qualify for any exemption from registration. In other words, the securities were supposed to be registered with the SEC but were not.

87. In the manner described in ¶¶ 1 through 86, Esposito, Birks, Holbrook, DeVito and Tye directly or indirectly (a) without a registration statement in effect as to the securities, (i) made use of the means or instruments of transportation or communication or the mails to sell such securities through the use or medium of a prospectus or otherwise, or (ii) carried or caused to be carried through the mails, or in interstate commerce, by any means or





instrument or transportation, such securities for the purpose of sale or for delivery after sale, and (b) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell through the use or medium of a prospectus or otherwise securities for which a registration statement had not been filed as to such securities.

88. By reason of the foregoing, Esposito, Birks, Holbrook, DeVito and Tye violated, and unless enjoined will continue to violate, Section 5(a) and 5(c) of the Securities Act [15 U.S.C §§ 77e(a) and 77e(c)].

**PRAYER FOR RELIEF**

WHEREFORE, the SEC respectfully requests that this Court enter a judgment:

(a) permanently enjoining defendants Esposito and Birks, and their agents, servants, employees, attorneys, and those in active concert or participation with them, who receive actual notice by personal service or otherwise, from violating Section 10(b) of the Exchange Act [15 U.S.C § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder;

(b) permanently enjoining defendants Esposito and Birks, and their agents, servants, employees, attorneys,

and those in active concert or participation with them, who receive actual notice by personal service or otherwise, from aiding and abetting violations of Section 10(b) of the Exchange Act [15 U.S.C § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder;

(c) permanently enjoining defendants Esposito, Birks, Holbrook, DeVito and Tye, and their agents, servants, employees, attorneys, and those in active concert or participation with them, who receive actual notice by personal service or otherwise, from violating Section 15(a) of the Exchange Act [15 U.S.C § 78o(a)] and Section 5(a) and 5(c) of the Securities Act [15 U.S.C §§ 77e(a) and 77e(c)].

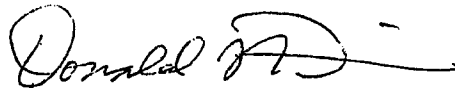
(d) ordering defendants Esposito, Birks, Holbrook, DeVito and Tye to provide an accounting and disgorge all ill-gotten gains from the conduct alleged herein, with prejudgment interest;

(e) ordering defendants Esposito, Birks, Holbrook, DeVito and Tye to pay civil money 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) permanently prohibiting defendants Esposito, Birks, Holbrook, DeVito and Tye from participating in an offering of penny stock pursuant to Section 21(d)(6) of the Exchange Act [15 U.S.C. § 78u(d)(6)]; and

(g) granting such other relief as this Court may deem just and appropriate.

Dated: January 28, 2008



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