

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF COLUMBIA

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SECURITIES AND EXCHANGE COMMISSION  
450 Fifth Street, N.W.  
Washington, DC 20549-0706

Plaintiff,

v.

MARIA IACOVELLI  
5875 Friars Road, Apt. 4209  
San Diego, CA 92110

RICHARD MORRISEY  
3218 Cedar Bluff Drive  
Marietta, GA 30062

JERRY THORNTHWAITE  
1332 White Avenue  
Henderson, TN 38340

MARVIN KOGOD  
6927 Queenferry Circle  
Boca Raton, FL 33496

Defendants.

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CASE NUMBER 1:01CV00344

JUDGE: Gladys Kessler

DECK TYPE: General Civil

DATE STAMP: 02/15/2001

**COMPLAINT**

Plaintiff Securities and Exchange Commission ("Commission" or "SEC") alleges:

**INTRODUCTION**

1. This case concerns the unlawful resale of Software of Excellence, Inc a.k.a. Systems of Excellence, Inc. ("SOE") securities through unregistered, non-exempt transactions by Defendants Maria Iacovelli ("Iacovelli"), Richard Morrisey ("Morrisey"),

Jerry Thornthwaite ("Thornthwaite") and Marvin Kogod ("Kogod"). Additionally, Defendants Iacovelli, Morrisey and Thornthwaite resold certain of these securities while in possession of material non-public information, a violation of the antifraud provisions of the federal securities laws. Collectively, Defendants reaped over \$1.7 million in trading profits when they resold SOE securities into an artificially inflated market that was being manipulated by others. Accordingly, the SEC brings this action: (i) to enjoin Defendants Iacovelli, Morrisey and Thornthwaite from further violation of both the registration and antifraud provisions, (ii) to enjoin Defendant Kogod from further violation of the registration provisions, (iii) to recover their ill-gotten gains, (iv) to recover prejudgment interest thereon, and (v) to appoint a receiver to collect and marshal such monies and other assets as the Court may order Defendants to disgorge.

2. In multiple transactions from June 1995 through July 1996, Iacovelli, Morrisey, and Thornthwaite were issued a total of 2,496,515 SOE shares in unregistered, non-exempt transactions in exchange for services, including assistance with SOE's corporate operations, accounting and acquisitions. In an unregistered, non-exempt transaction in March 1996, Kogod acquired 86,207 SOE shares by investing \$25,000 in a so-called "private placement."

3. SOE had these consulting and private placement shares issued without a restrictive legend by presenting various S-8 registration statements to the transfer agent and misrepresenting that the necessary registration statements had been filed with the Commission. In actuality, SOE did not file any S-8 registration statements until months later, on September 24, 1996.

4. The distribution of these shares in unregistered, non-exempt transactions was part of a massive fraud perpetrated by SOE, its chairman Charles O. Huttoe (“Huttoa”) and others. Monies raised through Defendant Kogod’s private purchases of these securities, for example, provided SOE with needed cash and allowed Huttoa and others to carry on the operations of SOE and to further manipulate the market for SOE stock.

5. In addition to the private placement shares, SOE also issued shares in unregistered, non-exempt transactions in 1995 and 1996 to individuals and entities in exchange for purported services provided to the company. As it did with the private placement shares, SOE had these consulting shares issued without a restrictive legend by presenting various S-8 registration statements to the transfer agent and misrepresenting that the registration statement had been filed with the Commission. In actuality, SOE did not file any S-8 registration statements until months later.

6. On October 4, 1996, the Commission suspended trading in the securities of SOE for a ten-day period pursuant to Section 12(k) of the Securities Exchange Act of 1934, in part, because of questions regarding the illegal distribution and resale of millions of SOE shares in unregistered, non-exempt transactions. Prior to the trading suspension, Defendants had illegally resold 858,517 of the 2,496,515 SOE shares acquired into a market manipulated by others. Collectively, Defendants reaped ill-gotten gains (*i.e.*, net trading profits) in excess of \$1.7 million.

7. Maria Iacovelli: Maria Iacovelli was SOE’s corporate secretary and a director. Iacovelli took part in the preparation of the fraudulent S-8 Registration Statements in September 1996. On March 21, 1996, SOE issued 500,000 shares to

Iacovelli's mother. Iacovelli presented SOE's transfer agent with an S-8 Registration Statement to have her mother's shares issued without restriction. The registration statement was not filed with the Commission at the time. In August 1996, Iacovelli sold 200,000 of the SOE shares through her mother's account for proceeds of \$499,982. Iacovelli also sold 42,460 SOE shares, issued in her name, through her own account for proceeds of \$19,075. When Iacovelli sold her stock, SOE was delinquent in filing its periodic reports. As a result, there had been no disclosure of a series of material developments concerning the illegal distribution of SOE stock with which Iacovelli was involved.

8. Richard Morrissey: Morrissey performed accounting work for SOE during 1995 and 1996, and was paid with 325,000 consulting shares which were issued in unregistered, non-exempt transactions. During the late summer of 1996, Morrissey learned in detail certain aspects of the SOE fraud. Thereafter, he sold 95,000 SOE shares for \$130,020. Including those shares, Morrissey resold a total of 315,000 unregistered SOE consulting shares from July 21, 1995 through October 4, 1996 for proceeds totaling \$272,182.

9. Jerry Thornthwaite: Thornthwaite is a medical researcher who provided marketing services to SOE and was paid with 1,627,055 consulting shares that were issued in unregistered, non-exempt transactions. In June 1996, after SOE issued a press release that Thornthwaite knew was materially false (but before a correction was issued), Thornthwaite resold 50,000 of his SOE shares for \$201,250, avoiding a loss of about \$20,000. In total, Thornthwaite resold 214,850 SOE shares in unregistered, non-exempt transactions for total ill-gotten gains of \$631,959.

10. Marvin Kogod: Marvin Kogod, a retiree living in Florida, was introduced to SOE by his son, who in turn learned of SOE through an employee of ICMX Federal Systems, Inc. ("ICMX"). Kogod visited SOE in February, 1996, met Huttoe, and decided to invest \$25,000 in an unregistered, non-exempt "private placement" for which he received 86,207 shares in March 1996. Kogod resold all of his shares in June 1996 for a net profit of \$283,372.

11. Because all of these shares were acquired in various unregistered, non-exempt transactions, Defendants Iacovelli, Morrisey, Thornthwaite, and Kogod violated the registration provisions of the federal securities laws when they resold those same shares in a series of unregistered, non-exempt transactions. Iacovelli, Morrisey, and Thornthwaite also violated the antifraud provisions of the federal securities laws when they resold certain of their shares while in possession of material non-public information.

12. Defendants Iacovelli, Morrisey, Thornthwaite, and Kogod, directly or indirectly, have engaged in transactions, acts, practices, and courses of business which constitute violations of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a) and 77e(c)], and, unless enjoined, are likely to do so in the future.

13. Defendants Iacovelli, Morrisey, and Thornthwaite, directly or indirectly, have engaged in transactions, acts, practices, and courses of business which constitute violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5], and, unless enjoined, are likely to do so in the future.

## JURISDICTION

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

15. The Commission brings this action pursuant to authority conferred upon it by Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)].

16. Defendants, directly and indirectly, used the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, in connection with the acts, practices, and courses of business alleged herein.

## DEFENDANTS

17. Maria Iacovelli, age 35, resides in San Diego, California. Iacovelli was SOE's corporate secretary. In addition to her salary, Iacovelli was also granted options to buy SOE shares.

18. Richard Morrissey, age 50, resides in Marietta, Georgia. He performed accounting work for SOE during 1995 and 1996 in exchange for SOE shares.

19. Jerry Thornthwaite, age 51, resides in Henderson, Tennessee. Dr. Thornthwaite is a medical researcher who provided certain marketing services to SOE in exchange for shares of SOE stock.

20. Marvin Kogod, age 72, resides in Boca Raton, Florida. Kogod is a retiree who invested in SOE through a private placement.

## OTHER INDIVIDUALS AND ENTITIES

21. Systems of Excellence, Inc. ("SOE" or the "Company"), a Florida

corporation, was first purportedly engaged in the manufacture and distribution of dental software and, later, in the distribution of video teleconferencing equipment designed for use by hospitals and other medical facilities. At the relevant time, SOE common stock was quoted on the National Association of Securities Dealers' OTC Bulletin Board. SOE has since ceased all operations and is currently in bankruptcy liquidation proceedings; its securities have been deregistered by the Commission pursuant to Section 12(j) of the Securities Exchange Act of 1934.

22. Charles O. Huttoe, age 53, was formerly the Chairman and Chief Executive Officer of SOE. In a prior action filed in federal court on November 7, 1996 (styled SEC v. Huttoe, et al., Civ. Act. No. 96-2543 (GK) (D.D.C.)), plaintiff accused Huttoe of violating the antifraud provisions of the federal securities laws for his role in a massive market manipulation of SOE securities. Huttoe consented to the entry of a civil injunction and, in a related criminal case, pleaded guilty to securities fraud and money laundering.

23. Sheldon Kraft ("Kraft"), age 49, is a former stockbroker who acted as a promoter for SOE. In a prior action filed in federal court on January 14, 1998 (styled SEC v. Kraft, Civ. Act. No. 98-0095 (GK) (D.D.C.)), plaintiff accused Kraft of violating the antifraud provisions of the federal securities laws for his conduct relating to SOE. Kraft consented to the entry of a civil injunction and, in a related criminal case, pleaded guilty to conspiracy to commit securities fraud, money laundering, and failure to file tax returns.

## FACTS

24. From March 1995 through July 1996, Huttoe and Kraft engaged in a scheme to cause SOE to issue approximately 43 million purportedly unrestricted, free trading shares without registration. Huttoe carried out that distribution by causing bogus Form S-8 registration statements to be presented to SOE's transfer agent, with instructions to issue certificates without restrictions on transfer. The Form S-8 registration statements falsely reflected on the cover that they had been filed with the Commission on a particular date. In fact, without exception, none of these Form S-8 Registration Statements had been filed with the Commission on those dates, nor had they been filed as of the time they were presented to the transfer agent and the shares issued.

### **Kogod Invested \$25,000 in an Unregistered, Non-Exempt Private Placement Then Resold Those Same Shares in Violation of the Registration Provisions**

25. As a means to maintain the appearance that SOE had substance, in January 1996 Huttoe arranged for SOE to make a \$1 million offering through a private placement of SOE stock.

26. Pursuant to a Confidential Private Placement Memorandum ("CPPM"), investors were offered combination stock and loan "Units," with a minimum \$25,000 purchase. For the purchase of their units, each investor received: (i) a one-year note in the amount of their investment plus 10% interest (per annum) payable semi-annually and (ii) SOE shares at no additional cost. The number of shares was calculated by dividing the dollar amount of the note by 120 percent of the closing bid price as of December 20, 1995, or \$.29 per share. Accordingly, for every \$25,000 invested, SOE issued 86,207 shares of "free" stock.



27. The CPPM also contained the following warning against the resale of SOE securities obtained under the terms of the CPPM:

ALL INVESTORS WILL BE REQUIRED TO UNDERTAKE THAT THEY WILL NOT RESELL THE UNITS EXCEPT IN A TRANSACTION WHICH IS PURSUANT TO REGISTRATION UNDER THE 1933 ACT OR WHICH DOES NOT REQUIRE REGISTRATION UNDER THE 1933 ACT.

28. Purchasers were required to complete a Subscription Agreement and Questionnaire ("Subscription Agreement"). Paragraph 3(b) of the Subscription Agreement expressly stated:

Investor understands that the Units being purchased hereunder have not been registered under the Securities Act of 1933, as amended (the "Act") or any state securities laws. Investor agrees not to sell the Units without compliance with the terms of the Act and any applicable securities laws.

In completing the Subscription Agreement, purchasers represented, among other things, that they had read and understood the CPPM, that they understood that the Units had not been registered under the Securities Act, and that the Units were not being acquired with a view to distribution.

29. Initially there was little interest by investors in the private placement units. As the manipulation of the market for SOE common stock gained momentum, however, the underlying value of the so-called "free" shares -- to be issued as part of the private placement units -- increased to several multiples of the actual cost of private placement units, and demand for the offering increased.

30. Kogod was introduced to SOE by his son, who in turn learned of SOE through an employee of ICMX. Kogod visited SOE in February, 1996, met Huttoe, and decided to invest \$25,000 in the private placement. Kogod obtained the Subscription Agreement portion of the CPPM, which stated that the shares he was to receive in the

private placement would be restricted from resale unless he complied with the terms of the Securities Act of 1933 and any applicable securities laws.

31. Huttoe informed some investors in the private placement that, contrary to the express terms of the CPPM, the SOE stock they would be issued was freely tradeable.

32. Kogod signed and returned a Subscription Agreement to SOE in order to complete his investment and receive 86,207 SOE shares. Kogod then resold his shares in June 1996 for a net profit of \$283,372 in a series of unregistered, non-exempt transactions.

**Iacovelli, Morrissey and Thornthwaite Received SOE  
“Consulting” Shares in Unregistered, Non-Exempt Transactions  
and Then Resold Them in Violation of the Registration Provisions  
and Often While in Possession of Material Non-Public Information**

33. In addition to the private placement shares, SOE also issued shares in unregistered, non-exempt transactions in 1995 and 1996 to individuals and entities, including Defendants Iacovelli, Morrissey, and Thornthwaite, in exchange for services provided to the company.

***Maria Iacovelli***

34. Iacovelli was SOE’s corporate secretary and a director. She was principally responsible for investor relations. In addition to a regular salary, Iacovelli was issued SOE consulting shares in her name and in her mother’s name.

35. Iacovelli took part in the preparation of SOE’s fraudulent S-8 Registration Statements in September 1996. On March 21, 1996, SOE issued 500,000 shares to Iacovelli’s mother. Iacovelli presented the transfer agent with an S-8 Registration Statement in order to have her mother’s shares issued without restriction. The registration statement was not filed with the Commission.

36. In August 1996, Iacovelli sold 200,000 of the SOE shares through her mother's account for proceeds of \$499,982. Iacovelli also sold 42,460 SOE shares, issued in her name, through her own account, for proceeds of \$19,075.

37. When Iacovelli sold her stock, SOE was delinquent in filing its periodic reports. As a result, she was aware of material non-public information, namely that there had been no disclosure of a series of material developments concerning the distribution of SOE stock with which Iacovelli was involved. In particular, she knew that SOE had routinely issued large blocks of stock to investors and for purported consulting services in amounts that dwarfed the amount previously outstanding. Moreover, she knew that certain of the stock had been issued to nominees of Kraft as a "pay off" to him. Finally, she knew that millions of shares had been issued to nominees for Huttoo as secret compensation for him.

*Richard Morrisey*

38. Morrisey performed accounting work for SOE during 1995 and 1996, and was paid with 325,000 consulting shares. During the late summer of 1996, Morrisey learned in detail certain aspects of the SOE fraud and thereafter resold certain SOE shares while in possession of that material non-public information.

39. Morrisey acted as the principal point of contact for SOE with Weinberg Pershes, its auditors during the summer of 1996. In conducting its audit, Weinberg Pershes learned that SOE had improperly purported to register the stock sold through its private placement on Form S-8 registration statements. Morrisey knew that Weinberg Pershes was unable to complete its audit in part because of concerns that SOE had violated the securities laws by selling stock in unregistered, non-exempt transactions. On

September 19, 1996, Morrisey learned that Weinberg Pershes had been dismissed, and that he would have to work with a new set of auditors.

40. On September 20 or 21, 1996, Morrisey learned that M.H. Meyerson had stopped trading SOE's stock, which Huttoe told him increased the urgency of completing the audit of the financial statements. As a result, Morrisey worked through the weekend of September 20<sup>th</sup> and 21<sup>st</sup> with the new auditors to complete an audit and prepare a Form 10-K filing. During that weekend other SOE personnel were preparing a series of fraudulent S-8 Registration Statements for filing the following week.

41. During the weekend of September 20<sup>th</sup> and 21<sup>st</sup>, Huttoe told Morrisey that the private placement had been undone, and that investors had been repaid. Although Morrisey knew that Huttoe's statement was baseless, at Huttoe's direction, he did not disclose the private placement to the new auditors. At Huttoe's direction, Morrisey also typed in a revenue projection in the Form 10-K that he knew had no reasonable basis.

42. On September 26, 1996, after the Form 10-K (with an audit opinion) had been filed with the Commission, Morrisey saw the fraudulent S-8 Registration Statements that were filed with the Commission on September 24, 1996. He saw appended to them the fake consulting contracts that purported to reflect that the private placement investors had received stock in exchange for various services. By late September 1996, Morrisey also knew that Huttoe had disguised compensation to himself by issuing stock to nominees purportedly as payment for services performed by the nominees.

43. From September 27, 1996 to October 4, 1996, Morrisey resold 95,000 SOE shares for \$130,020 while in possession of this material non-public information regarding the SOE fraud. Including those shares, Morrisey resold a total of 315,000

unregistered SOE consulting shares for \$272,182 from July 21, 1995 through October 4, 1996.

*Jerry Thornthwaite*

44. Thornthwaite is a medical researcher who provided marketing services to SOE in exchange for shares of SOE stock. Thornthwaite was aware of certain parts of the SOE fraud and resold certain SOE shares into the manipulated market while in possession of material non-public information regarding a false press release.

45. Part of Thornthwaite's efforts for SOE concerned developing a marketing agreement with World Communications Group ("WCG"). On May 24, 1996, Thornthwaite assisted in drafting a press release describing a letter of intent signed by SOE and WCG, whereby WCG would distribute SOE video teleconferencing products. After faxing the draft to Huttoe, Thornthwaite left on a trip to Mexico.

46. An SOE release issued on May 28, 1996, purporting to describe the agreement, was materially false, stating among other things that WCG had committed to purchase millions of dollars of SOE's products. By no later than Thursday, May 30, 1996, Thornthwaite learned that the WCG President was upset about the press release. When Thornthwaite saw the release on June 1<sup>st</sup>, he realized that it was false and that day demanded that Huttoe retract the press release immediately.

47. On June 4<sup>th</sup>, Huttoe showed Thornthwaite the letter from WCG demanding a retraction. Knowing that the press release was false, Thornthwaite resold 50,000 of his SOE shares on June 4<sup>th</sup> and June 5<sup>th</sup>, before the retraction was issued on June 7, 1996, thereby avoiding losses of approximately \$20,000.

## COUNT ONE

**Iacovelli, Morrissey, Thornthwaite and Kogod Violated  
Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)]**

48. Paragraphs 1 through 47 are hereby realleged and incorporated herein by reference.

49. Since at least May 1995 and continuing through October 4, 1996, Defendants Iacovelli, Morrissey, Thornthwaite, and Kogod, directly or indirectly:

(a) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities as described herein, through the use or medium of a prospectus or otherwise;

(b) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, as described herein;

without a registration statement having been filed or being in effect with the Commission as to such securities.

50. By reason of the foregoing, and because no exemption from registration was applicable to their resales, Defendants Iacovelli, Morrissey, Thornthwaite, and Kogod violated Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

## COUNT TWO

**Iacovelli, Morrissey and Thornthwaite 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]**

51. Paragraphs 1 through 50 are hereby realleged and incorporated herein by reference.

52. Since at least June 1996 and continuing through October 4, 1996, Defendants Iacovelli, Morrisey and Thornthwaite, directly or indirectly:

by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange,

(1) employed any device, scheme, or artifice to defraud;

(2) made any untrue statement of a material fact or omitting 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

(3) engaged in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person

in connection with the purchase or sale of any security.

53. By reason of the foregoing, Defendants Iacovelli, Morrisey and Thornthwaite violated Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

### **RELIEF REQUESTED**

**WHEREFORE**, the SEC respectfully requests that the Court issue an Order:

A. permanently enjoining and restraining Defendants Iacovelli, Morrisey, Thornthwaite, and Kogod, their officers, agents, servants, employees, nominees, attorneys, and all persons in active concert or participation with them, and each of them, from violating Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)];

B. permanently enjoining and restraining Defendants Iacovelli, Morrisey, and Thornthwaite, their officers, agents, servants, employees, nominees, attorneys, and all persons in active concert or participation with them, and each of them, from violating Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5];

C. requiring Iacovelli to disgorge \$519,057 representing all profits that she received as a result of the acts and/or courses of conduct complained of herein, together with prejudgment interest thereon;

D. requiring Morrisey to disgorge \$272,182, representing all profits that he received as a result of the acts and/or courses of conduct complained of herein, together with prejudgment interest thereon;

E. requiring Thornthwaite to disgorge \$631,959, representing all profits that he received as a result of the acts and/or courses of conduct complained of herein, together with prejudgment interest thereon;

F. requiring Kogod to disgorge \$283,372, representing all profits that he received as a result of the acts and/or courses of conduct complained of herein, together with prejudgment interest thereon;

G. appointing a receiver to collect and marshal monies and others assets that are ordered by the Court to be disgorged by Defendants Iacovelli, Morrisey, Thornthwaite, and Kogod;

H. directing each Defendant to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)];


I. directing Defendants Iacovelli, Morrisey and Thornthwaite to pay civil



penalties pursuant to Sections 21(d) and 21A of the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1];

J. granting such other and further relief as may be necessary and appropriate.

Respectfully submitted,

  
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