

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FILED  
IN CLERK'S OFFICE  
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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

STEVIN R. HOOVER,  
and HOOVER CAPITAL MANAGEMENT, INC.

Defendants.

CIVIL ACTION

01<sup>10</sup>CV 10751 RGS

RECEIPT # N/A  
AMOUNT \$ ~~50.00~~ N/A  
SUMMONS ISS. YES-2  
LOCAL RULE 4.1     
WAIVER OF SERV.     
MCF ISSUED     
AO 120 OR 121     
BY DPTY CLK SS  
DATE 5-2-01

COMPLAINT  
**DOCKETED**

Plaintiff Securities and Exchange Commission ("Commission") alleges

PRELIMINARY STATEMENT

1. This is an enforcement action arising from multiple violations of the federal securities laws by Stevin R. Hoover ("Hoover") and Hoover Capital Management, Inc. ("HCM"), a registered investment adviser Hoover controls. Between 1995 and 1999, Defendants Hoover and HCM misappropriated client funds, obtained loans from clients under false pretenses, misrepresented the value of HCM's assets under management, failed to maintain accurate and complete books and records, and failed to disclose material information in investment adviser registration forms ("Forms ADV"). Defendant Hoover misappropriated over \$479,000 by making unauthorized transfers of \$404,000 from client accounts between June 1997 and March 1998 and by overbilling clients at least \$75,166 in management fees between 1995 and 1998. In addition, Defendant Hoover breached the fiduciary duty he owed his clients when he secured more than \$1 million in personal loans from clients in 1998 and 1999 by misrepresenting the purpose of the loans and by failing to disclose his actual personal and business financial status. In

addition, Defendants Hoover and HCM significantly overstated assets under management in materials provided to clients, the media, and to entities that rank investment advisers.

2. By engaging in the acts and practices alleged in this Complaint, Defendants Hoover and HCM violated the federal securities laws. Specifically, Defendants Hoover and HCM, directly or indirectly, have engaged in acts, practices and courses of business that constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], 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] and Section 206 (1) and (2) of the Advisers Act [15 U.S.C. §§ 80b-6 (1) and 80b-6 (2)] and Defendant Hoover aided and abetted such violations. In addition, Defendant HCM violated and Defendant Hoover aided and abetted violations of Sections 206(4) and 204 of the Advisers Act [15 U.S.C. §§ 80b-6 (4) and 80b-4] and Rules 206(4)-1(a)(5), 204-2(a)(5), 204-2(a)(6), 204-2(a)(7), 204-2(a)(9) and 204-2(a)(10), thereunder [17 C.F.R. §§ 275.206(4)-1(a)(5), 275.204-2(a)(5), 275.204-2(a)(6), 275.204-2(a)(7), 275.204-2(a)(9) and 275.204-2(a)(10)]. Finally, Defendants Hoover and HCM violated Section 207 of the Advisers Act [15 U.S.C. § 80b-7].

3. Defendants Hoover and HCM, unless restrained and enjoined, will continue to engage in acts, practices and courses of business as set forth in this Complaint or in acts, practices and courses of business of similar object and purpose.

#### JURISDICTION

4. This Court has jurisdiction over this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v], Sections 21 and 27 of the Exchange Act [15 U.S.C.

§§ 78u and 78aa], and Section 209 of the Advisers Act [15 U.S.C. § 80b-9]. Specifically, the acts and transactions constituting violations occurred within the District of Massachusetts.

5. The Commission brings this action pursuant to the enforcement authority conferred upon it by Section 20 of the Securities Act [15 U.S.C. § 77t], Section 21 of the Exchange Act [15 U.S.C. § 78u], and Section 209 of the Advisers Act [15 U.S.C. § 80b-9] to permanently enjoin Defendants Hoover and HCM and to obtain disgorgement, prejudgement interest, and other equitable relief.

#### DEFENDANTS

6. Defendant Hoover currently resides in Kansas City, Missouri. He is the sole shareholder, chief executive officer, and portfolio manager of Defendant HCM. Defendant Hoover, at all relevant times, lived and worked as a money manager in Boston, Massachusetts. Defendant Hoover was featured in 1998, 1999 and 2000 articles in Worth magazine describing selected money managers' stock picks.

7. Defendant HCM has been registered with the Commission as an investment adviser since 1989. At all relevant times, Defendant HCM was a Massachusetts corporation with its principal place of business in Boston, Massachusetts. On October 13, 2000, Defendant HCM filed an amended Form ADV indicating that its address changed to Kansas City, Missouri.

#### MISAPPROPRIATION OF CLIENT FUNDS

8. Defendant HCM's clients' accounts were held in custody at Charles Schwab & Co., Inc. ("Schwab"). Schwab accounts held equity securities, and any available cash in the accounts was automatically invested in a money market fund. Defendants Hoover and HCM had discretionary authority to conduct certain transactions in client accounts on the client's behalf.

Schwab effected transactions in client accounts based upon Defendants Hoover and HCM's instructions.

9. In the following instances, Defendants Hoover and HCM misappropriated client funds by selling shares from each client's money market account to effect the unauthorized transfer of funds and/or withdrawals from client accounts.

#### **Unauthorized Transfers**

10. Between June 1997 and March 1998, Defendants Hoover and HCM misappropriated approximately \$404,000 from at least five clients by making unauthorized transfers from their accounts.

#### **Alexander S. Coke**

11. At all relevant times, Alexander S. Coke ("Coke") lived in Amsterdam, Netherlands. By January 1997, Coke and his immediate family comprised one of Defendant HCM's largest non-institutional accounts, with approximately \$4 million under management. Defendants Hoover and HCM, without Coke's knowledge or consent, withdrew a total of approximately \$231,000 from Coke's account, as set forth in paragraphs 12-14 below.

12. On October 16, 1997, Defendants Hoover and HCM, or an employee acting at their direction, faxed Schwab instructions to issue a \$100,000 check from Coke's account, payable to Coke. Schwab mailed the check to Defendant HCM's offices where Defendant Hoover forged Coke's endorsement on the check. On October 27, 1997, Defendant Hoover deposited, or caused to be deposited, the funds into Defendant HCM's operating account and used the funds for general expenses.

13. On January 26, 1998, Defendants Hoover and HCM, or an employee acting at their direction, faxed Schwab instructions to issue a \$90,000 check from Coke's account, payable to Coke. Schwab mailed the check to Defendant HCM's offices where Defendant Hoover forged Coke's endorsement on the check. On January 27, 1998, Defendant Hoover deposited, or caused to be deposited, the funds into Defendant HCM's operating account and used the funds for general expenses.

14. On March 10, 1998, Defendants Hoover and HCM, or an employee acting at their direction, faxed Schwab instructions to issue a \$40,171 check from Coke's account, payable to Coke. On March 11, 1998, Schwab mailed the check to Defendant HCM's offices. Soon thereafter, Defendant Hoover forged Coke's signature and endorsed the check over to "Foreign Motors West" to buy his wife a sports utility vehicle.

15. By August 1999, upon Coke's insistence, Defendant Hoover repaid Coke the misappropriated funds.

**Christian P. Hinneberg**

16. Christian P. Hinneberg ("Hinneberg") lives in Hamburg, Germany. By January 1997, Hinneberg's account with Defendants Hoover and HCM had approximately \$ 1 million under management. Initially, Hinneberg received monthly Schwab account statements at his home address in Hamburg, Germany. On January 27, 1997, a fax was sent to Schwab instructing that the address on Hinneberg's account be changed to a post office box in Boston, Massachusetts. Beginning in June 1997, Defendants Hoover and HCM, without Hinneberg's knowledge or consent, withdrew a total of approximately \$108,000 from Hinneberg's account, as set forth in paragraphs 17-19 below.

17. On June 28, 1997, Defendant Hoover faxed Schwab instructions to issue a \$28,000 check from Hinneberg's account, payable to Hinneberg. On June 30, 1997, Schwab mailed the check to the post office box address. Defendant Hoover forged Hinneberg's endorsement and, on July 3, 1997, deposited, or caused to be deposited, the funds into his personal account at Schwab.

18. Similarly, on September 19, 1997, Defendants Hoover and HCM, or an employee acting at their direction, faxed Schwab instructions to issue a \$20,000 check from Hinneberg's account, payable to Hinneberg. On September 19, 1997, Schwab mailed the check to the post office box address. Defendant Hoover forged Hinneberg's endorsement and, on September 25, 1997, deposited, or caused to be deposited, the funds into Defendant HCM's operating account at Schwab.

19. Finally, on June 16, 1998, Defendants Hoover and HCM, or an employee acting at their direction, faxed Schwab instructions to issue a \$60,000 check from Hinneberg's account, payable to Hinneberg. On June 17, 1998, Schwab mailed the check to the post office box address. On or about June 23, 1998, Defendant Hoover forged Hinneberg's signature, and endorsed the check over to American Express as payment on Defendant Hoover's personal credit card.

20. After Defendant Hoover was contacted by the Commission's enforcement staff, Defendant Hoover returned funds that he had misappropriated from Hinneberg's account. Specifically, on September 1, 1998, Defendant Hoover wrote three checks totaling approximately \$128,000 to Hinneberg from Defendant Hoover's personal checking account. Without Hinneberg's knowledge or consent, Defendant Hoover forged Hinneberg's signature as an

endorsement on those checks, and deposited, or caused the deposit of, the funds, into Hinneberg's account.

**Matilda Cuneo**

21. Mathilda Cuneo ("Cuneo") was an elderly widow who resided in Bedford, Massachusetts. By June 1997, Cuneo's account with Defendants Hoover and HCM had approximately \$1.2 million under management. In June 1997, Cuneo was in the hospital and *non compos mentis*. On June 5, 1997, Defendants Hoover and HCM, or an employee acting at their direction, faxed Schwab a forged letter of authority that instructed Schwab to transfer \$50,000 from Cuneo's account to Defendant HCM's operating account. On June 27, 1997, Cuneo died. On April 15, 1998, the executor of Cuneo's estate demanded that Defendant Hoover repay the estate the amount of the unauthorized transfer. By September 1, 1998, Defendant Hoover had repaid Cuneo's estate in full.

**Susan Bacon**

22. In 1994, Defendant Hoover encouraged Susan Bacon ("Bacon"), with whom he had a personal relationship, to set up an account at Defendant HCM to manage funds that she had inherited from her mother. On April 21, 1995, after the relationship ended, Defendant Hoover transferred Bacon's initial investment into two custodial accounts for her children, Anthony and Isabel Bacon.

23. The two custodial accounts were established pursuant to the Uniform Gifts to Minors Act with Bacon as the custodian and Defendant Hoover as the investment adviser. Until March 24, 1997, Bacon received statements for the children's accounts. On March 24, 1997, Defendant Hoover sent Schwab a forged letter of authority which instructed Schwab to change

the address of record, from Bacon's home address to Defendant Hoover's home address.

Defendant Hoover caused the address change without Bacon's knowledge or consent.

24. On or about May 30, 1997, Defendant Hoover requested that Schwab issue a \$9,076.66 check from Isabel Bacon's account and a \$7,204.86 check from Anthony Bacon's account, payable to Susan Bacon. On May 30, 1997, Schwab mailed the two checks to Defendant Hoover's home address. Defendant Hoover forged Bacon's signature on both checks. On June 4, 1997, Defendant Hoover caused the funds to be deposited into Defendant HCM's operating account. Defendant Hoover caused the withdrawal from the Bacon custodial accounts on or about May 30, 1997, without Bacon's knowledge or consent.

25. On April 9, 1998, Schwab deducted \$16,281.53 from Defendant HCM's operating account and returned the funds to the respective Bacon custodial accounts.

26. During Commission investigative testimony, Defendant Hoover was questioned regarding the unauthorized transfers set forth in paragraphs 10-24 above. Defendant Hoover provided limited testimony regarding the Coke transactions in paragraphs 11-15 above and asserted his Fifth Amendment privilege against self-incrimination in response to all questions regarding the conduct alleged in paragraphs 16-24.

#### **Overbilling of Advisory Fees**

27. For the years 1995, 1996 and 1997, Defendant HCM's Form ADV stated that Defendant HCM clients were charged advisory fees on a quarterly basis equal to 1% annually of the fair market value of the clients' securities under management. Beginning with the Form ADV filed in January 1998, Defendant HCM disclosed that clients living in the United States would be charged advisory fees of 1% of assets under management annually and foreign-based clients



would be charged 1.5% of assets under management annually. None of the Forms ADV indicated that any client could be charged more than the fees set forth in the ADV. The standard client agreement was consistent with the disclosures in the Form ADV.

28. Defendants Hoover and HCM billed clients for management fees by faxing Schwab a list of client account numbers and amounts to be deducted. Following Defendant Hoover's instructions, Schwab deducted the amount from the client account and transferred the funds to Defendant HCM's management fee disbursement or operating account.

29. Between March 24, 1995 and March 31, 1998, Defendants HCM and Hoover misappropriated client funds by overbilling clients at least \$75,166 in advisory fees. Defendants HCM and Hoover overcharged clients in two ways: by charging advisory fees at a higher percentage rate than agreed and/or by charging the account more than once a quarter.

**Alexander S. Coke**

30. From March 1995 through December 1996, without Coke's knowledge or consent, Defendants Hoover and HCM, or an employee acting at their direction, caused excessive withdrawals totaling approximately \$25,000 from Coke's accounts.

31. Specifically, on or about March 24, 1995, May 30, 1996 and December 13, 1996, without Coke's knowledge or consent, Defendants Hoover and HCM, or an employee acting at their direction, instructed Schwab to deduct \$5,000, \$10,000 and \$10,000, respectively, from Coke's accounts for purported advisory fees. At the end of those quarters, Defendants Hoover and HCM again instructed Schwab to deduct additional advisory fees from Coke's accounts.

**Christian P. Hinneberg**

32. Defendants Hoover and HCM, or an employee acting at their direction, sent Hinneberg a Statement of Management Fees dated January 8, 1997, which reflected an advisory fee of \$2,752.84 for the quarter ended December 31, 1996. Without Hinneberg's knowledge or consent, however, Defendants Hoover and HCM, or an employee acting at their direction, caused the withdrawal of more than \$5000 from Hinneberg's account for that quarter.

**Jurgen Koob**

33. From March 1996 through January 1997, without Koob's knowledge or consent, Defendants Hoover and HCM, or an employee acting at their direction, caused excessive withdrawals totaling approximately \$37,060 from Koob's account.

34. Specifically, on or about May 30, 1996, Defendants Hoover and HCM, or an employee acting at their direction, instructed Schwab to deduct \$10,000 from Koob's account for purported advisory fees. Defendants Hoover and HCM, or an employee acting at their direction, instructed Schwab to deduct these purported advisory fees in addition to appropriate advisory fees which had already been charged for the quarter.

35. Specifically, on or about July 10, 1996 and September 23, 1996, Defendants Hoover and HCM, or an employee acting at their direction, instructed Schwab to deduct \$22,390 and \$2,529, respectively, from Koob's accounts for purported advisory fees. Defendants Hoover and HCM, or an employee acting at their direction, instructed Schwab to deduct these purported advisory fees in addition to appropriate advisory fees which had already been charged for each quarter.

36. Defendants Hoover and HCM sent Koob a Statement of Management Fees dated January 9, 1997, which reflected an advisory fee of \$1,141.72 for the quarter ended December 31, 1996. Without Koob's knowledge or consent, however, Defendants Hoover and HCM caused an additional withdrawal of \$1000 from Koob's account for that quarter.

37. Koob subsequently questioned Hoover about the additional charge and Defendant Hoover credited Koob's account for the excessive \$1,000 withdrawal.

**Benjamin I. Brown**

38. From January through April 1997, without Benjamin Brown's ("Brown") knowledge or consent, Defendants Hoover and HCM caused excessive withdrawals totaling approximately \$6933 from Brown's brokerage trust account and individual retirement account.

39. Defendants Hoover and HCM sent Brown a Statement of Management Fees dated January 22, 1997 for Brown's brokerage trust and individual retirement accounts, which reflected advisory fees for both accounts of approximately \$4269 for the fourth quarter of 1996. On January 10, 1997, Defendants Hoover and HCM caused the withdrawal of more than \$9500 from those accounts for the purported payment of advisory fees.

40. Defendants Hoover and HCM sent Brown a Statement of Management Fees dated April 7, 1997 for Brown's brokerage trust account, which reflected advisory fees of \$1335 for the first quarter of 1997. On April 10, 1997, Defendants Hoover and HCM caused the withdrawal of \$1335 from Brown's brokerage trust account. On April 18, 1997, Defendants Hoover and HCM caused an additional withdrawal of \$1675 from Brown's brokerage trust account for purported advisory fees.

**Matilda Cuneo**

41. Defendants Hoover and HCM sent Cuneo a Statement of Management Fees dated July 14, 1996, which reflected an advisory fee of \$3,926 for the quarter ended June 30, 1996. Without Cuneo's knowledge or consent, however, Defendants Hoover and HCM caused an additional withdrawal on July 18, 1996 of \$3,926 from Cuneo's account for that quarter.

42. During Commission investigative testimony, Defendant Hoover was questioned about the excessive withdrawals from client accounts for purported fees as set forth in paragraphs 30-33 and 35-41 above. Although Hoover provided limited testimony about HCM's billing procedures and the Coke transactions set forth in paragraphs 30-31 above, Hoover asserted his Fifth Amendment privilege against self-incrimination in response to all questions about the conduct alleged in paragraphs 32-33 and 35-41.

**HOOVER'S MISREPRESENTATIONS TO OBTAIN  
PERSONAL LOANS FROM CLIENTS**

43. Between August 1998 and August 1999, Defendant Hoover borrowed almost \$1 million from clients. In each instance, Defendant Hoover misrepresented the purpose of the loan to the client. As an investment adviser, Defendant Hoover owed his clients a fiduciary duty to accurately disclose his financial condition.

**Alexander S. Coke**

44. In August 1998, Defendant Hoover asked Coke for a \$400,000 loan. At that time, Defendant Hoover told Coke that he needed the \$400,000 as part of a payment to his ex-wife to buy out her interest in Defendant HCM. Additionally, at Coke's request, Defendant Hoover provided Coke with financial statements. The financial statements Defendant Hoover provided to

Coke were false and fraudulent because Defendant Hoover misrepresented that his personal assets included \$700,000 in cash and \$900,000 of real estate in Hoover Hill, Pennsylvania. In fact, Defendant Hoover did not have any real estate in 1998.

45. On August 31, 1998, Coke wrote Defendant Hoover a check from his SchwabOne account for \$400,000. On September 2, 1998, Defendant Hoover deposited Coke's check in his personal bank account at Boston Private Bank & Trust Company.

**Joanne Morris Camer**

46. In late June 1999, Defendant Hoover asked client Joanne Morris Camer ("Camer") for a \$405,000 loan. Defendant Hoover told Camer that he needed the money to pay a bill and for a divorce settlement payment to his ex-wife.

47. In June 1999, Camer wrote Defendant Hoover a check from her SchwabOne account for \$405,000. On June 30, 1999, Defendant Hoover deposited Camer's check in his personal bank account at Boston Private Bank & Trust. In investigative testimony, Hoover admitted that he used the funds that Camer had loaned him to repay Coke.

**Heilwig and Jim Nille**

48. In August 1999, Defendant Hoover asked clients Heilwig and Jim Nille ("Nille") for a \$150,000 loan. Defendant Hoover told the Nilles that he needed the money to make a payment to his ex-wife.

49. On August 9, 1999, Jim Nille wrote Defendant Hoover a check from the Nille's personal checking account. On or about August 9, 1999, Defendant Hoover gave the Nille check to his second wife, K. Mechelle Hoover, who deposited the funds into her bank account at Boston Private Bank & Trust Company. On August 10, 1999, K. Mechelle Hoover transferred \$100,000

to Defendant Hoover's personal bank account at Boston Private Bank & Trust and used \$50,000 to pay general living expenses.

50. During Commission investigative testimony, Defendant Hoover was questioned about the personal loans from clients set forth in paragraphs 44-49 above. Although Defendant Hoover provided limited testimony regarding the allegations in paragraphs 44-47 above, he asserted his Fifth Amendment privilege against self-incrimination in response to all questions about the conduct alleged in paragraphs 48-49.

#### MISREPRESENTATION OF ASSETS UNDER MANAGEMENT

51. Defendant Hoover repeatedly overstated the amount of Defendant HCM's assets under management to clients and others. In April 1995, Defendant Hoover met with the trustees of Forest Hills Cemetery to discuss his potential management of its portfolio and provided the trustees with an informational package which falsely stated that Defendant HCM managed \$151 million in assets. As of August 1995, however, Defendant HCM's 1995 Form ADV reported only \$65.1 million of assets under management.

52. In May 1996, Defendant Hoover provided client Adelphi University with a portfolio review which falsely showed that Defendant HCM managed \$205 million in assets. As of February 20, 1996, however, Defendant HCM's 1996 Form ADV reported only \$74.3 million of assets under management.

53. In 1996, Defendant Hoover provided false information to Nelson Publications regarding Defendant HCM's assets under management. Beginning in June 1996, Defendant Hoover sent both clients and prospective clients a reprint of a Nelson Publication's article captioned "World's Best Money Managers 4Q95," which ranked Defendant HCM sixteenth

among all US mid-cap value equity managers for the three years ended December 31, 1995. The article reported that Defendant HCM's assets under management as of December 31, 1995, were approximately \$135 million. As of August 1995, however, Defendant HCM's 1995 Form ADV reported only \$65.1 million of assets under management.

54. In late 1996, Defendant HCM provided client Forest Hills Cemetery documents which falsely reflected assets under management of \$214 million as of October 31, 1996. As of February 20, 1996, however, Defendant HCM's 1996 Form ADV reported only \$74.3 million of assets under management.

55. During Commission investigative testimony, Defendant Hoover was questioned regarding the misrepresentation of assets under management set forth in paragraph 53 above, and asserted his Fifth Amendment privilege against self-incrimination in response to those questions.

#### BOOKS AND RECORDS VIOLATIONS

56. During all relevant times, Defendants Hoover and HCM failed to maintain accurate and complete books and records as is required of a registered investment adviser. Specifically, Defendants Hoover and HCM failed to keep all bills or statements, paid or unpaid, trial balances, financial statements, internal audit working papers relating to the advisory business, and originals of written communications received and copies of all written communications sent by Defendants Hoover and HCM. Correspondence with clients was often missing from both the individual client's files and from Defendants Hoover and HCM's chronological correspondence file.

57. During all relevant times, Defendants Hoover and HCM also failed to maintain powers of attorney and other documents which evidenced the granting of discretionary authority by clients. In addition, Defendants Hoover and HCM failed to maintain written agreements

entered into between Defendants Hoover and HCM and the client. Lastly, Defendants Hoover and HCM failed to maintain and preserve the required records in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record.

FAILURE TO DISCLOSE MATERIAL INFORMATION IN FORM ADV

58. Defendants Hoover and HCM had a duty to file accurate and complete Forms ADV that were not false or misleading and that did not omit to state material facts required therein. Defendants Hoover and HCM violated this duty because Defendant HCM filed, and Defendant Hoover signed, Forms ADV that failed to reveal that some clients were charged higher fees than those set forth in the Forms ADV.

REMEDIES

59. The violations set forth in this Complaint involve fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement and such violations directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

FIRST CLAIM

(Securities Act § 17 (a))

60. The allegations set forth in Paragraphs 1-42 above are hereby realleged and incorporated by reference herein.

61. Between at least January 1996 and August of 1999, Defendants Hoover and HCM, directly or indirectly, singularly and in concert, knowingly or recklessly, in the offer and sale of securities, used means or instrumentalities of interstate commerce, or of the mails, or a national



securities exchange facility: (a) to employ a device, scheme, or artifice to defraud; (b) to make untrue statements of material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) to engage in acts, practices or a course of business which operates or would operate as a fraud or deceit purchasers of securities.

62. Defendant Hoover knew, or was reckless in not knowing, that Defendant HCM's conduct was improper, and provided knowing and substantial assistance of Defendant HCM's violations.

63. By reason of the foregoing transactions, acts, omissions, practices and course of business, from at least March 1995 through August 1999, Defendants Hoover and HCM, knowingly or recklessly, directly or indirectly, violated Section 17(a) of the Securities Act [15 U.S.C. §17q(a)] and Defendant Hoover aided and abetted such violations.

### SECOND CLAIM

#### (Exchange Act § 10(b) and Rule 10b-5)

64. The allegations set forth in Paragraphs 1-42 above are hereby realleged and incorporated by reference herein.

65. Between at least March 1995 and August of 1999, Defendants Hoover and HCM, directly or indirectly, singularly and in concert, knowingly or recklessly, used means or instrumentalities of interstate commerce, or of the mails, or a national securities exchange facility: (a) to employ a device, scheme, or artifice to defraud; (b) to make untrue statements of material fact, or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) to engage in acts,

practices, or a course of business which operates or would operate as a fraud or deceit upon any person in connection with the purchase or sale of securities.

66. Defendant Hoover knew, or was reckless in not knowing, that Defendant HCM's conduct was improper, and provided knowing and substantial assistance of Defendant HCM's violation.

67. By reason of the foregoing transactions, acts, omissions, practices and course of business, from at least March 1995 through August 1999, Defendants Hoover and HCM, knowingly or recklessly, 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] and Defendant Hoover aided and abetted such violation.

### THIRD CLAIM

#### (Advisers Act §§ 206(1), (2))

68. The allegations set forth in Paragraphs 43-50 above are hereby realleged and incorporated by reference herein.

69. Defendant Hoover knew, or was reckless in not knowing, that Defendant HCM's conduct was improper, and provided knowing and substantial assistance of Defendant HCM's violations of the Advisers Act regarding fraud upon investment adviser clients.

70. By reason of the foregoing transactions, Defendants Hoover and HCM directly or indirectly, violated Section 206(1) of the Advisers Act [15 U.S.C. § 80b-6(1)], and directly or indirectly, violated Section 206(2) of the Advisers Act [15 U.S.C. § 80b-6(2)], and Defendant Hoover aided and abetted such violations.

FOURTH CLAIM

(Advisers Act § 206(4) and Rule 206(4)-1(a)(5))

71. The allegations set forth in Paragraphs 51-55 above are hereby realleged and incorporated by reference herein.

72. From at least April 1995 through at least 1996, Defendant HCM, directly or indirectly, published, circulated, or distributed advertisements that contained untrue statements of material fact, or were otherwise false or misleading.

73. Defendant Hoover knew, or was reckless in not knowing, that Defendant HCM's conduct was improper, and provided knowing and substantial assistance of Defendant HCM's violations of the Advisers Act regarding false and misleading advertisements by any investment adviser.

74. By reason of the foregoing transactions, acts, omissions, practices or courses of business, Defendant HCM violated, and Defendant Hoover aided and abetted Defendant HCM's violations of, Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-1(a)(5) thereunder [17 C.F.R. § 275.206(4)-1(a)(5)].

FIFTH CLAIM

(Advisers Act § 204 and Rules 204-2(a)(5), (6), (7), (9) and (10) and 204-2(e)(1))

75. The allegations set forth in Paragraphs 56-57 above are hereby realleged and incorporated by reference herein.

76. Defendant HCM, an investment adviser who made use of the mails and means and instrumentalities of interstate commerce in connection with its business as an investment adviser, failed to make and keep, accurate and current certain books. Defendant HCM also failed to

maintain and preserve the required records in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record.

77. Defendant Hoover knew, or was reckless in not knowing, that Defendant HCM's conduct was improper and provided knowing and substantial assistance of Defendant HCM's violations of the Advisers Act regarding record keeping requirements.

78. By reason of the foregoing, Defendant HCM violated, and Defendant Hoover aided and abetted Defendant HCM's violation of Section 204 of the Advisers Act [15 U.S.C. § 80b-4] and Rules 204-2(a)(5), (6), (7), (9), and (10) and 204-2(e)(1), thereunder [17 C.F.R. §§ 275.204-2 (a)(5), 275.204-2 (a)(6), 275.204-2 (a)(7), 275.204-2 (a)(9), 275.204-2 (a)(10) and 275.204-2 (e)(1)]

#### SIXTH CLAIM

#### (Advisers Act § 207)

79. The allegations set forth in Paragraphs 58 above are hereby realleged and incorporated by reference herein.

80. Between at least 1996 through 1998, Defendants Hoover and HCM willfully made untrue statements of material fact and omitted to state material facts required, in Forms ADV filed with Commission.

81. Defendants Hoover and HCM knew, or were reckless in not knowing, that it violated the Advisers Act by failing to adequately disclose material information in the Forms ADV.

82. By reason of the foregoing, Defendants Hoover and HCM violated Section 207 of the Advisers Act [15 U.S.C. § 80b-7].

PRAYER FOR RELIEF

**WHEREFORE**, the Commission respectfully requests that this Court:

I.

Issue a Final Judgment of Permanent Injunction permanently restraining and enjoining Defendants Hoover and HCM and their officers, agents, servants, employees, and attorneys, and all persons in active concert or participation, and each of them who receive actual notice of the Final Judgement by personal service or otherwise, from violating Section 17(a) of the Securities Act [15 U.S.C. §17q(a)].

II.

Issue a Final Judgment of Permanent Injunction permanently restraining and enjoining Defendants Hoover and HCM and their officers, agents, servants, employees, and attorneys, and all persons in active concert or participation, and each of them who receive actual notice of the Final Judgement 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] thereunder.

III.

Issue a Final Judgment of Permanent Injunction permanently restraining and enjoining Defendants Hoover and HCM and their officers, agents, servants, employees, and attorneys, and all persons in active concert or participation, and each of them who receive actual notice of the Final Judgement by personal service or otherwise, from violating Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6 (1) and 80b-6 (2)].

IV.

Issue a Final Judgment of Permanent Injunction, permanently restraining and enjoining Defendants Hoover and HCM and their officers, agents, servants, employees, and attorneys, and all persons in active concert or participation, and each of them who receive actual notice of the Final Judgement by personal service or otherwise, from violating Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6 (4)] and Rules 206 (4)-1(a)(5) thereunder [17 C.F.R. § 275.206(4)-1(a)(5)].

V.

Issue a Final Judgment of Permanent Injunction permanently restraining and enjoining Defendants Hoover and HCM and their officers, agents, servants, employees, and attorneys, and all persons in active concert or participation, and each of them who receive actual notice of the Final Judgement by personal service or otherwise, from violating Section 204 of the Advisers Act [15 U.S.C. § 80b-4] and Rules 204-2(a)(5), (6), (7), (9), and (10) and 204-2(e)(1), thereunder [17 C.F.R. §§ 275.204-2 (a)(5), 275.204-2 (a)(6), 275.204-2 (a)(7), 275.204-2 (a)(9), 275.204-2 (a)(10) and 275.204-2 (e)(1)].

VI.

Issue a Final Judgment of Permanent Injunction permanently restraining and enjoining Defendants Hoover and HCM and their officers, agents, servants, employees, and attorneys, and all persons in active concert or participation, and each of them who receive actual notice of the Final Judgement by personal service or otherwise, from violating Section 207 of the Advisers Act [15 U.S.C. § 80b-7].

VII.

Issue an Order requiring Defendants Hoover and HCM to disgorge all ill-gotten gains.

VIII.

Issue an Order requiring Defendants Hoover and HCM each to pay a civil penalty in an appropriate amount pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77(t) (d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u (d)] and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9 (e)].

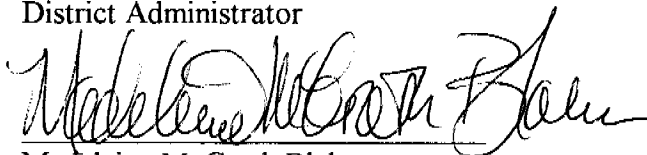
IX.

Grant such other relief as this Court deems just and appropriate under the circumstances.

Respectfully submitted,

JUAN MARCEL MARCELINO  
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By:



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Dated: May 2, 2001