

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS	
<b>FILED</b>	
AUG 20 2008	
CLERK, U.S. DISTRICT COURT	
By _____	Deputy _____

141258

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

PATRICK HENRY HAXTON  
ROYAL FOREX MANAGEMENT LLC

Defendants.

Civil Action No.

3-08CV1467-L

**COMPLAINT**

Plaintiff Securities and Exchange Commission (“Commission”) alleges as follows against Defendants Patrick Henry Haxton and Royal Forex Management LLC (collectively, “Defendants”):

**SUMMARY OF ALLEGATIONS**

- From at least June 2007 through the present, Defendants Haxton and Royal Forex, a company Haxton founded and controls, have engaged in a fraudulent scheme which has defrauded eight investors in three states of at least \$305,000 so far. Using a Royal Forex website, printed offering material, and oral sales pitches, Haxton represents to investors and prospective investors that he has produced extraordinary returns trading foreign currencies using a software program he created called the “Currency Trading Robot.” He promises investors high returns with little or no risk. In reality, Haxton has not produced any returns—he has lost a huge portion of investor funds trading foreign currencies and has misappropriated the rest.
- The Defendants are presently seeking new victims. The Royal Forex website remains active on the Internet, touting the trading program using fraudulent claims. For example, it

contains a claim that the company made double digit returns in February 2008. In reality, in the same month, Haxton lost virtually all of the investor funds he had not previously misappropriated. Since February, the Defendants have raised at least \$50,000. Moreover, since as recently as July 2008, Haxton has told some investors that he is trying to raise additional funds.

3. By this conduct, Defendants have offered and sold securities in the form of investment contracts and have violated, and continue to violate, the securities-registration and anti-fraud provisions of the federal securities laws, specifically Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§77e(a), 77e(c), and 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and of Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

4. Based on the loss and misappropriation of investor funds, emergency relief is needed to prevent the Defendants from defrauding additional investors, to limit the potential for further financial harm to existing investors, and, if economically feasible, to recover assets for the Defendants' victims.

#### **JURISDICTION AND VENUE**

5. The investments offered and sold by the Defendants are "securities" under Section 2(1) of the Securities Act [15 U.S.C. § 77b] and Section 3(a)(10) of the Exchange Act [15 U.S.C. § 78c].

6. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], to enjoin Defendants preliminarily and permanently from future violations of the federal securities laws.

7. This Court has jurisdiction over this action, and venue is proper, 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].

8. Defendants, directly or indirectly, made use of the means or instruments of transportation and communication, 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. Certain of the transactions, acts, practices, and courses of business alleged herein took place in the Northern District of Texas.

#### DEFENDANTS

9. **Haxton**, age 51, of Carrollton, Texas, is the owner and sole manager of Royal Forex, which he operates from his home. Haxton also works in his brother's fence-building business. Haxton has never been registered with the Commission or FINRA in any capacity and has never been licensed to offer or sell securities publicly. Haxton was indicted for felony insurance fraud and theft in Dallas County in July 1999, and later pleaded guilty. He was sentenced to two years confinement. Imposition of the sentence was suspended in lieu of four years community supervision.

10. **Royal Forex** is a Texas limited liability company formed by Haxton in May 2007. The Royal Forex offering materials and Internet website indicate that investors are investing with Royal Forex. All investor funds raised so far, however, have been deposited into Defendant Haxton's personal accounts. Royal Forex purports to use proprietary trading software developed by Haxton called the "Currency Trading Robot" ("Trading Robot"). Royal Forex has never registered a class of securities under the Exchange Act and has never registered any securities transaction with the Texas State Securities Board.

## THE FRAUDULENT SCHEME

### The Royal Forex Offering

11. In or about June 2007, Haxton began offering investments to the public, representing that his company, Royal Forex, would generate profits for investors by trading their funds in the foreign-currency market. Haxton and Royal Forex offer the investments in various ways. For example, they use a Royal Forex website, [www.RoyalForexManagement.com](http://www.RoyalForexManagement.com), which is available to the public with out password or other restriction. In addition, Haxton solicits investors through his personal contacts and advertises the offering with a sign on his vehicle.
12. The offering materials include a Trading Agreement and a Currency Forex Risk Disclosure Statement (“Disclosure Statement”). The Trading Agreement specifies that the investor’s funds will be placed in a trading account in the investor’s name and under the investor’s control. Haxton is to receive only trading authority over the account and authority to trade through the Trading Robot. It further provides that Haxton does not have the authority to withdraw or transfer the client’s funds. The Trading Agreement provides that Haxton will receive a 10% management fee, which is to be deducted when the funds have been deposited in the client’s account, and 60% of the trading profits. The Disclosure Statement contains general warnings regarding the risks of foreign-currency trading but does not accurately explain the risks associated with the Royal Forex offering. Indeed, Defendants misrepresent the risk to investors, falsely claiming that there is no risk associated with the Royal Forex investment.
13. The Defendants’ actual practices belie these claims. Haxton secured the first Royal Forex investment in or about June 2007, and raised a total of \$255,000 by November 2007. Instead of opening individual client-trading accounts as promised, he deposited all investor funds in his personal bank account. Then, in August 2007, Haxton transferred \$219,000 in investor

funds to two accounts in his name at Peregrine Financial Group (“Peregrine”), a CFTC registered commodities-trading firm that facilitates foreign-currency transactions.

14. From August through October 2007, Haxton used the \$219,000 to trade foreign currencies in his personal Peregrine accounts. By end of October 2007, he had generated a 15% return in his accounts using investor funds. In November 2007, December 2007, and January 2008, he had realized gains on certain positions of \$132,000, \$135,000, and \$182,000, respectively. But these realized gains were offset in these months by unrealized losses of \$71,000, \$144,000, and \$435,000, respectively. In early February 2008, these negative positions led to a \$435,000 margin call, plus an additional \$34,000 in premiums and costs. This reversal wiped out the realized gains in Haxton’s accounts and the vast majority of the investors’ initial investments.

#### **Misappropriation of Investor Funds**

15. Haxton misappropriated approximately \$200,000 of investor funds. For example, he used almost all of the \$10,000 contributed by one early Royal Forex investor to pay personal expenses, such as dining, U-Haul rental, appliance purchases, clothing, medicine, and utilities. Furthermore, in December 2007, Haxton transferred \$100,000 from one of his Peregrine trading accounts to his personal bank account. After making the \$100,000 transfer to his personal bank account, Haxton made cash withdrawals of \$30,000, transferred \$30,000 to other personal bank accounts, and transferred \$30,000 to two unknown entities. In early February 2008, after the \$435,000 margin call, Haxton had only \$54,725 in his Peregrine trading account. Haxton subsequently made three counter withdrawals totaling approximately \$54,725, leaving the account with a zero balance on April 10, 2008.

### **The Scheme is Ongoing**

16. The Defendants' fraudulent offering is presently available to the public on Royal Forex's website. Royal Forex's website, for instance, claims that Royal Forex achieved a 34% return in February 2008. In reality Haxton lost the large majority of the investor funds in February 2008 and has not achieved a return for investors.

17. Moreover, Haxton has personally solicited investors and made sales in the recent past. In May 2008, Haxton provided a potential investor with Royal Forex's promotional materials, told the investor to view the Internet site, and made several oral representations about the past successes and safety of the Royal Forex investment. Haxton did not disclose, however, that he had either lost or misappropriated all of the funds previously invested. The investor subsequently invested \$50,000 with Royal Forex. As recently as July 2008, Haxton finally admitted to at least one investor that he had lost the investor's money. Haxton further admitted that he was trying to raise additional funds to continue trading in hopes of repaying the investor.

18. To date, at least eight investors in three states have invested approximately \$305,000 in the fraudulent Royal Forex offering.

### **False and Misleading Statements Made in the Offering**

19. Royal Forex's web site and offering materials are replete with misleading claims and falsehoods about past trading successes and the safety of the investment. Specifically, these materials contain the following false or misleading representations:

- (a) Royal Forex has generated annual trading returns of 574% for 2006, 401% for 2007, and 158% for the first quarter of 2008.
- (b) Royal Forex has generated a "5-Year Average Return" of 2105.4%.

- (c) “Make at least 100% on your funds. We are doing it now.”
- (d) “This remarkable trading program has returned 75%-100% each year for our clients.”
- (e) “We offer forex trading, trading for all investors with a no-risk environment.”
- (f) “Royal Forex Management has grown exponentially over the last EIGHT years to one of the top forex trading systems in the universe.”
- (g) “We have great performance and great history.”

20. In reality, Royal Forex has never generated returns for its clients. The investment was fraught with serious risks, among these were risks resulting from Haxton having deposited investor funds into his personal bank accounts and foreign-currency-trading accounts contrary to the Trading Agreement. The Defendants operated a scheme to defraud—not a legitimate forex-trading system with great performance and great history. In fact, Royal Forex has not been in existence for eight years. And Defendant Haxton’s history includes a felony fraud conviction in 2000, which neither Defendant disclosed to investors.

### **FIRST CLAIM**

#### **Violations of Section 17(a) of the Securities Act**

21. Plaintiff Commission repeats and incorporates paragraphs 1 through 20 of this Complaint by reference as if set forth *verbatim*.
22. The Defendants, directly or indirectly, singly or in concert with others, in connection with the offer or sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

and (c) engaged in acts, practices and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons.

23. As a part of and in furtherance of their scheme, the Defendants, directly and indirectly, prepared, disseminated, or used contracts, written offering documents, promotional materials, investor, and other correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations of material facts, and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, those set forth in Paragraphs 1 through 20 above.

24. With respect to violations of Sections 17(a)(2) and (3) of the Securities Act, the Defendants were negligent in their actions regarding the representations and omissions alleged herein. With respect to violations of Section 17(a)(1) of the Securities Act, the Defendants made the above-referenced misrepresentations and omissions knowingly or with severe recklessness regarding the truth.

25. By reason of the foregoing, the Defendants have violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

## **SECOND CLAIM**

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

26. Plaintiff Commission repeats and incorporates paragraphs 1 through 20 of this Complaint by reference as if set forth *verbatim*.

27. The Defendants, directly or indirectly, singly or in concert with others, in connection with the purchase or sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have: (a) employed devices, schemes and artifices to defraud;



(b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons.

28. As a part of and in furtherance of their scheme, the Defendants, directly and indirectly, prepared, disseminated, or used contracts, written offering documents, promotional materials, investor, and other correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations of material facts, and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, those set forth in Paragraphs 1 through 20 above.

29. The Defendants made the above-referenced misrepresentations and omissions knowingly or with severe recklessness regarding the truth.

30. By reason of the foregoing, the Defendants violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

### **THIRD CLAIM**

#### **Violations of Section 5(a) and 5(c) of the Securities Act**

31. Plaintiff Commission repeats and incorporates paragraphs 1 through 20 of this Complaint by reference as if set forth *verbatim*.

32. Defendants, directly or indirectly, singly and in concert with others, have been offering to sell, selling, and delivering after sale, certain securities, and have been, directly and indirectly:

(a) making use of the means and instruments of transportation and communication in interstate

commerce and of the mails to sell securities, through the use of written contracts, offering documents and otherwise; (b) carrying and causing to be carried through the mails and in interstate commerce by the means and instruments of transportation, such securities for the purpose of sale and for delivery after sale; and (c) making use of the means or instruments of transportation and communication in interstate commerce and of the mails to offer to sell such securities.

33. As described in paragraphs 1 through 20, the investments described herein have been offered and sold to the public through a general solicitation of investors. No registration statements were ever filed with the Commission or otherwise in effect with respect to these securities.

34. By reason of the foregoing, the Defendants have violated and, unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

**RELIEF REQUESTED**

**WHEREFORE**, Plaintiff respectfully requests that this Court:

**I.**

Temporarily, preliminarily, and permanently enjoin Defendants from violating Sections 5(a), 5(c), and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

**II.**

Enter an Order *instanter* freezing the assets of Defendants and directing every bank, brokerage firm, entity, and individual possessing assets of the Defendants to comply with the Court's Order.

**III.**

Order *instanter* that Defendants shall file with the Court and serve upon Plaintiff Commission, no later than 72 hours after notice of this Order, an accounting, under oath, detailing all of their assets and all funds or other assets received from investors and from one another.

**IV.**

Order *instanter* that Defendants be restrained and enjoined from destroying, removing, mutilating, altering, concealing or disposing of, in any manner, any of their books and records or documents relating to the matters set forth in the Complaint, or the books and records and such documents of any entities under their control, until further order of the Court.

**V.**

Order that the parties may commence discovery immediately, and that notice periods be shortened to permit the parties to require production of documents, or the deposition of any party or party-representative, on 72 hours notice.

**VI.**

Order the Defendants to disgorge an amount equal to the funds and benefits they obtained illegally as a result of the violations alleged herein, plus prejudgment interest on that amount.

**VII.**

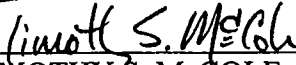
Order civil penalties against the Defendants pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], for the violations alleged herein.

**IX.**

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

For the Commission, by its attorney:

Dated and signed on the 20<sup>th</sup> day of August 2008

  
\_\_\_\_\_  
TIMOTHY S. McCOLE  
Mississippi Bar No. 10628  
United States Securities and Exchange Commission  
Burnett Plaza, Suite 1900  
801 Cherry Street, Unit 18  
Fort Worth, Texas 76102  
Telephone: (817) 978-6453  
FAX: (817) 978-4927  
E-mail: McColeT@SEC.gov  
Attorney for (Plaintiff) Securities and  
Exchange Commission

JS-44 (Rev. 11/04)

**ORIGINAL CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, 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 initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**  
**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Defendants**  
**Patrick Henry Haxton and Royal Forex Manager LLC**

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF** \_\_\_\_\_  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**County of Residence of First Listed Defendant:** Dallas  
 (IN U.S. PLAINTIFF CASES ONLY)  
 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

**(c) ATTORNEY (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**  
**Timothy S. McCole**  
 Burnett Plaza, Suite 1900  
 801 Cherry Street, Unit 18  
 Fort Worth, Texas 76102  
 Telephone: (817) 978-6453

**ATTORNEYS (IF KNOWN)**



**08 CV 1467 - L**

**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** (For Diversity Cases Only) (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/>
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/>
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STAT	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 156 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copy rights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Bar <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influence and Corrupt Org <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Information Act <input type="checkbox"/> 894 Energy Allocation <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access <input type="checkbox"/> 950 Constitutionality State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395FF) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

**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 Judge

**VI. CAUSE OF ACTION** CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING (DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY):  
 Brief Description of cause:  
 Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)]; and Section 10(b) of the Securities Exchange Act of 1934, [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION  UNDER F.R.C.P. 23

**DEMAND \$** \_\_\_\_\_

CHECK YES only if demanded in complaint:  
**JURY DEMAND**  YES  NO

**VIII. RELATED CASE(S)** (See Instructions):  
 IF ANY \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE August 20, 2008 SIGNATURE OF ATTORNEY OF RECORD Timothy S. McCole

FOR OFFICE USE ONLY  
 Receipt # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_