

'09 CIV 6129

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, :  
:  
  Plaintiff, :  
:  
  - against - :  
:  
SKY CAPITAL LLC a/k/a GRANTA CAPITAL :  
LLC, ROSS MANDELL, STEPHEN SHEA, ADAM :  
HARRINGTON RUCKDESCHEL, ARN WILSON, :  
MICHAEL PASSARO and ROBERT GRABOWSKI :  
:  
  Defendants. :  
:  
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09 Civ. \_\_\_\_ ( )

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against defendants Sky Capital LLC a/k/a Granta Capital LLC ("Sky Capital"), Ross Mandell ("Mandell"), Stephen Shea ("Shea"), Adam Harrington Ruckdeschel ("Harrington"), Arn Wilson ("Wilson"), Michael Passaro ("Passaro"), and Robert Grabowski ("Grabowski") (collectively, the "Defendants"), alleges as follows:

SUMMARY

1. The Defendants perpetrated a long-running scheme to defraud investors in two related companies: Sky Capital Holdings Ltd. ("Sky Holdings") and Sky Capital Enterprises,

Inc. (“Sky Enterprises,” and together with Sky Holdings, the “Sky Entities”), using boiler room tactics.

2. Mandell, Sky Capital’s founder, orchestrated the scheme with the assistance of Shea, the former Chief Operating Officer of Sky Capital, and registered representatives at Sky Capital, including Harrington, Wilson, Passaro, and Grabowski (collectively, the “RRs”).

3. Mandell commenced his scheme in 2001 and directed Sky Capital brokers, including Sky Capital Broker A (“Broker A”) and Sky Capital Broker B (“Broker B”) to make material misrepresentations and omissions to their customers to persuade them to buy shares in the Sky Entities’ private placements. To incentivize the Sky Capital brokers to sell the Sky Entities’ private placement stocks to their customers, Mandell paid, and directed Shea to pay, additional, undisclosed commissions to the brokers. Mandell also personally made material misrepresentations and omissions to Sky Capital customers in soliciting them to buy shares in the Sky Entities’ private placements.

4. Sky Holdings’ and Sky Enterprises’ stocks began to trade publicly in 2002 and 2004, respectively. In an effort to support the price of the publicly traded stocks, Mandell and Shea enforced a “no net sales” policy, which restricted Sky Capital’s customers’ ability to sell their publicly traded stocks in the Sky Entities. The RRs complied with this policy, and routinely crossed stock between their customers’ accounts, without disclosing the policy to their customers. Additionally, Mandell continued to pay, and directed Shea to pay, undisclosed commissions to the RRs to incentivize them to continue to sell the Sky Entities’ stock.

5. Mandell’s scheme was very profitable. Between September 2002 and November 2006, Sky Capital raised over \$61 million by selling stock in the Sky Entities. The fraudulent scheme was also profitable for Mandell. Mandell used Sky Enterprises’ and Sky Capital’s

funds to pay for his lavish lifestyle, and Mandell ensured Shea, the RRs, and others were richly compensated.

6. By virtue of the conduct alleged herein, Sky Capital, Mandell, Shea, Harrington, Wilson, Passaro, and Grabowski, directly or indirectly, singly or in concert, engaged in acts, practices, transactions, or courses of business that violated Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77q(a)], and Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. In the alternative, Shea aided and abetted Sky Capital’s, Mandell’s, Harrington’s, Wilson’s, Passaro’s, and Grabowski’s 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].

7. By virtue of the conduct alleged herein, Sky Capital also violated Section 15(c) of the Exchange Act [15 U.S.C. § 78o(c)], and Mandell aided and abetted Sky Capital’s violation of Section 15(c) of the Exchange Act [15 U.S.C. § 78o(c)].

8. Unless each of the Defendants is permanently restrained and enjoined, they will again engage in the acts, practices, transactions, or courses of business set forth herein and in acts, practices, transactions, or courses of business of similar type and object.

#### **NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT**

9. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]. The Commission seeks to permanently restrain and enjoin: (a) Sky Capital, Mandell, Shea, Harrington, Wilson, Passaro, and Grabowski from future violations of Section 17(a) of the Securities Act [15 U.S.C. §§ 77q(a)], and 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]; and (b) Sky

Capital and Mandell from primary or secondary future violations of Section 15(c) of the Exchange Act [15 U.S.C. § 78o(c)]. The Commission also seeks a final judgment ordering the Defendants to disgorge their ill-gotten gains and to pay prejudgment interest thereon, 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)], and to permanently prohibit Mandell from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l], or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)] pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)]. Finally, the Commission seeks all other just and appropriate relief.

#### **JURISDICTION AND VENUE**

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

11. Venue lies in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. The Defendants, directly or indirectly, have made use of the means or instrumentalities of, or the means or instruments of transportation or communication in, interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged herein. Certain of these transactions, acts, practices, and courses of business occurred within the Southern District of New York. For instance, Sky Capital maintained its principal place of business in New York, New York, and Mandell, Shea, Harrington, Wilson, Passaro, and Grabowski engaged in at least

some of the conduct alleged herein while working at Sky Capital's office located in New York, New York.

### DEFENDANTS

12. **Sky Capital** was registered with the Commission as a broker-dealer on May 13, 2002, pursuant to Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)]. Sky Capital, which recently changed its name to Granta Capital LLC, withdrew its registration as a broker-dealer effective April 6, 2009. Sky Capital is a New York limited liability company, and has offices in New York, New York, and Boca Raton, Florida. Sky Capital was formed in June 2001 by Mandell, and is majority owned by Sky Holdings, an entity that was publicly traded on the Alternative Investment Market of the London Stock Exchange ("AIM") until November 2006.

13. **Mandell**, age 52, is a resident of Boca Raton, Florida. Mandell founded Sky Capital in June 2001, and was its President, CEO and majority shareholder until April 2008. Mandell was also the president of Sky Holdings from its formation in June 2001 until April 2008. Mandell was also the CEO of Sky Enterprises from its formation in August 2002 until April 2008. While at Sky Capital, Mandell held Series 7, 24 and 63 licenses.

14. **Shea**, age 37, is a resident of Brooklyn, New York. Shea was the Chief Operating Officer of Sky Capital from 2001 until January 2009, when he left Sky Capital. While at Sky Capital, Shea held Series 24, 62 and 63 licenses.

15. **Harrington**, age 39, is a resident of New York, New York. Harrington was a registered representative at Sky Capital from 2002 to 2005. Harrington has a disciplinary history. In September 2002, Harrington was fined \$128,496.31 and barred from being licensed by the Utah Division of Securities for, among other things, unauthorized trading, unsuitability, and churning. In the Matter of Adam Harrington Ruckdeschel, CRD #2481064, SD-02-0139,

September 23, 2002. While at Sky Capital, Harrington held Series 7, 24 and 63 licenses. Harrington is currently a partner at a hedge fund.

16. **Wilson**, age 45, is a resident of Dix Hills, New York. Wilson was a registered representative at Sky Capital from 2002 to 2008. Wilson holds Series 7 and 63 licenses. Wilson is currently employed as a registered representative at another broker-dealer.

17. **Passaro**, age 46, is a resident of Boca Raton, Florida. From 2001 until December 2008, Passaro was a registered representative at Sky Capital and, during the relevant period, worked out of the firm's Boca Raton, Florida, office, as well as, at times, its New York, New York, office. Passaro holds Series 7, 24 and 63 licenses. Currently, Passaro is employed as a registered representative at another broker-dealer.

18. **Grabowski**, age 42, is a resident of Staten Island, New York. Grabowski was a registered representative at Sky Capital from 2003 to 2008. Grabowski holds Series 7, 8, 24 and 63 licenses. In September 2002, Grabowski was fined \$75,000 and barred from being licensed by the Utah Division of Securities for failure to supervise and failure to grant auditors access to books and records. In the Matter of Robert J. Grabowski, CRD #1639890, SD-02-0140, September 23, 2002. Currently, Grabowski is employed as a registered representative at another broker-dealer.

#### **RELATED PERSONS AND ENTITIES**

19. **Sky Capital UK Ltd.** ("Sky Capital UK") was a broker-dealer in London that was a wholly-owned subsidiary of Sky Holdings. Sky Capital UK registered with the Financial Services Authority in October 2003. Sky Capital UK is now in liquidation.

20. **Sky Enterprises** (f/k/a Sky Capital Ventures, Inc.) is a Delaware company Mandell formed in August 2002 purportedly to invest in emerging growth companies. Sky Holdings

had access to Sky Enterprises funds through a revolving credit line of £3 million. Sky Enterprises began trading on the AIM on March 29, 2004. On November 7, 2006 the London Stock Exchange suspended trading in Sky Enterprises' stock. To date, Sky Enterprises' stock has not resumed trading on the AIM. During the period that it was trading on the AIM, Sky Enterprises' average daily trading volume was 16,573 shares.

21. **Sky Holdings** is a Delaware company Mandell formed in June 2001. Sky Holdings owns at least 75% of Sky Capital stock. Mandell was the President of Sky Holdings and owned a portion of Sky Holdings. Sky Holdings also owned Sky Capital UK prior to its liquidation. Sky Holdings began trading on the AIM on July 15, 2002. On November 7, 2006 the London Stock Exchange suspended trading in Sky Holdings' stock. To date, Sky Holdings' stock has not resumed trading on the AIM. During the period that it was trading on the AIM, Sky Holdings' average daily trading volume was 12,341 shares.

## FACTS

### **A. Sky Capital's Role as Sales Agent for Related Entities**

22. From 2002 to 2006, Sky Capital sold stock in private placements of several related entities, including the Sky Entities, to investors.

23. Although Sky Capital solicited investors in the United States, most of Sky Capital's brokers' solicitation efforts were directed towards investors in the United Kingdom.

24. From September 2002 to August 2003, Sky Capital acted as the sales agent for Sky Enterprises' private placement. Sky Enterprises raised approximately \$20.7 million from over 80 investors.

25. From February 2003 through July 2003, Sky Capital acted as a sales agent for an offering of Sky Holdings' Series A convertible preferred stock. Sky Holdings raised approximately \$9.2 million from more than 50 investors.

26. From September 2003 through January 2004, Sky Capital acted as a sales agent for an offering of Sky Holdings' Series B convertible preferred stock to more than 240 investors. Sky Holdings raised over \$32 million in this offering.

27. After public trading in Sky Enterprises and Sky Holdings commenced, Sky Capital continued to act as the sales agent for subsequent private placements, and also facilitated Sky Capital customers' public trading of these stocks.

**B. Sky Capital, Mandell and the RRs Made Material Misrepresentations and Omissions in Connection With the Sky Entities' Private Placements**

28. Mandell directed Sky Capital brokers to make material misrepresentations, omit material information, and use high pressure sales tactics to induce their Sky Capital customers to purchase stock in the Sky Entities' private placements.

29. Throughout the time that Sky Capital served as the sales agent for the Sky Entities' private placements, Mandell instructed Sky Capital brokers to pressure their customers to sell their positions in liquid stocks and invest the proceeds in Sky Enterprises or Sky Holdings.

30. Based on this directive from Mandell, Sky Capital brokers, including Broker A and Broker B, told their customers that investing in the Sky Entities, as opposed to holding the stock that the customers then owned, was a better investment even though there was no basis for the brokers to make such assertions.

31. For example, although neither Sky Enterprises nor Sky Holdings had any operating history or revenues, Sky Capital brokers, including Broker A and Broker B, made baseless



price predictions regarding the Sky Entities' stocks and misrepresented the value of the investments to their customers.

32. Mandell personally examined Sky Capital brokers' customers' portfolios, and when Mandell found customers who held liquid stocks, Mandell instructed the brokers to convince those customers to sell the liquid stocks and invest the proceeds in the Sky Entities.

33. Sky Capital brokers also used scripts to solicit investors for the Sky Entities' private placements, and they based their sales pitches on what Mandell told them.

34. Mandell personally made material misrepresentations to Sky Capital customers to convince them to invest in the Sky Entities. For example, beginning in 2002, Mandell personally solicited Investor 1 and Investor 2, both of Manchester, England, to invest in the Sky Enterprises private placements. Mandell convinced Investor 1 and Investor 2 to invest approximately \$1 million in Sky Enterprises by promising them the stock price would at least double in value, and that they would be able to sell their shares to capture this profit in six months.

35. Prior to July 2003, Mandell solicited Investor 1 and Investor 2 to invest in the Sky Holdings private placement as well. Mandell met with Investor 1, and assured Investor 1 that Investor 1 would be getting the Sky Holdings stock "cheap," that there was no doubt that Investor 1 would make a significant profit from his Sky Holdings investment, and that there was no risk of losing money on the investment. Mandell persuaded Investor 1 and Investor 2 to buy 900,000 shares of Sky Holdings' Series A convertible preferred stock for approximately £600,000.

36. After Sky Holdings' preferred stock was converted into common stock, Investor 1 and Investor 2 met with Mandell in approximately September 2004 to discuss selling all their

Sky Holdings shares. At the meeting, in or around September 2004, Mandell told them that it would be “ridiculous” for them to sell their Sky Holdings stock because in a few weeks Mandell was going to sell Sky Holdings to a German Bank for £4 per share, a price that constituted a premium of nearly 100% over £2.01, the highest price at which Sky Holdings’ stock traded in September 2004.

37. In fact, there was no such sale transaction in the works. Investor 1 and Investor 2, however, continued to hold their Sky Holdings stock. Soon thereafter, the price of Sky Holdings stock began to decline.

38. Mandell later told Investor 1 and Investor 2 that the Sky Holdings acquisition was cancelled because the German bank had wanted Mandell to work for the bank for three years as part of the deal, but because he was Jewish, Mandell could not work for a German bank. In fact, the bank never proposed any employment arrangement of any type to Mandell.

39. Contrary to Mandell’s indications to Investor 1 and Investor 2 that they would be able to sell their Sky Entities’ stocks profitably because a liquid market would exist, as Mandell knew, or was reckless in not knowing, the Sky Entities’ stocks were illiquid stocks, and there was no reasonable basis to make these predictions.

40. Investor 1 and Investor 2 continued to hold a substantial amount of their Sky Entities’ stock until November 7, 2006 when trading in these stocks was suspended.

**C. Sky Capital and Mandell Paid Additional Commissions in Connection With the Sky Entities’ Private Placements That Were Not Disclosed to Investors**

41. In order to motivate Sky Capital brokers to sell the Sky Entities’ private placement stocks to their customers, Mandell paid the brokers additional commissions that were not disclosed. While the disclosed commission rates in the private placement memoranda

(“PPMs”) for the Sky Entities’ offerings were 8% to 10%, Mandell authorized Sky Capital to pay brokers, including Broker A and Broker B, additional commissions beyond such rates.

42. Despite the language in the PPMs, Mandell instructed Sky Capital brokers to tell investors, if asked about commissions, that the investors would not be charged for commissions. However, the funds raised from investors in the private placements were, in fact, used to pay commissions to Sky Capital brokers.

43. For example, Sky Capital and Mandell paid Broker A and Broker B additional commissions following each private placement for Sky Holdings or Sky Enterprises for which they sold stock to investors. Broker A and Broker B did not disclose these additional commissions to investors.

**D. Sky Capital, Mandell, Shea and the RRs Made Material Misrepresentations and Omissions After the Sky Entities’ Stocks Became Publicly Traded**

Failure to Disclose the “No Net Sales” Policy

44. Throughout the time that the Sky Entities’ stocks were publicly trading on the AIM, in an effort to support the price of the stocks, Sky Capital had a “no net sales” policy. The policy prohibited Sky Capital brokers from submitting sell order tickets for the Sky Entities’ stocks unless they had lined up Sky Capital customers to buy an equivalent amount of shares at the same price so that the sell order did not drive the stock price down. Therefore, in order for a broker to sell a customer’s stock in one of the Sky Entities, the broker had to find another Sky Capital customer to buy the stock being sold.

45. Mandell enforced the “no net sales” policy. Mandell held meetings with Sky Capital brokers to inform them that they needed to find buyers for the Sky Entities’ stocks being sold by other Sky Capital customers to alleviate the “selling pressure” on the stocks. In

addition, Mandell told brokers, including Broker A and Broker B, that they had to find a buyer before the broker could submit a sell ticket.

46. Mandell bullied brokers who submitted customer sell orders without first lining up a buyer, and accused them of not being a “team player.” Mandell also denied perks to brokers who did not follow the “no net sales” policy. Sky Capital often paid for parking, cell phones, and other personal expenses incurred by the brokers, but if a broker did not “support the stock,” Mandell would take away the broker’s perks.

47. Shea also enforced the “no net sales” policy. When Sky Capital brokers were unable to find a buyer to match a customer sell order for the Sky Entities’ stocks, the broker would give the customer sell order to Shea who would then attempt to find a buyer for that stock from another Sky Capital broker. This practice was also called “crossing stock.”

48. Sky Capital’s trading records reveal numerous instances of cross-trades or “crossing-stock” in the Sky Entities’ stocks by each of the RRs, either acting alone or in concert with other Sky Capital brokers. For example:

- On April 27, 2004, Harrington earned a commission resulting from the sale by a Sky Capital customer, Investor 3, of 2,000 shares of Sky Holdings stock at £4.61 per share. On that same day, Harrington also earned a commission by causing an account held by a Sky Capital customer, Investor 4, to purchase 2,000 shares of Sky Holdings stock at £4.64 per share.
- On May 7, 2004, Harrington earned a commission resulting from the sale by a Sky Capital customer, Investor 5, of 15,000 shares of Sky Enterprises stock at \$3.01 per share. On that same day, Harrington and two other Sky Capital brokers also shared commissions by causing two Sky Capital customer accounts – Investor 6 (4,000 shares) and Investor 7 (11,000 shares) – to purchase, in the aggregate, 15,000 shares of Sky Enterprises stock at \$3.04 per share.
- On July 27, 2004, Wilson and Grabowski shared a commission resulting from the sale by a Sky Capital customer, Investor 8, of 15,000 shares of Sky Enterprises stock at \$3.02 per share. On that same day, Wilson and Grabowski shared a commission by causing an account held by a Sky Capital

customer, Investor 9, to purchase 15,000 shares of Sky Enterprises stock at \$3.07 per share.

- On August 20, 2004, Wilson and Grabowski shared a commission resulting from the sale by a Sky Capital customer, Investor 10, of 3,000 shares of Sky Holdings stock at £3.81 per share. On that same day, Wilson and Grabowski shared another commission by causing an account held by a Sky Capital customer, Investor 11, to purchase 3,000 shares of Sky Holdings stock at £3.85 per share.
- On November 18, 2004, Passaro earned a commission resulting from the sale by a Sky Capital customer, Investor 12, of 10,000 shares of Sky Enterprises stock at \$1.57 per share. On that same day, Passaro earned another commission by causing four Sky Capital customer accounts – Investor 13 (8,600 shares), Investor 14 (340 shares), Investor 15 (640 shares), and Investor 16 (420 shares) – to purchase, in the aggregate, 10,000 shares of Sky Enterprises stock at \$1.60 per share.
- On February 22, 2005, Harrington earned a commission resulting from the sale by a Sky Capital customer, Investor 17, of 6,000 shares of Sky Holdings stock at £3.15 per share. On that same day, Wilson and Grabowski shared a commission by causing an account held by a Sky Capital customer, Investor 18, to purchase 5,000 shares of Sky Holdings stock at £3.21 per share.
- On March 3 and 4, 2005, Wilson and Grabowski shared commissions resulting from the sales by Investor 8 of 20,000 shares (sold in equal parts over the two days) of Sky Enterprises stock, at \$2.27 per share. On March 3, Wilson and Grabowski caused an account held by a Sky Capital customer, Investor 19, to purchase 10,000 shares of Sky Enterprises stock at \$2.30 per share, and on March 4, Wilson and Grabowski caused an account held by another Sky Capital customer, Investor 20, to also purchase 10,000 shares of Sky Enterprises stock at \$2.30 per share. Wilson and Grabowski shared the commissions resulting from the two buy transactions.
- On March 7, 2005, Wilson and Grabowski shared commissions resulting from the sale by two Sky Capital customers – Investor 8 (60,000 shares) and Investor 21 (20,000 shares) – of 80,000 shares of Sky Enterprises stock, at \$2.34 per share. On that same day, Wilson and Grabowski shared an additional commission by causing an account held by a Sky Capital customer, Investor 22, to purchase 80,000 shares of Sky Enterprises stock at \$2.37 per share.
- On August 31, 2005, Broker B earned commission resulting from the sale by a Sky Capital customer, Investor 23, of 3,000 shares of Sky Enterprises stock at \$2.73 per share. On that same day, Passaro earned commission by causing an

account held by a Sky Capital customer, Investor 24, to purchase 3,000 shares of Sky Enterprises stock at \$2.77 per share.

- On May 23, 2006, Wilson and Grabowski shared a commission resulting from the sale by Investor 21 of 16,000 shares of Sky Holdings stock at £0.94 per share. On that same day, Wilson and Grabowski earned additional commissions by causing three Sky Capital customer accounts – Investor 23 (9,000 shares), Investor 25 (4,000 shares), and Investor 19 (3,000 shares) – to purchase, in the aggregate, 16,000 shares of Sky Holdings stock at £0.95 per share.

49. In some cases, if Sky Capital brokers could not dissuade a customer from selling, and were unsuccessful in finding a buyer to cross the sell order, Shea and the sales managers told other brokers that the stock was “at the desk.” Shea and the sales managers used the phrase “at the desk” to mean either that sell tickets for Sky Holdings or Sky Enterprises stock were literally at the trading desk waiting to be executed against buy orders from other Sky Capital customers, or that Sky Capital’s “desk” – *i.e.*, its proprietary account – had purchased the stock so that it would not be up for sale on the open market without a buyer, which might cause the price to fall. Shea directed the Sky Capital brokers to find Sky Capital customers who would buy the stock that had been purchased by the proprietary account.

50. At times, Mandell directed Sky Capital brokers whose customers wanted to sell their Sky Entities stocks to inform such customers that because the Sky Enterprises and Sky Holdings stocks were thinly traded, the customers had no option but to sell their shares to Sky Capital at a discount from the publicly listed price.

51. The Sky Capital desk made several purchases of Sky Holdings and Sky Enterprises stocks from its customers at a “discount,” a price below the stock’s listed price on the AIM.

52. Sky Capital brokers, including Broker A and Broker B, then resold the discounted shares to other Sky Capital customers at the publicly listed price, thereby making a profit for

Sky Capital on the difference between the two prices, or the “spread.” Mandell was aware of, and condoned, this practice.

53. Sky Capital also offered its brokers, including Broker A and Broker B, additional commissions to find buyers of Sky Enterprises’ publicly traded stock to “keep the stock price up” while Sky Capital was soliciting investors to invest in a Sky Enterprises private placement.

54. Because of the “no net sales” policy being in effect, investors had extreme difficulty selling their stock in the Sky Entities, and, as a result, many of them continued to remain shareholders in the Sky Entities until November 7, 2006 when the stocks were delisted from the AIM and trading in the shares was halted.

55. Mandell, Shea, the RRs, Broker A and Broker B did not tell their customers that Sky Capital had a “no net sales” policy.

**E. Sky Capital, Mandell, and Shea Paid Additional Commissions in Connection With the Sky Entities’ Publicly Traded Stock and the RRs Did Not Disclose these Commissions**

56. Mandell and Shea offered Sky Capital brokers additional commissions in the form of bonuses for getting Sky Capital customers to buy the Sky Entities’ publicly traded stocks that other Sky Capital customers sold.

57. Shea, acting under Mandell’s direction, led meetings with Sky Capital’s brokers to let them know when there was stock “at the desk” and let them know that there was a “credit” or “special bonus” available for them to resell it. This “credit” or “special bonus” was often a portion of the profit, or spread, that Sky Capital earned when it resold to its customers the publicly traded Sky Entities stocks it had purchased at a discount from other Sky Capital customers.

58. At Mandell’s direction, Harrington led a meeting with Sky Capital’s brokers in which he said that Sky Capital would be giving out what he called “performance bonuses”

because, he explained, Sky Capital was not permitted to pay extra commission for selling the stock of Sky Enterprises or Sky Holdings. Harrington described the performance bonuses as being bonuses for dressing nicely, coming to work on time, and being a team player. It was clear to the brokers that Harrington was telling them in this meeting that they could earn additional commissions.

59. The brokers called their customers to find buyers for the Sky Entities' stocks "at the desk," and when they sold it, they received additional commissions in an amount equal to 50% of the spread, with the other 50% remaining at Sky Capital. These commissions were not disclosed to the Sky Capital customers.

60. Mandell and, in some cases, Shea approved these additional commission payments, which were made by check.

61. For example, in January 2005 Broker A received a check from Sky Capital dated January 6, 2005 in the amount of \$8,682.00. The January 6, 2005 check was additional, undisclosed commissions for Broker A's sales of a total of 80,000 shares of Sky Enterprises' stock to two of his customers during October and December of 2004. Broker A did not inform his customers of the additional commissions.

62. Mandell ignored complaints from customers about the behavior of Sky Capital's brokers in connection with the sales of the Sky Entities' publicly traded stocks. For example, a Sky Capital broker gave Mandell several customer complaints concerning Broker B, including allegations of unauthorized trading in the Sky Entities' stocks. Mandell did not, however, file notice of the complaints with the NASD, and did nothing to address the customers' concerns.



## **F. Mandell Profited from the Scheme**

63. Under Mandell's leadership, Sky Capital raised over \$61 million for Sky Enterprises and Sky Holdings.

64. Mandell squandered the funds on a lavish lifestyle for himself and the Sky Capital brokers. For example, Mandell made frequent trips to London to pitch the Sky Enterprises and Sky Holdings private placements to prospective investors. These trips were extravagant, and included first-class flights, five-star hotel suites, expensive meals, adult entertainment, and personal spending. Mandell authorized the Sky Entities to pay the expenses for these trips.

65. Mandell was also handsomely compensated, not only by Sky Capital, but also by Sky Enterprises and Sky Holdings, throughout the period of the fraudulent scheme. For example, in 2006, Mandell's overall cash compensation from Sky Capital, the Sky Entities, and related companies exceeded \$1.5 million.

66. During the period of the fraudulent scheme, the Sky Entities suffered significant financial losses. For example, for the fiscal year ended March 2004, Sky Holdings publicly reported that it lost over \$33 million, and in a period of less than three years, from August 2002 to June 2005, Sky Enterprises publicly reported that it lost over \$15 million.

67. Mandell also used Sky Capital's funds to pay for personal expenses. For example, Mandell paid a decorator from checks drawn on Sky Capital's bank account for work done on Mandell's penthouse apartment at the Trump UN Plaza in Manhattan, New York. Sky Capital also paid for Mandell's child-care expenses.

**FIRST CLAIM FOR RELIEF**  
**Violations of Section 17(a) of the Securities Act**  
**(Sky Capital, Mandell, Shea, Harrington,**  
**Wilson, Passaro, and Grabowski)**

68. The Commission repeats and realleges paragraphs 1 through 67, as though fully set forth herein.

69. Sky Capital, Mandell, Shea, Harrington, Wilson, Passaro, and Grabowski, directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in, or the means or instrumentalities of, interstate commerce, or by the use of the mails, in connection with the offer or sale of securities, knowingly or recklessly: (a) employed devices, schemes, or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or have omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, transactions, practices, and courses of business which operated or would have operated as a fraud or deceit upon the purchasers of the securities offered and sold by the Defendants and other persons.

70. As part of and in furtherance of a fraudulent scheme, Sky Capital, Mandell, Shea, Harrington, Wilson, Passaro, and Grabowski, directly or indirectly, singly or in concert, employed the deceptive devices, schemes, artifices, contrivances, acts, transactions, practices, and courses of business and/or made misrepresentations and/or omitted to state the facts alleged above.

71. The false and misleading statements and omissions made by Sky Capital, Mandell, Shea, Harrington, Wilson, Passaro, and Grabowski were material.

72. Sky Capital, Mandell, Shea, Harrington, Wilson, Passaro, and Grabowski knew, or were reckless in not knowing, that these material misrepresentations and omissions were false

or misleading.

73. The material misrepresentations and omissions were made in connection with the offer or sale of securities.

74. By reason of the foregoing, Sky Capital, Mandell, Shea, Harrington, Wilson, Passaro and Grabowski, directly or indirectly, singly or in concert, violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

**SECOND CLAIM FOR RELIEF**  
**Violations of Section 10(b) of the Exchange Act  
and Rule 10b-5 Thereunder (Sky Capital, Mandell,  
Shea, Harrington, Wilson, Passaro, and Grabowski)**

75. The Commission repeats and realleges paragraphs 1 through 74 as though fully set forth herein.

76. From at least 2001 through November 2006, or at various times during such period, Sky Capital, Mandell, Shea, Harrington, Wilson, Passaro, and Grabowski, directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in, or the means or instrumentalities of, interstate commerce, or by the use of the mails, in connection with the purchase or sale of securities, knowingly or recklessly: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, transactions, practices, and courses of business which operated or would have operated as a fraud or deceit upon the purchasers of the securities offered and sold by the Defendants and other persons.

77. As part of and in furtherance of this violative conduct, Sky Capital, Mandell, Shea, Harrington, Wilson, Passaro, and Grabowski, directly or indirectly, singly or in concert,

employed the deceptive devices, schemes, artifices, contrivances, acts, transactions, practices, and courses of business and/or made misrepresentations and/or omitted to state the facts alleged above.

78. The false and misleading statements and omissions made by Sky Capital, Mandell, Shea, Harrington, Wilson, Passaro, and Grabowski were material.

79. Sky Capital, Mandell, Shea, Harrington, Wilson, Passaro, and Grabowski knew, or were reckless in not knowing, that these material misrepresentations and omissions were false or misleading.

80. The material misrepresentations and omissions were in connection with the purchase or sale of securities.

81. By reason of the foregoing, Sky Capital, Mandell, Shea, Harrington, Wilson, Passaro and Grabowski, singly or in concert, directly or indirectly, violated 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].

**THIRD CLAIM FOR RELIEF**  
**Aiding and Abetting Violations of Section 10(b)**  
**of the Exchange Act and Rule 10b-5 Thereunder (Shea)**

82. The Commission repeats and realleges paragraphs 1 through 81 as though fully set forth herein.

83. By reason of the foregoing, Sky Capital, Mandell, Harrington, Wilson, Passaro, and Grabowski, directly or indirectly, singly or in concert, violated 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].

84. As part of and in furtherance of this violative conduct, Shea provided knowing and substantial assistance to Sky Capital, Mandell, Harrington, Wilson, Passaro, and Grabowski.

85. By reason of the foregoing and pursuant to Section 20(e) of the Exchange Act [15

U.S.C. § 78t(e)], Shea, directly or indirectly, singly or in concert, aided and abetted Sky Capital's, Mandell's, Harrington's, Wilson's, Passaro's and Grabowski's primary 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].

**FOURTH CLAIM FOR RELIEF**  
**Violations of Section 15(c) of the Exchange Act**  
**(Sky Capital)**

86. The Commission realleges and incorporates by reference paragraphs 1 through 85, as though fully set forth herein.

87. Sky Capital, directly or indirectly, singly or in concert, made use of the mails or means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of securities, by means of a manipulative, deceptive, or other fraudulent device or contrivance as prohibited by Section 15(c) of the Exchange Act [15 U.S.C. § 78o(c)].

88. As part and in furtherance of this violative conduct Sky Capital engaged in a fraudulent scheme to sell its customers shares of the Sky Entities' stock.

89. By reason of the foregoing, Sky Capital, directly or indirectly, singly or in concert, violated Section 15(c) of the Exchange Act [15 U.S.C. § 78o(a)].

**FIFTH CLAIM FOR RELIEF**  
**Aiding and Abetting Violations of Section 15(c)**  
**of the Exchange Act (Mandell)**

90. The Commission realleges and incorporates by reference paragraphs 1 through 89, as though fully set forth herein.

91. Sky Capital, directly or indirectly, singly or in concert, made use of the mails or means or instrumentalities of interstate commerce to effect transactions in, or to induce or

attempt to induce the purchase or sale of securities, by means of a manipulative, deceptive, or other fraudulent device or contrivance as prohibited by Section 15(c) of the Exchange Act [15 U.S.C. § 78o(c)].

92. As part of and in furtherance of this violative conduct, Mandell provided knowing and substantial assistance to Sky Capital by means of a manipulative, deceptive, or other fraudulent device or contrivance.

93. By reason of the foregoing and pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], Mandell, directly or indirectly, aided and abetted Sky Capital's primary violations of Section 15(c) of the Exchange Act [15 U.S.C. § 78o(a)].

#### **PRAYER FOR RELIEF**

**WHEREFORE**, the Commission respectfully requests that this Court enter a Final Judgment:

##### **I.**

Permanently restraining and enjoining Sky Capital, Mandell, Shea, Harrington, Wilson, Passaro, and Grabowski, and their officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], and 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.**

Permanently restraining and enjoining Sky Capital and its officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with it who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating

Section 15(c) of the Exchange Act [15 U.S.C. § 78o(c)], and permanently restraining and enjoining Mandell and any of his agents, servants, employees, and attorneys and all persons in active concert or participation with him who receive actual notice of this injunction by personal service or otherwise, and each of them, from aiding and abetting or causing violations of Section 15(c) of the Exchange Act [15 U.S.C. § 78o(c)].

### III.

Ordering each of the Defendants to disgorge the ill-gotten gains they received as a result of their violations alleged herein, and to pay prejudgment interest thereon.

### IV.

Ordering each of the Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and/or Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

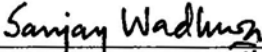
### V.

Permanently prohibiting Mandell from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)] pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)].

VI.

Granting such other and further relief as this Court may deem just and proper.

Dated: New York, NY  
July 8, 2009

  
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