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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

CV-05

3885 ER, J.

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

JOHN J. AMORE, RALPH D. CASBARRO, DAVID  
G. GHYSELS, JR., KENNETH E. MAHAFFY, JR.,  
AND TIMOTHY J. O'CONNELL,

Defendants.

GOLD, M.J.

2005 Civ. FILED  
(IN CLERK'S OFFICE)  
U.S. DISTRICT COURT E.D.N.Y.  
\* AUG 15 2005  
BROOKLYN OFFICE

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") alleges the following against Defendants John J. Amore ("Amore"), Ralph D. Casbarro ("Casbarro"), David G. Ghysels, Jr. ("Ghysels"), Kenneth E. Mahaffy, Jr. ("Mahaffy"), and Timothy J. O'Connell ("O'Connell") (collectively, "Defendants"):

SUMMARY

1. This case involves a fraudulent "trading ahead" scheme, in which John J. Amore ("Amore"), the former Chief Executive Officer of A. B. Watley Group, Inc. ("Watley Group"), a day trading firm, paid brokers at securities firms to provide live audio access to those firms'

institutional trading "squawk boxes." Squawk boxes are devices that broadcast, within a securities firm, institutional orders to buy and sell large blocks of securities. The information on squawk boxes includes material, non-public information.

2. Amore directed day traders working at a Watley Group subsidiary to listen to the pirated squawk boxes and trade ahead of the institutional orders in order to profit from price movements that resulted from execution of the large customer orders.

3. Casbarro, a broker for Citigroup Global Markets, Inc. ("Citigroup"), Ghysels, a broker for Lehman Brothers, Inc. ("Lehman"), Mahaffy, a broker for Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") and Citigroup, and O'Connell, a broker for Merrill, provided access to their firms' respective squawk boxes to Amore and the day traders.

4. Between at least June 2002 and September 2003, the day traders placed more than 400 trades based on information provided by Casbarro, Ghysels, Mahaffy, and O'Connell, and made at least \$650,000 in gross profits.

5. By providing Amore and the day traders with access to the squawk boxes, Casbarro, Ghysels, Mahaffy and O'Connell violated their respective firms' policies and obligations to preserve the confidentiality of information regarding their employers' customer orders.

6. As compensation for providing access to their employers' squawk boxes, Casbarro, Ghysels, Mahaffy and O'Connell solicited and received commissions from Watley. In addition, Casbarro and Mahaffy received cash payments from Amore and the Watley traders.

#### **JURISDICTION AND VENUE**

7. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77t(b), and Section

21(d) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78u(d). In this action, the Commission is seeking: (a) permanent injunctive relief; (b) disgorgement plus prejudgment interest; (c) civil penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Sections 21(d) and 21(A) of the Exchange Act, U.S.C. § 78u(d); and (d) such further relief as the Court may deem appropriate.

8. This Court has subject matter jurisdiction over this action 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.

9. Venue lies in this district 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. § 77aa, because, among other things, certain of the transactions, acts, practices, and courses of business occurred in the Eastern District of New York. Mahaffy and O'Connell provided access to the Merrill squawk box from Merrill's office in Garden City, New York, and Mahaffy provided access to the Citigroup squawk box from Citigroup's offices in Melville, New York. Additionally, Casbarro lives in Bayside, New York, Mahaffy lives in Huntington, New York, O'Connell lives in Carle Place, New York, and Amore lives in Manhasset, New York, all locations within the Eastern District of New York.

10. The Defendants, directly or indirectly, singly and in concert, made use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or of the mails, in connection with the transactions, acts, practices and courses of business alleged herein.

**STATUTES AND RULE ALLEGED TO HAVE BEEN VIOLATED**

11. The Defendants have engaged, and unless enjoined, will continue to engage, directly or indirectly, in transactions, acts, practices, and courses of business that constitute 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, 17 C.F.R. § 240.10b-5, thereunder.

**DEFENDANTS**

12. Amore, age 42, is a resident of Manhasset, New York. At all relevant times, Amore was the Chief Executive Officer of Watley Group. Amore, among others, was responsible for establishing and managing Watley's proprietary trading desk, which consisted of day traders who traded the firm's capital.

13. Casbarro, age 43, is a resident of Bayside, New York. From February 1995 through March 2005, Citigroup employed Casbarro as a broker in an office in New York City. Casbarro has had a Series 7 license since January 1995.

14. Ghysels, age 47, is a resident of West Palm Beach, Florida. From March 2001 through March 2003, Lehman employed Ghysels as a broker in its Palm Beach, Florida office. From April 2003 through May 2005, Citigroup employed Ghysels as a broker in its Boca Raton, Florida office. Ghysels has had a Series 7 license since November 1983.

15. Mahaffy, age 50, is a resident of Huntington, New York. From December 1997 through February 2003, Merrill employed Mahaffy in its Garden City, New York office. From February 2003 through June 2005, Mahaffy was employed as a broker at Citigroup in its Melville, New York office. Mahaffy has had a Series 7 license since March 1997.

16. O'Connell, age 40, is a resident of Carle Place, New York. From August 1997 through February 2005, Merrill employed O'Connell in its Garden City, New York office. O'Connell has had a Series 7 license since July 1995.

#### RELATED ENTITIES

17. Watley was a registered broker-dealer headquartered in New York, New York whose registration was terminated in April 2004. During the relevant period, over half of Watley's revenue derived from trading securities for the firm's own account, principally day trading.

18. Watley Group is the parent company of Watley. Watley Group continues to operate a brokerage business through a registered broker-dealer subsidiary, A.B. Watley Direct, Inc.

#### FACTUAL ALLEGATIONS

##### Squawk Boxes as Internal Communication Systems

19. At securities firms, a "squawk box" is a loudspeaker connected to an intercom system that is used to broadcast market-related information to other employees within that firm. Within institutional equities departments at securities firms including Citigroup, Lehman, and Merrill, traders use squawk boxes to announce to colleagues within the firm that an institutional customer or the firm's own proprietary trading desk has placed a large block order in a certain stock.

20. A trader announces a pending order on the squawk box when attempting to fill the order by finding a contra party among the firm's other customers (rather than filling the order through an exchange or an electronic marketplace). Institutional sales traders and brokers who

hear the order over the squawk box may then contact institutional customers to see if they are interested in filling or partly filling the other side of the pending block order.

21. Institutional customers expect their brokers to preserve the confidentiality of information regarding the customers' market activities including orders to buy or sell securities. Customers require confidentiality for several reasons, including: (a) the possibility that knowledge of a pending order would adversely affect the price at which the securities firm could execute the order; (b) the possibility that other market participants could discern the identity of the customer, to the possible detriment of the customer's market strategies; and (c) generally, as a critical aspect of the relationship of trust that the customer has with its broker. Customers authorize brokers to divulge sufficient information about their orders to assist in executing the orders, but do not authorize brokers to divulge information about their orders to other persons, such as day traders who plan to trade ahead of their orders.

22. Because squawk boxes are intended for internal use at securities firms and contain information that is not widely disseminated to the investing public, the information announced on them is non-public.

23. Institutional customer orders as announced on squawk boxes are material information that a reasonable investor would want to know because of the potential impact of a large customer order on the prevailing price of a security.

Citigroup, Lehman, and Merrill Policies Concerning Confidentiality of Order Information

24. A compliance memorandum that Citigroup distributed to all of its employees states, in relevant part, that "confidential information concerning a transaction may be shared with other participants in the transaction only to the extent necessary to effect the transaction and only insofar as is consistent with your obligation to serve the client's interests." The

memorandum also states that “examples of confidential information include information about a client’s ... pending orders” and that Citigroup’s employees have a “duty to keep nonpublic information confidential and to use it solely for the purpose for which it was provided.”

25. Casbarro and Mahaffy, as employees of Citigroup, were required to adhere to the terms of the compliance memorandum, and to observe industry standards for protecting confidential customer information.

26. Lehman’s policy manual states, in relevant part, that “if an employee has information about a client’s pending order and the employee has reason to believe that the placement or execution of the order may affect the price of the security, the employee is prohibited from buying, selling or recommending the purchase or sale of, the security for any other account to take advantage of the anticipated change in price.”

27. Ghysels, an employee of Lehman, was required to adhere to the terms of Lehman’s policy manual, and to observe industry standards for protecting confidential customer information.

28. Merrill’s policy manual states, in relevant part, that “[i]nformation on client orders may not be disclosed to any other person for other than bona fide business purposes, or used as the basis of any solicitation.”

29. Mahaffy and O’Connell, as employees of Merrill, were required to adhere to the terms of Merrill’s policy manual, and to observe industry standards for protecting confidential customer information.

Casbarro, Ghysels, Mahaffy and O’Connell Made Their  
Employers’ Squawk Boxes Audible to Amore and the Watley Traders

30. From at least June 2002 through August 2003, Casbarro regularly allowed Amore and the Watley traders to listen to the broadcasts from Citigroup’s squawk box. During this

period, Casbarro regularly placed a phone receiver connected to Watley's offices next to the Citigroup squawk box in his office for the entire trading day.

31. From at least August 2002 through October 2002, Ghysels regularly allowed Amore and the Watley traders to listen to the broadcasts from Lehman's squawk box by placing a telephone, connected to Watley's offices, next to the Lehman squawk box for virtually the entire trading day.

32. From at least June 2002 through February 2003, Mahaffy and O'Connell, who were partners, regularly allowed Amore and the Watley traders to listen to the broadcasts from Merrill's squawk box by placing a telephone, connected to Watley's offices, next to the Merrill squawk box for the entire trading day.

33. Mahaffy left Merrill to become a broker at Citigroup in February 2003. Between at least February 2003 and September 2003, Mahaffy allowed Amore and the Watley traders to listen to Citigroup's squawk box by placing a telephone, connected to Watley's headquarters, next to the Citigroup squawk box for the entire trading day.

34. When Mahaffy left Merrill, O'Connell continued to allow Amore and the Watley traders to listen to Merrill's squawk box for the entire trading day from at least February 2003 through September 2003.

35. In addition, O'Connell allowed another day trader ("Trader Doe"), who was the head of the day trading desk at another day trading firm, and the traders at that firm to listen to the Merrill squawk box for several months in 2003 in exchange for commissions paid through a brokerage account with Merrill.



36. Mahaffy also allowed Trader Doe to listen to the Citigroup squawk box for several months in 2003 in exchange for commissions paid through a brokerage account with Citigroup.

The Watley Traders Traded Ahead of the Orders Broadcast  
Over the Citigroup, Lehman, and Merrill Squawk Boxes

37. Amore, directly or via subordinates, instructed the Watley traders to carry out trades on the basis of the confidential squawk box information as described below.

38. After receiving the information about a particular large institutional order over the Citigroup, Lehman, or Merrill squawk boxes, the Watley traders bought or sold (including short sales) the same security in expectation of a movement in the stock price as a result of Citigroup, Lehman, or Merrill executing the large order.

39. After, or while, Citigroup, Lehman, or Merrill executed the institutional purchase or sell order for the particular security, and the stock price increased or decreased, the Watley traders sold the position that they had purchased, or covered the position that they had sold.

40. Between at least June 2002 and September 2003, the Watley traders placed over 400 trades based on the order flow information provided by Casbarro, Ghysels, Mahaffy, and O'Connell, and made at least \$650,000 in gross profits.

41. The Watley traders made at least \$60,000 in gross profits based on the order flow information provided by Casbarro.

42. The Watley traders made at least \$90,000 in gross profits based on the order flow information provided by Ghysels.

43. The Watley traders made at least \$170,000 in gross profits based on the order flow information provided by Mahaffy.

44. The Watley traders made at least \$330,000 in gross profits based on the order flow information provided by O'Connell.

45. The following are examples of these trades. Shortly before 9:52 a.m. on July 24, 2002, while Casbarro was providing an open phone line between his office at Citigroup and Watley's headquarters, a Citigroup trader announced a block order to sell Noble Corp. stock over the Citigroup squawk box. From 9:52 a.m. through 9:55 a.m., over ten Watley traders sold short at least 36,000 shares of Noble Corp. stock at an average price of approximately \$28.63. From 9:56 a.m. through 9:57 a.m., Citigroup executed at least one large sell order of Noble Corp. stock. From 9:56 a.m. through 9:57 a.m., the Watley traders purchased at least 36,000 shares of Noble Corp. stock at an average price of approximately \$28.10 per share. The fall in share price resulted in the Watley traders making a gross profit of at least \$19,000.

46. Shortly before 9:54 a.m. on January 28, 2003, while Casbarro was providing an open phone line between his office at Citigroup and Watley's headquarters, a Citigroup trader announced a block order to buy EMC Corp. stock over the Citigroup squawk box. At 9:54 a.m., at least nine Watley traders purchased at least 38,800 shares of EMC Corp. stock at an average price of approximately \$7.20 per share. From 9:54 a.m. through 10:18 a.m., Citigroup executed at least one large buy order of EMC Corp. stock. From 9:55 a.m. through 10:19 a.m., the Watley traders sold at least 40,000 shares of EMC Corp. stock at an average price of approximately \$7.24 per share and purchased an additional 1,200 shares of EMC Corp. stock. The rise in share price resulted in the Watley traders making a gross profit of at least \$1,600.

47. Shortly before 9:43 a.m. on September 23, 2002, while Ghysels was providing an open phone line between his office at Lehman and Watley's headquarters, a Lehman trader announced a block order to sell Supervalu, Inc. stock over the Lehman squawk box. Between

9:43 a.m. and 9:44 a.m., at least eight Watley traders sold short at least 22,000 shares of Supervalu stock at an average price of approximately \$17.08 per share. At 9:45 a.m., Lehman executed at least one large sell order of Supervalu stock. At 9:45 a.m., the Watley traders purchased at least 20,000 shares of Supervalu stock at an average price of approximately \$17.00 per share. The fall in share price resulted in the Watley traders making a gross profit of at least \$1,800.

48. Shortly before 12:48 p.m. on September 12, 2002, while Ghysels was providing an open phone line between his office at Lehman and Watley's headquarters, a Lehman trader announced a block order to sell Commerce Bancorp, Inc. stock over the Lehman squawk box. Between 12:48 p.m. and 12:50 p.m., at least six Watley traders sold short at least 22,000 shares of Commerce Bancorp stock at an average price of approximately \$45.15. Between 12:50 p.m. and 12:54 p.m., Lehman executed at least one large sell order of Commerce Bancorp stock. Between 12:50 p.m. and 12:52 p.m., the Watley traders purchased at least 21,000 shares of Commerce Bancorp stock at a price of \$45.10 per share. The fall in share price resulted in the Watley traders making a gross profit of at least \$1,200.

49. Shortly before 3:28 p.m. on October 16, 2002, while Mahaffy was providing an open phone line between his office at Merrill and Watley's headquarters, a Merrill trader announced a block sell order in Citigroup, Inc. stock over the Merrill squawk box. Immediately after this announcement, the Watley traders sold short at least 42,000 shares of Citigroup stock at an average price of approximately \$33.70 per share. Between 3:28 p.m. and 3:30 p.m., Merrill executed at least one large sell order of Citigroup stock. Between 3:29 p.m. and 3:30 p.m., the Watley traders purchased approximately 38,000 shares to cover most of their short positions at an average price of approximately \$33.50 per share. Merrill continued to execute a series of

block sell orders of Citigroup stock from 3:31 p.m. through 3:40 p.m., and the Watley traders continued to trade Citigroup stock making sales and short sales of at least 12,000 shares and purchases of at least 16,000 shares. The Watley traders made a gross profit of at least \$8,700 from this trading in Citigroup stock.

50. Shortly before 12:04 p.m. on February 5, 2003, while O'Connell was providing an open phone line between his office at Merrill and Watley's headquarters, a Merrill trader announced a block buy order in American Financial Group, Inc. over the Merrill squawk box. Immediately after this announcement, the Watley traders bought at least 10,000 shares of American Financial Group stock at a price of \$19.79 per share. Between 12:08 p.m. and 12:38 p.m., Merrill executed at least one large buy order of American Financial Group stock. By 12:51 p.m., the Watley traders sold at least 10,000 shares at an average price of approximately \$19.99 per share. The rise in share price resulted in the Watley traders making a gross profit of at least \$2,000.

Amore, Casbarro, Ghysels, Mahaffy, and O'Connell Benefited From Their Fraudulent Schemes

51. While Amore was CEO of Watley Group, over half of Watley's revenue derived from trading securities for the firm's own account, principally day trading. Watley Group compensated Amore in part for developing Watley's proprietary day-trading business.

52. Amore, directly or via his subordinates, compensated Casbarro, Ghysels, Mahaffy and O'Connell through commissions.

53. The Watley traders generated approximately \$70,000 in gross commissions for Casbarro.

54. The Watley traders generated approximately \$20,000 in gross commissions for Ghysels.

55. The Watley traders generated approximately \$60,000 in gross commissions for Mahaffy's and O'Connell's partnership at Merrill.

56. After Mahaffy left Merrill, the Watley traders generated approximately \$140,000 in gross commissions for O'Connell at Merrill.

57. After Mahaffy began working at Citigroup, the Watley traders generated approximately \$20,000 in gross commissions for Mahaffy.

58. In addition, Amore and the traders that he employed at Watley made secret cash payments to Casbarro and Mahaffy for providing access to their firms' squawk box.

#### **FIRST CLAIM FOR RELIEF**

##### **Casbarro Violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

59. The Commission realleges and incorporates by reference each and every allegation contained in the paragraphs above.

60. By virtue of the conduct described above, Casbarro, in the offer or sale, and in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange: (1) employed devices, schemes, or artifices to defraud; (2) obtained money or property by, or otherwise made, untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (3) engaged in acts, practices, or courses of business that operated as a fraud or deceit upon the purchasers or sellers of numerous securities.

61. As part of and in furtherance of this violative conduct, Casbarro participated in a fraudulent scheme. Through this scheme, Casbarro, in breach of his duty to Citigroup's customers, and/or in breach of his duty to his employer, Citigroup, secretly communicated

confidential information concerning Citigroup's institutional orders to Amore and the Watley traders, who then used this information to trade ahead of customer orders.

62. As part of and in furtherance of this violative conduct, Casbarro, in breach of his fiduciary duty to Citigroup's customers, and/or in breach of his duty to his employer, Citigroup, communicated material, non-public information concerning customer orders to Amore and the Watley traders, who then used this information to trade ahead of customer orders.

63. Casbarro knew, or was reckless in not knowing, that he was breaching a duty by conveying confidential customer order information to Amore and the Watley traders, and in accepting compensation from Amore and the Watley traders in exchange for providing this information.

64. Casbarro also knew, or was otherwise reckless in not knowing, that he was defrauding Citigroup, and/or its customers, through this scheme.

65. This scheme was material. For example, Citigroup's customers would have reasonably wanted to know that Casbarro was secretly disclosing their confidential orders to day traders whose intent was to trade ahead of these orders.

66. By reason of the acts and practices described above, Casbarro, singly or in concert, directly or indirectly, violated, and unless permanently enjoined will again violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), 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.

#### **SECOND CLAIM FOR RELIEF**

##### **Ghysels Violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

67. The Commission realleges and incorporates by reference each and every allegation contained in the paragraphs above.

68. By virtue of the conduct described above, Ghysels, in the offer or sale, and in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange: (1) employed devices, schemes, or artifices to defraud; (2) obtained money or property by, or otherwise made, untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (3) engaged in acts, practices, or courses of business that operated as a fraud or deceit upon the purchasers or sellers of numerous securities.

69. As part of and in furtherance of this violative conduct, Ghysels participated in a fraudulent scheme. Through this scheme, Ghysels, in breach of his duty to Lehman's customers, and/or in breach of his duty to his employer, Lehman, secretly communicated confidential information concerning Lehman's institutional orders to Amore and the Watley traders, who then used this information to trade ahead of customer orders.

70. As part of and in furtherance of this violative conduct, Ghysels, in breach of his fiduciary duty to Lehman's customers, and/or in breach of his duty to his employer, Lehman, communicated material, non-public information concerning customer orders to Amore and the Watley traders, who then used this information to trade ahead of customer orders.

71. Ghysels knew, or was reckless in not knowing, that he was breaching a duty by conveying confidential customer order information to Amore and the Watley traders, and in accepting compensation from Amore and the Watley traders in exchange for providing this information.

72. Ghysels also knew, or was otherwise reckless in not knowing, that he was defrauding Lehman, and/or its customers, through this scheme.

73. This scheme was material. For example, Lehman's customers would have reasonably wanted to know that Ghysels was secretly disclosing their confidential orders to day traders whose intent was to trade ahead of these orders.

74. By reason of the acts and practices described above, Ghysels, singly or in concert, directly or indirectly, violated, and unless permanently enjoined will again violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), 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.

### **THIRD CLAIM FOR RELIEF**

#### **Mahaffy Violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

75. The Commission realleges and incorporates by reference each and every allegation contained in the paragraphs above.

76. By virtue of the conduct described above, Mahaffy, in the offer or sale, and in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange: (1) employed devices, schemes, or artifices to defraud; (2) obtained money or property by, or otherwise made, untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (3) engaged in acts, practices, or courses of business that operated as a fraud or deceit upon the purchasers or sellers of numerous securities.

77. As part of and in furtherance of this violative conduct, Mahaffy participated in a fraudulent scheme. Through this scheme, Mahaffy, in breach of his duty to Merrill's and Citigroup's customers, and/or in breach of his duty to his employers, Merrill and Citigroup, secretly communicated confidential information concerning Merrill's and Citigroup's



institutional orders to Amore and the Watley traders, who then used this information to trade ahead of customer orders.

78. As part of and in furtherance of this violative conduct, Mahaffy, in breach of his fiduciary duty to Merrill's and Citigroup's customers, and/or in breach of his duty to his employers, Merrill and Citigroup, communicated material, non-public information concerning customer orders to Amore and the Watley traders, who then used this information to trade ahead of customer orders.

79. Mahaffy knew, or was reckless in not knowing, that he was breaching a duty by conveying confidential customer order information to Amore and the Watley traders, and in accepting compensation from Amore and the Watley traders in exchange for providing this information.

80. Mahaffy also knew, or was otherwise reckless in not knowing, that he was defrauding Merrill, Citigroup, and/or their customers, through this scheme.

81. This scheme was material. For example, Citigroup's and Merrill's customers would reasonably have wanted to know that Mahaffy was secretly disclosing their confidential orders to day traders whose intent was to trade ahead of these orders.

82. By reason of the acts and practices described above, Mahaffy, singly or in concert, directly or indirectly, violated, and unless permanently enjoined will again violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), 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.

**FOURTH CLAIM FOR RELIEF**

**O'Connell Violated Section 17(a) of the Securities Act,  
Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

83. The Commission realleges and incorporates by reference each and every allegation contained in the paragraphs above.

84. By virtue of the conduct described above, O'Connell, in the offer or sale, and in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange: (1) employed devices, schemes, or artifices to defraud; (2) obtained money or property by, or otherwise made, untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (3) engaged in acts, practices, or courses of business that operated as a fraud or deceit upon the purchasers or sellers of numerous securities.

85. As part of and in furtherance of this violative conduct, O'Connell participated in a fraudulent scheme. Through this scheme, O'Connell, in breach of his duty to Merrill's customers, and/or in breach of his duty to his employer, Merrill, secretly communicated confidential information concerning Merrill's institutional orders to Amore and the Watley traders, who then used this information to trade ahead of customer orders.

86. As part of and in furtherance of this violative conduct, O'Connell, in breach of his fiduciary duty to Merrill's customers, and/or in breach of his duty to his employer, Merrill, communicated material, non-public information concerning customer orders to Amore and the Watley traders.

87. O'Connell knew, or was reckless in not knowing, that he was breaching a duty by conveying confidential customer order information to Amore and the Watley traders, and in

accepting compensation from Amore and the Watley traders in exchange for providing this information.

88. O'Connell also knew, or was otherwise reckless in not knowing, that he was defrauding Merrill, and/or its customers, through this scheme.

89. This scheme was material. For example, Merrill's customers would have reasonably wanted to know that O'Connell was secretly disclosing their confidential orders to day traders whose intent was to trade ahead of these orders.

90. By reason of the acts and practices described above, O'Connell, singly or in concert, directly or indirectly, violated, and unless permanently enjoined will again violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), 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.

#### **FIFTH CLAIM FOR RELIEF**

##### **Amore Violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

91. The Commission realleges and incorporates by reference each and every allegation contained in the paragraphs above.

92. By virtue of the conduct described above, Amore, in the offer or sale, and in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange: (1) employed devices, schemes, or artifices to defraud; (2) obtained money or property by, or otherwise made, untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (3) engaged in acts, practices, or courses of business that operated as a fraud or deceit upon the purchasers or sellers of numerous securities.

93. As part of and in furtherance of this violative conduct, Amore directed Watley's day traders to trade ahead of institutional orders based on information regarding these orders received from Casbarro, Ghysels, Mahaffy and O'Connell.

94. Watley compensated Amore through salary and stock appreciation rights, in part for developing Watley's day trading desk.

95. When Amore directed the Watley traders to trade ahead of Citigroup, Lehman, and Merrill customer orders, he knew, or was reckless in not knowing, that the information he had received from Casbarro, Ghysels, Mahaffy and O'Connell concerning these orders was material and non-public and had been communicated to him as a result of a breach of fiduciary duty or other similar duty arising out of a relationship of trust and confidence.

96. By reason of the acts and practices described above, Amore, singly or in concert, directly or indirectly, violated, and unless permanently enjoined will again violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), 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.

**RELIEF SOUGHT**

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

A. Permanently enjoining Amore, Casbarro, Ghysels, Mahaffy, and O'Connell, their 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 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, 17 C.F.R. § 240.10b-5, thereunder.

B. Ordering Amore, Casbarro, Ghysels, Mahaffy, and O'Connell to disgorge all ill-gotten gains they received as a result of the violations alleged in this Complaint.

C. Ordering Amore, Casbarro, Ghysels, Mahaffy, and O'Connell to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Sections 21(d) and 21A(a) of the Exchange Act, 15 U.S.C. § 78u(d).

D. Granting such other relief as the Court shall deem just and proper.

Dated: August 15, 2005  
New York, New York

Respectfully submitted,

  
By: MARK K. SCHONFELD (MS-2798)

Attorney for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION  
3 World Financial Center  
New York, New York 10281  
(212) 336-0140 (Robert H. Murphy)

Of Counsel:  
Helene T. Glotzer  
Kay L. Lackey  
Robert H. Murphy  
Sandeep M. Satwalekar

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of a complaint or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

United States Securities and Exchange Commission

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) c/o Robert H. Murphy, 3 World Financial Center, NY, NY 10281

DEFENDANT'S

John J. Amore, Ralph D. Casbarro, David G. Ghysels, Jr., Kenneth E. Mahaffy, Jr., and Timothy J. O'Connell

County of Residence of First Listed Defendant Nassau County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

See Attachment

GLASSER, J

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and one box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business in This State
Incorporated in Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes checkboxes for various legal categories like Personal Injury, Real Property, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Securities Act of 1933, 15 U.S.C. s. 77t(b); Securities and Exchange Act of 1934, 15 U.S.C. s. 78u(d).

Brief description of cause: Antifraud action under Sec. 17(a) of Securities Act and Sec. 10(b) of Exchange Act and Rule 10b-5 thereunder

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMANDS CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Glasser DOCKET NUMBER 05-CR-548

DATE 08/15/2005 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY RECEIPT# AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## Attachment to Civil Cover Sheet

SEC v. Amore et al.

Filed August 15, 2005

DEFENDANT	COUNSEL
John J. Amore	Nelson A. Boxer Alston & Bird 90 Park Avenue New York, NY 10016 212-210-9470
Ralph D. Casbarro	Lawrence Iason Morvillo, Abramowitz et al., P.C. 565 Fifth Avenue New York, NY 10017 212-856-9600
David G. Ghysels, Jr.	Jeffrey C. Hoffinan Hoffinan and Pollok LLP 260 Madison Avenue New York, NY 10016 212-679-2900
Kenneth E. Mahaffy, Jr.	___ Bernfeld Dematteo Bernfeld, L.L.P. 600 Third Avenue, 15 <sup>th</sup> Floor New York, NY 10016 212-661-1661
Timothy J. O'Connell	Lee S. Richards Richards Spears Kibbc & Orbe LLP One World Financial Center New York, NY 10281 212-530-1800

I, Mark K. Schonfeld, counsel for Securities and Exchange Commission do hereby certify pursuant to the Local Arbitration Rule 83.10 that to the best of my knowledge and belief the damages recoverable in the above captioned civil action exceed the sum of \$150,000 exclusive of interest and costs.  
 Relief other than monetary damages is sought.

**DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1**

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

Did the cause arise in Nassau or Suffolk County? NO

If answered yes, please indicate which county. \_\_\_\_\_

County of residence of plaintiff(s) (1) New York  
(2) \_\_\_\_\_  
(3) \_\_\_\_\_

County of residence of defendant(s) (1) Nassau  
(2) Queens  
(3) Palm Beach  
(4) Suffolk (5) Nassau

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes  No \_\_\_\_\_

Are you currently the subject of any disciplinary action(s) in this or any other state or federal court?

Yes \_\_\_\_\_ (If yes, please explain) No

Please provide your E-MAIL Address and bar code below. Your bar code consists of the initials of your first and last name and the last four digits of your social security number or any other four digit number registered by the attorney with the Clerk of Court.

(This information must be provided pursuant to local rule 11.1(b) of the civil rules).

ATTORNEY BAR CODE: MK2798

E-MAIL Address: schonfeldm@sec.gov, murphyrob@sec.gov

I consent to the use of electronic filing procedures adopted by the Court in Administrative Order No. 97-12, "In re Electronic Filing Procedures(EFP)", and consent to the electronic service of all papers.

Signature: 