

JUDGE MUKASEY

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JAMES J. McDERMOTT, JR.,  
KATHRYN B. GANNON  
(a/k/a MARYLIN STAR), and  
ANTHONY P. POMPONIO,

Defendants.

99 Civ. \_\_\_\_\_ ( )

COMPLAINT

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

NATURE OF THE ACTION

1. James J. McDermott, Jr. is the former Chairman of the Board of Directors and Chief Executive Officer of Keefe, Bruyette & Woods, Inc., an investment banking firm engaged to advise companies in connection with merger and acquisition transactions. McDermott provided material nonpublic information concerning at least six merger transactions to Kathryn B. Gannon, an escort, exotic dancer, and actress in adult movies, who uses the screen name "Marylin Star." McDermott and Gannon had a personal

relationship that spanned a period of at least fourteen months, from June 1997 through September 1998. During the period September 3, 1997 through September 23, 1998, McDermott transferred at least \$37,000 to Gannon in the form of certified checks and wire transfers.

2. From at least June 1997 through April 1998, Gannon, while in possession of material nonpublic information that McDermott obtained as Chairman and CEO of Keefe, Bruyette, purchased securities in advance of merger transactions involving Central Fidelity Banks, Inc., Advanta Corporation, Barnett Banks, Inc., First Commerce Corp., California State Bank (West Covina), and First Commercial Corp. As a result of her illegal trading, Gannon made profits of at least \$88,135.

3. Gannon thereafter tipped Anthony P. Pomponio, a friend to whom she boasted that she had escort clients in New York City who were “well connected Wall Street types,” including lawyers, stockbrokers and other “high level people.” Pomponio, with knowledge of the reliability of the material nonpublic information concerning pending mergers obtained from Gannon, traded in advance of five of the merger transactions, reaping profits of at least \$86,378.

### **JURISDICTION**

4. This Court has jurisdiction over this action pursuant to Sections 21(d)(1), 21(e), 21A and 27 of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d)(1), 78u(e), 78u-1 and 78aa].

5. Defendants, directly or indirectly, made use of the means or instrumentalities of interstate commerce, or of the mails, or the facilities of a national

securities exchange in connection with the transactions, acts, practices and courses of business alleged herein.

6. Defendants will, unless restrained and enjoined, continue to engage in the acts, practices and courses of business alleged herein, or in transactions, acts, practices and courses of business of similar purport and object. The SEC seeks a judgment permanently enjoining Defendants from future violations and directing disgorgement of their illegal profits, together with prejudgment interest thereon, pursuant to Sections 21(d)(1) and (e) of the Exchange Act [15 U.S.C. §§ 78u(d)(1) and (e)]. The SEC also brings this action for an award of civil penalties, pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

#### **THE DEFENDANTS**

7. Defendant JAMES J. McDERMOTT, JR., age 48, is a resident of Briarcliff Manor, New York. McDermott was the Chairman and CEO of Keefe, Bruyette from January 1, 1998 until his unexpected resignation, on June 30, 1999, for “personal reasons.” McDermott joined Keefe, Bruyette in 1977 as a research analyst, and from 1977 through 1997 held a variety of positions at the firm, including Director of Research, Executive Vice President, and President. McDermott was also a member of the Board of Directors of Keefe, Bruyette from 1988 until June 30, 1999.

8. Defendant KATHRYN B. GANNON, age 30, is a Canadian citizen who resides in Miami, Florida. She is a self-employed escort, exotic dancer, and actress in adult movies using the screen name “Marylin Star.” During the SEC’s investigation of this matter, Gannon refused to testify, asserting her rights under the Fifth Amendment of the United States Constitution.

9. Defendant ANTHONY P. POMPONIO, age 45, is a resident of North Caldwell, New Jersey. Pomponio is a majority owner of an industrial diamond wheel manufacturing company called Pomponio Industries. Pomponio first met Gannon in Atlantic City, New Jersey, where she was attending a trade show for the adult movie industry.

#### **OTHER RELEVANT ENTITY**

10. Keefe, Bruyette & Woods, Inc., a New York corporation headquartered in New York City, is an investment banking firm engaged to advise companies in connection with merger and acquisition transactions. The firm specializes in the banking and financial services industries. From January 1994 through December 1998, Keefe, Bruyette acted as the financial advisor in 116 announced mergers and acquisitions of banks and thrifts, representing \$31.1 billion in aggregate transaction value, and 19 mergers and acquisitions of non-bank institutions, with an aggregate value of \$2.8 billion. Keefe, Bruyette is registered with the SEC as a broker-dealer and its subsidiary, KBW Asset Management, is registered as an investment adviser.

#### **CLAIM FOR RELIEF**

##### **Violations of Exchange Act Section 10(b) and Rule 10b-5 Promulgated Thereunder**

11. Plaintiff SEC repeats and realleges Paragraphs 1 through 10 above.
12. As President of Keefe, Bruyette during 1997, and as Chairman and CEO of Keefe, Bruyette from January 1, 1998 until his resignation on June 30, 1999, McDermott had access to information concerning all merger and acquisition transactions in which Keefe, Bruyette was involved. McDermott knew or should have known that

Keefe, Bruyette's Employment Manual strictly prohibited employees from disclosing any confidential or proprietary information learned or developed in the course of employment at Keefe, Bruyette. Accordingly, McDermott knew or should have known the significance of insider trading and the importance of not using material, nonpublic information obtained in the course of his employment at Keefe, Bruyette.

#### **McDermott's Relationship with Gannon**

13. McDermott knew Gannon and told her of six upcoming merger transactions. McDermott and Gannon had a personal relationship that lasted for at least fourteen months, from June 1997 through September 1998.

14. From September 3, 1997 through September 23, 1998, McDermott transferred approximately \$37,000 to Gannon in the form of certified checks and wire transfers. Specifically, on September 3, 1997, McDermott gave Gannon a certified check for \$9,500. On November 24, 1997, McDermott gave Gannon another certified check for \$7,500. On August 28, 1998, McDermott wired \$10,000 to Gannon's bank account from a joint bank account he maintained with his wife at Chase Manhattan Bank. On September 23, 1998, McDermott wired another \$10,000 to Gannon from that same joint account.

15. McDermott also made gifts to Gannon of material nonpublic information about Keefe, Bruyette's clients, as described below.

### **Trading by Gannon and Pomponio**

16. Gannon opened a brokerage account at Charles Schwab & Co., Inc. on June 13, 1997 with an initial deposit of \$25,800. Gannon had minimal investment experience; her only other securities investment up to this time was an IRA account at Schwab which was opened in April 1997 and invested in money market funds.

17. Within days of opening her brokerage account at Schwab, Gannon began trading in the securities of relatively unknown regional banks. Each of the banks whose stock Gannon traded was either involved in merger negotiations with potential suitors or actually consummated a merger transaction contemporaneously with her trading. In addition, with respect to all but one of Gannon's bank stock purchases, Keefe, Bruyette represented the target in the merger transaction or was otherwise associated in some way with one of the parties to the transaction.

18. Pomponio opened a brokerage account at Schwab on July 16, 1997. This was the first brokerage account Pomponio ever owned. Soon after opening the account, Pomponio began trading in the same relatively unknown bank stocks that Gannon purchased.

### **Central Fidelity Banks, Inc.**

19. On June 16, 1997, the Chairman and CEO of Central Fidelity Banks, Inc. telephoned McDermott regarding Central Fidelity's interest in pursuing a possible business combination with Wachovia Corporation, and retained Keefe, Bruyette to act as Central Fidelity's investment banker in connection with the potential corporate

combination with Wachovia. After being formally retained by Central Fidelity, Keefe, Bruyette added Central Fidelity to its internal "Watch List" memorandum.

20. The Watch List, which constituted proprietary information of Keefe, Bruyette maintained under the discretion of its Compliance Department, listed the names of companies that had formally retained Keefe, Bruyette and from whom Keefe, Bruyette had received confidential, material, nonpublic information. Employees of Keefe, Bruyette are prohibited both from trading in the securities of companies listed in the firm's Watch List and from recommending the purchase of such securities to others.

21. A copy of the Watch List memorandum listing Central Fidelity was distributed on June 16, 1997 to certain senior officers at Keefe, Bruyette, including McDermott.

22. On the same day that Central Fidelity retained Keefe, Bruyette -- June 16, 1997 -- Gannon purchased 390 shares of Central Fidelity stock at \$32.75 per share in her Schwab brokerage account, which she had opened three days earlier.

23. Just eight days later, on June 24, 1997, Central Fidelity and Wachovia announced the signing of a definitive merger agreement. Gannon sold all of her Central Fidelity stock on December 8, 1997 at \$50.812 per share, realizing profits of approximately \$7,044.

#### **Advanta Corporation**

24. Advanta Corporation was another security included on Keefe, Bruyette's June 16, 1997 Watch List, which was distributed to McDermott, among others.

25. Gannon purchased 400 shares of Advanta stock on June 16, 1997 at \$31.81 per share. Two days later Advanta's share price rose 7% because of speculation that a takeover was imminent. Gannon subsequently sold her Advanta shares on July 8, 1997 for a profit of \$750. Three days after Gannon's sale of her Advanta stock, it was reported in the press that Advanta had turned down a bid for \$42 per share from National Australia Bank Ltd.

#### **Barnett Banks, Inc.**

26. On August 25, 1997, SunTrust Banks, Inc. contacted Keefe, Bruyette and informed Keefe, Bruyette that Barnett Banks, Inc. was soliciting bids. Upon information and belief, SunTrust communicated this information directly to McDermott. SunTrust also informed Keefe, Bruyette that the deadline for submitting bid proposals for Barnett was August 27, 1997. SunTrust then retained Keefe, Bruyette to assist it in preparing a bid proposal for SunTrust to acquire Barnett. Keefe, Bruyette placed Barnett on its restricted Watch List on August 28, 1997.

27. On August 26, 1997, the day after McDermott learned of Barnett's solicitation of bids, Gannon purchased 1,800 shares of Barnett stock.

28. On August 25, 1997, Gannon telephoned Pomponio and told him that "a very powerful and rich Wall Street-type friend" told her that she should buy Barnett stock. Gannon also told Pomponio that she planned to purchase Barnett stock and recommended that Pomponio do the same. In reliance upon Gannon's recommendation, Pomponio purchased 1,370 shares of Barnett stock on August 26, 1997, the same day that Gannon purchased Barnett stock.



29. Three days later, on August 29, 1997, NationsBank Corporation and Barnett announced that they had entered into an agreement whereby NationsBank would acquire Barnett. The announcement caused a 24% surge in the price of Barnett's stock.

30. Following the announcement, Gannon sold all of her Barnett stock for a profit of \$30,400, and Pomponio sold all of his Barnett stock for a profit of \$26,793.75.

#### **First Commerce Corp.**

31. On October 1, 1997, First Commerce Corp. was placed on Keefe, Bruyette's Watch List.

32. On October 10, 1997, Gannon purchased 3,333 shares of First Commerce stock.

33. On October 13, 1997, Pomponio also purchased 3,013 shares of First Commerce stock.

34. One week later, on October 20, 1997, Banc One Corp. announced that it had a definitive agreement to acquire First Commerce. On the day of the announcement, the closing price of First Commerce's stock was up by \$8.25. Keefe, Bruyette advised First Commerce in connection with the Banc One Corp. transaction.

35. Gannon did not sell her First Commerce shares for a profit immediately following the announcement, but held her shares until October 28, 1997 and incurred a loss. Pomponio sold all of his First Commerce stock on October 27, 1997, for a profit of \$1,379.87.

### **California State Bank (West Covina)**

36. On December 8, 1997, Gannon purchased 4,000 shares of California State Bank (West Covina) stock in her brokerage account at Schwab.

37. On February 9, 1998, California State Bank was placed on Keefe, Bruyette's Watch List.

38. On February 13, 1998, Gannon jointly purchased with her younger brother an additional 430 shares of California State Bank stock in a joint Schwab brokerage account they had established.

39. Pomponio also purchased 5,500 shares of California State Bank stock during the period December 8, 1997 through February 13, 1998.

40. On February 19, 1998, First Security Corporation announced a definitive agreement to acquire California State Bank for \$848 million. Keefe, Bruyette represented California State Bank in the merger negotiations with First Security Corporation.

41. On the day of First Security Corporation's merger announcement, Gannon sold all 4,000 shares of the California State Bank stock in her individual account for a profit of \$32,000. Also on February 19, 1998, Gannon and her brother sold the 430 shares of California State Bank stock in their joint account, for a profit of \$2,150. Pomponio also sold his 5,500 shares of California State Bank stock on February 19, 1998, for a profit of \$51,330.

### **First Commercial Corp.**

42. On December 30, 1997 and January 23, 1998, Gannon purchased a total of 1,443 shares of First Commercial stock in her individual brokerage account at Schwab.

43. On January 22, 1998, First Commercial Corp. was placed on Keefe, Bruyette's Watch List.

44. On January 26, 1998, Gannon and her brother also jointly purchased 460 shares of First Commercial stock in their joint brokerage account at Schwab.

45. Pomponio also purchased a total of 1,375 shares of First Commercial stock on December 23, 1997 and January 21, 1998.

46. On February 9, 1998, Regions Financial Corp. announced its agreement to acquire First Commercial Corp. for \$2.7 billion, or \$68.85 per share. Keefe, Bruyette represented First Commercial in the merger negotiations with Regions Financial Corp.

47. Gannon sold all of the First Commercial stock in her individual account on March 4, 1998, for a profit of \$12,571.05. Gannon and her brother also sold all of the First Commercial stock in their joint account on March 4, 1998, for a profit of \$3,220. Pomponio sold his 1,375 shares of First Commercial stock on February 17, 1998, for a profit of \$6,875.

48. As an officer and director of Keefe, Bruyette, McDermott owed a fiduciary duty to Keefe, Bruyette and to Keefe, Bruyette's respective clients. Because of this relationship, McDermott had duties to safeguard the confidentiality of that client information and not to misuse it.

49. In breach of the foregoing duties, McDermott communicated material, nonpublic information concerning the proposed business combinations involving Keefe, Bruyette's clients to Gannon. McDermott knew or was reckless in not knowing the information he disclosed to Gannon was nonpublic and that his disclosure of the

information was improper and in breach of duties he owed. McDermott's repeated disclosures to Gannon of this information were made under circumstances in which he knew, should have known, or acted with reckless disregard of the fact that Gannon was likely to effect transactions in the securities of Keefe, Bruyette's clients or to disclose the information to others who were likely to effect such transactions.

50. Gannon knew, should have known, or acted in reckless disregard of the fact that the nonpublic information that she repeatedly received from McDermott was nonpublic, and that the information was disclosed to her in violation of a fiduciary duty or other duty of trust and confidence. Accordingly, Gannon inherited McDermott's duty not to trade on that information and not to communicate it improperly to others.

51. As part of a scheme to defraud, Gannon thereafter knowingly or recklessly breached these duties, and effected transactions in the securities of Keefe, Bruyette's clients while in possession of material, nonpublic information concerning potential business combinations that she obtained from McDermott.

52. As part of a scheme to defraud, Gannon also disclosed to Pomponio the material, nonpublic information provided to her by McDermott. Pomponio knew, should have known, or acted in reckless disregard of the fact that the information he was given had been disclosed to Gannon in breach of a fiduciary duty or other duty of trust and confidence. Accordingly, Pomponio inherited a duty not to trade on that information.

53. As part of a scheme to defraud, Pomponio thereafter knowingly or recklessly breached these duties, and effected transactions in the securities of Keefe,

Bruyette's clients while in possession of material nonpublic information concerning potential business combinations of Keefe, Bruyette's clients.

54. By reason of the foregoing, defendants, directly and 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 are likely to commit such violations in the future unless enjoined from doing so.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Securities and Exchange Commission respectfully requests that this Court enter a judgment:

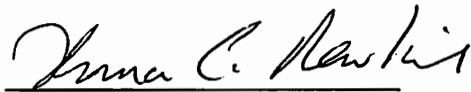
(i) permanently enjoining Defendants McDermott, Gannon and Pomponio from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

(ii) ordering Defendants McDermott, Gannon and Pomponio to disgorge all profits realized from the unlawful trading alleged herein, with prejudgment interest;

- (iii) ordering Defendants McDermott, Gannon and Pomponio to pay civil monetary penalties under Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and
- (iv) granting such other relief as this Court may deem just and appropriate.

Dated: December 21, 1999  
Washington, D.C.

Respectfully submitted,



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